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Literature and Law: Fairy Tales, Animated Cartoons and Property Law

Abstract: Property law is present in every narrative, language and even in fairy tales as a fundamental right. The contribution, based on the fairy tales *Up* and *The Emperor's New Groove*, aims to draw – in fairy tales as well as in reality – the boundaries within which this right can be exercised. The purpose of this paper, using an empirical and qualitative methodology, is to demonstrate how the use of fairy tales can be useful to teach young students of both primary and high school important concepts such as those part of the modern concept of "property" expressed recently by the legal doctrine and the jurisprudence of the European Court of Human Rights.

Keywords: fairy tales, language and law, law and literature, property law

Introduction

Property rights, and most broadly the right of ownership and with all that this implies, have always been a key element in human society. Nevertheless, "private property" was so important to be considered a fundamental and an absolute right

within Article 544 of the French 1804 Civil Code,[1] Article 436 of the Italian 1865 Civil Code[2] or Article 903 of the German 1900 BGB.[3]

The historic framework in which the "modern" civil codes have been developed and promulgated was an era in which many countries reunited or were in the process of becoming new modern nations.[4] Specifically, it is during the late XIX century that the entire European cultural scene evolved into achieving for each country a national culture (including also a national language) that spread out in each sector of human knowledge.[5] The scope of this cultural unity was in fact the creation of a "new language" intended to affirm a "national pride".[6] and fairy tales have played a crucial role in this.

1 The Code Napoleon's original text stated : "La propriété est le droit de jouir et disposer des choses de la manière la plus absolue, pourvu qu'on n'en fasse pas un usage prohibé par les lois ou par les règlements." (translated: "Property is the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way prohibited by laws or statutes.") For a detailed historical analysis and contextualization of the Code Napoleon see: A. B.M. Boistel, Le Code Civil et la philosophie du droit, Paris 1844.

2 The original text of the Italian civil code adopted in 1865 stated: "La proprietà è il diritto di godere e disporre delle cose nella maniera più assoluta, purché non se ne faccia un uso vietato dalle leggi o dai regolamenti" (translated: "Property is the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way prohibited by laws or statutes.") For a detailed historical analysis and contextualization of the Italian Civil Code see: G. Tarello, Cultura giuridica e politica del diritto, Bologna 1988, p. 122. It is worth underlying that the 1865 Italian Civil Code is a perfect replica, for the Italian population, of the 1804 French Civil Code. In fact, the Italian legislator took as inspiration the French civil code thus copying and translating most of its content from French into Italian.

3 The original text of the German BGB adopted in 1900 stated: "Der Eigentümer einer Sache kann, soweit nicht das Gesetz oder Rechte Dritter entgegenstehen, mit der Sache nach Belieben verfahren und andere von jeder Einwirkung ausschließen. Der Eigentümer eines Tieres hat bei der Ausübung seiner Befugnisse die besonderen Vorschriften zum Schutz der Tiere zu beachten." (translated: "The owner of an object may, unless the law or rights of third parties conflict, carry out the object at will and exclude others from any influence. The owner of an animal must observe the special rules for the protection of animals when exercising his powers.") For the German codification history see: F. Wieaker, Storia del diritto privato moderno con particolare riguardo alla germania, II, Milan 1980, p. 175 ff.

4 P. Grossi, Modernità e ordine giuridico, "Quaderni fiorentini" 1988, vol. 27, p. 39; C. Latini, Dei progressi del diritto civile in Italia. Una causa celebre sui versi di Giovanni Pascoli e l'emersione del diritto d'autore, (in:) R. Favale, C. Latini (eds.), La codificazione nell'Italia post unitaria 1865–2015, Camerino 2016, p. 15.

5 For instance, in Germany, the Brothers Grimm published the first German-language dictionary in 1854 in Leipzig. See: B. Roll et al., Die Brüder Grimm Pioniere deutscher Sprachkultur des 21. Jahrhunderts, Gütersloh/Munich 2013. In Italy, between 1861 and 1876, after the unification of the country into a modern state, Nicolò Tommaseo and Bernardo Bellini published the first Italian-language dictionary. For an insight into the history of the Italian dictionaries see: C. Marazzini, L'ordine delle parole: storia di vocabolari italiani, Bologna 2009, p. 282 ff.

6 J. Zipes, The Changing Function of the Fairy Tale, "The Lion and the Unicorn" 1988, vol. 12, no. 2, p. 19.

1. Methodology

Starting from this historic premise, this paper will – using an empirical and qualitative methodology and interdisciplinary approach – demonstrate how children and students could benefit from and learn law and its principles through the reading, listening or watching of fairy tales. An array of interdisciplinary literature ranging from sociology and cognitive psychology to law will be analysed, while through the analysis of individual fairy tales the link between law and education methods will be explained.[7]

When approaching a speech or a lesson, the main goal of the speaker is that the message expressed is clear to the audience.[8] This is more important if the speaker is a teacher in a class full of children or a professor in front of an audience of students eager to learn. Still, what is crucial, especially when teaching law, is that the students get, as Fuller states, "something more durable, more versatile and muscular, than mere knowledge of rules of law".[9] Moreover, the teacher has to allow students and children to think in a creative yet productive way that will help them in the future to solve problems never faced before.[10]

At the same time, it is pivotal that teachers and professors give instruments to children and students to understand the current society and build of a sense of community,[11] because it will affect the process of consolidating their personal,[12] political and social identity.[13] The "sense of community" and the understanding of law are closely linked and intertwined.[14]

7 See Sections 2 and 3 of this paper.
8 R. Dolan, Effective presentation skills, "FEMS Microbiology Letters" 2017, vol. 364, no. 24, p. 2.
9 L. L. Fuller, On teaching law, "Stanford Law Review" 1950, vol. 3, no. 4, p. 36.
10 M. Wertheimer, Productive thinking, Springer 2020, *passim*.
11 J. Adelson, R.P. O'Neil, Growth of political ideas in adolescence: The sense of community, "Journal of Personality and Social Psychology" 1966, vol. 4, no. 3, p. 295–306.
12 E.H. Erikson, Identity, youth, and crisis, New York 1968.
13 S. Berman, Children's social consciousness and the development of social responsibility, Albany 1997.
14 J.E. Young, The law as expression of community ideals and the lawmaking functions of courts, "Yale Law Journal" 1917, vol. 18, no. 1, p. 20.

As many studies have demonstrated, both in children and adolescents, there is a lack of knowledge in the concept of law, judicial system and politics[15] even if in many education systems civic education has been introduced into the curricula.[16]

Due to the fact that children have been their main addressee as they have become the recipients of "moral recommendations with didactic intent spread",[17] the literary genre of fairy tales can be a useful tool for effectively implementing the knowledge of law and the sense of community in a wider meaning and perspective.

Fairy tales and folk tales have allowed children to achieve "a more mature consciousness" on society,[18] thus making them understand the "real world" of adults.[19] As pointed out by Carpi, "folktales are the mirrors of the social order in a given historical period, and as such they symbolize the dreams and the needs of the people"[20] and, especially in children, fairy tales can play a pivotal role into supporting their socio-emotional, cognitive and conative development.[21]

And while the evolution of culture has continued over time, even if the communication methods have changed,[22] so fairy-tales have migrated into these new communication tools, thus remaining in the public consciousness[23] and reinventing

15 A.E. Berti, V. Guaranaccia, R. Lattuada, Lo sviluppo della nozione di norma giuridica, "Scuola e città" 1997, vol. 48, no. 12, p. 532–545; A.E. Berti, E. Ugolini, Developing knowledge of the judicial system: A domain specific approach, "The Journal of Genetic Psychology" 1998, vol. 159, no. 2, p 221–236; G.M. Garcia-Albacete, Promoting Political Interest in Schools: The Role of Civic Education, (in:) S. Abendschön (ed.), Growing into Politics: Contexts and Timing of Political Socialisation, Colchester 2013, p. 96 ff.

16 For instance, it is worth noting that most of the European countries have introduced in the respective education curricula activities related to civic or citizenship education. See in this regard: European Commission/EACEA/Eurydice, Citizenship Education at School in Europe – 2017, Eurydice Report, Luxembourg 2017; for the USA see: National Council for the Social Studies, The College, Career, and Civic Life (C3) Framework for Social Studies State Standards: Guidance for Enhancing the Rigor of K–12 Civics, Economics, Geography, and History, Silver Spring 2013.

17 S. Barsotti, The fairy tale: recent interpretations, female characters and contemporary rewriting. Considerations about an "irresistible" genre, "Ricerche di Pedagogia e Didattica – Journal of Theories and Research in Education" 2015, vol. 10, no. 2, p. 70.

18 B. Bettelheim, The Uses of Enchantment: the Meaning and Importance of Fairy Tales, New York 1989, 2.

19 V. Propp, Istoricheskie korni volshebnoy skazki (The Historical Roots of the Wonder Tale). Leningrad 1986, *passim*; J. Zipes, *op. cit.*.

20 D. Carpi, Fables of the Law. A literary perspective, (in:) D. Carpi, M. Leiboff (eds.), Fables of the Law. Fairy Tales in a Legal Context, Berlin/Boston 2016, p. 6.

21 D. Vučković, A fairy tale (r)evolution: the value and the critical reading of fairy tales in the contemporary educational context, "History of Education & Children's Literature" 2018, vol. 13, no. 2, p. 336.

22 J. Lull, Evolutionary communication: an introduction, New York 2020; G. Antonelli, L'e-taliano fra storia e leggende, (in:) S. Lubello (ed.) L'e-taliano. Scriventi e scritture nell'era digitale, Florence 2016, p. 11.

23 C. Schwabe, The Fairy Tale and Its Uses in Contemporary New Media and Popular Culture Introduction, (in:) C. Schwabe (ed.), The Fairy Tale and Its Uses in Contemporary New Media and Popular Culture, Basel 2016, p. 2.

themselves in the new era.[24] In this regard, animated movies – especially those depicted by Disney since the beginning of the 1930s – have allowed children, adolescents, and adults to rethink society[25] and have replaced the written fairy tales.

In order to understand the educational power that fairy tales might have for the understanding of legal concepts, it is worth taking some examples. The aim of the following pages is to highlight how using examples presented in fairy tales, especially in the new form of animated movies which is more popular today, can allow children and adolescents to understand the concept of property in the various forms in which it is present in the contemporary legal framework.

The examples taken are from two fairy tales: *Up*[26] and *The Emperor's New Groove*.[27] The plots will be summarized before we consider the houses of the protagonists of the two fairy tales, which will be relevant for the discussion.

2. Fairy Tales: *Up* and *The Emperor's New Groove*

2.1. Up's Plot

Carl Fredricksen, a timid eight-year-old in the 1930s, is an admirer of the renowned explorer Charles F. Muntz, who was said to have discovered Paradise Falls, the most beautiful place on earth. When older, Carl meets Ellie, another Muntz lover, they fall in love and marry with the dream to relocate Ellie's clubhouse to a cliff that looks out over Paradise Falls. They move into Ellie's clubhouse and decide to live there for the rest of their lives before eventually relocating next to Paradise Falls. But they never actually carry out this plan. Life passes by for both Carl and Ellie, who becomes ill out of the blue and dies quite quickly. Years go by, and one by one skyscrapers supplant Carl's old neighborhood, but he obstinately refuses to sell his home. The court declares him a danger to the public after he unintentionally hurt a construction worker and orders him into a retirement home. Carl, however, has other ideas. Together with a teenage Wilderness Explorer called Russell, he affixes his house with hundreds of helium balloons that he accumulated from his previous employment as a balloon salesman. After numerous adventures they finally manage to arrive with

24 D. Haase, Television, (in:) D. Haase, A. Duggan (eds.), Folktales and Fairy Tales: Traditions and Texts from around the World, 2nd ed. 4 vols, Santa Barbara 2016, p. 1010.

25 T.L. Mollet (a), A Cultural History of the Disney Fairy Tale: Once Upon an American Dream, Cham 2020, p. 6.

26 The animated movie was produced by Walt Disney in 2002. For a critique on the movie see: H. Silverman, Groovin' to Ancient Peru: A critical analysis of Disney's The Emperor's New Groove, "Journal of Social Archeology" 2002, vol. 3, no. 2, p. 298 ff.

27 The animated movie was produced by Pixar in 2009. See also: Aleteia, The Amazing True Story of the Woman Who Inspired the Movie "Up", 11 March 2014, https://aleteia.org/2014/03/19/the-amazing-true-story-of-the-woman-who-inspired-pixars-up/ (12.06.2022).

the house at Paradise Falls, where the house softly lands on the ground next to the cliff, just where Ellie had always imagined it, and thus Carl fulfils his promise to her.

2.1.1. Carl's House

The main characters in Carl's story are Carl himself and his house. In fact, as Pixar stated upon the release of the movie, "the Pixar team treated Carl's house like a film character, touring vintage Oakland and Berkeley neighborhoods to cast for the right mix of comfort and familiarity, with just a touch of melancholy."[28] For instance, it is worth noting that the entire story is related to the house.

Indeed, the house represents Carl's personal and professional life (as he has always lived there and he created his balloons behind its walls), Carl's love life (as it is the place where he has lived with Ellie), and also his future (after the eviction notice and the court order to move into a retirement home, the protagonist decides that he still wants to live there).

In the movie, Carl's house is a main character of his identity as a human being. It is thus more than an "immovable" property depicted in many legal provisions. For example, if we take into consideration article 832 of the Italian Civil Code, which states that the owner has the right to "enjoy and dispose of things in the most absolute manner, provided they are not used in a way prohibited by the laws or statutes", is it possible to note that within the text it is not possible to capture the "personalistic" shape that the right to property can have, especially if related to someone's own house.[29]

2.2. The Emperor's New Groove's Plot

The plot of the movie *The Emperor's New Groove* revolves around Emperor Kuzko, an egocentric ruler of an ancient American kingdom. Emperor Kuzko plans to build a large summer villa on the site of the home of village leader and llama farmer Pacha. But after firing his royal adviser Yzma from her job, she and her assistant Kronk plan to kill Kuzko and take the imperial throne. The plan almost succeeds when they attempt to poison the emperor at a dinner party, but instead of dying, Kuzko is transformed into a llama by the potion. In an attempt to dispose of the llama's body, Kronk ends up putting the emperor in a sack on the back of Pacha's cart. When Pacha realizes that the llama in his cart is Emperor Kuzko, he strikes a bargain to return him to the throne, letting him keep his village home. Kuzko agrees, planning secretly to betray Pacha. They travel through the jungle and encounter many dangers, all while Yzma enjoys her time on the throne until she learns that Kuzko is still alive. Yzma and Kronk leave the palace to search for Kuzko. Hitting a few roadblocks and misunderstandings along the way, Kuzko and Pacha eventually resolve their differences and

28 Pixar, Feature Films – *Up*, https://www.pixar.com/feature-films/up (20.09.2022).

29 I. Farè, Il discorso dei luoghi, Naples 1991, p. 91.

become good friends. When Kuzko and Pacha finally arrive at the palace, Yzma attempts to kill them both, using a variety of potions and guards to fight them. She accidentally takes a potion herself, transforming herself into an adorable but nonetheless ferocious kitten, while Kuzko manages to return back to his human form. The empire is his once more. In the end, Kuzko decides to keep his word and let Pacha keep his home. Kuzko and Pacha remain friends and enjoy time together with Pacha's family, while Kronk goes on to be a scout leader of a small patrol, which also happens to include Yzma, who is stuck in her kitten form.

2.2.1. Pacha's House

The *Emperor's New Groove* tale is mostly concentrated on analysing Kuzko's egocentric persona, while the personal story of Pacha and his family is left to one side.

The analysis into Pacha's personal life and character begins when he meets with Emperor Kuzko at the imperial palace. When the emperor communicates to the llama farmer his intention to evict him from his house in order to build his villa, Pacha expresses his disappointment regarding his project and tells him that "his house is the house where also his parents grew up" and that "he and his family have lived there for generations". These protests do not move Kuzko and the ruler still wants to build his villa on Pacha's land.

When Pacha is heading back to his house to announce to his family the emperor's decision, there is a touching scene in which it is possible to feel his anger and his pain on being obliged to forever leave his house because of Kuzko's order. As the story continues the farmer's character is better depicted and it is possible to see that he lives in his house with his wife (who is pregnant) and his two little sons. From the movie it is also possible to understand that Pacha's house is also his place of work, as he farms llamas.

We can conclude that what stands out in the entire story is the relationship and the attachment that Pacha has with his house, as it represents more than just a place to live. The story brings to mind the words of Karjalainen, who stated that "house is a material object, but home is a relation … home is an emotionally based and meaningful relationship between dwellers and the dwelling places."[30] And this is the exact relationship between Pacha and his house which can be seen in the tale.

3. Discussion: A New Definition of Property within the EU

Thanks to the previous analysis it was possible to highlight the relationship between each protagonist and his house. For instance, it has become clear that both Carl and Pacha have a sentimental and special relationship with their homes. In light

30 P.T. Karjalainen, House, home and the place of dwelling, "Scandinavian Housing & Planning Research" 1993, vol. 10, p. 71.

of this, it is necessary to contextualize these fairy tales into the current legal scenario, thus providing a legal point of view on the fairy tales' outcomes.

Analysing the two fairytales it is worth noting that both Carl Fredricksen and Pacha have a special relationship with their houses which goes beyond the *res* as physically intended. For the first one, his house reminds him of his youth and his marriage with Ellie. For the second one, his house up on the hills in the farmer's village symbolizes his affective relationship with the property, as well as his professional workspace as a llama farmer. Both of them are victims of eviction orders. Carl Fredricksen is pursued by the enterprise to sell his property in order to allow the enterprise's economic expansion. Pacha receives an eviction order from Emperor Kuzko (the public authority) in order to allow the construction of the emperor's new villa.

It is possible to affirm that both in Fredricksen's and Pacha's cases there are elements that can be included within Article 8 of the European Convention on Human Rights – "Right to respect for private and family life" – and Article 1 Protocol 1 – "Protection of property" – of the European Convention on Human Rights. The language used by the fairy tales to describe the legal problems that Carl and Pacha are facing allows anyone, especially children, to understand the new meaning of the right to property within our contemporary society. For instance, it has become common knowledge between legal practitioners that, within the European Convention of Human Rights, the right to property has been disciplined by Article 8 ECHR and by Article 1 Protocol 1 ECHR.[31]

The protection extended to the right to property – especially thanks to Article 8 devoted to private and family life – has increased the borders within which real estate property is today seen as a right among humans. In fact, it is also thanks to the European Court of Human Rights that, today, property has lost its meaning only as a material good, but has become something that goes beyond the physical and economic *res*[32].

The social function attributed to property rights has increased its relevance within legal practitioners and doctrine, allowing a development of the concept that property rights are beyond the actual material good[33]. Private property has become

31 On the relationship between Article 1 Protocol 1 ECHR and Article 8 ECHR see: European Court on Human Rights, Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights, Strasbourg 2021, p. 49, according to which the two articles might seem overlapping regarding the concepts of home and property. Still the ECtHR states that the difference between the two concepts lies in the personal ties that an individual has with the property.

32 In the same sense see: T. Nieborak, Human Rights in the Light of the Process of Financialisation, "Bialystok Legal Studies" 2021, vol. 26, 5, p. 161 ff.

33 C. Tenella Sillani, I diversi profili del diritto di proprietà, "Rassegna Diritto Civile" 2013, vol. 4, p. 1060; B. Sirgiovanni, Dal diritto sui beni comuni al diritto ai beni comuni, "Rassegna Diritto Civile", 2017, p. 240.

something more, and it is now intended as "an instrument able to fulfil human dignity"[34].

Analyzing property law in the text of the ECHR, it is necessary to start our reflection by defining the concept of "home" within the meaning of private and family life of Article 8 paragraph 1 ECHR. In this regard, the copious jurisprudence of the European Court of Human Rights helped to reshape the meaning of property rights.

In fact, today, the Strasbourg Court does not intend as "home" exclusively traditional apartments and houses but includes in the meaning of "home" also caravans, other mobile homes[35] as well as those places where a certain person carries out his professional and/or working activity[36] and all those activities that can be included in his private and family life[37]. It is the ECtHR's common opinion that nowadays the link between the domicile and the person complaining of a violation must be lasting and meaningful in a material and affective way.

With regard to the stories considered in this paper, both Carl's and Pacha's houses fall within the meaning of "home" highlighted by the ECtHR. Both protagonists carry out in their respective homes a personal activity and professional activity that can be linked to the article's meaning. For both it is the centre of their family life (Carl's wife Ellie or Pacha's wife and his children) and both carried out a professional activity there such as designing balloons or farming llamas.

However, it is thanks to the concept of "private life", linked to that of domicile (home), that Article 8 of ECHR provides full protection to those who complain about a property violation within the Convention's meaning.

"Private (and family) life" in Article 8 of the ECHR is a broad concept for which it does not seem possible to give an exhaustive or even unambiguous definition. The definition of "private and family life" includes in its notion both the physical and the psychological integrity of a person[38], the right to establish and develop relationships

34 P. Perlingieri, Introduzione alla problematica della proprietà, Camerino, 2011, p. 6.

35 On the relationship between professional activity and Article 8 see: Judgment of ECtHR of 30 March 1989 on the case of Chappell v. United Kingdom, application no. 10461/83 para. 26; Judgment of ECtHR of 16 April 2002 on the case of Société Colas Est et al. v. France, application no. 37971/97, para. 41; Judgment of ECtHR of 25 April 2005 on the case of Buck v. Germany, application no. 41604/98, para. 31; Judgment of ECtHR of 9 September 2016 on the case of Popovi v. Bulgaria, application no. 39651/11, para. 103.

36 Judgment of ECtHR of 29 September 1996 on the case of Buckley v. United Kingdom, application no. 20348/92, para. 52; Judgment of ECtHR of 18 January 2001 on the case of Chapman v. United Kingdom, application no. 27238/95, para. 71; Judgment of ECtHR of 24 September 2012 on the case of Yordanova et al. v. Bulgaria, application no. 19009/04, para. 103.

37 The limits to this extensive interpretation of Article 8 are stated in the Judgment of ECtHR of 18 December 1996 Loizidou v. Turkey, application no. 15318/89, para. 66, for which Article 8 does not apply if it is an uninhabited property or an empty or under construction building.

38 Judgment of ECtHR of 26 March 1985 X e Y v. The Netherlands, application no. 8978/80, para. 22.

with other human beings[39] and other aspects concerning a person's physical and social identity[40] as well as his or her right to personal fulfilment or his or her right to self-determination.[41]

Also in these cases, our protagonists fit within the meaning of "private and family (life)" as both of them cherish behind the house's walls an affective and meaningful relationship.

Above all, as far as this paper is concerned, the concept of private life encompasses the emotional ties of a person[42] (e.g. the relationship between Carl Fredricksen and his wife Ellie) but also the professional ones[43] (e.g. Pacha and his llama farm). Therefore today, a violation of the right to property according to Article 8 of the ECHR and Article 1 Protocol 1 ECHR includes not only actual damage or violation of the right in the direct relationship between the individual and the property but also the emotional, personal and professional relationship between the *res* and the individual.

In fact, the doctrine has affirmed that today, there is not only a right to property, but also a right to remain in your own homeland, thus underlining the affective relationship between an immovable property and its possessor.[44]

Conclusions

In light of the current analysis, it has become clear how the example fairy tales can be useful to allow almost everyone to comprehend difficult legal concepts – such as those reflecting the meaning of "house" and "home" and the emotional ties that can be linked with its loss as expressed recently by the legal doctrine and jurisprudence of the European Court of Human Rights – since fairy tales have the social function to allow children to understand the adult world as well as to unite cultures.[45]

39 Judgment of ECtHR of 16 December 1992 on the case of Niemietz v. Germany, application no 13710/88, para. 29.

40 Judgment of ECtHR of 4 September 2002 on the case of Mikulić v. Croatia, application no. 53179/99, para. 53.

41 Judgment of ECtHR of 29 April 2004 on the case of Pretty v. United Kingdom, application no. 2346/02, para. 61.

42 Judgment of ECtHR of 24 January 2017 on the case Paradiso-Campanelli v. Italy, application no. 25358/12, para. 159.

43 Judgment of ECtHR of 13 November 2017 on the case of *Jankauskas v. Lithuania*, application no. 50446/17, para. 56; Judgment of ECtHR of 5 September 2017 on the case of Bărbulescu v. Romania, application no. 61469/08, para. 71.

44 L. Vicente, L. Ruggeri, K. Kashiwazaki, Beyond Lipstick and High Heels: Three Tell-Tale Narratives of Female Leadership in the United States, Italy, and Japan, "Hastings Women's L.J." 2021, vol. 32, 3, p. 13 ff.

45 J. Zipes, *op. cit.* On the positive impact of fairy tales on children see: L. Viskoknox Johnson, The Positive Impacts of Fairy Tales for Children, "University of Hawai'i at Hilo Hohonu" 2016, vol. 4, p. 78.

Secondly it is necessary to highlight that many studies have agreed upon the usefulness of videos as an educational tool. The potential of the medium of video (and thus animated cartoons and animated tales) is very high as the expressed message can be integrated in elements such as sound, image, text and speech,[46] thus democratizing the message that is to be expressed.[47]

It can therefore be suggested that this methodology of explaining legal concepts through fairy tales (including tales depicted in animated cartoons) can be used among primary school, high school and university students. As a concrete and effective medium, the fairy tale will allow anyone, based on the specific age, to understand legal concepts, enhancing their knowledge of society and community.

In this regard, two projects that adopt this methodology can be brought to the readers' attention. The first one is *Diritto e Fiabe,*[48] an Italian legal journal founded by Ivan Allegranti in 2015 which explains, especially to university students, legal concepts and encompasses the subjects of civil law, criminal law, administrative law, constitutional law, commercial law and law philosophy.

The second one is the recently launched project by *Diritto e Fiabe* and the European Law Students' Association (ELSA Italia)[49] "Elsa for Schools", which aims to bring legal education to high-schoolers through the explanation of legal concepts and current societal problems through fairy tales.

The importance of these two projects is based on the fact that both projects are easily replicable in every country of the world. There are many reasons for this. The first one is that, as demonstrated, fairy tales and animated movies are part of today's cultural common knowledge. The second one is that as fairy tales and animated films are widely known by most societies, using them as a medium to explain difficult concepts such as legal concepts will facilitate the understanding and learning of children and adolescents of the legal framework in which they live.

REFERENCES

Adelson J., O'Neil, R.P., Growth of political ideas in adolescence: The sense of community. "Journal of Personality and Social Psychology" 1966, vol. 4, no. 3, pp.295–306.

Aleteia, The Amazing True Story of the Woman Who Inspired Pixar's "Up", 11 March 2014, https://aleteia.org/2014/03/19/the-amazing-true-story-of-the-woman-who-inspired-pixars-up/.

46 J.H. Choi, S.D. Johnson, Effect of Problem-Based Video Instruction on Learner Satisfaction, Comprehension and Retention in College Courses. "British Journal of Educational Technology" 2008, vol. 38, no. 5, pp. 885–895.

47 J. Makita, An Effect of Democracy Education Using a Cartoon Video and Mock Voting: a comparative study between Japan and Papua New Guinea, SSRN, 2022, p. 6.

48 Diritto e Fiabe, https://www.dirittoefiabe.it (27.09.2022). See also Allegranti's recently launched family law handbook: I. Allegranti, Diritto e Fiabe: La Famiglia, Milan 2021.

49 ELSA Italia, https://www.elsa-italy.org (27.09.2022).

Allegranti I., Diritto e Fiabe: La Famiglia, Milan 2021.

Antonelli G., L'e-taliano fra storia e leggende, (in:) S. Lubello (ed.) L'e-taliano. Scriventi e scritture nell'era digitale, Florence 2016, pp. 11–28.

Barsotti S., The fairy tale: recent interpretations, female characters and contemporary rewriting. Considerations about an "irresistible" genre, "Ricerche di Pedagogia e Didattica – Journal of Theories and Research in Education" 2015, vol. 10, no. 2, pp. 69–80.

Berman S., Children's social consciousness and the development of social responsibility, Albany 1997.

Berti A.E., Guaranaccia V., Lattuada R., Lo sviluppo della nozione di norma giuridica, "Scuola e città" 1997, vol. 48, no. 12, pp. 532–545.

Berti A.E., Ugolini E., Developing knowledge of the judicial system: A domain specific approach, "The Journal of Genetic Psychology" 1998, vol. 159, no. 2, pp. 221–236.

Bettelheim B., The Uses of Enchantment: the Meaning and Importance of Fairy Tales, New York 1989.

Boistel A.B.M., Le Code Civil et la philosophie du droit, Paris 1844.

Carpi D., Fables of the Law. A literary perspective, (in:) D. Carpi, M. Leiboff (eds.), Fables of the Law. Fairy Tales in a Legal Context, Berlin/Boston 2016, pp. 3–33.

Choi J.H., Johnson, S.D., Effect of Problem-Based Video Instruction on Learner Satisfaction, Comprehension and Retention in College Courses. "British Journal of Educational Technology" 2008, vol. 38, no. 5, pp. 885–895.

Dolan R., Effective presentation skills, "FEMS Microbiology Letters" 2017, vol. 364, no. 24, pp. 1–3.

Diritto e Fiabe, www.dirittoefiabe.it.

Erikson E.H., Identity, youth, and crisis, New York 1968.

European Commission/EACEA/Eurydice, Citizenship Education at School in Europe – 2017. Eurydice Report. Luxembourg 2017, https://eurydice.indire.it/wp-content/uploads/2017/11/Citizenship_education_Final-Report-2017–1.pdf.

European Court of Human Rights, Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights, Strasbourg 2021.

ELSA Italia, https://www.elsa-italy.org.

Farè I., Il discorso dei luoghi, Naples 1991.

Fuller L.L., On teaching law, "Stanford Law Review" 1950, vol. 3, no. 4, pp. 35–47.

Garcia-Albacete G.M., Promoting Political Interest in Schools: The Role of Civic Education, (in:) S. Abendschön (ed.), Growing into Politics: Contexts and Timing of Political Socialisation, Colchester 2013, pp. 91–115.

Grossi P., Modernità e ordine giuridico, "Quaderni fiorentini" 1988, vol. 27, pp. 13–39.

Haase D., Television, (in:) D. Haase, A. Duggan (eds.), Folktales and Fairy Tales: Traditions and Texts from around the World, 2nd ed. 4 vols, Santa Barbara 2016, pp. 1007–1011.

Judgment of ECtHR of 30 March 1989 on the case of Chappell v. United Kingdom, application no. 10461/83.

Judgment of ECtHR of 29 September 1996 on the case of Buckley v. United Kingdom, application no. 20348/92.

Judgment of ECtHR of 18 December 1996 Loizidou v. Turkey, application no. 15318.

Judgment of ECtHR of 16 April 2002 on the case of Société Colas Est et al. v. France, application no. 37971/97.

Judgment of ECtHR of 18 January 2001 on the case of Chapman v. United Kingdom, application no. 27238/95.

Judgment of ECtHR of 29 April 2004 on the case of Pretty v. United Kingdom, application no. 2346/02.

Judgment of ECtHR of 25 April 2005 on the case of Buck v. Germany, application no. 41604/98.

Judgment of ECtHR of 24 September 2012 on the case of Yordanova et al. v. Bulgaria, application no. 19009/04.

Judgment of ECtHR of 9 September 2016 on the case of Popovi v. Bulgaria, application no. 39651/11.

Judgment of ECtHR of 24 January 2017 on the case of Paradiso-Campanelli v. Italy, application no. 25358/12.

Judgment of ECtHR of 13 November 2017 on the case of *Jankauskas v. Lithuania*, application no.

50446/17.

Judgment of ECtHR of 5 September 2017 on the case of Bărbulescu v. Romania, application no. 61469/08.

Karjalainen P.T., House, home and the place of dwelling, "Scandinavian Housing & Planning Research" 1993, vol. 10, pp. 65–74.

Latini C., Dei progressi del diritto civile in Italia. Una causa celebre sui versi di Giovanni Pascoli e l'emersione del diritto d'autore, (in:) R. Favale, C. Latini (eds.), La codificazione nell'Italia post unitaria 1865–2015, Camerino 2016, pp. 15–33.

Lull J., Evolutionary communication: an introduction, New York 2020; G. Antonelli, L'e-taliano fra storia e leggende, (in:) S. Lubello (ed.) L'e-taliano. Scriventi e scritture nell'era digitale, Florence 2016, p. 11.

Makita J., An Effect of Democracy Education Using a Cartoon Video and Mock Voting: a comparative study between Japan and Papua New Guinea, SSRN 2022, pp. 1–33.

Marazzini C., L'ordine delle parole: storia di vocabolari italiani, Bologna 2009.

Mollet T.L., A Cultural History of the Disney Fairy Tale: Once Upon an American Dream, Cham 2020.

Mollet T.L., With a smile and a song...: Walt Disney and the Birth of the American Fairy Tale, "Marvels & Tales" 2013, vol. 27, no. 1, pp. 109–124.

National Council for the Social Studies, The College, Career, and Civic Life (C3) Framework for Social Studies State Standards: Guidance for Enhancing the Rigor of K–12 Civics, Economics, Geography, and History. Silver Spring 2013, https://www.socialstudies.org/sites/default/files/c3/C3-Framework-for-Social-Studies.pdf.

Nieborak N., Human Rights in the Light of the Process of Financialisation, "Bialystok Legal Studies" 2021, vol. 26, no. 5, pp. 161–185.

Perlingieri P., Introduzione alla problematica della proprietà, Camerino 2011.

Pixar Feature Films – *Up*, https://www.pixar.com/feature-films/up.

Propp V., Istoricheskie korni volshebnoy skazki (The Historical Roots of the Wonder Tale), Leningrad 1986.

Roll B., et al., Die Brüder Grimm Pioniere deutscher Sprachkultur des 21. Jahrhunderts, Gütersloh/Munich 2013.

Schwabe C., The Fairy Tale and Its Uses in Contemporary New Media and Popular Culture Introduction, (in:) C. Schwabe (ed.), The Fairy Tale and Its Uses in Contemporary New Media and Popular Culture, Basel 2016, pp. 1–8.

Silverman H., Groovin' to Ancient Peru: A critical analysis of Disney's The Emperor's New Groove, "Journal of Social Archeology" 2002, vol. 3, no. 2, pp. 298–322.

Tarello G., Cultura giuridica e politica del diritto, Bologna 1988.

Tenella Sillani C., I diversi profili del diritto di proprietà, "Rassegna Diritto Civile" 2013, vol. 4, pp. 1058–1076.

Sirgiovanni B., Dal diritto sui beni comuni al diritto ai beni comuni, "Rassegna Diritto Civile" 2017, vol. 1, pp. 229–246.

Vicente L., Ruggeri L., Kashiwazaki K., Beyond Lipstick and High Heels: Three Tell-Tale Narratives of Female Leadership in the United States, Italy, and Japan, "Hastings Women's L.J." 2021, vol. 32, no. 3, pp. 1–34.

Viskoknox Johnson L., The Positive Impacts of Fairy Tales for Children, "University of Hawai'i at Hilo Hohonu" 2016, vol. 4, pp. 77–80.

Vučković D., A fairy tale (r)evolution: the value and the critical reading of fairy tales in the contemporary educational context, "History of Education & Children's Literature" 2018, vol. 13, no. 2, pp. 309–336.

Young J.E., The law as expression of community ideals and the lawmaking functions of courts, "Yale Law Journal" 1917, vol. 18, no. 1, pp. 1–33.

Wertheimer M., Productive thinking, Springer 2020.

Wieaker F., Storia del diritto privato moderno con particolare riguardo alla Germania, vol. II, Milan 1980.

Zipes J., The Changing Function of the Fairy Tale, "The Lion and the Unicorn" 1988, vol. 12, no. 2, p. 19.

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Law and Literature – New Tendencies Based on the Example of Science Fiction Motifs

Abstract: This article presents an example of law and literature movement applicability as a phenomenon in legal sciences. It shows the links between law and literature based on the example of the features that are characteristic of literature and, at the same time, are important in the reflection of the philosophy of law and in current law-making practice. This approach is inspired by a cultural approach to legal theory and philosophy (cultural studies of law). The law and literature movement deals with diverse issues in the field of the integration of legal sciences with linguistics and literary theory. The law and literature movement is not novel in the Anglo-Saxon legal culture, as opposed to Polish law science where it is rather new and has recently been gaining in popularity. In this paper, I will try to answer the question of how the law and literature movement and research perspectives originating from this trend could be an inspiration for further use in legal philosophy. This reflection is inspired by some works in the science fiction (S-F) genre.
Keywords: android, Asimov's laws, cultural legal studies, law and literature, science fiction

Introduction

The law and literature movement is developing primarily in Anglo-Saxon legal science.[1] Most American law schools offer lectures and even diploma seminars on the

1 See, e.g., M. Aristodemou, Law and Literature: Journey from Her to Eternity, Oxford 2000; G. Binder and R. Weinberg, Literary Criticism of Law, Princeton 2000; R. Weinberg, Literary Criticism of Law, Princeton 2000; P. Brooks, Narrativity of the Law, 'Law & Literature' 2002, no. 1, pp. 1–10; P. Hanafin, A. Gearey and J. Brooker (eds.), Law and Literature, Oxford 2004; F. Dore, Law's Literature, Law's Body: The Aversion to Linguistic Ambiguity in Law and Literature, 'Law,

subject. This research is also recognized by some American lawyers' corporations. In Polish law science, this trend was not very important. In recent years however, it has become increasingly popular.[2]

There have been works on legal threads in literary fiction, including many variations of research on law and literature. Another perspective is to place it as part of a critical study of the law or poststructuralist legal theory. There are also studies on the law and literature movement which are understood as a part of the aesthetics of the law (and *law and music*, *law and film*, law, and so on).[3] Methodological views of this trend are also being considered. Besides the well-known trends – *law in literature* and *law as literature* – there are other approaches; some researchers distinguish even more detailed variations, namely *law on literature*, *literature in law*, *literature and law*, and *legal literature*, and so on.

This diversity of approaches reflects the characteristic feature of the law and literature itself. It is heterogeneous and diverse. It can be useful to approach law and literature from a cultural perspective. The law and other fields involved in cultural communication coexist in the cultural and communicative context. Many texts, social codes, and symbols – literary and legal – have common cultural roots. Therefore, both literary and legal texts can be studied using research tools of literary theory in the light of cultural studies, and this type of research is called *cultural literature theory*. This is an argument for conducting in-depth research treating law and literature as convergent areas. What is distinctive of the cultural point of view in the application of the law and literature movement in the legal sciences is the possibility of observing the influence of literature on the law based on the example of science fiction literary works. Many problems which concern the modern philosophy of law and jurisprudence have long been present in literature and films, especially in the science fiction genre. This reflection may have been inspired by Philip K. Dick's prose and other works in the genre of science fiction and cyberpunk, and several S-F films. As L. Sutin explains, 'Philip K. Dick is a master of the speculative imagination – the type of im-

Culture and Humanities' 2006, no. 2, pp. 17–28; K. Dolin, A Critical Introduction to Law and Literature, Cambridge 2007; C. Biet, Judicial Fiction and Literary Fiction: The Example of the Factum, 'Law & Literature' 2008, no. 3, pp. 403–422; R. Weisberg, Wigmore and the Law and Literature Movement, 'Law & Literature' 2009 no. 21, pp. 129–145.

2 See, e.g., J. Kuisz and M. Wąsowicz (eds.), Prawo i literatura. Szkice, Warsaw 2015; *Idem*, Prawo i literatura. Antologia, Warsaw 2019; K. Zeidler and M. Andruszkiewicz, Law and literature, (in:) A. Bator, J. Zajadło and M. Zirk-Sadowski (eds.), Wielka encyklopedia prawa. Tom VII Teoria i filozofia prawa, Warsaw, 2016, pp. 334–339; 2016; J. Kamień, J. Zajadło and K. Zeidler (eds.), Prawo i literatura. Parerga, Gdańsk 2019. M. Andruszkiewicz, The Heritage of Cultural Determinants of Law and Literature: Methodological Findings, 'International Journal for the Semiotics of Law – Revue internationale de Sémiotique juridique' 2021, vol. 34(2), pp. 611–621.

3 See K. Zeidler, Estetyka prawa, Gdańsk/Warsaw 2018, *passim* and literature cited there.

agination that includes but goes beyond psychological, political, and moral explorations to challenge the very cognitive constructs by which we order our lives'[4].

The research question posed in this text is as follows: what new challenges for the philosophy of law result from the development of the law and literature trend? General remarks and problems that may constitute a set of new tendencies, as well as issues that may be of interest to the philosophy of law in the future, will be presented. Achieving the goal of this article will consist of discussing selected examples of the application of the law and literature trend in the philosophy of law and law-making practice.

1. The Main Assumptions and Creators of the Law and Literature Movement

The law and literature movement deals with diverse issues in the field of the integration of legal sciences with linguistics and literary theory. The increase in interest in law and literature relationships started around the 1970s, when interdisciplinary research on law developed, taking into account the perspectives of other disciplines – sociology, psychology, economics, communication sciences, language, and literature. However, interest in this issue originated much earlier. One of the first researchers was Benjamin Cardoso, who in his essay titled 'Law and Literature' analysed written reasons for judgments from the perspective of literary characteristics.[5] In 1908, John H. Wigmore published a high-profile list of legal novels containing outstanding works of world literature.[6] These are a set of famous works in which there are literary reflections on law, legal systems, lawyers, and legal practice. Wigmore claimed that this list contained work that every lawyer should know. James B. White, who is considered the creator of the trend, presented the main assumptions of this research direction in his famous work *The Legal Imagination*.[7] White's proposed research perspective was an attempt to use theoretical lyric methods to study legal texts.

The law and literature movement was originally expected to overcome the stereotypically hermetic nature of legal language and legal circles, and to bridge the communication gaps between the legal and non-legal worlds.[8] The concepts of literary analysis of the law, referred to as law and literature, may serve as a platform for the study of the grounding of cultural heritage and its variation in time and space. This is a diverse, complex field, forming part of critical legal studies. It is sometimes asso-

4 L. Sutin, Divine Invasions. A Life of Philip K. Dick, New York 2005, p. 9.
5 B. Cardoso, Law and Literature, New York 1931.
6 J.H. Wigmore, A List of Legal Novels, Chicago 1908, *Idem*, A List of One Hundred Legal Novels, 'Illinois Law Review' 1922, no. 17, pp. 26–41.
7 J.B. White, The Legal Imagination, Boston 1979.
8 K. Zeidler and M. Andruszkiewicz, Law and literature…, *op. cit*., p. 335.

ciated with American postmodernist jurisprudence, given the subject studied or the methods adopted. Some researchers also point to a relation with Jacques Derrida's deconstructionist point of view, and H.G. Gadamer's hermeneutics.

Law and literary theorists distinguish two main trends as part of the problem of combining law and literature, namely the *law in literature* and the *law as literature*. The first, law in literature, is referred to as the external approach and examines the legal motifs in literary works. These are studies similar to critical literary analysis. Such points of reference support learning about various aspects of the functioning of the law and promote knowledge about the specificity of legal cultures and the characteristics of the law in its diachronic development. Internal recognition of law as literature focuses on the analysis of legal texts using theoretical literary tools. This study centres on the theoretical and literary analysis of the structural, semantic, and stylistic properties of legal texts, examined by means of the techniques used by literary scholars. Legislative activity is seen as a kind of linguistic creation, as is the creation of other types of texts, including literary ones.[9] Issues of legal interpretation and literary interpretation, as well as analogies between the legal text and the literary text, are of particular interest here.

2. Law and Literature Movement Applicability as a New Trend in Philosophy of Law

It is possible to notice the links between law and literature based on the example of the features that are characteristic of science fiction works and, at the same time, are important in the reflection of legal sciences. The possible links between law and science fiction literature have already been noted.[10] Typical motifs of science fiction

9 See more: *Ibidem*, *passim*.

10 See, e.g., F. Lyall, Law in Science Fiction: An Introduction, Foundation 1992, no. 55, pp. 36–57; B.L. Rockwood, Law, Literature, and Science Fiction: New Possibilities, 'Legal Studies Forum' 1999, vol. 23, no. 3, pp. 267–280; S. Leslie-McCarthy, Asimov's Posthuman Pharisees: The Letter of the Law Versus the Spirit of the Law in Isaac Asimov's Robot Novels, 'Law Culture and the Humanities' 2007, no. 3, pp. 398–415; G. Hallevy, The Criminal Liability of Artificial Intelligence Entities – from Science Fiction to Legal Social Control, 'Akron Intellectual Property Journal' 2010, vol. 4, pp. 171–201; W. Raiford, Race, Robots, and the Law, 'New Boundaries in Political Science Fiction' 2008, no. 93, pp. 93–113; M. Travis, Making Space: Law and Science Fiction, 'Law and Literature' 2011, vol. 23, no. 2, pp. 241–261; K. Tranter, Living in Technical Legality. Science Fiction and Law as Technology, Edinburgh University Press, Edinburgh 2018; O. Ben-Naftali and Z. Triger, The Human Conditioning: International Law and Science-Fiction, 'Law, Culture and the Humanities' 2018, vol. 14(1), pp. 6–44; W. Jankowski, *Raport mniejszości*, czyli prawie ideał kryminologii pozytywnej, (in:) J. Kamień, J. Zajadło and K. Zeidler (eds.), Prawo i literatura. Parerga, Gdańsk 2019, pp. 347–356; P. Księżak and S. Wojtczak, Prawa Asimova czyli science-fiction jako fundament nowego prawa cywilnego, 'Forum Prawnicze' 2020, no. 4(60), pp. 57–70; C. Casey and D. Kenny, How Liberty Dies in a Galaxy Far, Far Away: Star Wars, Democratic De-

literature as an object of interest in philosophy of law are as follows: the definition of human and humanity; the limits of experiments related to the human body's improvement; the distinction of a human from a non-human; differences or convergence between a man and an android; artificial beings and their rights; the definition of the relationship between man and robot/artificial intelligence, etc. At the same time, these issues have long been of interest to literature and film. There are many literary works and films on this list.[11] There are comments on science fiction and the law included in other works.[12]

Questions about who people are and what it means to be human are among the traditional questions that literature, and not only science fiction, addresses.[13] The crucial question is: *is it possible to catalogue characteristics that would define the 'uniqueness of man'*? Literature has played a key role in determining human nature and its limitations, and at the same time pondering the question of what it means to be non-human, a mutant, a robot, an android, or a non-human person.[14] Characteristics of S-F literature present, for example, in the prose of Philip K. Dick are issues like the definition of human and humanity. The main issues in Dick's novel entitled *Do Androids Dream of Electric Sheep?* (1968) and the films based on it, *Blade Runner* (Ridley Scott, 1982) and *Blade Runner 2049* (Denis Villeneuve, 2017), concern the differences or convergence between man and android.

In Dick's novel, androids look like real people, have memories (a human trait), and it is difficult to distinguish an android from a human, even with the help of a special test. Even the main character, who considers himself a man, has such doubts. Rick Deckard deals with killing those who escape from their colony planets. He says:

> He had never thought of it before, had never felt any empathy on his own part toward the androids he killed. Always he had assumed that throughout his psyche he experienced the android as a clever machine – as in his

cay, and Weak Executives, 'Law and Literature' 2021; J.L. Contreras, Science Fiction and the Law: A New Wigmorian Bibliography, 'Harvard Journal of Sports & Entertainment Law' 2022, vol. 13, no. 1, pp. 65–112.

11 As an example, some of them can be mentioned: Mary W. Shelley, *Frankenstein; or The Modern Prometheus* (1818); Karel Čapek, *R.U.R. (Rossumovi Univerzální Roboti)* (1921); Isaac Asimov, *Runaround* (1942); Philip K. Dick, *Blade Runner. Do Androids Dream of Electric Sheep?* (1968); William Gibson, Sprawl Trilogy (1984, 1986, 1988); Orson S. Card, *Ender's Game* (1985); *Matrix* (Lilly Wachowski and Lana Wachowski, 1999), *The Matrix Reloaded* (2003), The Matrix Revolutions (2003), *The Matrix Resurrections* (2021); *Blade Runner* (Ridley Scott, 1982); *Blade Runner 2049* (Denis Villeneuve, 2017); *Dune* (David Lynch, 1984); *Dune* (Denis Villeneuve, 2021), and many more.

12 See, e.g., materials from the symposium Law, Literature, and Science Fiction, 'Legal Studies Forum' 1999, no. 3, vol. 23, and literature cited there.

13 A. Bennett and N. Royle, An Introduction to Literature, Criticism and Theory, Harlow 2005, p. 224.

14 *Ibidem*, p. 227.

> conscious view. And yet, in contrast to Phil Resch, a difference had manifested itself. And he felt instinctively that he was right. Empathy toward an artificial construct? he asked himself. Something that only pretends to be alive? But Luba Luft had seemed genuinely alive; it had not worn the aspect of a simulation.[15]

Another important question is: man vs android – what is the difference? Who are people and what does it mean to be human? Is it possible to catalogue characteristics that would define the 'uniqueness of man'?[16] Modern literature, influenced by the development of biotechnology, genetic engineering, and other progressive sciences, describes various forms that are 'mutants' of man – cyborgs, hybrids, chimers, etc. The interference of advanced technologies in the human body is a distinctive motif of science fiction literature. It is worth adding that the working title of Dick's novel was *The Killers Are Among Us! Cried Rick Deckard to the Special Man.*[17] In *Blade Runner* P.K. Dick's binaries (such as the natural and artificial) are tentative in their orientation and often collapse into symbiosis – that the natural (Deckard) and artificial (Rachael) exist in a dialectical relationship – as human and machine.[18] In Dick's text we read:

> The Nexus-6 android types, Rick reflected, surpassed several classes of human specials in terms of intelligence. In other words, androids equipped with the new Nexus-6 brain unit had from a sort of rough, pragmatic, no-nonsense standpoint evolved beyond a major – but inferior – segment of mankind.[19]

Tore Westre writes that 'both the novel and film *Blade Runner* raise the question of what it means to be human, and what criteria lie under the term "human". Biologically, the androids can be considered human, although they are not sexually produced. They do, however, fall under the category "homo sapiens", as the word derives from Latin, and means "wise man"… Both the novel and film portray the androids as intelligent beings'.[20] As Dick said, 'The true measure of a man is not his intelligence or how high he rises in this freak establishment. No, the true measure of a man is this: how quickly can he respond to the needs of others and how much of himself he can give.' In Dick's novel, the crucial criterion for distinguishing man from android is em-

15 P.K. Dick, Do Androids Dream of Electric Sheep? New York 1996, p. 141.

16 S. Lem, Summa technolgiae, Cracow 2019, p. 32.

17 L. Sutin, Divine Invasions. A Life of Philip K. Dick, New York 2005, p. 439.

18 D.C. Ryan, Dreams of Postmodernism and Thoughts of Mortality: A Twenty-Fifth Anniversary Retrospective of Blade Runner, pp. 10–11, www.sensesofcinema.com/2007/feature-articles/blade-runner/ (23.05.2022).

19 P.K. Dick, Do Androids Dream…, *op. cit*., p. 31.

20 T. Westre, Do Androids Dream of Electric Sheep and Blade Runners? Inland Norway University of Applied Sciences 2018, p. 14. https://brage.inn.no/inn-xmlui/handle/11250/2602236 (23.05.2022).

pathy. For both Dick and Deckard, the determinant of humanism is concern for others; human beings' caring for one another is central to their humanity.[21]

The question of whether it is possible to differentiate a human from a non-human such as a robot or an android is also crucial in the legal sphere. Technological progress poses new challenges for law scientists, for example the need to reflect on the concept of subjectivity. The law uses the concept of a person, understood as an individual who is the subject of the law. Technological advances also lead to other non-human beings whose actions may be relevant in the legal sphere. Robots used in various spheres of social practice are also starting to be regulated by the law. This implies the question of the extent to which the concept of legal subjectivity is understood. Questions about, for example, the ontic status of robots equipped with artificial intelligence (AI) or the decision on liability for these robots' actions are being more and more considered as new problems of various branches of law, e.g. criminal, civil, family, or labour law. As Christopher Brown notes, 'some science fiction stories get right up to the edge of legal procedurals by focusing on changes in the criminal law, as with Philip K. Dick's "The Minority Report", about a world where people are prosecuted for crimes the system predicts they will commit in the future, or Asimov's "A Loint of Paw", which considers the statute of limitations applicable to time travelers.'[22]

An eternal literary question: is it possible to catalogue characteristics that would define the 'uniqueness of man'? This goes to the fundamental question of philosophy of law. Modern philosophy of law sees the human individual status of other non-human beings, the problem of artificial beings and their rights, the definition of the relationship between man and robot, or artificial intelligence as an important problem. The problems of defining in law 'electronic persons', cyber-components of man, its 'expansion' by artificial elements, the legal (and moral) subjectivity of artificial beings become momentous objects of reflection in modern philosophy of law and legal bioethics. New research trends, such as transhumanism and *human enhancement,* are being shaped by technological developments. Also, there is a need in the philosophy of law to define, for instance, the status of man as an entity in the light of cyborgization, human–robot relations, or the limits of interference of artificial technologies in the human body. These problems have already been the subject of scientific analysis in the trend of law and literature. For example, Orna Ben-Naftali and Zvi-Triger analysed the attention science fiction has given to the man–machine interaction and

21 C. Lovins, A Ghost in the Replicant? Questions of Humanity and Technological Integration in Blade Runner and Ghost in the Shell, 'Journal of Science Fiction' 2019, vol. 3, p. 23. In the novel, Deckard is tasked with retiring six escaped androids with the newest 'Nexus-6' brain type. He performs the Voigt–Kampff test – an empathy test used to distinguish androids from humans. In the film, the human/android difference is framed slightly differently. See: *Ibidem*, p. 26, *passim*.

22 Ch. Brown, Will There Be Justice? Science Fiction and The Law, Tor 2019, August 7. https://www.tor.com/2019/08/07/will-there-be-justice-science-fiction-and-the-law/ (29.10.2022).

its impact on the human condition. They studied law and literature motifs and their value concerning two technologies, one directed at creating life or saving it (cloning and organ donation) and the other at ending life (lethal autonomous robots).[23]

Many motifs that are the object of reflection and discovery of modern science, namely transhumanism, virtual databases, reality simulation technologies, and even robots capable of creating poetry and many others, were predicted in S-F literature (among others, by Stanislaw Lem) a few decades ago. These are important questions not only in philosophy and ethics but also in the philosophy of law. They fit into the canon of literary and cinematic motifs typical of the science fiction genre, which makes it possible to believe that the problems that are new to the law are age-old in literature.[24]

3. Law and Literature Movement Applicability as a New Trend in Law-Making

Science fiction literature contains many themes that are only now being discovered in the philosophy of law and legal bioethics, and law-making practice. The literature highlights reciprocal relationships between science fiction and law. On the one hand, science fiction has considered law and matters of jurisprudence in many of its texts; on the other hand, it has permeated the imagination of law, the judiciary, and the legislature.[25] Bruce L. Rockwood writes that here in science fiction literary works are political, legal, and ideological problems, considering present and possible futures.[26] Technological progress poses new challenges for law-making. There is a need to reflect on the concept of subjectivity; the subject of the law's rights, and their ethical and moral status of them. Nowadays, in philosophy and ethics, many ethical dilemmas and problems arise from the human–robot relationship. This area of research is called roboethics – the application of ethics to the conduct of robots. Modern lawyers no longer seem to doubt that it is necessary to take seriously the challenges posed by the paradigm of legal humanism to the emergence of advanced intelligent robots.[27] Lawmakers and legal practitioners are trying to tackle this challenge. In recent years, new legislative initiatives which regulate non-human materials

23 O. Ben-Naftali and Z. Triger, The Human Conditioning: International Law and Science-Fiction…, *op. cit*., p. 6, *passim*.

24 M. Andruszkiewicz, *Blade Runner 2049* – wyzwania etyki przyszłości. Jak literatura kształtuje rzeczywistość i prawo, (in:) K. Zeidler (ed.), Blade Runner. O prawach quasi-człowieka, Gdańsk 2021, p. 54.

25 M. Travis, Making Space: Law and Science Fiction…, *op. cit*., pp. 241–261. Travis analyses the reciprocal relationships between pop culture, science fiction, and law, and questions how these factors influence the amendments to the UK Human Fertilization and Embryology Act 2008.

26 B.L. Rockwood, Law, Literature, and Science Fiction…, *op. cit*., p. 269.

27 M. Andruszkiewicz, *Blade Runner 2049*…, *op. cit*., p. 64.

known as robots or electronic persons have been created. This is new to the law, but long known in fictional literature. The Initiative on the Legal Status of AI was taken up by the European Parliament in 2017. These proposals highlight the need to develop ethical principles for robotics, including the design, production, use, and modification of robots. The intentions include a code of conduct for robotics engineers, a code of ethics committees for research, rules for ethical research committees reviewing robotics protocols, and a licensing model for designers and users. The rules on robots are becoming an important subject of regulation. The EU's legislative proposals include references to several literary works and characters. Other states, such as the US, China, and the UK, are also working on regulatory frameworks. The role of these regulations is to establish legal norms which can shape and guide the ethics, based on which AI machine learning is trained.[28] The creators of new legal regulations on the laws of robotics are looking for support in neuroscience, bioethics, neurocognitive science, and computer science, as well as in literature. In the introduction to the motion for a European Parliament resolution with recommendations to the Commission on Civil Law Rules on Robotics we can read:

> 'Whereas from Mary Shelley's Frankenstein's Monster to the classical myth of Pygmalion, through the story of Prague's Golem to the robot of Karel Čapek, who coined the word, people have fantasized about the possibility of building intelligent machines, more often than not androids with human features.'[29]

In the proposed regulations, therefore, there is a myriad of prototypes of fictional characters endowed with artificial intelligence, chimeras, cyborgs, and androids, described in the canon of the S-F classics. It turns out that literature is the point of reference, not as a scientific discipline, but as literary fiction. The terminology of these regulations, including the terms 'robot' and 'robot rights', are derived from literature, too. The word robot has its literary origins in the work of Karel Čapek, who introduced it in his theatrical play *R.U.R. Rossumovi Univerzální Roboti*, (1921) (*Rossum's Universal Robots*). The concept of a robot as an electromechanical creation also appeared in another literary work, namely Isaac Asimov's short story entitled *Runaround* (1942). Čapek's robots, however, were artificially produced creatures created on a biological basis, i.e. living organisms. In Asimov's work, a robot is a machine (i.e. a technical device using the process of energy transformation), and more precisely a fusion of a machine and a computer.

The concept and way of understanding 'robots' rights' also has literary roots. The rules, as set out in the fictional literary work, are widely used in both legislation and

28 T. Tzimas, Legal and Ethical Challenges of Artificial Intelligence from an International Law Perspective (Law, Governance and Technology Series, 46) 1st ed., Cham 2021, p. 114.

29 European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)).

discourse on robotics rights. What's more, they have become commonly used under the name 'robots' rights' or 'Asimov's rights'. Their content is as follows: three laws[30], plus the zeroth law added in *Robots and Empire*[31]:

(1) A robot must obey the orders given it by human beings except where such orders would conflict with the First Law.

(2) A robot must protect its own existence as long as such protection does not conflict with the First or Second Laws.

(0) A robot may not harm humanity, or, by inaction, allow humanity to come to harm.

As reported in EU-supported research, Asimov's reinterpreted ethics laws may apply, for example, to the formulation of the ethical principles of robotic assistants for the elderly.[32] It turns out that literature – in this case as well – can be the inspiration for law and legal practice and legislative practice. In the previously mentioned European Parliament motion, we read:

> 'Asimov's Laws must be regarded as being directed at the designers, producers, and operators of robots, including robots assigned with built-in autonomy and self-learning, since those laws cannot be converted into machine code.'

It can be added that from the point of view of law, but also of robotics, it is known that these laws cannot be applied literally. There are sceptical views on this subject[33]. There are many risks associated with this. In *Blade Runner 2049*, androids are not – as in Asimov's works – only machines used by humans, but highly developed intelligent imitations of man. Also, robots used in modern technologies are much more advanced. Like androids, beings equipped with so-called strong AI may have the ability to learn, process information, and solve problems. It is not excluded that they could be equipped with consciousness. As Deckard thinks in Dick's novel, 'the servant was

30 First Law: A robot may not injure a human being, or, through inaction, allow a human being to come to harm. Second Law: A robot must obey orders given it by human beings, except where such orders would conflict with the First Law. Third Law: A robot must protect its own existence as long as such protection does not conflict with the First or Second Law. I. Asimov, Runaround, 'Astounding Science-Fiction', March 1942, pp. 94–103.

31 I. Asimov, Robots and Empire. New York 1985.

32 Dlaczego prawa robotyki Asimova wymagają w XXI wieku aktualizacji, https://cordis.europa.eu/article/id/121860-why-asimovs-laws-of-robotics-should-be-updated-for-the-21st-century/pl (21.04.2022).

33 As Lee McCauley explains, 'Even though knowledge of the Three Laws of Robotics seems universal among AI researchers, there is the pervasive attitude that the Laws are not implementable in any meaningful sense'. *Idem*, AI Armageddon and the Three Laws of Robotics, 'Ethics and Information Technology' 2007, vol. 9(2), pp. 153–164. See also: S.L. Anderson Asimov's "three laws of robotics" and machine metaethics AI & Society 2008, vol. 22, no. 4, pp. 477–493, DOI 10.1007/s00146–007-0094–5 (23.05.2022).

sometimes wiser than the master'.[34] Is the vision of their participation in human life a utopia or a dystopia? This question can also be answered in literature. The above leads to the statement that if lawmakers draw inspiration from literary texts, law researchers can use research tools from the theory of literature. This is possible thanks to the cultural methodological approach in the law and literature movement.

Conclusions

The standpoint of the examples described above shows that many problems and motifs – both literary and legal – have common roots in the canon of culture codes and symbols. The cultural point of view in the application of the law and literature movement in the legal sciences causes the influence of literature on the law – based on the example of science fiction literature. This kind of study shows that various cultural objects – like law, literature, film, and so on – can be a point of interest for complementary research. The cultural perspective of the law and literature movement presents the law and legal texts as an object of culture and as an artistic artefact. Cultural studies have the potential to expand the perspective of literary theory; the tools that literary theory offers can be used to study other texts as well. According to Stanislaw Lem's belief, science explains the world, but only art can come to terms with it.[35] Lem calls science fiction a 'collective phenomenon' of a sociocultural nature.[36] S-F works show that – as Donna Haraway writes – 'no longer structured by the polarity of public and private, the cyborg defines technological policies based partly on a revolution of social relations in the oikos, the household. Nature and culture are reworked; the one can no longer be the resource for appropriation and incorporation by the other.'[37] Law scholars are also beginning to recognize the role of S-F literature in understanding the law. As Jorge L. Contreras says, science fiction is an ideal medium in which to consider how the law can and should develop in the face of technological change.[38]

34 P.K. Dick, Do Androids Dream…, *op. cit*., p. 30.

35 S. Lem, Bajki robotów, Cracow 2021.

36 S. Lem, Microworlds. Writing on Science Fiction and Fantasy by Stanislaw Lem, Franz Rottensteiner, San Diego/New York/London 1984, p. 47.

37 D. Haraway, A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late Twentieth Century, (in:) N. Badmington (ed.), Posthumanism, London 2000, p. 67. S-F themes in pop culture are also studied as an example of the impact of new technologies on society, politics, economics, etc. See. S. Keslovitz, The Digital Dystopias of Black Mirror and Electric Dreams, Jefferson, North Carolina 2020.

38 J.L. Contreras, Science Fiction and the Law…, *op. cit*., p. 72. Contreras presents interesting reflections on science fiction and law and proposes his list of 'legal science fiction works that can be used to inform judicial and legal reasoning and understanding of the rapid growth of modern science and technology'. See: *Ibidem*, p. 76, *passim*.

Although Philip K. Dick's novel and the films based on it do not directly depict legal themes, they ask philosophical questions that may have legal implications. Notions typical for the science fiction genre, such as humanity and human subjectivity, human–robot relations, responsibility for artificial intelligence actions, or boundaries of technological interference on the human body are nowadays posing challenges of a philosophical and ethical nature; these challenges will have to be addressed by legal philosophy, ethics, and other legal science, especially during rapid technological advancement. The topic of science fiction and law has already been the subject of scientific analysis, but the challenges related to technological development described in the literature still need to be sorted out in the sphere of law. At this stage of research development, it is difficult to formulate detailed conclusions in this text because the trends that have been signalled in it are just developing. Problems created by the appearance of AI and intelligent robots call for forming novel terminology, regulations, and ethical and legal rules concerning robot construction and use without infringing human rights, human dignity, and autonomy.[39] It appears that legal sciences may use literature and film as additional inspiration and an aid to solve these issues.

REFERENCES

Anderson S.L., Asimov's 'three laws of robotics' and machine metaethics, 'AI & Society' 2008, vol. 22, no. 4, pp. 477–493.

Andruszkiewicz M., *Blade Runner 2049* – wyzwania etyki przyszłości. Jak literatura kształtuje rzeczywistość i prawo, (in:) K. Zeidler (ed.), Blade Runner. O prawach quasi-człowieka, Gdańsk 2021, pp. 53–70.

Andruszkiewicz M., The Heritage of Cultural Determinants of Law and Literature: Methodological Findings, 'International Journal for the Semiotics of Law – Revue internationale de Sémiotique juridique' 2021, vol. 34(2), pp. 611–621.

Aristodemou M., Law and Literature: Journey from Her to Eternity, Oxford 2000.

Asimov I., Robots and Empire, New York 1985.

Asimov I., Runaround, 'Astounding Science-Fiction', March 1942.

Ben-Naftali O. and Z. Triger, The Human Conditioning: International Law and Science-Fiction, 'Law, Culture and the Humanities' 2018, vol. 14(1), pp. 6–44.

Bennett A. and N. Royle, An Introduction to Literature, Criticism and Theory, Harlow 2005.

Biet C., Judicial Fiction and Literary Fiction: The Example of the Factum, 'Law & Literature' 2008, no. 3, pp. 403–422.

39 As A. Breczko says, the supervision of biotechnological opportunities undoubtedly requires, in the first place, that boundaries be drawn, i.e., a distinction made between 'therapeutic' and 'improvement' activities. *Idem,* Human Enhancement in the Context of Disability (Bioethical Considerations from the Perspective of Transhumanism), 'Bialystok Legal Studies' 2021, vol. 26, no. 3, p. 104.

Binder G. and R. Weinberg, Literary Criticism of Law. Princeton 2000.

Breczko A., Human Enhancement in the Context of Disability (Bioethical Considerations from the Perspective of Transhumanism), 'Bialystok Legal Studies' 2021 vol. 26 no. 3, pp. 95–108.

Brooks P., Narrativity of the Law, 'Law & Literature' 2002, no. 1, pp. 1–10.

Brown Ch., Will There Be Justice? Science Fiction and The Law, Tor 2019, August 7, https://www.tor.com/2019/08/07/will-there-be-justice-science-fiction-and-the-law/.

Cardoso B., Law and Literature, New York 1931.

Casey C. and D. Kenny, How Liberty Dies in a Galaxy Far, Far Away: Star Wars, Democratic Decay, and Weak Executives, 'Law and Literature' 2021.

Contreras J.L., Science Fiction and the Law: A New Wigmorian Bibliography, 'Harvard Journal of Sports & Entertainment Law' 2022, vol. 13, no. 1, pp. 65–112.

Dick P.K., Do Androids Dream of Electric Sheep? New York 1996.

Dlaczego prawa robotyki Asimova wymagają w XXI wieku aktualizacji, https://cordis.europa.eu/article/id/121860-why-asimovs-laws-of-robotics-should-be-updated-for-the-21st-century/pl.

Dolin K., A Critical Introduction to Law and Literature, Cambridge 2007.

Dore F., Law's Literature, Law's Body: The Aversion to Linguistic Ambiguity in Law and Literature, 'Law, Culture and Humanities' 2006, no. 2, pp. 17–28.

European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)).

Hallevy G., The Criminal Liability of Artificial Intelligence Entities – from Science Fiction to Legal Social Control, 'Akron Intellectual Property Journal' 2010, vol. 4, pp. 171–201.

Hanafin P., Gearey A. and Brooker J. (eds), Law and Literature, Oxford 2004.

Harraway D., A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late Twentieth Century, (in:) N. Badmington (ed.), Posthumanism, London 2000.

Jankowski W., *Raport mniejszości*, czyli prawie ideał kryminologii pozytywnej, (in:) J. Kamień, J. Zajadło and K. Zeidler (eds.), Prawo i literatura. Parerga, Gdańsk 2019, pp. 347–356.

Lyall F., Law in Science Fiction: An Introduction, Foundation 1992, no. 55, pp. 36–57.

Leslie-McCarthy S., Asimov's Posthuman Pharisees: The Letter of the Law Versus the Spirit of the Law in Isaac Asimov's Robot Novels, 'Law Culture and the Humanities' 2007, no. 3, pp. 398–415.

Keslovitz S., The Digital Dystopias of Black Mirror and Electric Dreams, Jefferson, North Carolina 2020

Księżak P. and Wojtczak S., Prawa Asimova czyli science-fiction jako fundament nowego prawa cywilnego, 'Forum Prawnicze' 2020, no. 4(60), pp. 57–70.

Kuisz J. and Wąsowicz M. (eds.), Prawo i literatura. Antologia, Warsaw 2019.

Kuisz J. and Wąsowicz M. (eds.), Prawo i literatura. Szkice, Warsaw 2015.

Lem S., Bajki robotów, Cracow 2021.

Lem S., Summa technolgiae, Cracow 2019.

Lem S., Microworlds. Writings on Science Fiction and Fantasy by Stanislaw Lem, Franz Rottensteiner, San Diego/New York/London 1984.

Lovins C., A Ghost in the Replicant? Questions of Humanity and Technological Integration in Blade Runner and Ghost in the Shell 'Journal of Science Fiction' 2019, vol. 3, pp. 21–34.

Materials from the symposium Law, Literature, and Science Fiction, 'Legal Studies Forum' 1999, vol. 23, no. 3.

McCauley L., AI Armageddon and the Three Laws of Robotics, 'Ethics and Information Technology' 2007, vol. 9(2), pp. 153–164.

Raiford W., Race, Robots, and the Law, 'New Boundaries in Political Science Fiction' 2008, no. 93, pp. 93–113.

Rockwood B.L., Law, Literature, and Science Fiction: New Possibilities, 'Legal Studies Forum' 1999, vol. 23, no. 3, pp. 267–280.

Ryan D.C., Dreams of Postmodernism and Thoughts of Mortality: A Twenty-Fifth Anniversary Retrospective of Blade Runner, pp.10–11, www.sensesofcinema.com/2007/feature-articles/blade-runner/.

Sutin L., Divine Invasions. A Life of Philip K. Dick, New York 2005.

Tranter K., Living in Technical Legality. Science Fiction and Law as Technology, Edinburgh University Press, Edinburgh 2018

Travis M., Making Space: Law and Science Fiction, 'Law and Literature' 2011, vol. 23, no. 2, pp. 241–261.

Tzimas T., Legal and Ethical Challenges of Artificial Intelligence from an International Law Perspective (Law, Governance and Technology Series, 46) 1st ed., Cham 2021.

Weisberg R., Wigmore and the Law and Literature Movement, 'Law & Literature' 2009, no. 21, pp. 129–145.

Westre T., Do Androids Dream of Electric Sheep and Blade Runners? Inland Norway University of Applied Sciences 2018, p. 14. https://brage.inn.no/inn-xmlui/handle/11250/2602236.

White J.B., The Legal Imagination, Boston 1979.

Wigmore J.H., A List of Legal Novels, Chicago 1908.

Wigmore, J.H., A List of One Hundred Legal Novels, 'Illinois Law Review' 1922, vol. 17, pp. 26–41.

Zeidler K. and Andruszkiewicz M, Law and Law and Literature, (in:) A. Bator, J. Zajadło and M. Zirk-Sadowski (eds.), Wielka encyklopedia prawa. Tom VII Teoria i filozofia prawa. Warsaw, 2016, pp. 334–339.

Zeidler K., Estetyka prawa, Gdańsk/Warsaw 2018.

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Enhancing Students' Metacognition in Legal English Classes

Abstract: In the last two decades, researchers have shown the importance of metacognition in language learning and teaching. This paper focuses on students' metacognition in the course 'English for Lawyers' at Masaryk University and reports on the action research which was performed over the period of three years, 2019–2021. The objectives of the research were twofold: to identify how students perceive their learning in legal English lessons in which both the legal content and academic skills were practised, and then to find out whether implementing steps that raise their metacognition would help students become more efficient learners. By collecting data from reflective questionnaires given to students, the teacher analysed the teaching and learning situations and proposed changes, such as explaining the learning opportunities of the lessons and supporting the planning, monitoring, and evaluating of students' learning, so that students could exploit the full potential of lessons and their learning abilities.
Keywords: academic skills, legal English, metacognition in language learning

Introduction

Metacognition, understood as 'one's knowledge concerning one's own cognitive processes and products, or anything related to them', is a term attributed to Flavell.[1] The concept of metacognition in language learning has experienced a certain development: from metacognition understood as knowledge about one's own learning[2] to a broad understanding of metacognition as an awareness of and reflections about one's knowledge, experiences, emotions, and learning in the contexts of language

1 J.H. Flavell, Metacognitive Aspects of Problem Solving, (in:) L B. Resnick (ed.), The Nature of Intelligence, Hillsdale 1976, p. 232.

2 A. Wenden, Metacognition: An Expanded View on the Cognitive Abilities of L2 Learners, 'Language Learning' 1987, vol. 37, no. 4, p. 575.

learning and teaching.[3] Even though the importance of metacognition in enhancing language learning has been pointed out for more than two decades,[4] metacognition has not yet become an integral part of language learning and teaching.[5] This paper provides an overview of research investigating students' metacognition during the years 2019–2021 in the course 'English for Lawyers' taught at the Faculty of Law in Masaryk University.

1. Motivation and Teaching Context

After several years of teaching on the 'English for Lawyers' course, I noticed that students viewed and evaluated the lessons differently when the classroom activities focused on the law content from when they focused on academic or professional skills practice. More specifically, students' feedback on the course implied that some of them consider learning the content superior to learning skills and that practising academic skills like presentations, role plays, or discussions does not contribute to their learning of legal English; some even mentioned that these were just fun or a waste of time. To explore the real situation and students' views on their learning, I decided to start research investigating the issue of how students perceive the learning in topic-based lessons compared to those that are skills-based.

The course 'English for Lawyers' runs for four semesters and most students are first- and second-year undergraduates. The course is topic-based, but within the lessons, apart from language skills, academic and legal professional skills are developed as well. From the teacher's perspective, the best time for the research on students' metacognition seemed to be the last, i.e. the fourth, semester of the course because it is a perfect combination of skills and content. Students are supposed to prepare a team presentation on a legal topic as part of the continuous assessment. Thus, while working on developing their presentation skills, students can extend and practise their professional English as well. But is this also the student perspective? Are students aware of their learning in legal English classes? Are they metacognitively conscious learners? If not, how can I, as their teacher, help them? Those were the issues that I was interested in and explored in the years 2019–2021.

I planned the research in two phases. The first step of the research would address and disclose the real state of students' metacognition, i.e. whether students

3 Å. Haukås, Metacognition in Language Learning and Teaching – Overview, (in:) Å. Haukås, C. Bjørke, M. Dypedahl (eds.), Metacognition in Language Learning and Teaching, Abingdon 2018, pp. 11–30.

4 See, e.g., A. Wenden, Metacognition…, *op. cit.*, p. 592; Å. Haukås, Metacognition…, *op. cit.*; A. U. Chamot, Language Learning Strategy Instruction: Current Issues and Research, 'Annual Review of Applied Linguistics' 2005, vol. 25, pp. 112–130; N.J. Anderson, The Role of Metacognition in Second Language Teaching and Learning, 'ERIC Digest' 2002, vol. 4, pp. 1–7.

5 Å. Haukås, Metacognition…, *op. cit*.

are aware of what they learn, or could learn, and whether they are able to reflect on their learning. The second step, in case the level of metacognition could be increased, would mean implementing tools for increasing the students' metacognition and exploring the effectiveness of the proposed tools. The plans, however, were affected by the COVID-19 crisis and the research had to be adapted. The second stage took two years; however, the trickiest issue was the fact that I was unable to directly compare the effect of metacognitive tools because the teaching situation was very different in 2019, 2020, and 2021.

2. Action Research as a Methodological Tool

A method that could effectively deal with the intended investigation was action research. This term was introduced by Kurt Lewin;[6] it refers to a practice of solving problems by cycles of observing, reflecting, and acting,[7] and thus combines research and actions being taken and observed. In this way, the teacher can gain more understanding of the students' performance and thinking. Moreover, the changing teaching situation is not an obstacle in the process of researching since action research allows for adopting research questions to new situations as the project progresses.[8]

The research presented here on student metacognition thus happened in three action-research cycles, the first one being Spring 2019, the second Spring 2020, and the last cycle in Spring 2021. The first cycle explored students' metacognition in lessons of two types, and the following questions were investigated:

Research Question 1: Are students aware of academic/professional skills they practise within a topic-based lesson?

Research Question 2: Are students aware of developing legal English knowledge when they practise academic/professional skills?

My expectations (from past teaching experience) were that students were more likely to notice that they had learnt the content, e.g. legal English vocabulary, than that they had developed their skills. Moreover, I anticipated that a certain percentage of students would not appreciate the content delivered via presentations given by their peers.

After the first cycle, an action plan of raising students' awareness of their learning in legal English lessons was designed, and it was implemented in two different settings, influenced by the COVID-19 crisis: the spring semester 2020 and the spring semester 2021. In those two cycles, I explored a research question connected to the action plan:

6 K. Lewin, Action Research and Minority Problems, (in:) G.W. Lewin (ed.), Resolving Social Conflicts, New York 1946, p. 34.

7 P. McIntosh, Action Research and Reflective Practice, Abingdon 2010.

8 V. Koshy, Action Research for Improving Practice: A Practical Guide, London 2005.

Research Question 3: Can the teacher help students make their learning more effective by enhancing their metacognition about learning?

The data were collected by various methods, different for each cycle: end-of-lesson questionnaires, end-of-semester questionnaires, mid-semester individual consultations, or oral feedback. The questionnaires and consultations had a rather strong self-reflective nature, which led me to concerns about whether students are willing and able to reflect.

3. Research Cycle 1 (Spring 2019)

Description of the Lessons

The year 2019 was, from today's perspective, the last 'traditional' one when the lessons took place within the walls of the classroom, and nobody expected anything different. The fourth semester of the course of legal English consisted of three topics (Civil Rights, Human Rights, and Employment Law); however, a special focus was given to improving students' presentation skills, and some lessons were devoted solely to presentations. The classes took place once a week, each 100 minutes long, for 12 weeks. Every lesson consisted of both the legal content and skills practice; however, in Weeks 2–8, the lessons were, at first sight, focused on one of them. Weeks 2, 4, 6, and 8 were targeted at presentation skills and Weeks 3, 5, and 7 were centred around legal topics. The lessons were, in fact, of three types:

- Presentation practice-based (Weeks 2 and 4), but involving legal content: the students practised their presentation skills and gave team mini-presentations on the legal topic (civil and human rights) as a preparation for their future 15-minute presentation.
- Content-based lessons (Weeks 3, 5, and 7) on civil and human rights, but developing academic or professional skills in certain activities within the lesson, e.g. discussions, argumentation, a legal analysis of a case.
- Presentation lessons (Weeks 6 and 8) in which three groups delivered their 15-minute presentations, followed by self-reflection led by the teacher and peer and teacher feedback. The content was provided by the students; each presenting team could choose any topic related to law.

End-of-lesson Questionnaires

After each lesson, the students were to fill in an online questionnaire reflecting on their learning in which they completed the sentences: 'After this lesson I know…' and 'After this lesson, I feel (that)….' The sentence openers intentionally avoided the phrase 'I learnt' so that the students had a chance to comment on developing their

skills, e.g. 'I know how to start a presentation effectively. I feel I still need to work on my eye contact with the audience.'

In the 2019 spring semester, I taught two seminar groups with 34 students altogether. The response rate to the questionnaire varied from 75% to 85%, and about 90% of answers were to the point, i.e. sensible and sincere comments, though often not very specific. Let us analyse the results based on which type of lesson the students reacted to:

- In the presentation practice-based lessons (Weeks 2 and 4), all answers pointed out developing presentation skills, but nobody mentioned the content. The majority of answers (85%) were not specific, e.g. 'I know how to improve my presentation skills', 'I know some tips about presenting', 'I feel I can present better', as opposed to 15% with specific answers: e.g. 'I know how to conclude a presentation.'
- After the content-based lessons (Weeks 3, 5, and 7), all relevant replies mentioned the content, e.g. 'I know how the system of checks and balances works', 'I feel good because I remembered a lot of legal words which we used'; only about 10% of answers mentioned skills – speaking or discussions, e.g. 'I feel I am better in discussions now.'
- After the presentation lessons (Weeks 6 and 8), the answers varied depending on whether the particular student presented or not. The students who presented often expressed feelings about their performance, e.g. 'I feel relaxed and satisfied', 'I feel I still need to improve my presentation skills.' The students who only listened to presentations commented about the content, e.g. 'I know more information about family law', or gave only general remarks, e.g. 'I feel pretty good, it was a nice lesson.' There was only one comment related to the skill of giving feedback: 'I feel I can evaluate others.'

Answers to Research Questions 1 and 2

Research Question 1: Are students aware of academic/professional skills they practise within a topic-based lesson?

The results of the end-of-lesson questionnaires in Weeks 3, 5, and 7 showed that the vast majority of students did not consider the practised skills as something they could mention in their reflection after the lesson. Only 10% of responses indicated the skills as something they had worked on during the lesson.

Research Question 2: Are students aware of developing legal English knowledge when they practise academic/professional skills?

There was no clear answer to this research question because the students' responses were greatly influenced by whether they presented or how much they were preparing for the (mini-)presentation. The responses revealed that, in the majority of cases, if a student presented, their emotions related to the actual presentation overweighed the experience of learning the content. If they just listened and gave feed-

back, students appreciated new information. All in all, about 35% of responses in Weeks 2, 4, 6, and 8 reflected on the legal knowledge in the skills-based lessons; however, I consider this figure influenced by the fresh emotions aroused by the presenting.

To compare the results with my expectation that students would be more likely to notice that they had learnt the content than that they had developed their skills, we can conclude that this was confirmed in the case of content-based lessons.

Further Results

The responses in the questionnaires also revealed other interesting results:

– No student commented on learning from others in any of the lessons. Only one remark was related to the work of others: 'I feel better because I saw many of my colleagues have the same problem with presenting in front of other people.'
– The students provided only occasional observations connected to specific activities in the lesson, e.g. 'I feel human rights are an interesting topic for work in pairs and discussion.' This might indicate that the students did not actively think about the learning potential of the tasks performed.
– Approximately 15% of students seemed frustrated because they 'didn't prepare for the exam' in the lessons. An example of this type of response is 'I feel indifferent, it is not useful for the exam.'

My concerns about the students' willingness and ability to reflect on their learning proved to be partly right. The majority of students were willing to reflect: an average of 80% submitted their answers every week, and 90% of them gave serious answers. (Examples of non-serious responses are 'I know everything' or 'I feel like a new man.') As far as the ability to reflect is concerned, the percentage of very general answers was rather high, about 70% out of the serious responses in all weeks. Such answers are not very helpful for the reflection, but the reasons for providing general responses are not clear and may be varied, from not being able to reflect to practical reasons, e.g. a lack of time when the student was in a hurry.

End-of-semester Questionnaire

To round up the whole semester, the students completed one more questionnaire, which was concerned with what the students appreciated about the course, with a specific question about the presentation skills. The response rate was 82%, out of which 83% of students appreciated the opportunity to practise presentation skills and 17% explicitly stated that it was unnecessary or even a waste of time. The last figure is directly related to my expectation that some students would not appreciate the content delivered via presentations given by their peers; however, the percentage was not high. What may be interesting is that none of the responses commented on the

fact that the presentation practice was an opportunity to learn something new about legal topics in English.

Conclusions After the First Research Cycle and an Action Plan

It can be concluded that even though students were given the information that each lesson combined both learning the content and developing the skills, the answers in the questionnaires revealed that the students gave priority to only one. Generally, hardly any students considered both when reflecting on their learning in the lessons. The responses showed that most students were not very good at reflecting on their actual learning in the course, which created an opportunity to raise metacognitive awareness to enhance their learning.

Based on the results, I prepared the following action plan:

- explaining learning opportunities (both skills and language) in all activities,
- supporting students' planning, monitoring, and evaluating of learning legal English from the first semester of the course,
- making sure students understand that improving English, working in the lessons, and succeeding in the final examinations are interconnected,
- finding time for learning strategies and reflection during the lessons.

4. Research Cycle 2 (Spring 2020)

I started implementing the action plan in the 'English for Lawyers' course in Autumn 2019 by making students aware of the learning opportunities and helping them to find strategies in the first and third semester; however, I expected to continue the action research with the same method (end-of-lesson questionnaires) in the fourth semester, in Spring 2020, to see whether there would be any difference in students' responses. The only new element that I expected compared to Spring 2019 was that my students were going to start cooperation with law students from the University of Nicolaus Copernicus in Toruń, Poland. They were going to communicate in a closed Facebook group, ask questions, provide answers, and implement those answers into their 15-minute team presentations.

As we know, the reality of Spring 2020 was very different from the plans. Following the philosophy of action research, I modified the action plan and applied the parts which were reasonable in the circumstances.

Teaching Situation

After one or two regular face-to-face lessons, the teaching and learning went online. In our case, the lessons were substituted by e-learning in the university information system: students could participate in optional Microsoft Teams sessions (not many did), and communication happened mainly via the university e-learning plat-

form or by email. I was teaching two seminar groups of students, 36 altogether. The new element, the cooperation with the Polish students, was easy to keep, and it suddenly became almost a natural part of online learning. The 15-minute team presentations were recorded and submitted online, which turned out to be very practical for the cooperation with the Polish students as the teams shared their presentations and provided international peer feedback.

Adjustments in the Action Plan

With all the changes happening, I decided to abandon the plan of collecting student reflections every week. The reasons were simple: everybody had to cope with an unknown learning situation, and many students were overwhelmed, uncertain, or even lost. However, I made an effort to show students learning opportunities in our (online) tasks.

As mentioned above, I communicated with the students by email or via the e-learning platform. The platform was mainly for providing individual feedback. Apart from that, I created a shared document with a weekly schedule where I noted down what had been done and what was to be done, but also tips for effective learning: useful phrases, how to learn from the Facebook communication, how to improve English writing skills. In this way, I could implement the following points from the action plan of 2019:

- explaining learning opportunities in the tasks that students did,
- supporting students' planning and monitoring of learning legal English,
- making explicit comments that the online work in the course and succeeding in the final examinations are interconnected,
- giving examples of learning strategies.

To illustrate the points, here is an extract from the shared document with the weekly schedule, giving instructions for the coming lesson:

6 May: Continue with the FB interaction, watch the presentations, and work on your English (useful exam practice):

1) *work on your understanding and interaction* (= practising listening, reading, writing): react on FB – either to presentations or posts, some presenters ask questions, if you have not answered any yet, use your chance.
2) *work on accuracy and extending your vocabulary:* Do you spot any nice words/phrases/grammatical structures? Or do you spot any suspicious words/phrases/grammatical structures/pronunciation (potentially with a mistake)? – *Check if they are correct* (use online dictionaries, e.g. https://www.lexico.com/) or search for the particular phrase in quotation marks. Examples:

Example 1: you are not sure if 'I'd like to draw your attention to the picture' is correct (maybe you would choose a different preposition); write into a search machine

'draw your attention to' – what is the result? – 4,900,000 results, English pages, and grammar explanations on the first page → the phrase is correct.

Example 2: you feel 'minimal wage' sounds strange in English, you search for this phrase, and Google will return 'Showing results for "*minimum* wage"' and, clearly, the right phrase is 'minimum wage'.

End-of-semester Questionnaire and Oral Feedback from Students

As mentioned above, I did not use end-of-lesson questionnaires in Spring 2020. The only way to collect data was an end-of-course questionnaire and feedback after the oral examination. The questionnaire included open-ended questions asking how the students coped with the online teaching and learning in the course and what they appreciated or (dis)liked. Unfortunately, the response rate was only 33%. Nevertheless, the majority of students (70%) shared their experience of the learning, mainly by describing what helped them, e.g. 'I very much enjoyed going through the presentations and learning new things about the law', 'I really loved cooperating with Polish students. It was very interactive and a good way to keep us doing something in "English for Lawyers"', or 'I really like that I had opportunities to improve my writing.' Unfortunately, many comments were rather vague, e.g. 'We've had many options to practise our English and improve ourselves.'

As for the feedback after the oral examination, I examined 12 of the students who I was teaching in the fourth semester of the course, and all of them were willing to discuss their learning in the course. Generally, the students were happy with the support provided and considered the comments in the shared document a valuable resource for their learning. What I found interesting was that each of them had their preferences about activities which they found helpful and effective. This assured me to continue providing students with a wide range of tips and learning opportunities so that each of them could find what is useful for them.

Conclusions After the Second Research Cycle and the Action Plan

Generally, Spring 2020 can be considered to be emergency remote teaching;[9] however, many elements introduced then proved to be helpful and effective for student learning, so they were implemented even in the online teaching of 2020/2021, which became fully-fledged online learning. An example of an element which I considered successful was the shared document monitoring planning and progress as well as providing tips for learning opportunities.

As far as the action plan was concerned, I decided to continue with the plan of 2019. Nevertheless, I modified the methods of how to analyse students' metacognition. I did not wish to continue with the 2019 end-of-lesson questionnaires because

9 C. Hodges, S. Moore, B. Lockee, A. Bond, The Difference between Emergency Remote Teaching and Online Learning, 'Educause Review' 2020, vol. 27, pp. 1–12.

the learning situation and environment were too different to compare the results of 2019 and 2021. Instead, I introduced mid-semester individual consultations, which were to help students be aware of their learning. An end-of-course questionnaire was then to confirm whether students were able to analyse their learning in the lessons.

5. Research Cycle 3 (Spring 2021)

Teaching Situation

The academic year 2020/2021 was conducted online at Masaryk University. In the course 'English for Lawyers', this meant weekly lessons in Microsoft Teams (compulsory this year) and e-learning available in the university platform. Similar to the spring semester of 2019, Weeks 2 to 8 of the fourth semester of 'English for Lawyers' were devoted to developing presentation and communication skills as well as the legal content. I again taught two seminar groups with 40 students altogether, and we continued the cooperation with the Polish law students. This time the collaboration was well established within the semester: two common Microsoft Teams sessions, written interaction on Facebook, and providing peer feedback on recorded presentations.

Implementation of the Action Plan

To implement the 2019 action plan of raising students' metacognition in learning legal English, I carried out the following steps:

- explaining learning opportunities in all activities and thus raising students' awareness of their learning (during the Microsoft Teams lessons and in the shared document monitoring progress),
- supporting students' planning, monitoring, and evaluating of learning outcomes (in the shared document and individual consultations),
- making sure students understand that improving English, working in the lessons, and succeeding in the final examinations are interconnected (during the Microsoft Teams lessons and in the shared document monitoring progress),
- finding time for learning strategies and reflection during the lessons (mainly in individual consultations).

The shared documents continued to keep track of the work done and planned, and at the same time provided tips and feedback on the language produced by students. A special focus was placed on peer feedback, in presentations and other tasks, as this was a suitable place to make students aware of the double role of many legal English activities, e.g. practising the communicative function of the language as well as legal vocabulary practice.

A new reflective element consisted of short individual consultations in the middle of the semester. I spent at least five minutes with each student, discussing their learning progress and the support they needed. The majority of students showed themselves to be conscientious learners who just needed some assurance or assistance with specific issues. However, there were students who required more help, and they were grateful to find out that the teacher cares about their progress. I found individual consultation particularly useful in the online teaching environment since I was not able to establish individual rapport similar to the face-to-face setting.

End-of-semester Questionnaire

At the end of the course, students filled in a questionnaire which focused on their learning mainly during the presentation-phase weeks, i.e. Weeks 2–8. The questionnaire included Likert-scale items addressing the skills which the students practised and improved, and closed and open questions asking the students to specify activities they found most useful and valuable for their learning. The response rate was 90% and the results were the following:

- The following percentage of students agreed or fully agreed that they felt they practised: listening skills 61%, reading skills 50%, writing skills 78%, discussions and spoken interaction 92%, online presentation skills 94%, providing feedback 89%, legal English content 78%.
- The following percentage of students agreed or fully agreed that they felt they improved (the percentage is out of those who identified that they practised the particular area): listening 68%, reading 70%, writing 57%, discussions and spoken interaction 91%, presentation skills 91%, giving feedback 81%, legal content 80%.
- When asked what students considered the most valuable in their learning of legal English, 81% named academic skills (presentation skills, giving feedback, discussions), 25% the legal content, some students mentioned both.
- 97% of students considered presentation-skills practice valuable.

An Answer to Research Question 3 and Further Observations

Research Question 3. Can the teacher help students make their learning more effective by enhancing their metacognition about learning?

Even though the learning situations and questionnaires of 2019 and 2021 were different, the outcomes suggest that 2021 students were more conscious of their learning, and mainly of the importance of the presentation and discussion tasks. This can be demonstrated by the 97% of students who considered presentations valuable, compared to 83% of 2019 students, or by the fact that 2021 students gave high importance not only to presentation skills but also to discussions and giving feedback. Also, the percentage of students who appreciated and were aware of both the content and skills was much higher in 2021. As the 2021 students were exposed to more concen-

trated metacognitive strategies and the final questionnaire showed that students were rather positive about their learning outcomes, we can conclude that students' learning outcomes can be improved by a teacher raising students' awareness about their learning and supporting reflection and evaluation of the learning process, i.e. the answer to research question 3 is affirmative.

From the teacher's perspective, I felt that the 2021 students were more focused when performing activities mainly because they were informed about the learning opportunities they offered. The learning thus became more efficient. The steps which I considered essential in supporting students' metacognition are the mid-semester consultations and making the learning tips and evaluation personalised for the particular group or individual. Then it becomes the student's responsibility to exploit the learning opportunities offered in the course.

The experience and outcomes of implementing steps supporting student metacognition showed themselves to be promising. I am therefore going to continue with the action plan even in the coming semesters, no matter which type of teaching situation occurs. The research helped me understand how students perceived the learning in my lessons, and with this knowledge I can now help students become more efficient learners.

Conclusion

The action research presented here covered three research cycles which investigated student metacognition in the 'English for Lawyers' course, implemented new elements into the teaching, and analysed the results. Research cycle 1 demonstrated that students paid attention to practising and learning the legal content but did not exploit the full potential of lessons in which the content as well as academic and professional skills were practised. I therefore identified space for raising students' awareness about their learning. In research cycles 2 and 3, several steps were taken to enhance students' metacognition, e.g. by explaining learning opportunities and supporting the students' planning, monitoring, and evaluating of their learning. Since research cycle 2 was influenced by the beginning of the COVID-19 crisis, the data analysing the impact of the steps taken were collected during research cycle 3. The results show that enhancing student metacognition about their learning can make it more effective. This confirms Haukås's statement that 'language teachers play a key role in supporting their students in their language learning efforts by reflecting on and modelling what learners know and how languages can be learnt'.[10]

10 Å. Haukås, Metacognition…, *op. cit.*, p. 25.

REFERENCES

Anderson N.J., The Role of Metacognition in Second Language Teaching and Learning, 'ERIC Digest' 2002, vol. 4, pp. 1–7.

Chamot A.U., Language Learning Strategy Instruction: Current Issues and Research, 'Annual Review of Applied Linguistics' 2005, vol. 25, pp. 112–130.

Flavell J.H., Metacognitive Aspects of Problem Solving, (in:) L.B. Resnick (ed.), The Nature of Intelligence, Hillsdale 1976, pp. 231–235.

Haukås Å., Metacognition in Language Learning and Teaching – Overview, (in:) Å. Haukås, C. Bjørke, M. Dypedahl (eds.), Metacognition in Language Learning and Teaching, Routledge 2018, pp. 11–30.

Haukås Å., Bjørke C., Dypedahl M. (eds.), Metacognition in Language Learning and Teaching, Abingdon 2018.

Hodges C., Moore S., Lockee B., Bond A., The Difference between Emergency Remote Teaching and Online Learning, 'Educause Review' 2020, vol. 27, pp. 1–12.

Koshy V., Action Research for Improving Practice: A Practical Guide. London 2005.

Lewin K., Action Research and Minority Problems, (in:) G.W. Lewin (ed.), Resolving Social Conflicts, New York 1946, pp. 34–46.

McIntosh P., Action Research and Reflective Practice. Abingdon 2010.

Wenden A., Metacognition: An Expanded View on the Cognitive Abilities of L2 Learners, 'Language Learning' 1987, vol. 37, no. 4, pp. 573–597.

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Regulae Iuris: A Lasting and Universal Vehicle of Legal Knowledge

Abstract: The article discusses the significance of Latin legal rules (*regulae iuris, maximae iuris, dicta*) for European legal culture. One of the areas explored by the authors is the relationship between the content of these rules and the language in which they were written down, i.e. Latin. Section one provides an overview of the origin, sources, and techniques of formulating legal rules by the jurisprudence of the ancient Roman state, with particular focus on the history of development of *ius Romanum*. After the dissolution of the Western Roman Empire (476 AD), the Church became the custodian of the values embedded in Roman law in Western Europe. Not only did she treasure precious scrolls containing ancient legal wisdom for the future generations but also implemented many Roman regulations in her internal legal system, as expressed in the paroemia *Ecclesia vivit lege romana*. This issue is addressed in section two. An important vehicle of disseminating the Roman legal thought, including its paroemias, was the Latin language. The ancient Romans contributed to its increasing circulation through rapid political expansion. Over time, Latin also elevated to the rank of the language of the Western Church. Because of that, it continued to prevail, also as a durable carrier of legal knowledge. This phenomenon is discussed in section three. The last section covers some facets of the use, application, and impact of Latin legal rules on modern legal science.
Keywords: canon law, history of law, jurisprudence, Latin, legal rules, Roman law

Introduction

The idea of legal rules and their relevance in promoting legal knowledge, including the teaching of law, has not lost its currency since antiquity. Contemporary legal culture, legal education being part hereof, as well as the various currents and trends in law, largely draws on and refers to Roman law. The study of Roman law keeps proving its profound significance for the ability to interpret and apply present-day law.[1] The ancient Romans created institutions, legal constructs, a method of legal thinking, and a clear conceptual model that have penetrated into modern-era law systems.[2] Relying on the values conveyed by *ius Romanum* and the achievements of ancient Roman jurisprudence is now strongly emphasized also in the wake of advancing globalization and the need for the lawyers of integrated Europe to share the same parlance.

An important, lasting, and inspiring legacy of learned jurists, who attained utter perfection in legal techniques and even called themselves "priests of justice" (*sacerdotes iustitiae*[3]), are the Latin legal rules and expressions. They would be known by the names of paroemias, brocards, rules, or maxims.[4] On the one hand, they still impress with their brevity; on the other hand, they are apt and accurate. This article aims to discuss how they were coined and what mechanisms were behind it; in this regard,

1 The problems of legal education in the broad sense, specific trends and currents existing in the legal science, especially in historical and legal studies, were addressed, but not only, in: M. Pyter, Współpraca ośrodka lwowskiego i lubelskiego w zakresie nauczania prawa rzymskiego, (in:) A. Dębiński, M. Pyter, B. Czech-Jezierska (eds.), Nauki prawne pomiędzy tradycją a współczesnością. Prace dedykowane Profesorowi Longchamps de Bérier w 70. rocznicę śmierci, Lublin 2011, pp. 139–165; idem, Swoboda nauczania prawa na uniwersytetach galicyjskich na przełomie XIX i XX w., (in:) M. Pyter (ed.), Studia prawnicze a rzeczywistość zawodowa, Lublin 2009, pp. 31–45; idem, Oswald Balzer i lwowska szkoła historycznoprawna, Lublin 2010; idem: Miejsce dyscyplin historycznoprawnych w wykształceniu jurydycznym w okresie międzywojennym, "Roczniki Nauk Prawnych" 2004, no. 1, pp. 105–128.

2 Analyses of individual institutions of Roman private law, with special emphasis laid on the evolution of its concepts demonstrating the viability of ideas that underlie the modern legal order, were made in numerous research papers; one of the most recent contributions addressing this question fairly comprehensively is: A. Dębiński, M. Jońca (eds.), Leksykon tradycji rzymskiego prawa prywatnego. Podstawowe pojęcia, Warsaw 2016 (Bibliography, ibid., pp. 403–409). The most important concepts of Roman penal law, exploited by penal law dogmatists as a major substrate, are discussed in, inter alia: M. Jońca, Rzymskie prawo karne. Instytucje, Lublin 2021 (wykaz literatury, ibid., pp. 206–218); M. Jońca (ed.), Leksykon rzymskiego prawa karnego. Podstawowe pojęcia, Warsaw 2022 (Bibliography, ibid., pp. XXV–XXXV). Vast literature linked to a catalogue of entries relating to Roman penal law was compiled by: M. M. Skřejpek, Bibliographia iuris romani criminalis. Bibliography of Roman criminal law, Prague 2021, and I. Leraczyk, Rzymskie prawo karne. Bibliografia, Lublin 2021.

3 Cf. D.1.1.1 (Ulpianus).

4 Invention and application in Roman law of some general legal principles, today known as rules or maxims, have been discussed at length in numerous research works for decades; multiple Roman legal rules and maxims are compiled in: K. Burczak, A. Dębiński, M. Jońca, Łacińskie sentencje i powiedzenia prawnicze, wyd. III, Warsaw 2018; bibliography, ibid., pp. 414–416.

special attention will be paid to the role of the mediaeval science of canon law and the language in which they were written down. The historical and legal method was employed.

1. Regulae Iuris: The Legacy of Roman Jurisprudence

In a figurative sense, the Latin word *regula* (*kanon*[5] being its Greek equivalent) denoted a rule, principle, a standard of conduct, while in a literal sense, it meant a levelling rod (wooden or metal) or board, or else a measuring rope or line.[6] The concept made its way into the scientific vernacular owing to grammarians and philosophers at the end of the Roman Republic period. The word "rule" (*regula*) in its normative role entered the Roman legal dictionary relatively late. As commonly held in the literature on the subject, it was Massurius Sabinus, a highly esteemed jurist from the first half of the 1st century AD, who used it first. It was also adopted later by Lucius Neratius Priscus, a Roman jurist, senator, and high official, who was active at the turn of the 1st century AD. In the 2nd century AD, the term *regula* was commonly found across legal texts.

Ultimately, rules became understood as concisely framed, yet generally applicable legal principles. Rules so defined were of normative character, even if, from the linguistic point of view, they would often be found as descriptive in form. The definition of the term *regula* was proposed by Iulius Paulus, a reputable representative of Roman law in its heyday, i.e. of the classical period of Roman law, who lived at the turn of the 2nd century AD. He authored numerous legal works, including commentaries to texts by other jurists. In his commentary to the writings of Plautius, he included a three-sentence text, which was incorporated in Book 50 of *The Digest*, at the beginning of Title 17 *De diversis regulis iuris antiqui*[7] ("Concerning Different Rules of Ancient Law"). The paragraph begins as follows: *Regula est, quae rem quae est breviter enarrat*[8] ("A rule is a statement, in a few words, of the course to be followed in the

5 The origin of the word "canon" can be traced back in its etymology. The term derives from the Hebrew word *kaneh* denoting "measuring rod". In Greek the word meant "pattern", "measurement", or "measuring rod". These rods were used in construction to tell measurements. The Greeks widened its use and transferred it to other areas of science to designate a simple, finished shape and an unfailing measurement unit to appraise different phenomena. In an ethical context, canon refers to what is fair and correct, or to a criterion to apply and conform to; in art, canon is a perfect, yet achievable form. In the study of canon law, canon and norm are used as synonyms, and the former is equivalent in its meaning to a regulation or provision of ecclesiastical law.

6 For more on this term, its interpretation, and application in legal sources, see P. Stein, Regulae iuris: from juristic rules to legal maxims, Edinburgh 1966, pp. 49–73; H. Kupiszewski, Prawo rzymskie a współczesność, Warsaw 1988, pp. 131–175; W. Litewski, Podstawowe wartości prawa rzymskiego, Cracow 2001, pp. 43–44.

7 D.50.17.

8 D.50.17.1

matter under discussion"). Then, the jurist goes on to point out that, *Non ex reguła ius sumatur, sed ex iure quod est regula fiat* ("The law, however, is not derived from the rule, but the rule is established by the law"). Finally, Paulus explains, *Per regulam igitur brevis rerum narratio traditur, et, ut ait Sabinus, quasi causae coniectio est, quae simul cum in aliquo vitiata est, perdit officium suum* ("Hence, a short decision of the point in question is made by the rule; or, as Sabinus says, a concise explanation of the case is given, which, however, in other instances to which it is not applicable, loses its force").

Hence, according to the learned jurist, a rule should be succinct and provide a short description of the basic premises of the given legal order. When explaining the mechanism of creating a rule, the author stressed that a law was not derived from it (*ius*), but in contrast, the rule came from the law. At the same time, Paulus recommended not to broaden the meaning of the rule beyond the relevant scope of application.

The process of establishing and applying legal rules in antiquity has a relatively long history;[9] its origins go back as far as to the literature of the ancient Greeks. They devised an elaborate system of expressions known as gnomes (Gr. *gnōmē*). Gnomes were short adages imparting a deeper thought or general judgment, often of philosophical or moral relevance. The oldest of them can be found in the writings of Homer and Hesiod (8th century BC). Some of them were of a legal nature.

However, it was the ancient Romans who disseminated the use of succinct legal rules. The early oral usage is known from the jurisprudence of ancient Roman pontiffs, yet most of them date back to the period of the Late Republic. Legal rules were most often coined through pragmatic induction after a considerable number of specific judicial decisions had been accumulated. Certainly, this kind of reasoning only created a probability rather than certainty of their application. Consequently, a rule so understood was more of an instructive rather than directly binding nature. Still, it helped find the correct (lawful) solution. However, it could not guarantee such a solution to take effect in practice.

In classical Roman law, which was actually a mosaic of extremely diverse, often incoherent and hardly available sources from different periods, rules were of paramount importance. They helped navigate through the normative maze. Their correct application, however, required the involved jurist to display certain autonomy. In accordance with his knowledge of "things human and divine" and "the knowledge of just and unjust",[10] to cite Ulpian's words, he had to decide whether the application of a rule in a certain case was in accordance with the principles of legitimacy. No less important was the question of whether the application of that rule would have been

9 A brief history and the use of sententia-like expressions in the legal practice was discussed by M. Jońca, Prawo rzymskie. Marginalia, ed. II, Lublin 2015, pp. 110–118.

10 Cf. D.1.1.1 (Ulpianus).

aligned with other components of the legal order. If there had been no such premises, he should have abandoned the use of the rule. The most prominent lawyers of that period, more or less intentionally, would often put forward brief solutions to complex legal challenges and would attach them as short sentences opening or summarizing a broader discussion of a problem.

Recreating the mechanisms behind the creation of legal rules is a daunting, if not impossible, task. The rules were presumably less frequently formulated through scientific reasoning. This was indeed the case at the decline of the republic and was attributed to the adoption by Roman jurists of the Greek dialectical method, primarily the introduction of the division into *genus* and *species* into the science of law. Sometimes a rule was proposed that was intended to rectify some existing legal matter.

The authors of the vast majority of legal rules were unknown, which makes it even more challenging to reconstruct the principles behind their formation. This is true not only of the generally post-classical period of the development of Roman law but also of the pre-classical and classical periods, that is, ones that produced many learned jurists known by name. Among the many unknown rules, the *regula Catoniana* (Cato's rule) was an exception. It was most likely laid down by Cato Licinianus, a jurist from the 2nd century BC, son of the famous Cato the Elder (Cato the Censor).

Roman jurists did not regard the existing rules as permanent and immutable. They were not generally the subject of controversy among individual law experts. However, along with the expansion and development of law, as well its progressing diversification, a need for change began to be commonly acknowledged. Because of the Roman adherence to tradition and conservatism, however, the old rules were not removed but only limited by introducing various exceptions. Roman jurists justified such limitations in a number of ways. Most often, they relied upon a teleological reduction, e.g. they exposed some absurd consequences in a legal case, or they sought similarities to another legal condition that did not correspond to the challenged rule. Only in extreme cases were they ready to accept that a specific rule should not be applied. Salvius Iulianus (2nd century AD) took a rigid stance on this problem, and in one of his works he expressly stated, *In his, quae contra rationem iuris constituta sunt, non possemus sequi regulam iuris* ("In those matters which have been established contrary to the legal rules, we cannot follow the legal rules").[11]

Concise legal rules were found, although to a relatively narrow extent, already in the writings of jurists of the Roman Republic. It is worth noting that different rules and maxims were often transferred to the legal domain from literature. Marcus Tullius Cicero (106–43 BC) was a particularly prolific author. His wise and accurate observations have been circulating for centuries, not only among lawyers.

In ancient Rome, there was also the practice of making separate compilations of sayings and maxims, most of which served legal purposes. An example of this is

11 D. 1.3.15 (Iulianus).

the work of Publilius Syrus (1st century BC). He compiled a work titled *Sententiae*. Its educational value was recognized already by Roman teachers. The first edition of *Sententiae* from the 1st century AD contained only the author's output. In subsequent editions, the rules were amended, and new were added, including ones attributed to or authored by Seneca.

As the number of new legal rules was gradually increasing, jurists from the classical period (2–3rd century), despite their inclination towards a casuistic approach to legal problems, began to group them into separate collections known as "books of rules" (*libri regularum*).[12] Ranked as pedagogic literature, they became a separate form of extensive and diverse writing output of Roman jurists.[13]

Great interest in classical works dotted with legal rules was seen in the Roman Dominate. Old legal writings were stripped of casuistry and controversy to expose the rules only. Sometimes the old rules were rewritten into a new, post-classical form. Often, when taken out of their original context, the rules assumed a more general understanding. This was especially true of those included in imperial orders.

In the period of post-classical Roman law (4th–6th centuries), also referred to as declining or vulgar Roman law, which was marked by the evident disintegration of intellectual culture, including the legal one, jurists, usually anonymous, attempted to adapt classical legislation to contemporary needs. Departing from the sophisticated considerations of their predecessors, they made radical alterations or compilations of classical works. They were most eager to copy short and concise rules and disseminate them as a cursory, though practical and comprehensible image of the binding law. Some of the most popular and noteworthy were *Regulae Ulpiani, Pauli Sententiae, Fragmenta Vaticana*, or *Collatio legum Mosaicarum et Romanarum*; they also contained a variety of *regulae*, *maximae,* and *sententiae*.

However, of greatest significance was the incorporation of ancient rules in a separate title of Justinian's *Digest*, *De diversis regulis iuris antiqui* ("Concerning Different

12 Their list and discussion is available in P. Stein…, *op. cit.,* pp. 117–118.

13 The literary output of *iuris prudentes* was marked by high intellectual level and diversity. The most widespread and typical literary forms were the works compiling casuistic decisions (*quaestiones*, *disputationes*, *responsa*, *epistulae*); in these works, jurists presented and settled dubious cases (*casus*), both real and fictional. The works contained opinions and legal recommendations to questions raised by private persons and offices. Jurists, mainly for teaching purposes, produced basic legal textbooks for law schools called *institutiones* or *enchiridia*. Furthermore, commentaries were made to individual statutes (e.g. to the Law of Twelve Tables), official edicts (*ad edictum*), and works of past jurists (e.g. *ad Sabinum*) as well as monograph studies on distinct legal institutions. Another literary form was *digesta*, i.e. relatively voluminous works providing an exhaustive and comprehensive coverage of the author's legal decisions, commentaries to historical authors with critical remarks (*notae*), and works treating excerpts (*excerpta*) from the pieces of past jurists; cf. A. Dębiński, Rzymskie praw prywatne. Kompendium, Warsaw 2017, pp. 50–51. See also: M. Skřejpek, Lex et ius. Zákony a právo antického Říma, Plzeň 2018.

Rules of Ancient Law").[14] Justinian compilers listed 211 various legal rules meticulously extracted from the works of jurists of the pre-classical and classical periods and delivered in a concise and maxim-like form. They were mainly sourced from the writings of Paulus and Ulpian; fewer were borrowed from the works of Pomponius and Gaius. The authors also reached for the writings of Javolenus, Mecianus, Hermogenian, and Celsus. Many of those rules have not become obsolete at all.

The *regule* integrated into *The Digest* were usually excerpts from jurists' justifications of decisions in individual cases. In other words, originally, they did not operate independently. Taken out of their original context, the rules and maxims in the form presented by Justinian compilers assumed a more general character, somewhat departing from their original tenor. Not all of them followed the classical definition of legal rule by Paulus, either. On top of this, the original scope of application of specific rules is not easy to find out.

Although the name of the title has the *antiquum ius* ("ancient law") component, the rules contained therein were to remain effective, pursuant to Emperor Justinian's decision. This decision embodied the emperor's recognition of the achievements and traditions of jurisprudence from the classical period. The rules listed in the title became a vehicle and, at the same time, an inspiring input which, after the collapse of the Roman state, spearheaded new interpretations and applications of legal principles and maxims in different legal systems. They also found their way into law collections adopted by the Church.

2. Regulae Iuris in the Collections of Canon Law

After the dissolution of the Western Roman Empire (476 AD), the Church became the custodian of the values embedded in Roman law in Western Europe. Above all, she treasured precious scrolls containing ancient legal wisdom for the future generations. Besides, she incorporated numerous Roman regulations into her internal legal system. This phenomenon was reflected in the 7th-century paroemia *Ecclesia vivit lege Romana* ("The Church lives by Roman law"). This can be explained by a number of preconditions.

The legal order of the Roman Catholic Church was closely bound with the culture of the Roman Empire; this is where Christianity was born and developed anyway. The place and time of the emergence of the new monotheistic religion were mirrored in almost all aspects of the early Church's life, beginning with the language. The influence of the cultural and social context had a tremendous impact on the juridical order developed by the Church as one of the instruments for achieving its

14 D.50.17. This title was preceded by title D.50.16. *De verborum significatione* ("Concerning the Significance of Terms"). It contains 246 extracts from different legal writings of the classical period. They offer definitions of many legal terms.

fundamental goals.[15] For that reason, Roman law was frequently referred to as "the accoucheuse of canon law".[16] In his exhaustive, three-volume work on the Christian Roman law, Italian Romanist Biondo Biondi (1888–1966) rightly pointed out that "the Roman tradition and Christianity are two mighty spiritual powers that, although deriving from dissimilar concepts and having different goals, at some point in the history intertwine to head for the same direction."[17]

The influence of Roman law on the legal system adopted by Christian communities was also asserted through the adoption of the Roman framework of concepts, definitions, constructs, and some legal rules and guidelines. Certainly, that was anything but a one-time phenomenon. The process spanned several centuries and coincided with the gradual reception of Roman law.

One of the most important sources that contributed to the ancient legal tradition permeating into mediaeval and early modern culture was *The Etymologies* (*Etymologiarum sive Originum libri XX*).[18] The work was authored by Isidore of Seville, bishop, erudite, theologian, writer, politician, and saint of the Roman Catholic Church who lived in the late 6th and early 7th century. He lived in difficult and turbulent times when the face of Europe was being transformed after the fall of the Roman Empire in the West, which resulted in the slow disintegration of ancient culture, as well as inertia and disorder caused by the migration of European peoples. The scholar from Seville made his first attempt to pen a work that would bring together all the knowledge accumulated by mankind and available to Europeans at the beginning of the 7th century. He planned his work to be delivered in a compact and structured form.

Isidore was also driven by another and no less important goal. He aspired to combine the achievements of the ancient world with the considerable intellectual capital of Christianity, which had already gained a firm foothold in the European milieu. He managed to complete his project, and the compilation soon became a very demanded source. Such a comprehensive work could not go without an exposition on law; it was included in Book V *De legibus et temporibus*. Although to a more modest extent and in a less coherent manner, the scholar of Seville also addressed this province of

15 The body of literature on connections between Roman law and canon law is extensive; a substantial collection of works is provided in A. Dębiński, Church and Roman Law, Lublin 2010 (Bibliography, ibid., pp. 173–186).

16 H.J. Berman, Prawo i rewolucja. Kształtowanie się zachodniej tradycji prawnej, przekł. S. Amsterdamski, Warsaw 1995, p. 255.

17 B. Biondi, Il diritto romano cristiano, Giuffrè, t. I, Milano 1952, p. 3.

18 The more recent and vast literature on Isidore of Seville and his legacy is compiled, for example, in: A. Dębiński, M. Jońca, Izydor z Sewilii. O prawach, opracowanie, Lublin 2021, pp. 152–157; A. Dębiński, Wiedza o prawie w ujęciu Izydora z Sewilli, "Studia Prawnicze KUL" 2020, no. 1(89), note 2, pp. 126–127.

knowledge in some other books of *The Etymologies* and, only cursorily, in other didactic pieces. He covered some aspects of legal matters as he interpreted them.

When editing his work, Isidore rewrote and compiled different texts of ancient authors, both pagan and Christian. He abridged, shortened, merged, and modified them, often adding his own views on the matters. Often, he would take off their fragments from the original context or would assign new meanings to ancient vocabulary.

Published in the Andalusian city of Seville, *The Etymologies* gained immense popularity; the work reached audiences outside the Iberian Peninsula throughout the Christian world. It was copied, translated, interpreted, annotated, and even imitated by other authors; *The Etymologies* attained the unquestionable status of a coursebook of first choice in mediaeval schools and of the most popular read right after the Bible. It also became an important and inspiring source of knowledge about law. *The Etymologies* projects a vivid picture of the process of embracing ancient ideas of law and adapting them to new needs.

The use by Christian authors of the concepts and definitions developed by ancient jurists opened up new possibilities. Papal documents from the 9th century contain explicit references to Justinian's legislation as own law (*ius proprium*). However, not only papal law and letters established new channels for Roman law to penetrate into ecclesiastical law. Numerous collections of canon law of different provenance played a similar role. They were often inspired by the codification of Emperor Justinian and intended for the clergy. The incorporation of passages from Roman law into the collections of canon law made the former gain the authority and relevance of the latter. That was how the received provisions of Roman law became an integral part of the ecclesiastical legislation. It was not so infrequent that the deficiencies of ecclesiastical law were remedied by having recourse to Roman law, which actually legitimized it as an auxiliary and supplementary source (*fons subsidiarius et suppletorius*) of canon law.

The reception of Roman law into canon law gained considerable momentum in the 12th century. The process was largely attributed to the legists and canonists who taught Roman and canon law at the University of Bologna established at the end of the 11th century.[19] The following maxim was widely shared in the Middle Ages: *Sine canonibus legistae parum valent, canonistae sine lege nihil* ("Legists without the knowledge of canons do not matter much; canonists without the knowledge of constitutions [Roman law] do not matter at all.")[20] Apart from *leges,* the Bologna legists

19 A. Dębiński, Kościół i prawo rzymskie…, *op. cit.,* p. 66.

20 Peter Rebuffus (1497–1557), a learned canonist, spoke of this bond in a similar way. He expressed the opinion that "Canon and civil law are connected to such an extent that you can hardly understand one without the other" (*Ius canonicum et civile sunt adeo connexa, ut unum sine altero vix intelligi possit*); more in A. Dębiński, Church and Roman Law…, *op. cit.,* p. 90.

were conversant with *canones* while the canonists were experts in ecclesiastical law and the Roman *leges*. In practice, canonists became legists and vice versa. Consequently, they were able to pursue and be awarded doctoral degrees *in utroque iure*. The teaching of Roman and canon law at the University of Bologna by the same professors to the same groups of students led to a situation where similar methods were utilized for the two fields of study taught in the same language (Latin). In this way, the canonists and legists at Bologna shared not only the same genres of legal literature but also the legal rules and principles that they conveyed. Both juridical systems were referred to as "the learned laws". They underpinned the legal system in locations where the Roman Catholic Church was expanding her administration.

The penetration of Roman law into canon law was also the work of the 12th and 13th-century glossators and 14th-century commentators who studied the Justinian codification, in the mid-16th century renamed as *Corpus Iuris Civilis*. The glossators upheld the tradition of compiling general paroemias from Roman casuistry, and their effort bore fruit in the form of collections of legal rules and principles. Similar collections built up by canonists show that many of the rules and principles were borrowed directly from Roman law, while others were aligned with it.

New terminology for legal rules also emerged during this period; they became known as brocards (*brocardia*) or, less often, generalities (*generalia*). The word *brocardia* (originally *procardica*) was supposedly derived from the distorted Latin phrase *pro et contra* (for and against) or from the name of Burchard of Worms (965–1025), jurist and codifier. The term was used to denote general legal guidelines but with no legal force. Their actual value was in legal texts added as arguments for or against. Brocards also provided solutions to various contradictions occurring between legal texts.

Legal rules, put together as systematic and conclusive records, found their way into two important (official) collections of canon law promulgated by the supreme ecclesiastical legislator.

The first such record was attached to the *Decretales Gregorii IX*; a separate title was included in the main body of the text, titled *De regulis iuris* ("Concerning the Rules of Law"). The collection was published by Pope Gregory IX , who was thoroughly versed in the theory and practice of canon law and Roman law. He did not overlook the deficiencies of canon law that made it difficult to understand and apply properly. Therefore, he decided to address the problem and commissioned Raymond de Peñafort (ca. 1175–1275), papal chaplain and penitentiary who, at the same time, enjoyed high esteem as a lawyer, to edit a new collection modelled on the ancient codifications of Roman law. The papal editor graduated from and taught at the University of Bologna, which was a guarantee of his expertise in the two legal systems.

According to the systematic approach adopted by Bernard of Pavia (d. 1213) and applied in similar collections, *The Decretals of Gregory IX* consist of five books. Eleven *Regulae iuris* were appended to the last one. Of these, only three seem to allude to or draw from the Justinian codification, namely *The Digest*. Although none of the existing codes of canon law have ever contained a separate set of legal rules, each of them contains provisions that refer to some of the rules promulgated by Pope Gregory IX content-wise.[21]

It took four years to complete the collection, which was promulgated in the papal bull *Rex pacificus* in 1234. *The Decretals* went with a well-known recommendation that the law contained therein be applied by the judiciary, but also in science and teaching, and literally at courts and schools (*tam in iudiciis quam in scholis*).[22] Following this instruction, at the time of promulgation, the collection was transferred to at least two universities, in Bologna and Paris. Then, in accordance with the relevant papal decree, it reached university libraries and *scriptoria* throughout Christian Europe. Its text was scrutinized, and its *regulae iuris* became a handy tool in university disputes imitating court processes.

Another official collection of canon law, even better known as a source of citations of *regulae iuris* than *The Decretals of Gregory IX*, was *Liber sextus Bonifatii VIII*. It was assembled to respond to contemporary needs. The circumstances and historical conditions that the Church was facing in the second half of the 13th century urged for the enactment of new laws, which at some point created a sizeable list. That led to serious challenges in the interpretation and application of the law. With a view to lessening these inconveniences, Pope Boniface VIII (1294–1303) commissioned the development of a uniform, authentic, and comprehensive body of canon law.

An outstanding expert in law and champion of art and science (in 1303 he founded the Sapienza University of Rome), Pope Boniface VIII, inspired by canonists, appointed a three-person editorial team and tasked them with assembling any applicable legal provisions and amending them to remove any legal ambiguities and uncertainties. The team consisted of Wilhelm de Mandagoto (d. 1321), Riccardus Petronius de Senis (d. 1314), and Berengarius Fredoli (1250–1323). Their scientific background and competence were of significance: they were first-class legal experts of high renown. The first two, like Pope Boniface VIII, graduated from the University

21 An analysis of the rules in the form of a synoptic table is available in: A. Dębiński, Kościół i prawo rzymskie, ed. II, Lublin 2008, pp. 173–174.

22 The formula *tam in iudicis quam in scholis* first surfaced in the papal bull *Devotioni vestrae*; it was framed by Pope Innocent III and described the relations between pope and universities. It was applied as long as until the mid-18th century. More about the significance and application of the formula in K. Burczak, Quinque compilationes antiquae przykładem systematyki oraz współpracy ustawodawcy, sądów i uniwersytetu, Lublin 2020, pp. 619–622.

of Bologna. Petronius de Senis was a professor of Roman law at Naples, and Berengarius Fredoli held the degree of doctor of decrees and taught canon law at Paris.

Editorial work on the new collection took two years. Pope Boniface VIII promulgated the finished collection in his bull *Sacrosanctae Romanae Ecclesiae* in 1298. As his predecessors had done before, he also gifted it to, inter alia, the universities of Bologna and Paris. The bull contained a formula instructing the users of the collection to apply it at courts and schools (*tam in iudiciis quam in scholis*).

Eighty-eight legal rules arranged in five books were added to the collection of canons.[23] They are considered to have been sourced mainly from Roman law by the Bologna-based legist Dinus Mugellanus (1253–ca. 1298/1303) and were one of the outcomes of the scientific work of the university faculty. The collected *regulae iuris* aided Bologna lawyers in interpreting, applying, and supplementing the existing law. The analysis of the individual rules appended to *Liber sextus Boniface VIII* in the form of a separate column titled *De regula iuris* shows that 20 of them have no explicit connection to Roman law. However, the remaining ones were laid down on the basis of 99 excerpts taken from the Justinian codification. Ten came from *The Code of Justinian* and the rest from *The Digest*.

The role of legal rules and principles in canon law does not differ from the function that they serve in other legal systems. The role of *regulae iuris* in the era of casuistic law was to expedite the process of interpreting, applying, and supplementing canon law as *fons suppletorius* and *fons subsidiarius*. In this way, they became embedded in the legal rhetoric employed both in Roman law and canon law.

Canonists did not only compile and interpret legal rules stemming from the sources of Roman law. The number and soundness of solutions developed by canon law based on the Roman legal legacy are highly impressive. They have been used in most legal orders of the world to date, including in such areas as freedom of contract.

The close bond developed between Roman law and canon law was of great importance for the mediaeval science of law. The bond was attributed to several circumstances. First of all, civil law and canon law programmes were taught at the same university centres. As mentioned elsewhere, the courses in Roman law (*ius civile*) and *ius canonicum* were offered at Bologna, the first university of Christian Europe. The two subjects would very often be taught by the same professors. The coherence and symbiosis of both types of laws was symbolically marked by awarding the graduates of Roman law and canon law doctoral degrees in both laws (*in utroque iure*). Moreover, the employed methods of scientific research were similar. The reception by

23 For more, see Reguły prawne Bonifacego VIII. Źródła i znaczenie, (in:) M. Mikołajczyk et al. (ed.), O prawie i jego dziejach księgi dwie. Studia ofiarowane Profesorowi Adamowi Lityńskiemu w czterdziestopięciolecie pracy naukowej i siedemdziesięciolecie urodzin, vol. I, Białystok – Katowice 2010, pp. 157–164. A detailed analysis of the rules in the form of a compendious list is available in: A. Dębiński, Kościół i prawo rzymskie…, *op. cit.,* pp. 163–172.

canonists of the method pioneered by the Bologna legists led, as already mentioned, to the application in canon studies of the same genres of literature published by the school of glossators.

Of significance was also the fact that the sources of the two laws were edited and copied in the same Latin language. During the Middle Ages, it was the lingua franca of education, science, the Western Church, diplomacy, and law. And while the languages of other European countries were naturally secular, Latin, which was the language of *Corpus Iuris Civilis* and *Corpus Iuris Canonici,* became "a sacred linguistic instrument".[24]

3. Lingua Latina as a Tool Promoting Legal Rules

An important and lasting element of the cultural heritage of ancient Rome is Latin (*lingua latina*), the language of the legal maxims and adages discussed herein.[25] For centuries, it was the native language of the ancient Romans. It was adopted as the official language of the Roman Republic, and later of the western part of the Roman Empire.

Latin was already spoken in the first millennium BC in Lazio, a small province between the Apennines and the Tyrrhenian Sea in central Italy. It was considered the birthplace of the Roman state. Its northern region was inhabited by the Indo-European tribe of Latins (Latians). The entire region was named after them, and so was the language that they spoke (*lingua latina*).

The founding of Rome, which became the major urban centre of Lazio, was the pivotal event for the development of the Latin language (it is traditionally dated to the mid-8th century BC). Interestingly, the Latins did not use a uniform parlance. There were numerous Latin dialects (including Sabino, Oscan, Umbrian), the most prevailing of which was Roman Latin. The Romans pursued an expansionist policy, so they promoted the spread of Latin, or rather its Roman dialect, first within Lazio and then across Italy.

Ultimately, as a result of the cultural and military expansion of the Roman state from the 3rd century BC onwards, Latin gradually earned the status of dominant language throughout Italy. Later on, it became instrumental in the process of Romaniza-

24 F. Merzbacher, Die Parömie «Legista sine canonibus parum valet, canonista sine legibus nihil», "Studia Gratiana" 1967, no. 13, p. 281.

25 W. Stroh, Łacina umarła, niech żyje łacina! Mała historia wielkiego języka, tł. A. Arnd, Poznań 2013; A. Mikołajczak, Łacina w kulturze polskiej, Wrocław 2005; M. Hermann, O łacinie tylko dobrze. De lingua latina nil nisi bene. Język łaciński i grecko-łacińskie dziedzictwo kulturowe we współczesnej Europie, Kraków 2014; M. Kaczmarkowski, Historia języka łacińskiego od czasów najdawniejszych do dziś, "Vox Patrum" 1986, no. 11, pp. 477–504; M. Skřejpek, Římskoprávní zásady v Koldínově díle "Práva městská království českého", Všehrd 2010, p. 21.

tion of vast areas of Western Europe and parts of the Mediterranean Basin. It is worth noting that Rome, however, did not implement the strategy of the forceful supplanting of the local languages of defeated nations. On the other hand, the defeated did not strive to preserve their own ethnic language in a conscious and organized manner.

Initially, Latin was more suited for expressing concrete rather than abstract matters. Influenced by writers, Cicero in particular, it became a more abstract language and included a scientific vocabulary of philosophy and the humanities, as we would call it today. Consequently, Christian authors were able to harness Latin to express all concepts of philosophy and theology, thus giving the people of the Middle Ages and early modern times an excellent means of expression. "Latin is concise, short, decisive, and far from ambiguous in defining meaning; it conveys one sense and can name a thing as clearly and simply as possible for a language,"[26] as Krzysztof Burczak put it. The attributes of the Latin language were instrumental in making legal rules universal. Most of them can be understood by lawyers of various nationalities and regardless of their mother tongue or legal system.

Due to the collapse of the Western Roman Empire in the 5th century AD and the elevation of local dialects to the rank of legitimate languages,[27] Latin gradually vanished as an everyday speech, yet it continued to be an international vernacular used in various areas of life.

Latin became the language of the Western Church. It was first used by the Church in North Africa in the era of Tertullian, Cyprian, Arnobius the Elder, and Lactantius (2nd–3rd centuries). In the second half of the 4th century, Latin replaced Greek as the language of the Roman Catholic liturgy and maintained this status until the reform of the Second Vatican Council. Even after the fall of the Western Roman Empire, due to the historical and cultural status of the barbarian kingdoms, whose underdeveloped languages were unable to fulfil a liturgical function, during the Middle Ages Latin became the language of religious volumes and ceremonies across the entire Western Church. The fact that the Church, universal and transnational at her core, recognized Latin as her own and made it an instrument of fostering unity and evangelizing peoples contributed to its further spread; in most European countries, it was used as the language of administration, liturgy, and literature.

Currently, although national languages were validated for liturgical purposes, Latin has remained the official language of Vatican City and of the liturgy of the Roman Catholic Church; it has also been the language of documents issued by the Holy

26 K. Burczak, Łacina trwałym nośnikiem myśli prawniczej, "Monitor Prawniczy" 2009, no. 4, pp. 186–189.

27 Latin gave rise to Italian, French, Spanish, Romanian, and Portuguese; moreover, its numerous borrowings, including of grammatical structures, can be seen also in English and German.

See and its offices.[28] The Codes of Canon Law of 1917,[29] 1983,[30] and 1990,[31] which constitute the very framework of the law of the Roman Catholic Church, were promulgated in Latin.

For centuries, up to the 18th century, Latin was the language of science as well as dominating as the legal parlance throughout Europe. This can be explained by the fact that at the time of adopting the solutions of Roman law, the local languages of the nations receiving Roman law, to a greater or lesser extent, basically did not have their written form or were not sufficiently developed.[32] This, again, strengthened the role of Latin in legal sciences. For that reason, in the Middle Ages, Western civilization radiating throughout Europe wrapped in the cloak of Christianity was permeated with the culture of the Latin language. It provided a cultural substrate and created a unique code that was legible for succeeding generations. An important item of this code is Latin legal rules and maxims.

4. Regulae Iuris in Contemporary Legal Culture

The long tradition in Europe's legal practice of using sententia-like expressions, which convey the very essence of things matter-of-factly, expressively, and in a way that makes them easy to remember, is still vivid in contemporary culture and is also invariably an area of interest to present-day science. This observation is corroborated by the fact that this slice of legal tradition is still explored by researchers in Roman law; what is more, the problem is approached from the perspective of various branches of law.[33] Its topicality can be seen in numerous scientific initiatives, such

28 This state of affairs is evidenced by the fact that in 2012 Pope Benedict XVI issued the Apostolic Letter *Latina Lingua* establishing the Pontifical Academy for Latin.

29 The Code of Canon Law (*Codex Iuris Canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus*); the code regulated the legal system of the Latin Church and of the Eastern Churches recognizing papal primacy.

30 The Code of Canon Law (*Codex Iuris canonici auctoritate Joannis Pauli PP. II promulgatus*); the code regulated the legal system of the Latin Church.

31 Code of Canons of the Eastern Churches (*Codex canonum Ecclesiarum Orientalium auctoritate Joannis Pauli PP. II promulgatus*); the code regulated the legal system of the Eastern Churches recognizing papal primacy.

32 The process of "emancipation" of national languages showed varied intensity; I. Szczepankowska, Język prawny I Rzeczypospolitej, (in:) A. Zamoyski (ed.), Zbiór praw sądowych, Białystok 2004, p. 24, points out that "Although the Polish language in the 16th century sought to assert greater authority, it could not match Latin in all its existing functions: at church, school, offices, science..."

33 Some latest monograph works addressing this area and published by the young generation of researchers are, for example: P. Alexandrowicz, Kanonistyczne uzasadnienie swobody umów w zachodniej tradycji prawnej, Poznań 2020; A. Sacher, Zasada nieretroaktywności prawa w prawie rzymskim i kanonicznym, Lublin, 2021.

as local, national, and supranational conventions, seminars, and conferences on the subject.[34]

New research prospects embracing legal rules and maxims are also driven by the globalization and Europeanization of law. Long before the establishment of the European Union, the Austrian legal historian Paul Koschaker (1879–1951) wrote in one of his works[35] that Roman law and its original terms and expressions were more than likely to become a platform of understanding and communication among lawyers from different legal systems. The rise and development of the European Union and the common European legislation raises the question of to what extent the potential contained in *ius Romanum* is exploited to the benefit of enacted European normative acts and judgments made by international judicial institutions. Further and more in-depth research in this field may help find the answer.[36]

Latin legal rules and maxims continue to embellish items and buildings. For example, they can be found on court buildings or other public administration facilities. They are there to emphasize the rank and importance of the institutions housed inside. They are also intended to promote the tradition and values of *ius Romanum* in

34 They are held with a relatively high frequency. For example, in 2008, the *Monitor Prawniczy* journal and the Warsaw Bar Association organized a seminar, Latin Legal Paroemias and Contemporary Legal Practice. In 2014 Naples hosted a convention of historians of ancient law (*"Regulae iuris." Racines factuelles et jurisprudentielles, retombées pratiques. 68ème Session de la Société Internationale Fernand De Visscher pour l'histoire des Droits de l'Antiquité*) and the seminar *Fondamenti storici, analisi teorica, operatività pratica delle "regulae iuris" nella dimensione del diritto europeo.* In 2017 Cardinal Stefan Wyszynski University in Warsaw held a nationwide academic conference, Regulae Iuris of Boniface VIII in Contemporary Legal Systems.

35 Europa und das römische Recht, C.H. Beck Verlag, Munich/Berlin 1953.

36 On the options of reaching for Roman law in the process of harmonization and creation of *ius novum* in the European space, see K. Wyrwińska, Prawo rzymskie kluczem do zrozumienia dziedzictwa prawnego Europy. Uwagi na marginesie europejskich tendencji do harmonizacji prawa prywatnego, (in:) W. Uruszczak, P. Święcicka, A. Kramer (eds.), Leges sapere. Studia i szkice dedykowane profesorowi Januszowi Sondlowi w pięćdziesiątą rocznicę pracy naukowej, Kraków 2008, pp. 697–706. A separate question related to the influence of Roman law is the lasting debate on the influence of continental law, with its Roman roots, on the system of common law; the literature on the subject is extensive. More recently, the place of Roman law in the American legal system based on the case law of the Supreme Court has been discussed in W. Kosior, Prawo rzymskie w orzecznictwie Sądu Najwyższego Stanów Zjednoczonych Ameryki, "Zeszyty Prawnicze" 2018, no. 1, pp. 5–24. The relations between Roman law and common law (in England) were explored by, for example, Ł. Korporowicz, Prawo rzymskie w orzecznictwie Izby Lordów w latach 1876–2009, Łódź 2016; Idem, Prawo rzymskie w wybranych orzeczeniach Izby Lordów w latach 1999–2009, "Z Dziejów Prawa" 2011, no. 4, pp. 283–296; Ł. Marzec, Prawo rzymskie – składnik angielskiej doktryny i praktyki prawa narodów?, "Zeszyty Prawnicze" 2002, no. 2, pp. 83–98; Idem, Czy prawo rzymskie pokonało Kanał La Manche? "Krakowskie Studia z Dziejów Historii Państwa i Prawa" 2008, no. 2, pp. 43–53. One of the central values of the Roman jurisprudence, the idea of just and equitable law (*aequitas*) has invariably been a point of departure for discussions about corrective mechanisms of positive law; cf. S. Prutis, "Korzenie" słuszności jako zasady wiodącej prawa prywatnego, "Białostockie Studia Prawnicze" 2014,np. 17, pp. 207–215.

the public domain. This practice has a long tradition, and a contemporary example of this is the building of the Supreme Court in Warsaw, Poland (also known as the Palace of Justice). Its frontage columns are adorned with 86 Latin legal paroemias. This is how they perpetuate their culture-making role and significance in a monumental manner.[37] The Latin expressions embody the concepts of the law that has been genetically intertwined with European law and impart the cultural image of Roman law, its values, and paradigms.

Conclusion

In conclusion, the legal rules created by the ancient Roman jurisprudence and taking the form of maxims and adages were applied and creatively elaborated over centuries in various legal systems. Today, they still enjoy the vivid interest of not only researchers in Roman law. Not without significance for their dissemination among the general public was that after the collapse of the Western Roman Empire in the second half of the 5th century, the Church took the role of custodian of the values of Roman law in Western Europe. Not only did she preserve precious scrolls with ancient juridical wisdom, but she also implemented many of the Roman regulations in her own legal order. An invaluable tool that consolidated and disseminated the Roman legal thought, including legal paroemias and adages, was Latin, the language of the ancient Romans. Legal rules in an attractive form, communicating timeless ideas, and ready for use by present-day lawyers in everyday legal discourse can be attractive and inspiring input material in the process of the harmonization and development of European law.

REFERENCES

Alexandrowicz P., Kanonistyczne uzasadnienie swobody umów w zachodniej tradycji prawnej, Poznań 2020.

Berman H.J., Prawo i rewolucja. Kształtowanie się zachodniej tradycji prawnej, transl. S. Amsterdamski, Warsaw 1995.

Biondi B., Il diritto romano cristiano, Giuffrè, vol. I, Milano 1952.

Burczak K., Dębiński A., Jońca M., Łacińskie sentencje i powiedzenia prawnicze, ed. III, Warsaw 2018.

Burczak K., Łacina trwałym nośnikiem myśli prawniczej, "Monitor Prawniczy" 2009, no. 4, pp. 186–189.

Burczak K., Quinque compilationes antiquae przykładem systematyki oraz współpracy ustawodawcy, sądów i uniwersytetu, Lublin 2020.

37 There is a body of literature covering this project; a noteworthy publication providing the relevant references is: A. Kacprzak, J. Krzynówek, W. Wołodkiewicz, "Regulae iuris". Łacińskie inskrypcje na kolumnach Sądu Najwyższego Rzeczypospolitej Polskiej, Warsaw 2006.

Dębiński A., Church and Roman Law, Lublin 2010.

Dębiński A., Kościół i prawo rzymskie, ed. II, Lublin 2008.

Dębiński A., Reguły prawne Bonifacego VIII. Źródła i znaczenie, (in:) M. Mikołajczyk (ed.) (et al.:), O prawie i jego dziejach księgi dwie. Studia ofiarowane Profesorowi Adamowi Lityńskiemu w czterdziestopięciolecie pracy naukowej i siedemdziesięciolecie urodzin, t. I, Białystok – Katowice 2010.

Dębiński A., Rzymskie praw prywatne. Kompendium, Warsaw 2017.

Dębiński A., Wiedza o prawie w ujęciu Izydora z Sewilli, "Studia Prawnicze KUL" 2020, no. 1(89) pp. 125–141.

Dębiński A., Jońca M. (eds.), Leksykon tradycji rzymskiego prawa prywatnego. Podstawowe pojęcia, Warsaw 2016.

Hermann M., O łacinie tylko dobrze. De lingua latina nil nisi bene. Język łaciński i grecko-łacińskie dziedzictwo kulturowe we współczesnej Europie, Crakow 2014.

Izydor z Sewilii. O prawach, opracowanie A. Dębiński, M. Jońca, Lublin 2021.

Jońca M., Rzymskie prawo karne. Instytucje, Lublin 2021.

Jońca M., Prawo rzymskie. Marginalia, ed. II, Lublin 2015.

Jońca M. (ed.), Leksykon rzymskiego prawa karnego. Podstawowe pojęcia, Warsaw 2022.

Kacprzak A., Krzynówek J., Wołodkiewicz W., "Regulae iuris." Łacińskie inskrypcje na kolumnach Sądu Najwyższego Rzeczypospolitej Polskiej, Warsaw 2006.

Kaczmarkowski M., Historia języka łacińskiego od czasów najdawniejszych do dziś, "Vox Patrum" 1986, no. 11, pp. 477–504.

Kaschaker P., Europa und das römische Recht, Munich/Berlin 1953.

Korporowicz Ł., Prawo rzymskie w orzecznictwie Izby Lordów w latach 1876–2009, Łódź 2016.

Korporowicz Ł., Prawo rzymskie w wybranych orzeczeniach Izby Lordów w latach 1999–2009, "Z Dziejów Prawa" 2011, no. 4.

Kosior W., Prawo rzymskie w orzecznictwie Sądu Najwyższego Stanów Zjednoczonych Ameryki, "Zeszyty Prawnicze" 2018, no. 1.

Kupiszewski H., Prawo rzymskie a współczesność, Warsaw 1988.

Leraczyk I., Rzymskie prawo karne. Bibliografia, Lublin 2021.

Litewski W., Podstawowe wartości prawa rzymskiego, Kraków 2001.

Marzec Ł., Czy prawo rzymskie pokonało Kanał La Manche? "Krakowskie Studia z Dziejów Historii Państwa i Prawa" 2008, no. 2.

Marzec Ł., Prawo rzymskie -składnik angielskiej doktryny i praktyki prawa narodów?, "Zeszyty Prawnicze" 2002, no. 2.

Merzbacher F., Die Parömie «Legista sine canonibus parum valet, canonista sine legibus nihil», "Studia Gratiana" 1967, no. 13, p. 281.

Mikołajczak A., Łacina w kulturze polskiej, Wydawnictwo Dolnośląskie, Wrocław 2005.

Prutis S., "Korzenie" słuszności jako zasady wiodącej prawa prywatnego, "Białostockie Studia Prawnicze" 2014, no. 17.

Pyter M., Miejsce dyscyplin historycznoprawnych w wykształceniu jurydycznym w okresie międzywojennym, "Roczniki Nauk Prawnych" 2004, no. 1, pp. 105–128.

Pyter M., Oswald Balzer i lwowska szkoła historycznoprawna, Lublin 2010.

Pyter M., Swoboda nauczania prawa na uniwersytetach galicyjskich na przełomie XIX i XX w., (in:) M. Pyter (ed.), Studia prawnicze a rzeczywistość zawodowa, Lublin 2009, pp. 31–45.

Pyter M., Współpraca ośrodka lwowskiego i lubelskiego w zakresie nauczania prawa rzymskiego, (in:) A. Dębiński, M. Pyter, B. Czech-Jezierska (eds.), Nauki prawne pomiędzy tradycją a współczesnością. Prace dedykowane Profesorowi Longchamps de Berier w 70. rocznicę śmierci, Lublin 2011, pp. 139–165.

Sacher A., Zasada nieretroaktywności prawa w prawie rzymskim i kanonicznym, Lublin 2021.

Skřejpek M., Bibliographia iuris romani criminalis. Bibliography of Roman criminal law, Prague 2021.

Skřejpek M., Lex et ius. Zákony a právo antického Říma, Plzeň 2018.

Skřejpek M., Římskoprávní zásady v Koldínově díle "Práva městská království českého", Všehrd 2010.

Stein P., Regulae iuris: from juristic rules to legal maxims, Edinburgh 1966.

Stroh W., Łacina umarła, niech żyje łacina! Mała historia wielkiego języka, trans. A. Arnd, Wydawnictwo Poznańskiego Towarzystwa Przyjaciół Nauk, Poznań 2013.

Szczepankowska I., Język prawny I Rzeczypospolitej w "Zbiorze praw sądowych" Andrzeja Zamoyskiego, Białystok 2004.

Wyrwińska K., Prawo rzymskie kluczem do zrozumienia dziedzictwa prawnego Europy. Uwagi na marginesie europejskich tendencji do harmonizacji prawa prywatnego, (in:) W. Uruszczak, P. Święcicka, A. Kramer (eds.), Leges sapere. Studia i szkice dedykowane profesorowi Januszowi Sondlowi w pięćdziesiątą rocznicę pracy naukowej, Kraków 2008, pp. 697–706.

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Synonyms as a Challenge in Legal Translation Training

Abstract: Even though it is sometimes argued that synonymy is undesirable in legal language, legal language is not devoid of it. In fact, legal language involves cases of syntactical synonymy and lexical synonymy as well as cases of absolute and partial synonymy. Therefore synonymy must be addressed in a legal translation classroom to make trainees aware of all the issues that it may involve, as well as of the fact that terms that may be perceived as synonymous by laypeople are not actually synonymous to lawyers (e.g. *murder*, *homicide*, *manslaughter*). What also needs to be addressed in a legal translation classroom are situations of near-synonyms, whose usage is governed by collocational or contextual restrictions (e.g. *breach*, *violate*, *infringe*) and sometimes involves slight nuances in meaning (e.g. *liability* v. *responsibility*, or *unlawful*, *illegal*, *illicit*, etc.). This article introduces a step-by-step approach designed to introduce legal translation trainees to a variety of issues related to (non-)synonymy in legal language, and presents a series of exercises that have been prepared to this end in line with the scaffolding approach. Although the exercises are designed for the English–Czech language pair, they are easily transferable to any teaching context involving English.
Keywords: doublets, legal translation training, lexical synonymy, synonymy, syntactical synonymy

Introduction

The role of synonymy in legal language is controversial, and, as Tiersma argues, 'the legal profession has a very schizophrenic attitude toward synonyms'.[1] Some argue that this is undesirable, since lawyers tend to see different meanings behind different

1 P. Tiersma, Legal Language, Chicago 1999, p. 113.

terms,[2] which may lead to confusion and cause legal uncertainty. However true this may be, synonymy in legal language exists, as attested by a number of papers that address it.[3]

Synonymy is also one of the areas that cause problems in legal translation, as identified by Cao, who, in her list of areas of difficulty in legal translation, makes a specific reference to issues of 'legal language as a technical language in terms of ordinary v. legal meanings, and legal synonyms [emphasis added]'.[4] In addition, the problem of synonyms becomes even more acute in legal translation since many languages and legal systems do not make the same distinctions that English does, making it difficult to find equivalents in the target language. It is therefore only logical that it should be addressed in a legal translation classroom. This article will discuss the status of synonymy in legal language, and more specifically in legal English, to later adopt a didactic perspective and present a number of exercises that may be used to raise legal trainees' awareness of its existence and of the challenges it involves. Even though the exercises were designed to be used in an English–Czech legal translation classroom, all of them can be used, possibly subject to slight adaptation, for any language pair involving English as either the source or the target language.

1. Synonymy in Legal Language

Synonymy has been extensively addressed by linguists, and as Cruse admits, 'there is no neat way of classifying synonyms', which leads to great variation in the terms used to describe different types of synonymy.[5] Therefore the definitions of synonymy proposed by linguists are often rather broad, to cover the phenomenon in its entirety. According to Cruse, 'a word is said to be a synonym of another word in the same language if one or more of its senses bears a sufficiently close similarity to one or more of the senses of the other word'.[6] More specifically, in relation to legal language, Matilla defines synonymy as a situation where 'two or several terms express the same concept', which is often the definition used with reference to specialized language.[7]

2 cf. M. Chromá, Synonymy and Polysemy in Legal Terminology and Their Applications to Bilingual and Bijural Translation, 'Research in Language' 2011, vol. 9, no. 1, p. 45.

3 *Ibidem*; A. Matulewska, Semantic Relations between Legal Terms. A Case Study of the Intralingual Relation of Synonymy, 'Studies in Logic, Grammar and Rhetoric' 2016, vol. 45, no. 58, pp. 161–174; S. Goźdź-Roszkowski, Exploring Near-Synonymous Terms in Legal Language: A Corpus-Based Phraseological Perspective, 'Linguistica Antverpiensia' 2013, no. 12, pp. 94–109.

4 D. Cao, Translating Law, Clevedon 2007, p. 54.

5 A. Cruse, Lexical Semantics, Cambridge 1986, p. 266.

6 A. Cruse, Glossary of Semantics and Pragmatics, Edinburgh 2006, p. 176.

7 H. Matilla, Comparative Legal Linguistics, London 2006, p. 144.

As suggested above, synonymy is by no means a homogenous phenomenon,[8] and many categories are distinguished, and different labels used, by different authors.[9] On the most general level, Matulewska makes a distinction between interlingual and intralingual synonyms.[10] The former are, in fact, a case of equivalence, which must be dealt with in legal translation by means of comparative conceptual analysis, which has been dealt with elsewhere.[11] Therefore the remainder of this article will address the case of intralingual synonymy in English from the translator's perspective.

On the most general level, Chromá conceives of two major categories, based on Murphy, namely lexical and propositional synonyms.[12] In her understanding, propositional synonyms are syntactical synonyms, which may often be expressed by paraphrase (1):

(1) *In the event of Buyer's default*
Should the Buyer default
If the Buyer defaults

The category of lexical synonymy is even more varied; Cruse makes a distinction between absolute synonyms, propositional synonyms[13] (also referred to elsewhere as cognitive)[14] and near-synonyms (plesionyms),[15] while Löbner identifies two categories, namely total and partial synonyms.[16] In the case of absolute synonyms, 'words are mutually substitutable in all contexts without change of normality'.[17] Such cases are comparatively rare in legal language, with the most frequent example being *causal link*, *causal nexus*, *causal connection*, *causal relation* and *causation*.[18] Cognitive synonyms refer to situations when 'two words A and B are synonyms if substituting either one for the other in an utterance has no effect on the propositional meaning

8 This article uses the terms *synonym* and *synonymy* in the broadest sense possible to account for as many aspects as are relevant for the legal translation classroom.

9 Since the focus of this article is specifically on synonymy in a legal translation classroom, the theoretical aspects of synonymy will not be addressed.

10 A. Matulewska, Semantic Relations…, *op. cit*.

11 O. Klabal, Teaching Comparative Conceptual Analysis to Legal Translation Trainees, (in:) M. Kubánek, O. Klabal, O. Molnár (eds.), Teaching Translation vs. Training Translators. Olomouc Modern Language Series, Olomouc 2022, pp. 47–68.

12 M. Chromá, Synonymy…, *op. cit.*; M. L. Murphy, Semantic Relations and the Lexicon, Cambridge 2008, p. 144.

13 The meaning of the term is different than that used by Chromá. To avoid confusion, the term *syntactical synonyms* will be used to refer to the category of propositional synonyms as described by Chromá.

14 See A. Cruse, Lexical Semantics…, *op. cit*.

15 A. Cruse, Meaning in Language: An Introduction to Semantics and Pragmatics, Oxford 2011, pp. 142–145.

16 S. Löbner, Understanding Semantics, London 2002, p. 46.

17 A. Cruse, Meaning in Language…, *op. cit.*, p. 142.

18 M. Chromá, Synonymy…, *op. cit.*, p. 41.

(i.e. truth conditions) of the utterance', e.g. *false* and *untrue*.[19] Finally, near-synonyms must share the same core meaning and must not have the primary function of contrasting with one another in their most typical contexts. Near-synonyms include sets of words like *damage*, *injury*, *loss* and *harm*, or *breach*, *violation*, *infringement*, *or infraction*.[20] Alcaraz Varó and Hughes argue that it is precisely this category that is the most frequent one in legal texts.[21] The category of near-synonyms is extremely challenging as it often involves cases which may seem synonymous to lay users or which may be subject to collocational restrictions.

Yet another approach to classifying intralingual synonyms is that promoted by Matulewska,[22] who identifies a number of parameters that may be used to distinguish synonyms. The parameters include *lect*, where synonymy may result from the opposition of specialized and non-specialized language or even from the opposition of two specialized languages, *time*, *text genre*, *branch of law* and *jurisdiction*. The individual categories will be dealt with later, together with the exercises that are proposed to train awareness of them.

2. Synonymy Across Parts of Speech

It is also important to note that synonymy in legal language may affect different parts of speech, and different types of synonyms may require different approaches in terms of interlingual transfer.

1. Adjectival synonyms such as *unlawful*, *illegal*, *wrongful*, *illicit*: such synonymical groups are often a matter of collocations, where they may acquire terminological value, and may well be researched by corpus methods.
2. Verbal synonyms such as *set aside*, *annul*, *cancel* or *reverse a judgment*, or *transfer*, *assign*, *deal with*, *sell* or *dispose of property*: such synonyms may be a matter of collocations, or jurisdictional variation, but at the same time may involve some terminological nuance, such as the distinction between *reject* and *dismiss* (as presented in Exercise No. 4).
3. Nominal synonyms such as *judge*, *justice* or *magistrate*, or *court* or *tribunal*, are often terminological in nature and usually cannot be used interchangeably, or may also be a case of collocations or jurisdictional variation (e.g. *share*, *stock* and *equity*).

19 A. Cruse, Glossary, *op. cit.*, p. 176.
20 Cf. S. Goźdź-Roszkowski, Exploring…, *op. cit*.
21 E. Alcaraz Varó and B. Hughes, Legal Translation Explained, Manchester 2002.
22 A. Matulewska, Semantic Relations…, *op. cit*.

4. Prepositional synonyms such as *in accordance with*, *pursuant to*, *according to* and *under* are often a matter of style and phraseology, and may be explored by corpus methods.[23]

It is important to realize that different methods are available for tackling different types of synonyms, and trainees should be made aware of that. For example, corpus methods may be a helpful tool for dealing with cases of synonymy hinging on collocations, but are less convenient for cases of synonymy where a terminological nuance is involved.

3. Translating Challenges into Exercises

This section presents a series of exercises designed to raise legal translation trainees' awareness of the implications of synonymy for their work. The approach is based on an assumption that if certain phenomena are addressed in isolation by means of targeted exercises, trainees may develop procedures to deal with them in their future assignments. The exercises use examples from different branches of law, ranging from civil procedure to contract and company law. The examples come from authentic documents either available online or extracted from documents translated in the author's professional experience.

Awareness-raising

The initial exercise aims to raise trainees' awareness of the heterogeneity of the category of synonyms in legal language.

Exercise No. 1: Categories of synonyms: Match pairs of (near-)synonyms and discuss the type of synonymy:

plaintiff	Articles of Association
unlawful	undertaking
by-laws	proof
enterprise	set aside
landmark case	wrongful
evidence	affirmed
annul	tenant
dismissed	leading case
real property	claimant
lessee	immovable things

23 Ł. Biel, Phraseological Profiles of Legislative Genres: Complex Prepositions as a Special Case of Legal Phrasemes in EU Law and National Law, 'Fachsprache' 2015, no. 37, pp. 139–160.

Trainees are asked to identify pairs of (near-) synonyms and the type of synonym, and to discuss any implications that may be involved for translation. The examples include jurisdictional variation (*by-laws*/*Articles of Association* or *landmark case*/*leading case*, being the difference between UK and US English, and *enterprise* and *undertaking* being a difference between UK and EU English), diachronic variation possibly resulting from new legislation (*plaintiff*/*claimant* – a change introduced by Lord Woolf's reform[24]), differences between common law and continental law English terminology (*real property*/*immovable thing*) or simply collocational differences (*proof*/*evidence*, *set aside*/*annul*, *unlawful*/*wrongful*).

Pairs of synonyms as confusing words

Even when learning a non-specialized foreign language, an issue encountered by many is the differentiation between words that may be very similar (synonymous) in meaning but which are not interchangeable, as a result of usage differences.[25] The issue is even more acute in legal language since using the wrong word may involve legal consequences, and not just demonstrating one's lack of language proficiency. Moreover, such words may often appear to be synonymous for lay users of language but very often carry a slight nuance of meaning, be it terminological or stylistic. Such issues are best presented by discussing the definitions and the nuances in meaning, accompanied with examples of use, and practised by means of gap-fills (inspiration may be drawn from general language-practice books).[26]

Exercise No. 2: Study the difference between responsibility and liability and then complete the gaps:

Liability	Responsibility
To be liable for something means to be legally responsible for something, as in 'he lost his case and was found liable for damages'.	'Responsibility' refers to the care and consideration a person has for the outcome of their actions. It can also refer to any legal obligation a person may have to repair any damage caused, as in 'the company director accepted full responsibility for the consequences of her actions'.
I am ..... for damage caused by my children; they have broken our neighbour's window.	*I am ..... for my children so that they do not break anything.*

24 G. Gadbin-George, The Woolf reform of civil procedure: a possible end to legalese? 'LSP Journal' 2010, vol. 1 no. 2, pp. 41–49.

25 Some of such pairs are covered by Garner's usage dictionary (B. A. Garner, Garner's Dictionary of Legal Usage, Oxford 2011), which, naturally, does not include any exercises.

26 E.g. M. Matasek, Synonimy, antonimy i kolokacje w języku angielskim: przykłady zastosowania oraz praktyczne ćwiczenia, Poznań 2002.

- *The Institution is …… for ensuring that each individual who packages or handles any dangerous goods or infectious materials for shipping from the Institution complies with all applicable laws and regulations.*
- *Any Party who so sub-contracts shall be …… for the acts and omissions of its sub-contractors as though they were its own.*
- *The Principal Investigator shall be …… for obtaining authorization from the representatives of the Trial Site to perform the Clinical Trial at the Trial Site.*
- *No Party shall be …… to the other Parties or shall be in default of its obligations hereunder if such default is the result of war, hostilities, terrorist activity, revolution, civil commotion, strike and epidemic or because of any other cause beyond the reasonable control of the Party affected.*

Exercise No. 3: Complete the gaps with represent or state/declare and say why:

- *The Parties solemnly ..... that this Treaty constitutes the complete and final settlement of the questions with which it deals.*
- *The Landlord ..... that it has full authority and capacity to contract in regard to the Premises.*
- *The parties ..... that they are familiar with and accept these rules, also as regards the methods established for the appointment of the arbitrator.*
- *In that statement, the parties ..... that they have entered a termination agreement.*
- *In witness whereof, the parties ..... that they have read and are fully aware of all the terms and conditions of this contract.*
- *The Buyer ..... that information provided when placing its order is up to date, materially accurate and is sufficient for the Seller to fulfil the Buyer's order.*

Exercise No. 2 aims at showing that even though *liability* and *responsibility* may be synonymous in many contexts (e.g. criminal liability = criminal responsibility), there may be other contexts when *liability* is conceived of as more backward-looking, whereas *responsibility* is more forward-looking. Exercise No. 3 tries to raise trainees' awareness of the fact that even verbs, which are often not considered very terminological, may sometimes carry a nuance of meaning. While *represent* often introduces a statement that has some legal value and whose violation (hence *misrepresentation*) gives rise to availability of a remedy, *declare* (or *state*) is used to introduce statements that are formal in nature, i.e. they must appear in the legal document for the sake of compliance with formal requirements, but should they prove to be false, legal consequences are not necessarily involved.

Exercise No. 4: Using contextual information to differentiate between synonyms:

- *In brief, the present appeal concerns a Chinese exporter subject to an anti-dumping investigation, whose request for its normal prices to be assessed in the same way as those of an exporter operating in a market economy was initially rejected by the Commission but was later reviewed more favourably, only to suffer an unexpected final rejection.*
- *Having regard to all the foregoing considerations, I am of the opinion that the Court should dismiss the appeal.*
- *The Court of Justice rejected the action of the United Kingdom, considering, in substance, that an act may have 'police cooperation' as its legal base, whilst constituting a development of the Schengen acquis.*
- *The court rejected the complaint by the Musical Copyright Society of Nigeria, saying it was not the proper jurisdiction for the dispute.*
- *Upon motion by the Appellees, the District Court dismissed the action, without prejudice to the institution of another action for property damage, on the grounds that the personal injury action was barred by the Kentucky statute of limitations.*
- *The district court dismissed the action for lack of subject-matter jurisdiction, finding that although Topolos' claim was framed as one for copyright infringement it did not 'arise under' the copyright laws within the meaning of 28 U.S.C. Sec. 1338(a).*

Exercise No. 4 shows yet another synonymy-related issue involving interlingual transfer. The Czech language makes a distinction between two actions that courts may do with cases/claims and uses two different verbs to denote these which differ only in a prefix (*odmítnout* and *zamítnout*); either courts may *reject* them on formal grounds such as late filing, lack of jurisdiction, etc., or they may *dismiss* them after giving them substantive consideration and not finding for the claimant. However, English uses the verbs interchangeably, and either of them may be used for either of the meanings. That means that the translator working into Czech, or possibly other languages, where such a distinction is made, must decide by relying on their analysis and contextual clues.

Geographical variation

One of the causes of synonymy in legal English, which is used in more than one jurisdiction, is geographical, or dyatopic, variation.[27] The differences can be encountered between various English-speaking countries, between common law and civil law jurisdictions using the English language, and also between the terminology used by international organizations, most notably the EU, and English-speaking countries. The areas where dyatopic differences may be seen most often are terms denoting legal institutions (e.g. the court structure), legal personnel and procedural terms, but also

27 C. Bestué Salinas, La variación terminológica de los conceptos del derecho de sociedades y sus estrategias de traducción, 'Revista de Llengua i Dret' 2006, no. 65, pp. 18–35.

phraseology and style issues, such as the use of modal verbs (*shall* v. *must* and other alternatives) to express obligations.[28]

Exercise No. 5: Identify any US-specific terms and rewrite the text below into UK English:

If you plan to establish a corporation in the United States, knowing the basics of corporate law will be useful. You need to draw up Articles of Incorporation that must be filed with the Secretary of State. To regulate the internal issues of the corporations, by-laws will also be needed. Stock corporations may offer both common and preferred stock to their stockholders, sometimes even callable stock, up to the limit of the authorized capital stock. When the corporation wishes to go public, it will do so through the initial public offering. To know how much corporation tax will be paid, an income statement will be prepared. If the corporation wishes to be dissolved, it will file Articles of Dissolution.

Doublets and triplets as a special case of synonymy

A special case of synonymy unique in legal English is the case of doublets[29] and triplets, which are often referred to as a traditional feature of legal language.[30] The reasons for their existence as well as their detailed description have been dealt elsewhere;[31] therefore, this article will limit itself to their role in the legal translation classroom, where they should be addressed for two reasons. First, trainees need to be able to determine, when encountering such a chain of synonyms in their English source text, whether it is a single unit of meaning or whether the meanings of the components of the chain are different, possibly only slightly. In Wiggers' words, it is necessary to 'determine the degree of fixedness and idiomaticity of synonymous chains and, ultimately, determine whether such lexical items serve any function'.[32] To be able to do this, trainees are shown examples of an analysis of such a chain, using a sort of flowchart.

28 O. Klabal, Shall We Teach Shall: An Attempt at a Systematic Step-By-Step Approach, 'Studies in Logic, Grammar and Rhetoric' 2018, vol. 53, no. 66, pp. 119–139.

29 Other terms used are binomials, chains of synonyms or hendiadyses.

30 H. Matilla, Comparative…, *op. cit*.

31 M. Gustafsson, The Syntactic Features of Binomial Expressions in Legal English, 'Text' 1984, vol. 4, nos. 1–3, pp. 123–141; M. Bázlik, Art for Art's Sake? Or Peculiarities of Coordination in Legal English, 'Linguistica Pragensia' 2007, vol. 17, no. 2, pp. 90–101.

32 W. Wiggers, Drafting Contracts: Techniques, Best Practice Rules and Recommendations Related to Contract Drafting, The Hague 2011, p. 120.

(2) This agreement and the New Warrants have been duly executed and delivered *by the Company.*

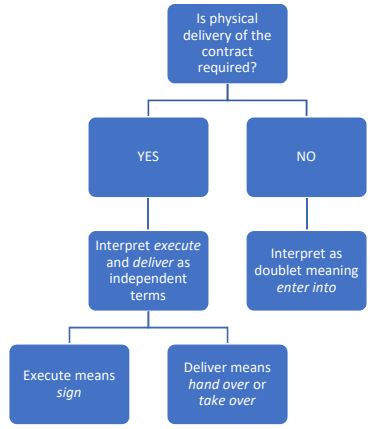

Figure No. 1: Flowchart showing an analysis of a doublet33

(3) …*the same may be* amended, supplemented or modified *in accordance with the terms hereof…*

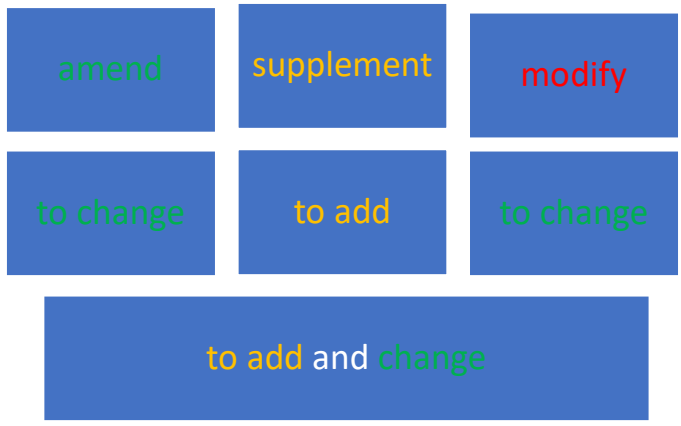

Figure No. 2: Analysis of a chain of synonyms

As Figures Nos. 1 and 2 show, chains of synonyms should be split into individual components, and the meaning of each component should be established. If the meanings overlap, or are synonymous, then the translation into the target language may account only for some of the synonyms. If they do not overlap, the meaning of each

33 Adapted from P. Arturo, Doublets & Triplets: Translate or Drop?, https://www.translatinglawyeracademy.com/blog/doublets-and-triplets (14.03.2020).

component must be expressed in translation.[34] Almost any doublet or triplet could be used for such an analysis, or more contextual examples could be used, as shown in Exercise No. 6.

Exercise No. 6: Identify doublets in the following paragraph and decide whether you would translate each of the components:

I grant to my attorney-in-fact full power and authority to do, take, and perform each and every act or thing whatsoever necessary or proper to be done, in the exercise of any of the rights and powers granted in this instrument, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution or revocation, and by this instrument I ratify and confirm whatever act or thing that my attorney-in-fact shall lawfully do or cause to be done by virtue of this durable power of attorney and the rights and powers granted by this instrument.

The second issue that must be addressed is the use of such chains of synonyms when translating into English. This is, in fact, a more general issue of style, i.e. the conflict between plain language and legalese, applicable not only to doublets and triplets but to the use of *shall* or other markers of legalese, which leads to a dilemma for legal translation trainees.[35] The general advice is to opt for the simpler version, i.e. not to use the chain, when translating into L2, in line with the recommendations by Wiggers or Garner, to name a few.[36]

Syntactical synonyms

Syntactical synonyms are often an underestimated area of language, yet they are extremely important for stylistic and formulation purposes. They are most frequent in the case of legal phrases, which are not terminological but are important for expressing legal functions and organizing legal texts, for example, introducing non-exhaustive lists as shown by Examples No. 4 and 5. That is why their correct use is conditional upon the identification of their function.

(4) No other use of the Website is permitted. Without restricting the generality of the foregoing, you may not make commercial use of the content of the Website

(5) No other use of the Website is permitted. You may not, without limitation, make commercial use of the content of the Website.

34 In an ideal case, an analysis-based guidance would be available for each doublet/triplet, such as that available for adjectival doublets and their translation from English to Czech in K. Tarabová, Dublety a triplety v anglických právních textech: překlad do češtiny, Diploma Thesis, Faculty of Arts, Palacký University Olomouc 2020.

35 O. Klabal, Shall We…, *op. cit*.

36 W. Wiggers, Drafting Contracts…, *op. cit.*; B.A. Garner, Legal Writing in Plain English: A Text with Exercises, Chicago 2013.

To train syntactical synonymy, reformulation exercises lend themselves very well. In fact, translators are required to deverbalize the meaning of the phrase and express it completely differently.[37]

Exercise No. 7: Rephrase the sentences in bold using other synonymous phrasings:

Except as otherwise specified in the articles, all certificates must be issued free of charge.	Unless specified otherwise in the articles, all certificates must be issued free of charge.	In the absence of a provision to the contrary in the articles, all certificates must be issued free of charge.
	Unless a company's articles specifically restrict the objects of the company, its objects are unrestricted.	
		The Consultant, in the absence of notice in writing from the Company, will rely on the continuing accuracy of data supplied by the Company.

Exercise No. 7 shows merely one function that could be used for such exercises; others may include presumptions, conditionals, lists, cross-referencing, etc. Awareness of such syntactical synonyms and their mastery enhances trainees' autonomy, especially in translation into L2.

Conclusion

Despite the wish that 'law should be unambiguous and legal texts should be free from synonyms', as postulated by Matulewska,[38] synonyms are an integral part of legal language, and as such have their irreplaceable role in legal translation training. Awareness of the role of synonyms is important both in terms of understanding English source texts in order to determine whether seemingly similar terms are synonymous or not and to translate them accordingly, but also in terms of production, i.e. drafting the target text. Trainees need to be reminded that they should refrain from using as many synonyms as possible, and instead opt for the equivalent that is most appropriate in contextual or style terms, especially when translating into L2. The exercises that have been proposed in this article are designed to serve both of these aims. Naturally, they can be complemented with a host of other exercises. Last but not least, the importance of synonymy in legal language and legal translation clearly shows the need for creating new resources such as translation thesauri, possibly using

37 D. Seleskovitch, L'interprétation de conference, 'Babel' 1962, vol. 8, no. 1, pp. 13–18.

38 A. Matulewska, Semantic Relations…, *op. cit.*, p. 165.

corpus exploration as proposed by Torikai,[39] since such resources are currently not available for the vast majority of languages, not to mention bilingual resources for specific language pairs.

REFERENCES

Alcaraz Varó E., Hughes B., Legal Translation Explained, Manchester 2002.

Arturo P., Doublets & Triplets: Translate or Drop?, https://www.translatinglawyersacademy.com/blog/doublets-and-triplets.

Bázlik M., Art for Art's Sake? Or Peculiarities of Coordination in Legal English, 'Linguistica Pragensia' 2007, vol. 17, no. 2, pp. 90–101.

Bestué Salinas C., La variación terminológica de los conceptos del derecho de sociedades y sus estrategias de traducción, 'Revista de Llengua i Dret' 2006, no. 65, pp. 18–35.

Biel Ł., Phraseological Profiles of Legislative Genres: Complex Prepositions as a Special Case of Legal Phrasemes in EU Law and National Law, 'Fachsprache' 2015, no. 37, pp. 139–160.

Cao D., Translating Law, Clevedon 2007.

Chromá M., Synonymy and Polysemy in Legal Terminology and Their Applications to Bilingual and Bijural Translation, 'Research in Language' 2011, vol. 9, no. 1, pp. 31–50.

Cruse A., Lexical Semantics, Cambridge 1986.

Cruse A., Glossary of Semantics and Pragmatics, Edinburgh 2006.

Cruse A., Meaning in Language: An Introduction to Semantics and Pragmatics, Oxford 2011.

Gadbin-George A., The Woolf reform of civil procedure: a possible end to legalese? 'LSP Journal' 2010, vol. 1 no. 2, pp. 41–49.

Garner B.A., Garner's Dictionary of Legal Usage, Oxford 2011.

Garner B.A., Legal Writing in Plain English: A Text with Exercises, Chicago 2013.

Goźdź-Roszkowski S., Exploring Near-Synonymous Terms in Legal Language: A Corpus-Based Phraseological Perspective, 'Linguistica Antverpiensia' 2013, no. 12, pp. 94–109.

Gustafsson M., The Syntactic Features of Binomial Expressions in Legal English, 'Text' 1984, vol. 4, no. 1–3, pp. 123–141.

Klabal O., Shall We Teach Shall: An Attempt at a Systematic Step-By-Step Approach, 'Studies in Logic, Grammar and Rhetoric' 2018, vol. 53, no. 66, pp. 119–139.

Klabal O. Teaching Comparative Conceptual Analysis to Legal Translation Trainees, (in:) M. Kubánek, O. Klabal, O. Molnár (eds.), Teaching Translation vs. Training Translators. Olomouc Modern Language Series, Olomouc 2022, pp. 47–68.

Löbner S., Understanding Semantics, London 2002.

39 S. Torikai, Synonyms in Legal Discourse: A Corpus-Based Approach to a New Legal English Dictionary, 'Language, Culture, and Communication' 2015, no. 7, pp. 37–63.

Matasek M., Synonimy, antonimy i kolokacje w języku angielskim: przykłady zastosowania oraz praktyczne ćwiczenia, Poznań 2002.

Matilla H., Comparative Legal Linguistics, London 2006.

Matulewska A., Semantic Relations between Legal Terms. A Case Study of the Intralingual Relation of Synonymy, 'Studies in Logic, Grammar and Rhetoric' 2016, vol. 45, no. 58, pp. 161–174.

Murphy M.L., Semantic Relations and the Lexicon, Cambridge 2008.

Seleskovitch D., L'interprétation de conference, 'Babel' 1962, vol. 8, no. 1, pp. 13–18.

Tarabová K., Dublety a triplety v anglických právních textech: překlad do češtiny, Diploma Thesis, Faculty of Arts, Palacký University Olomouc 2020.

Tiersma P., Legal Language, Chicago 1999.

Torikai S., Synonyms in Legal Discourse: A Corpus-Based Approach to a New Legal English Dictionary, 'Language, Culture, and Communication' 2015, no. 7, pp. 37–63

Wiggers W., Drafting Contracts: Techniques, Best Practice Rules and Recommendations Related to Contract Drafting, The Hague 2011.

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'Firm' [Firma] in the Meaning of Polish Legal Language: The Business Name under which the Entrepreneur Operates in Legal and Economic Transactions, or an Entrepreneur [Przedsiębiorca]? Selected Comments on the (Un) Reasonableness of the Use of the Word 'Firm' [Firma] in Various Substantive Meanings

Abstract: This article presents selected observations relating to the reasonableness of using the word 'firm' [Polish: *firma*] in various substantive meanings in Polish legal language. First, attention is drawn to the basic meaning of the word 'firm' [*firma*] in Polish legal language as a business name under which an entrepreneur [*przedsiębiorca*] operates in legal transactions, which is synthetically (briefly) distinguished from the meaning in Polish legal language, especially of the word 'entrepreneur' [*przedsiębiorca*]. It is then pointed out that in Polish legal and non-legal language, especially in everyday language and in the specialist language of economics and finance, as well as in management and quality sciences (including the language of practice of these areas of knowledge), a different meaning of the word 'firm' [*firma*] is adopted: while in Polish legal language it is understood as the business name of an entrepreneur, in the non-legal language of the above-mentioned areas it is understood as meaning an entrepreneur (also in the context of the meaning given to it in selected foreign languages). This is the background for pointing to the use of the word 'firm' [*firma*] in Polish legal language in the early 21st century not to define the business names of entrepreneurs conducting a strictly defined economic activity, but in a different sense – to define these entrepreneurs by introducing the concepts of an investment firm [*firma inwestycyjna*], a foreign investment firm [*zagraniczna firma inwestycyjna*] and an audit firm [*firma audytorska*], assessing these legislative changes as a significant systemic inconsistency and formulating conclusions in this regard.

Keywords: audit firm [*firma audytorska*], entrepreneur [*przedsiębiorca*], firm [*firma*], investment firm [*firma inwestycyjna*], legal language, non-legal language

Introduction

This article presents selected observations relating to the reasonableness of the use of the word 'firm' [*firma*] in Polish legal language[1] by Polish lawmakers in various significantly different substantive meanings. The aim of the study is to determine the meanings which the Polish legislature uses for the word 'firm' [*firma*] in legal language and whether it is justified at the beginning of the 21st century to give this word a normative meaning different from its basic meaning. It was originally adopted in the 1930s and has been used in Polish legal language until the present day, although it differs from the meaning used in colloquial Polish,[2] as well as in specialist language of other social sciences, especially economics and financial sciences, and management and quality sciences (as well as the language of the application of these sciences). Therefore this article covers, first of all, the basic meaning of the word 'firm' [*firma*] in Polish legal language as the designation under which the entrepreneur [*przedsiębiorca*] operates in legal and economic transactions, its synthetic (brief) distinction from the meaning of other words in Polish legal language – such as 'entrepreneur' [*przedsiębiorca*], 'enterprise' [*przedsiębiorstwo*] and 'business' [*działalność gospodarcza*] – and then an indication of the adoption in Polish legal and non-legal language of the different meaning of 'firm' [*firma*], especially in everyday Polish and in specialist language in other social sciences. In Polish legal language it is used as an entrepreneur's business name, while in colloquial Polish and specialist language of social sciences it is used to indicate an entrepreneur; I will also take into account the meaning of the word 'firm' [*firma*] in selected foreign languages (i.e. in English, which is a certain 'model' for Polish non-legal language, and – in contrast – in German, which from this perspective is a specific 'model' for Polish legal language). This is the necessary background to draw attention to what, in my opinion, is the incorrect use by the Polish legislature in the first and second decades of the 21st century in Polish legal language of the word 'firm' [*firma*] (in conjunction with other words), somewhat contrary to its basic meaning, which was originally introduced in the early

1 For more detail on the differences between the legal language and language of lawyers, see B. Wróblewski, Język prawny i prawniczy, Cracow 1948, p. 54; G.L. Seidler, H. Groszyk, J. Malarczyk, A. Pieniążek, Wstęp do nauki o państwie i prawie, Lublin 1997, pp. 113–114; A. Korybski, A. Pieniążek, Wstęp do prawoznawstwa, Lublin 1997, pp. 52–55; S. Roszkowski, The Language of Law as Sublanguage, (in:) J. Tomaszczyk (ed.), Aspects of Legal Language and Legal Translation, Łódź 1999, pp. 7–16. On these issues in the context of legal language translation, the related requirements (rules) and difficulties, see A.D. Kubacki, Podstawowe trudności w przekładzie tekstów prawniczych (in:) Prawo i język prawa – współczesne dylematy (artykuły po konferencji), Lublin 2019, https://www.researchgate.net/publication/340174436_Podstawowe_trudnosci_w_ przekladzie_tekstow_prawniczych (5.09.2022), pp. 3–8 and the literature quoted therein.

2 As regards the differences between official (formal) language and colloquial (informal) language, see J.M. Hawkins, E. Mizera, G. Mizera, Popularny Oxford Słownik angielsko–polski polsko–angielski [Oxford School Dictionary], Warsaw–Oxford 2010, pp. xvi–xvii.

1930s and was then consolidated for decades in the provisions of Polish law not to denote a specific type of designation of entrepreneurs running strictly defined businesses, but to denote the entrepreneurs themselves, in terms such as 'investment firm' [*firma inwestycyjna*], 'foreign investment firm' [*zagraniczna firma inwestycyjna*] and 'audit firm' [*firma audytorska*]. I will also assess these legislative changes as a significant semantic inconsistency in Polish legal language, and therefore of Polish lawmakers, and, based on this analysis, will formulate proposals for the law as it should stand (*de lege ferenda*) and other relevant conclusions.

The article uses first of all the formal–dogmatic method (generally all methods of interpretation, in particular including linguistic, historical and systemic interpretation) and, to a limited extent, the legal and comparative method as an auxiliary tool.

1. The Meaning of the Word 'Firm' [Firma] in Polish Legal Language and Its Meaning Adopted in Non-Legal Language: Colloquial Language, Specialist Language of Economic and Financial Sciences, Management and Quality Sciences, as well as in Selected Foreign Languages

In the language of the Act of 23 April 1964 – Civil Code,[3] which in Poland constitutes the basic normative act in the field of private law, the word 'firm' [*firma*] means primarily the business name under which the entrepreneur [*przedsiębiorca*] operates in legal transactions (and in principle is a name under which the entrepreneur operates in legal–economic transactions[4], since the entrepreneur is, pursuant to Art. 43^1 § 1 of the CC and Art. 4 of the Act of 6 March 2018 Law on Entrepreneurs,[5] a legal entity running a business). According to Art. 43^2 § 1 of the CC, 'the entrepreneur trades under a firm' ['*przedsiębiorca działa pod firmą*']. This business name can be considered as the commercialized intangible personal good[6] of the entrepreneur as a legal entity (Art. 23–24 of the CC in conjunction with Art. 43 and Art. 43^2 § 1), to which

3 Consolidated text, Journal of Laws of 2020, item 1740, as amended; hereafter 'CC'.

4 Broadly on the firm (in mean business name), including various aspects of its construction and use in legal and economic transactions, see above all J. Szwaja, Firma w kodeksie cywilnym, 'Prawo Spółek' 2004, no. 1, p. 2 et. seq.; P. Bielski, Prawo firmowe w kodeksie spółek handlowych, cz. I, 'Prawo Spółek' 2004, no. 2, p. 2 et. seq.; P. Zaporowski, Spory wokół nowego prawa firmowego, 'Rejent' 2004, no. 5, p. 143 et. seq.; Ł. Zamojski, Kilka uwag o firmie przedsiębiorcy, 'Prawo Spółek' 2006, no. 7–8, p. 50 et. seq.

5 Consolidated text, Journal of Laws of 2021, item 162, as amended; hereafter 'LE'.

6 Similarly, J. Sitko, Firma w świetle przepisów Kodeksu cywilnego, 'Przegląd Prawa Handlowego' 2003, no. 5, p. 24 et seq. In her later study (Dualizm oznaczeń przedsiębiorcy i przedsiębiorstwa – obrzeża prawa własności przemysłowej, 'Przegląd Prawa Handlowego' 2008, no. 4, pp. 19–20), however, she leans more towards the position that a firm [*firma*] is a mixed, personal-property asset closer to industrial property than to the personal interests of the entrepreneur. See also in this regard P. Zaporowski, Firma jako dobro osobiste przedsiębiorcy, 'Rejent' 2005, no. 12, p. 113 et seq.

the entrepreneur is entitled due to the so-called 'right to the firm' [*prawo do firmy*] (Art. 43^{10} of the CC).[7]

On the other hand, an 'entrepreneur' [*przedsiębiorca*] is a legal entity which runs a business on their own behalf, in the legal language of the provisions of individual laws containing the definitions of entrepreneur, including primarily the regulations that are of a basic nature for private law, i.e. the Civil Code (Art. 43^1 § 1 of the CC) and the provisions of the Law on Entrepreneurs (Art. 4 of the LE)[8] that are fundamental from this perspective for public law, including public economic law, if not for the whole system of Polish law in general. In the legal language of some other laws, the term 'entrepreneur' is defined more broadly than in Art. 43^1 § 1 of the CC and Art. 4 of the LE, but its meaning always indicates that it refers to a particular legal entity – usually both a person and an organizational unit having legal personality or at least legal capacity, including in some cases by reference to one of the two basic definitions of entrepreneur contained in Art. 43^1 § 1 of the CC and Art. 4 of the LE.[9] It should be pointed out that, in Polish legal language, the term had 'conceptual predecessors', namely 'economic operator' [*podmiot gospodarczy*][10] and, much earlier, 'trader' [*kupiec*] and 'registered trader' [*kupiec rejestrowy*].[11]

A firm [*firma*], as defined in Polish legal language, is not part of the enterprise in the substantive sense, also referred to as the functional and substantive sense[12]

7 The provision of Art. 43^{10} of the CC points to the claims of an entrepreneur whose right to the firm [*prawo do firmy*] has been threatened by someone else's unlawful action or infringement.

8 See G. Kozieł, Pojęcie przedsiębiorcy (in:) T. Długosz, G. Kozieł (ed.), A. Malarewicz-Jakubów, S. Patyra, A. Piszcz, A. Żurawik, Prawo przedsiębiorców. Przepisy wprowadzające do Konstytucji Biznesu. Komentarz, Warsaw 2019, p. 41.

9 See, for example, Art. 2 of the Act of 16 April 1993 on combating unfair competition (consolidated text in Journal of Laws of 2020, item 1913, as amended; hereafter 'CUC'), according to which entrepreneurs, within the meaning of that law, are natural persons, legal persons and organizational units without legal personality who, while carrying out a gainful or professional activity, participate in an economic activity; or Art. 4(1) of the Act of 16 February 2007 on the protection of competition and consumers (consolidated text in Journal of Laws of 2021, item 275, as amended), in which the legislature considers the entrepreneur to be defined by the provisions of the Law on Entrepreneurs (i.e. Art. 4 of the LE), as well as being, among others, a natural person, a legal person and an organizational unit which does not have legal personality, equipped with legal capacity by the law, who organizes or provides services of general interest which are not an economic activity within the meaning of the provisions of the Law on Entrepreneurs, or is a natural person pursuing a profession on his/her own behalf and for him/herself or pursuing an activity as part of such a profession.

10 See Art. 2(2) of the non-applicable Act of 23 December 1988 on economic activities (Journal of Laws of 1988, No 41, item 324).

11 See Art. 2 § 1 and Art. 4 § 1 of the non-applicable Decree of the President of the Republic of Poland of 27 June 1934 – Commercial Code (Journal of Laws of 1934, No 57, item 502). For more detail, see W.J. Katner, Kupiec. Podmiot gospodarczy. Przedsiębiorca. Ewolucja pojęciowa, 'Gdańskie Studia Prawnicze' 1999, vol. 5, p. 171 et seq.

12 As in A. Kidyba, Prawo handlowe, Warsaw 2016, pp. 33–36.

(defined in legal language in Art. 55^1 of the CC as a group of intangible and tangible assets intended for running the business[13]) as its 'name of the enterprise' [*nazwa przedsiębiorstwa*] (Art. 55^1(1) of the CC), since it is a name under which the entrepreneur operates, and not a name of the undertaking as a set of such assets (Art. 55^1(1) of the CC in conjunction with the Art. 43^2 § 1 of the CC). This is notwithstanding the fact that in Polish legal language the word 'enterprise' [*przedsiębiorstwo*] is also used in a subjective sense and can therefore mean the same as entrepreneur [*przedsiębiorca*] – as is currently the case, for example, in Art. 1 of the Act of 25 September 1981 on state enterprises[14] – and can therefore mean 'the running of a business' [*prowadzenie działalności gospodarczej*]. This is currently the case of, for example, the provisions of Articles 358^1 § 4, 526, 765, or 794 § 1 of the CC and Articles 22 § 1, 86 § 1, 102 and 125 of the Act of 15 September 2000 Code of Commercial Partnerships and Companies.[15]

In Polish legal language, and also in the language of legal professionals, and basically following the German model[16], the word 'firm' [*firma*] has not and is not currently used to designate an entity conducting business activity, unlike in Polish non-legal language, including everyday Polish, the specialized non-legal language of some other social sciences, and in some foreign languages, e.g. English. In dictionaries of the Polish language, which constitute the basic source of knowledge on typical meanings of particular words in the official language and whose simplified, commonly (or selectively) used variant is colloquial language, the word 'firm' [*firma*] does not have a uniform meaning. However, the meanings of this word referring to the entity that runs business activity and the meanings referring to its activity ('commercial, service or industrial enterprise' ['*przedsiębiorstwo handlowe, usługowe lub przemysłowe*']; 'person having a good reputation' ['*osoba mająca dobrą opinię*']; 'reputable

13 Pursuant to Art. 55^1 of the CC, an enterprise [*przedsiębiorstwo*] (in the objective sense) is an organized set of intangible and tangible assets intended for conducting economic activity, which includes, in particular, a designation identifying the enterprise or its separate parts (the name of the enterprise), or ownership of real estate or movable property, including equipment, materials, goods and products, and other rights *in rem* to real estate or movable property and other intangible or tangible assets of the enterprise, so understood and listed in that provision as an example.

14 Consolidated text, Journal of Laws of 2021, item 1317, as amended.

15 Consolidated text, Journal of Laws of 2020, item 1526, as amended.

16 See § 1 and §17(1) of the Handelsgesetzbuch of 10 May 1897, http://www.gesetze-im-internet.de/hgb/index.html (5.09.2022), further: „HGB". In the legal literature on this topic see in particular: A. Kraft, P. Kreutz, Gesellschaftsrecht, Luchterhand 1997, p. 165; C.W. Canaris, Handelsrecht, München 2000, pp. 1et. seq., 30 et. seq.; B. Grunewald, Gesellschaftsrecht, Köln 2000, pp. 9 et. seq., 90 et. seq.; K. Schmidt, Gesellschaftsrecht, Hamburg 2002, pp. 15 et. seq.; K.J. Hopt, Einleitung vor § 1 HGB; Commentar zu § 1–7 HGB, Commentar zu § 105 HGB (in:) K.J. Hopt, H. Merkt, A. Baumbach, Handelsgesetzbuch, München 2006, pp. 11–15; 37 et. seq.; 483 et. seq.

enterprise' ['*renomowane przedsiębiorstwo*']) are listed first and generally dominate.[17] The above-mentioned meaning of the word 'firm' [*firma*], as adopted in these dictionaries, is linked to the meaning of the word 'undertaking' [*przedsiębiorstwo*] referred to therein, which relates to its subjective meaning indicated above, as adopted in Polish legal language and also in the language of legal professionals, primarily by legal researchers. For the word 'enterprise' [*przedsiębiorstwo*], these dictionaries adopt in particular a meaning such as 'an independent economic unit comprising one or more production sites' ['*samodzielna jednostka gospodarcza obejmująca jeden zakład produkcyjny lub większą ich liczbę*'][18] or similar: 'an independent business, industrial, commercial unit – whether state-owned or privately owned, established for the purpose of rendering goods or services for money' ['*samodzielna jednostka gospodarcza, przemysłowa, handlowa – państwowa lub prywatna, ustanowiona w celu odpłatnego* świadczenia *rzeczy lub usług*'].[19] It is therefore no wonder that also in Polish colloquial language, 'firm' [*firma*] is synonymous, in particular, with the words used in colloquial language to designate a business-running entity or pursuing a business activity, such as 'entrepreneur' [*przedsiębiorca*], 'enterprise' [*przedsiębiorstwo*], 'business' [*biznes*] or 'business activity' [*działalność gospodarcza*], and therefore that in modern Polish colloquial language, the word 'firm' [*firma*] is used primarily to designate an entrepreneur as an entity that pursues business activity, and 'running a firm' [*prowadzenie firmy*] means 'conducting business activity' [*prowadzenie działalności gospodarczej*].

A similar meaning of the word 'firm' [*firma*] is adopted in specialized non-legal languages of some social sciences other than legal sciences (in particular economic and financial sciences or management and quality sciences), as can be demonstrated by the titles and content of theoretical or practical publications in this field, such as 'accounting in small firms' ['*Rachunkowość małych firm*'],[20] 'finance of small

17 See Słownik języka polskiego PWN, https://sjp.pwn.pl/szukaj/firma.html and Słownik języka polskiego, ed. W. Doroszewski, https://sjp.pwn.pl/doroszewski/firma;5427872.html (10.03.2022). One of the meanings of the word 'firm' [*firma*] in these dictionaries is 'officially registered name of an enterprise' ['*zarejestrowana urzędowo nazwa przedsiębiorstwa*'], which does not necessarily define the entrepreneur as a legal entity but rather denotes an enterprise [*przedsiębiorstwo*] in the objective sense.

18 See Słownik… PWN, *op. cit*., https://sjp.pwn.pl/szukaj/przedsi%C4%99biorstwo.html (10.03.2022).

19 See Słownik…, ed. W. Doroszewski, *op. cit.,* https://sjp.pwn.pl/doroszewski/przedsiebiorstwo;5483342.html (10.03.2022).

20 See e.g. A. Zawadzki, Rachunkowość małych firm, vol. 1. Podręcznik, Warsaw 2017 and A. Zawadzki, Rachunkowość małych firm, vol. 2. Zbiór zadań, Warsaw 2017. The publisher's website contains the following information about these publications: 'the textbook has been prepared for students of finance and accounting, where lectures and exercises on the subject of small business accounting are delivered. The second group of recipients are entrepreneurs who

and medium-sized firms' ['*Finanse małych i* średnich *firm*'],[21] or 'managing a firm' ['*zarządzanie w firmie*'].[22]

A meaning of the word 'firm' [*firma*] that is similar to that in Polish non-legal language – i.e. colloquial language and the specialized jargon of economics, finance, management and quality sciences – is also adopted in English, which is on the one hand the most exemplary and universal language in the field of communication in various areas of human activity in the world. On the other hand, it is a foreign language that is culturally and functionally linked with a legal system dissimilar to the Polish one (which follows the positive law system typical of continental European countries, e.g. Germany, France or Italy), namely the common law system (or system of precedents) developed in the United Kingdom.[23]

Examples in this respect are provided by Polish–English and English–Polish dictionaries, including traditional (paper) dictionaries as well as online dictionaries,[24] in which the Polish word '*firma*' is translated into English as 'firm', 'business' or 'company',[25] while the Polish word '*przedsiębiorstwo*' is translated into English as 'enterprise', 'business', 'firm' or 'company';[26] the English word 'business' is translated into Polish as, for example, '*przedsiębiorstwo*', '*działalność gospodarcza*' or simply '*biznes*',[27] the English word 'enterprise' is translated into Polish as '*przedsiębiorczość*' and '*przedsiębiorstwo*',[28] while the English word 'firm' is translated into Polish as '*firma*'.[29] An example of an online dictionary (and one of the most popular), which has recently gained a growing reputation for 'learning' new words and phrases from translations

intend to set up or already have small businesses', https://ksiegarnia.difin.pl/rachunkowosc-malych-firm-tom-1-podrecznik (10.03.2022).

21 See e.g. E. Denek, M. Dylewski, Finanse małych i średnich firm. Innowacje, decyzje, procesy, https://www.gandalf.com.pl/b/finanse-malych-i-srednich-firm/#product-desc (accessed 10.03.2022), with respect to which the publisher presents the following description: 'The book presents a broad view of the finance of small and medium-sized enterprises […]. The authors present key financial problems […] that will make it easier to learn the desired knowledge and skills. The book is an interesting resource for entrepreneurs who want to professionally use the knowledge presented in the decision-making process.'

22 See e.g. E. Jachymczak, Zarządzanie w firmie, 3 stycznia 2019, https://mojafirma.infor.pl/manager/zarzadzanie-zespolem/2860024,Zarzadzanie-w-firmie.html (10.03.2022).

23 On the common law legal system as one of the main European 'cradles' of the monistic system of governance in corporations in the context of Polish regulation of a simple joint-stock company, see G. Kozieł, Prosta spółka akcyjna. Komentarz do art. 300^{1}–300^{134} KSH, Warsaw 2020, pp. 216–217, and the literature referred to therein.

24 See in particular J.M. Hawkins, E. Mizera, G. Mizera, Popularny…, *op. cit.*, pp. 57, 203.

25 *Ibidem*, p. 57.

26 *Ibidem*, p. 203.

27 *Ibidem*, p. 109.

28 *Ibidem*, p. 276.

29 *Ibidem*, p. 312.

made and modified by its users, like classical artificial intelligence,[30] is the 'translate.google.pl' dictionary,[31] which translates the Polish words '*firma*', '*przedsiębiorca*' and '*przedsiębiorstwo*' directly into English as 'business', 'entrepreneur' and 'undertaking' respectively,[32] while it translates the English word 'business' into Polish as '*biznes*'.[33] At the same time, this dictionary translates the Polish sentence '*Przedsiębiorca działa pod firmą*' directly into English as 'The entrepreneur operates under the name of the company',[34] while it translates the English sentence 'The entrepreneur operates under the name of the company' directly into Polish as '*Przedsiębiorca działa pod nazwą firmy*'.[35] Although the 'translate.google.pl' dictionary translates the English sentence 'The entrepreneur operates under the business name' into Polish as '*Przedsiębiorca działa pod firmą*',[36] it does not translate the English term 'business name' into Polish as '*firma*', but as '*nazwa firmy*'[37].

A different meaning, directly referring to that adopted in Polish legal language, is given to the word 'firm' [*Firma*] in German[38]. Germany is part of the same continental legal culture (of positive law) as Poland and the primary source of influence of elements of Germanic legal culture, resulting from the neighbourly geographical location of Poland in relation to Germany and leading to the interpenetration of meaning of many words; therefore German language used to be, in the early 1930s, and

30 Instead of multiple resources, see J. Zerilli, A. Weller, The Technology (in:) M. Hervey, M. Lavy (eds.), The Law of Artificial Intelligence, London 2021, pp. 2–001–2–012.

31 https://translate.google.pl (10.03.2022).

32 https://translate.google.pl/?sl=pl&tl=en&text=firma%2C%20%0Aprzedsi%C4%99biorca%2C%0Aprzedsiebiorstwo%2C% 20%20&op=translate (10.03.2022).

33 https://translate.google.pl/?sl=en&tl=pl&text=business%2C%0Aentrepreneur%2C%0Aundertaking%20%20&op=translate (10.03.2022).

34 https://translate.google.pl/?sl=pl&tl=en&text=Przedsi%C4%99biorca%20dzia%C5%82a%20pod%20firm%C4%85%0A&op=translate (10.03.2022).

35 https://translate.google.pl/?sl=en&tl=pl&text=The%20entrepreneur%20operates%20under%20the%20name%20of%20the%20company%0A&op=translate (10.03.2022).

36 https://translate.google.pl/?sl=en&tl=pl&text=The%20entrepreneur%20operates%20under%20the%20business%20 name%0A&op=translate (10.03.2022).

37 https://translate.google.pl/?sl=en&tl=pl&text=business%20name%0A&op=translate (10.03.2022). The English term "business name" (in the sense of the name under which the entrepreneur operates) is also used in legal English (the language of English legal acts) and is adopted (and used) in the legal literature. See primarily section 1(1) of the Business Names Act of 1985, https://www.legislation.gov.uk/ukpga/1985/7/ section/1/enacted (5.09.2022) and section 4(1) of the Partnership Act of 1890, https://www.legislation.gov.uk/ukpga/Vict/53–54/39/section/4 (5.09.2022); E. Berry, Partnership and LLP Law, UK, Chippenham 2010, pp. 15, 27; G. Morse, Partnership Law, USA, New York 2010, pp. 2.01 et. seq.

38 See §17(1) of the HGB. In the legal literature on this topic see in particular A. Kraft, P. Kreutz, Gesellschaftsrecht, *op. cit.*, p. 165; K.J. Hopt, Commentar zu § 105 HGB (in:) Handelsgesetzbuch, *op. cit.*, pp. 483–484.

still is, a specific 'model' for the Polish legislator and at the same time for Polish legal language.[39]

As in the case of English, examples are mainly provided by traditional (paper) Polish–German[40] and German–Polish[41] dictionaries, in which the Polish word '*firma*' is translated into German unequivocally as '*Firma*',[42] which points to a direct borrowing from German[43] into Polish legal language. The Polish word '*przedsiębiorca*' is in turn expressly translated into German as '*Unternehmer*',[44] not as '*Firma*'. Also, the Polish word '*kupiec*', modelled on its German equivalent, is in Polish legal language the oldest (dating as far back as the Commercial Code of 1934[45]) 'conceptual predecessor' of the legal category '*przedsiębiorca*', translated into German primarily as '*Kaufmann*'[46] and not as '*Firma*'; while the Polish word '*przedsiębiorstwo*' is translated into German unequivocally as *Unternehmen*',[47] not as '*Firma*'. In those dictionaries, the German word '*Firma*' is translated into Polish primarily as '*firma*', or alternatively

39 This may be seen for example in a very explicit statement in the preface to the commentary by M. Allerhand, Kodeks handlowy z komentarzem. Spółka jawna, spółka komandytowa, spółka z ograniczoną odpowiedzialnością, spółka akcyjna, 2nd ed., Bielsko-Biała 1994, p. 6, that 'the Polish Commercial Code is modelled on German law'.

40 See e.g. A. Bzdęga, J. Chodera, S. Kubica, Firma; Kupiec; Przedsiębiorca, Przedsiębiorstwo, (in:) J. Czochralski, A. Wójcik, T. Korsak, G. Sochaj-Krajewska (eds.), Podręczny słownik polsko-niemiecki, Warsaw 1990, pp. 158; 273; 532.

41 See e.g. J. Chodera, S. Kubica, Firma; Kaufmann; Unternehmen, Unternehmer, (in:) J. Czochralski, A. Wójcik, L. Bielas, J. Jóźwicki (eds.), Podręczny słownik niemiecko-polski, Warsaw 1985, pp. 264; 445; 847.

42 See e.g. A. Bzdęga, J. Chodera, S. Kubica, Firma, (in:) Podręczny słownik polsko-niemiecki, *op. cit.*, p. 158.

43 Which also concerns to German legal language. See in this regard § 17(1) of the HGB and also A. Kraft, P. Kreutz, Gesellschaftsrecht, *op. cit.*, p. 165; K.J. Hopt, Commentar zu § 105 HGB, (in:) Handelsgesetzbuch, *op. cit.*, pp. 483–484.

44 See e.g. A. Bzdęga, J. Chodera, S. Kubica, Przedsiębiorca, (in:) Podręczny słownik polsko-niemiecki, *op. cit.*, p. 532.

45 See T. Dziurzyński, Z. Fenichel, M. Honzatko, Kodeks handlowy. Komentarz, Łódź 1995, 'Wstęp', p. 16.

46 See A. Bzdęga, J. Chodera, S. Kubica, Kupiec (in:) Podręczny słownik polsko-niemiecki, *op. cit.*, p. 273. It was and is reflected in § 1(1) of the HGB, which envisaged and currently provides for the concept of a trader [*kaufmann*] in the German legal order (system) and at the same time in the German legal language. See in this regard also V. Röhricht, Commentar zu § 1–7 HGB, (in:) L. Ammon, T. Lenz, M. Brandi-Dohrn, V. Röhricht (ed.), H. von Gerkan, C. Wagner, W. Küstner, F. Graf von Westphalen (ed.), Handelsgesetzbuch. Kommentar zu Handelsstand, Handelsgesellschaften, Handelsgeschäften und besonderen Handelsverträgen (ohne Bilanz-, Transport- und Seerecht), Köln 1998, pp. 79 et. seq.; C.W. Canaris, Handelsrecht, *op. cit.*, pp. 30 et. seq.

47 See A. Bzdęga, J. Chodera, S. Kubica, Przedsiębiorstwo, (in:) Podręczny słownik polsko-niemiecki, *op. cit.*, p. 532. It was and is reflected in § 1(2) of the HGB, which envisaged and currently provides for the concept of an enterprise [*unternehmen*] in the German legal order (system) and at the same time in the German legal language. See in this regard also K.J. Hopt, Einleitung vor § 1 HGB, (in:) Handelsgesetzbuch, *op. cit.*, pp. 11–15.

as '*dom handlowy*'[48], '*Unternehmer*' is translated into Polish unequivocally as '*przedsiębiorca*',[49] '*Kaufmann*' is translated unequivocally as '*kupiec*'[50] and '*Unternehmen*' is translated as '*przedsiębiorstwo*'.[51] It follows that in German, as in the Polish legal language modelled on it, the words '*Firma*' [Polish: '*firma*'], '*Unternehmer*' [Polish: '*przedsiębiorca*'], '*Kaufmann*' [Polish: '*kupiec*'] and '*Unternehmen*' [Polish: '*przedsiębiorstwo*'] are separate words with different meanings, and that the word '*firma*' is not one of the meanings or designations of the other words which are (or were) associated with running a business ('*Unternehmer*' [*przedsiębiorca*], '*Kaufmann*' [*kupiec*] and '*Unternehmen*' [*przedsiębiorstwo*]). Therefore the word '*Firma*' is not used in German to designate an entrepreneur as a legal entity or the enterprise operated by it[52]. Analogous translational conclusions in the field of the German language are drawn from analyses carried out using online dictionaries, such as 'translate.google.pl' referred to above.[53]

48 See J. Chodera, S. Kubica, Firma, (in:) Podręczny słownik niemiecko-polski, *op. cit.*, p. 264.

49 See J. Chodera, S. Kubica, Unternehmer, (in:) Podręczny słownik niemiecko-polski, *op. cit.*, p. 847.

50 See J. Chodera, S. Kubica, Kaufmann, (in:) Podręczny słownik niemiecko-polski, *op. cit.*, p. 445.

51 See J. Chodera, S. Kubica, Unternehmen, (in:) Podręczny słownik niemiecko-polski, *op. cit.*, p. 847.

52 In the German legal language this was and still is reflected in the provisions of § 1 and § 17 of the HGB, which provided and provide for separate conceptual categories of the firm [*firma*], trader [*kaufmann*] and enterprise [*unternehmen*].

53 In the 'translate.google.pl' online dictionary, the Polish word '*firma*' (firm, business name) is translated into German as '*Unternehmen*', i.e. '*przedsiębiorstwo*' in Polish; see https://translate.google.pl/?sl=pl&tl=de&text=firma%0A&op=translate (10.03.2022). As regards the translation of the Polish words '*przedsiębiorca*' (entrepreneur), '*kupiec*' (trader) and '*przedsiębiorstwo*' (enterprise) by that dictionary into German as '*Unternehmer*', '*Kaufmann*' and '*Unternehmen*', see: https://translate.google.pl/?sl=pl&tl=de&text=przedsi%C4%99biorca%0A%0Akupiec%0A%0Aprzedsiebiorstwo.&op=translate (10.03.2022). In the dictionary 'translate.google.pl', the German words '*Firma*' (firm, business name) and '*Unternehmen*' (enterprise) are translated similarly into Polish, the first two meanings proposed by that dictionary for each of these words being the Polish words '*spółka*' (company) and '*firma*' (firm); see https://translate.google.pl/?sl=de&tl=pl&text=-firma%0A%0A%0Aunternehmen%20%0A&op=translate (10.03.2022). As regards the translation by 'translate.google.pl' of the German words '*Unternehmer*' (entrepreneur) and '*Kaufmann*' (trader) as, respectively, '*przedsiębiorca*' and '*kupiec*' in Polish, see https://translate.google.pl/?sl=de&tl=pl&text=unternehmer%0A%0Akaufmann%0A%0A&op=translate (10.03.2022).

2. Introduction to the Polish Legal Language of the Terms 'Investment Firm' [Firma Inwestycyjna], 'Foreign Investment Firm' [Zagraniczna Firma Inwestycyjna] and 'Audit Firm' [Firma Audytorska] as a Reflection of Blurring the Established Distinction Between the Meanings of the Word 'Firm' [Firma] by the Polish Legislature in Polish Legal and Non-Legal Language, Constituting a Manifestation of Significant Legislative Inconsistency with a Systemic Dimension

In view of the above, it is interesting why the Polish legislature has decided, since the middle of the first decade of the 21st century, to cause a significant inconsistency in using the word '*firma*' in Polish to designate an entity (or group of entities) running a business. Why was the legislative decision taken to abandon the distinction in Polish legal language between the term 'firm' [*firma*] (defined as a designation under which the entrepreneur operates) and the term 'entrepreneur' [*przedsiębiorca*] (used to designate a legal entity which runs a business), which reflected a well-established, almost classical, distinction in this area between Polish non-legal and legal language and which had been continuously applied since the beginning of the fourth decade of the 20th century (first in the Commercial Code of 1934 and then, since 2003, in the Civil Code of 1964)?

This reflection should lead to the search for an answer to the question as to what was the reason behind the Polish legislature making a kind of 'borrowing' from the Polish non-legal language into legal language of the meaning of the word 'firm' [*firma*] to designate an entrepreneur, or, more precisely, a particular type of entrepreneur (conducting strictly specified activities), and introducing into Polish legal language the terms 'investment firm' [*firma inwestycyjna*][54] and 'foreign investment firm' [*zagraniczna firma inwestycyjna*] on 24 October 2005,[55] and then, on 21 June 2017,

54 In Polish legal language, the term 'investment firm' [*firma inwestycyjna*] was introduced on 24 October 2005 by Art. 3(33) of the Act of 29 July 2005 on trading in financial instruments (Journal of Laws, No 183, item 1538; hereafter 'TFI'). According to the current wording of that provision given to it by the Act of 1 March 2018 amending the Act on trading in financial instruments and certain other acts (Journal of Laws 2018, item 685, included in the consolidated text in Journal of Laws of 2021, item 328, as amended), an investment firm means a brokerage house, a bank engaged in brokerage activities, a foreign investment firm engaged in brokerage activities in the territory of the Republic of Poland or a foreign legal person established in the territory of a country other than an (EU) Member State engaged in brokerage activities in the territory of the Republic of Poland. An investment firm has therefore not been a specific type of designation under which the entrepreneur operates in legal and commercial transactions, that is to say a particular type of firm in the general civil law sense provided for in the Civil Code (i.e. a business name), but a concept which denotes in Polish legal language entrepreneurs carrying out activities strictly defined in Art. 3(33) of the TFI, i.e. brokerage activities.

55 In Polish legal language, the term 'foreign investment firm' [*zagraniczna firma inwestycyjna*] was introduced, likewise the concept of investment firm, on 24 October 2005 by Art. 3(32) of the

the term 'audit firm' [*firma audytorska*],[56] when the Polish legislature could have used other terms for this purpose while maintaining the consistency of the existing terminology in this respect – for instance, in the first two cases, 'investment entity' or 'investment entrepreneur' and 'foreign investment entity' or 'foreign investment entrepreneur', and in the third, 'audit entity' or 'audit entrepreneur'. It also raises the question of what potential possible advantage resulting from this in the legal and legislative area, especially in the area of Polish legal language and in the systemic area (within the Polish legal system), may counterbalance or mitigate the resulting terminological inconsistencies, which are of systemic significance.[57]

TFI, according to which it is a legal person or an organizational unit without legal personality established in the territory of another (EU) Member State, and where the laws of that state do not require the establishment of a head office based in another Member State, or a natural person with a place of residence in the territory of another (EU) Member State carrying out brokerage activities in the territory of another Member State under the authorization of the competent supervisory authority, as well as a foreign credit institution within the meaning of Art. 3(31) of the TFI. Therefore, like an investment firm, a foreign investment firm has also not been a specific type of designation under which the entrepreneur operates in legal and economic transactions, that is to say, a particular type of firm in the general civil law sense provided for in the Civil Code (i.e. a business name), but a collective concept of Polish legal language, which means entrepreneurs carrying out activities strictly defined in Art. 3(33) of the TFI, i.e. primarily brokerage activity, in the territory of another EU Member State.

56 The term 'audit firm' [*firma audytorska*] was introduced in Polish legal language on 21 June 2017 by Art. 46 of the Act of 11 May 2017 on statutory auditors, audit firms and public supervision (Journal of Laws of 2017, item 1089; hereafter SAAFS), by replacing the term 'entity authorized to audit financial statements' used by the Act of 7 May 2009 on statutory auditors and their self-government, entities authorized to audit financial statements and public supervision (consolidated text in Journal of Laws of 2016, item 1000, as amended), and strictly by Art. 47 of that Act, previously in force in this area. Therefore, it did not and does not currently constitute a specific type of designation under which an entrepreneur operates in legal and economic transactions, i.e. a specific type of firm in the general civil law meaning provided for in the Civil Code (i.e. a business name). In accordance with the current wording of Art. 46 of the SAAFS, taken into account by the consolidated text of this act contained in Journal of Laws of 2020, item 1415, as amended, an audit firm is an entity in which financial statements are audited by statutory auditors, registered with the list referred to in Art. 57(1) of the SAAFS and conducting activity in one of the forms listed in Art. 46 of the SAAFS, for example 1) a business activity pursued by a statutory auditor in their own name and on their own account; 2) a civil partnership, a general partnership or a professional partnership in which the majority of the voting rights are held by statutory auditors or audit firms approved in at least one EU country, where for professional partnerships in which a management board has been appointed, the majority of the members of the management board are statutory auditors approved in at least one EU country, and where the management board consists of no more than two persons, one of them is a statutory auditor; 3) a limited partnership whose general partners are exclusively statutory auditors or audit firms approved in at least one EU country.

57 Equally critical about the introduction of the concept of 'audit firm' [*firma audytorska*] in the systemic context is D. Wajda, Komentarz (elektroniczny) do art. 46, (in:) K. Ślebzak, M. Ślebzak (eds.), Ustawa o biegłych rewidentach, firmach audytorskich oraz nadzorze publicznym. Komen-

A thoughtless 'copy-and-paste' of concepts functioning in EU legal language[58] into Polish legal language resulting from direct translation (into Polish), in order to implement EU law as soon as possible or to ensure the compliance of Polish law with EU law, is certainly not such a 'mitigating' advantage[59]. Also, it cannot be explained by the need for the Republic of Poland to meet the existing obligation to implement or ensure such compliance in this particular area, or the need to quickly adapt Polish law, including Polish legal language, to the dynamically developing business transactions in various areas in the world, including various segments of the capital market and financial instruments[60].

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tarz, Warsaw, WKP 2018, point 1. For the characteristics (properties) of the legal system (law), see e.g. G.L. Seidler, H. Groszyk, J. Malarczyk, A. Pieniążek, Wstęp…, *op. cit.*, pp. 161–162.

58 See, for example, Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (O.J. L 173, 12.6.2014, p. 349) containing in Art. 4(1)(1) (for the purposes of that Directive) a definition of the term 'investment firm' [*firma inwestycyjna*] and referring to that definition in Art. 2(1)(1) of the Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) 648/2012 (O.J. L 173, 12.6.2014, p. 84), as well as Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (O.J. L 157, 9.6.2006, p. 87), which in Art. 2(3) (for the purposes of that Directive) formulates a definition of the term 'audit firm' [*firma audytorska*].

59 In the process of translating legal texts (especially in the field of EU law), one should take into account the specific rules of translating such texts (including also the rules of translating legal texts used by sworn translators in a special type of translation, i.e. sworn translations). In this regard, the literature indicates that a successful translation of legal texts requires the translator to have linguistic, substantive and translation skills (competence). The acceptability of a translation (of a legal text) is therefore determined by at least three criteria: 1) must be adequate, that is, in terms of key meanings, coincide with the key meanings of the source unit, 2) must respect the linguistic conventions of the target language and 3) must have significant informative value. The better the translation does, the more perfect it is (see wider J. Gościński, Angielskie orzeczenia w sprawach karnych, Warszawa 2019, pp. 269–274; A.D. Kubacki, Podstawowe…, *op. cit.*, p. 4).

60 The application of the special translation rules indicated above in the preceding footnote (no. 59) in the translation of legal texts, including legal texts in the field of EU law, is all the more important as the catalog of difficulties that occur in the translation of legal texts is very wide. The rudimentary (elementary) difficulties in translating legal texts usually include, first and foremost: 1) problems with the translation of specialist terms and the specific phraseology of the language of law, 2) difficulties in deciphering and correctly translating abbreviations and acronyms in this field, 3) taking into account the pragmatic differences resulting from the structure of various legal documents and their impact on the correctness of the translation, 4) problems with meeting formal requirements in the case of preparing certified translations of legal texts (see especially J. Janusz, O specyfice przekładu tekstów prawnych i prawniczych na przykładzie tłumaczeń poświadczonych z języka włoskiego i na język włoski, (in:) 'Italica Wratislaviensia', no. 2, Toruń 2011, pp. 149–162; A.D. Kubacki, Tłumaczenie poświadczone. Status, kształcenie, warsztat i odpowiedzialność tłumacza przysięgłego, Warszawa 2012; M. Kuźniak, Egzamin na tłumacza przysięgłego w praktyce. Język angielski. Analiza językowa, Warszawa 2016; A.D. Kubacki, Prob-

The consistent conceptual differentiation adopted by the Polish legislature largely with reference to the German language (including German legal language) in Polish legal language, from the beginning of the 1930s and maintained until the middle of the first decade of the 21st century, between the linguistic category of 'firm' [*firma*] understood as the business name of an entity running a business (i.e. an enterprise in a functional sense) based on a set of intangible and tangible assets held by the entity and intended for this, i.e. an enterprise in the objective (or functional and objective) meaning, and the name of that enterprise and finally the specific entity – referred to first as 'trader' [*kupiec*], then as 'economic operator' [*podmiot gospodarczy*] and ultimately as 'entrepreneur' [*przedsiębiorca*] – is very logical, coherent and accurate. This is despite the use of the word 'firm' [*firma*] in colloquial Polish, as well as in Polish specialized languages in social sciences such as economics, finance, management and quality sciences, and perhaps partly also in relation to adoption of its different, much broader, meaning in other languages, including especially in English, encompassing almost everything which is related to running a business, in particular the entity running it, the assets used to run it and the designation of both the entity and the property. This distinction makes it possible, using Polish legal language, to clearly and precisely assign certain normative features to a firm (understood as a business name), such as non-transferability, the entrepreneur, such as subjectivity, or to the name of an enterprise, such as specialized legal protection against an act of unfair competition, defined as a misleading designation of an enterprise (Art. 5 of the CUC). Thus, there are no rational reasons to give it up, or even to 'break' it (in the sense of weakening) by introducing exceptions, the existence of which could, in a way, encourage the legislature to multiply them by introducing other 'firms' inconsistent with the original, fundamental meaning of the word.

It should be borne in mind that in every legal system, including the Polish one, and at the same time in Polish legal language, there are smaller or larger, more or less significant, noted and perceived terminological differences in terms of individual phrases, concepts and legal institutions, as well as the distinctiveness of colloquial language in contrast to legal language, and as well as differences between individual specialist languages (e.g. in the area of economics, finance, management and quality sciences, and legal sciences, the most formalized field of social sciences). Apart from the fact that they occur within each country and legal system (including other states and foreign legal orders), this results in differences between individual states, their legal systems and legal languages, which – despite the increasingly frequently articulated needs of global unification in various areas (which are to be served by various, more or less universal, instruments of integration) – must be respected. This respect is justified by arguments resulting from the consideration of their broadly under-

lemy tłumaczenia polskich i niemieckich wyroków w sprawach cywilnych i karnych, (in:) 'Lingua Legis', no. 17, Warszawa 2009, pp. 76–86.

stood roots, including cultural conditions and other types of reason, and the related advantages, including the above-mentioned ones. Due to respect for the distinction in Polish legal language between the concept of 'firm' ('business name') [*firma*] and the other linguistic terms mentioned above ('entrepreneur' [*przedsiębiorca*], 'enterprise' [*przedsiębiorstwo*] and 'name of the enterprise' [*nazwa przedsiębiorstwa*]), from which the specific, positively understood terminological originality of Polish legal language results, the Polish legislature should remain very consistent.

Conclusions

At present, the return of the Polish legislature to such an attitude – consistent with respect to the linguistic and semantic distinctions established since the 1930s in Polish legal language between the term 'firm' [*firma*] and the other linguistic categories mentioned (above all 'entrepreneur' [*przedsiębiorca*], 'enterprise' [*przedsiębiorstwo*] and 'name of the enterprise' [*nazwa przedsiębiorstwa*]) – should lead to the removal from Polish legal language of the use the word 'firm' [*firma*] in a sense other than those referred to in Art. 43^2 § 1 of the CC, and therefore, in particular, the terms 'investment firm' [*firma inwestycyjna*], 'foreign investment firm' [*zagraniczna firma inwestycyjna*] and 'audit firm' [*firma audytorska*] referred to above, by replacing them with the terms proposed above or by other terms not including the word 'firm' [*firma*]. As a proposal for the law as it should stand, an introduction of such modifications in Polish legal language should be considered.

Notwithstanding, it also seems that it is necessary to generally strive towards using the word 'firm' [*firma*] consistently in its basic meaning, as currently defined in the Civil Code (and previously in the Commercial Code), universally, and therefore not only in the Polish legal language of private and public law and of legal professionals, but also in non-legal language, including official and colloquial language, as well as in specialized language of any non-law field of human activity, both in the field of social sciences (e.g. economics, finance, management, quality, security, psychology or sociology) and beyond the scope of these sciences (e.g. in the humanities, engineering and technology, medical and health sciences, agriculture, natural sciences and others). It should be noted that since Polish legal language and jargon respects terms (including concepts) from the specialized language of non-legal fields of activity, there should also be 'somewhat mutually' respected terms (including concepts) of Polish legal language in those non-legal fields, such as, in particular, 'firm' [*firma*], 'entrepreneur' [*przedsiębiorca*], 'enterprise' [*przedsiębiorstwo*] or 'name of the enterprise' [*nazwa przedsiębiorstwa*].[61] Therefore, first of all, more consistency by the Pol-

61 Examples of legal language used in the TFI, the Act of 29 September 1994 on accounting (consolidated text in Journal of Laws of 2021, item 217, as amended) or the above-mentioned SAAFS show that non-legal specialist language from the fields of economics and finance (including, for

ish legislature is needed in this area, which is always extended to the entire Polish legal system, and, on the other hand, more mutual respect among Polish non-legal language users is required regarding the use of the word 'firm' [*firma*] in the proper legal sense as currently provided for in the Civil Code. This may help increase the specialization of the Polish language in general and thus increase its essential potential as an instrument of communication between people of different educational backgrounds, professions and fields of activity who pursue their interests (including business activities) in various fields, which may help reduce barriers and linguistic errors in communication in the Polish language.

REFERENCES

Allerhand M., Kodeks handlowy z komentarzem. Spółka jawna, spółka komandytowa, spółka z ograniczoną odpowiedzialnością, spółka akcyjna, 2nd ed., Bielsko-Biała 1994.

Berry E., Partnership and LLP Law, Chippenham 2010.

Bielski P., Prawo firmowe w kodeksie spółek handlowych, cz. I, 'Prawo Spółek' 2004, no. 2, pp. 2–8.

Bzdęga A., Chodera J., Kubica S., Firma. Kupiec. Przedsiębiorca, Przedsiębiorstwo, (in:) J. Czochralski, A. Wójcik, T. Korsak, G. Sochaj-Krajewska (eds.), Podręczny słownik polsko-niemiecki, Warsaw 1990, p. 158; 273; 532.

Canaris C.W., Handelsrecht, München 2000.

Chodera J., Kubica S., Firma. Kaufmann. Unternehmen, Unternehmer, (in:) J. Czochralski, A. Wójcik, L. Bielas, J. Jóźwicki (eds.), Podręczny słownik niemiecko-polski, Warsaw 1985, p. 264; 445; 847.

Denek E., Dylewski M., Finanse małych i średnich firm. Innowacje, decyzje, procesy, https://www.gandalf.com.pl/b/finanse-malych-i-srednich-firm/#product-desc.

Kozieł G., Pojęcie przedsiębiorcy, (in:) T. Długosz, G. Kozieł (ed.), A. Malarewicz-Jakubów, S. Patyra, A. Piszcz, A. Żurawik, Prawo przedsiębiorców. Przepisy wprowadzające do Konstytucji Biznesu. Komentarz, Warsaw 2019, pp. 37–55.

Doroszewski W. (ed.), Słownik języka polskiego, https://sjp.pwn.pl/doroszewski.

Dziurzyński T., Fenichel Z., Honzatko M., Kodeks handlowy. Komentarz, Łódź 1995.

Gościński J., Angielskie orzeczenia w sprawach karnych, Warszawa 2019.

Grunewald B., Gesellschaftsrecht, Köln 2000.

example, terminology concerning financial instruments (in the case of the first of these acts), issues from the area of financial reporting and accounting rules (in the case of the second), and the area of financial audit (in the case of the third)) is accepted in Polish legal language. On the other hand, e.g. in the Act of 6 March 2018 on the central register and information on economic activity and the information point for entrepreneurs (consolidated text in Journal of Laws of 2022, item 541, as amended; hereafter 'CRIEA') [*Centralna Ewidencja i Informacja o Działalności Gospodarczej*], Polish lawmakers, when defining the scope of an entry in the CRIEA in Polish legal language of public economic law, 'did not forget' to use the term 'firm' [*firma*] in its basic, civil-law meaning as currently set out in the CC.

Hawkins J.M., Mizera E., Mizera G., Popularny Oxford Słownik angielsko–polski polsko–angielski [Oxford School Dictionary], Warsaw–Oxford 2010.

Hopt K.J., Einleitung vor § 1 HGB; Commentar zu § 1–7 HGB; Commentar zu § 105 HGB, (in:) K.J. Hopt, H. Merkt, A. Baumbach, Handelsgesetzbuch, München 2006.

Jachymczak E., Zarządzanie w firmie, 3 stycznia 2019, https://mojafirma.infor.pl/manager/zarzadzanie-zespolem/2860024,Zarzadzanie-w-firmie.html.

Janusz J., O specyfice przekładu tekstów prawnych i prawniczych na przykładzie tłumaczeń poświadczonych z języka włoskiego i na język włoski, (in:) 'Italica Wratislaviensia', nr 2, Toruń 2011, pp.149–162.

Katner W.J., Kupiec. Podmiot gospodarczy. Przedsiębiorca. Ewolucja pojęciowa, 'Gdańskie Studia Prawnicze' 1999, vol. 5, pp. 171–188.

Kidyba A., Prawo handlowe, Warsaw 2016.

Korybski A., Pieniążek A., Wstęp do prawoznawstwa, Lublin 1997.

Kozieł G., Prosta spółka akcyjna. Komentarz do art. 300^{1}–300^{134} KSH, Warsaw 2020.

Kraft A., Kreutz P., Gesellschaftsrecht, Luchterhand 1997.

Kubacki A.D., Podstawowe trudności w przekładzie tekstów prawniczych (in:) Prawo i język prawa – współczesne dylematy (artykuły po konferencji), Lublin 2019, pp. 3–8, https://www.researchgate.net/publication/340174436_Podstawowe_trudnosci_w_przekladzie_tekstow_prawniczych.

Kubacki A.D., Problemy tłumaczenia polskich i niemieckich wyroków w sprawach cywilnych i karnych, (in:) 'Lingua Legis', no. 17, Warszawa 2009, pp. 76–86.

Kubacki A.D., Tłumaczenie poświadczone. Status, kształcenie, warsztat i odpowiedzialność tłumacza przysięgłego, Warszawa 2012.

Kuźniak M., Egzamin na tłumacza przysięgłego w praktyce. Język angielski. Analiza językowa, Warszawa 2016.

Morse G., Partnership Law, USA, New York 2010.

Roszkowski S., The Language of Law as Sublanguage, (in:) J. Tomaszczyk (ed.), Aspects of Legal Language and Legal Translation, Łódź 1999, pp. 7–16.

Röhricht V., Commentar zu § 1–7 HGB, (in:) L. Ammon, T. Lenz, M. Brandi-Dohrn, V. Röhricht (eds.), von H. Gerkan, C. Wagner, W. Küstner, F. Graf von Westphalen (eds.), Handelsgesetzbuch. Kommentar zu Handelsstand, Handelsgesellschaften, Handelsgeschäften und besonderen Handelsverträgen (ohne Bilanz-, Transport- und Seerecht), Köln 1998, pp. 79–228.

Schmidt K., Gesellschaftsrecht, Hamburg 2002.

Seidler G.L., Groszyk H., Malarczyk J., Pieniążek A., Wstęp do nauki o państwie i prawie, Lublin 1997.

Sitko J., Dualizm oznaczeń przedsiębiorcy i przedsiębiorstwa – obrzeża prawa własności przemysłowej, 'Przegląd Prawa Handlowego' 2008, no. 4, pp. 18–26.

Sitko J., Firma w świetle przepisów Kodeksu cywilnego, 'Przegląd Prawa Handlowego' 2003, no. 5, pp. 24–32.

Słownik języka polskiego PWN, https://sjp.pwn.pl.

Szwaja J., Firma w kodeksie cywilnym, 'Prawo Spółek' 2004, no. 1, pp. 2–9.

Wajda D., Komentarz (elektroniczny) do art. 46, (in:) K. Ślebzak, M. Ślebzak (eds.), Ustawa o biegłych rewidentach, firmach audytorskich oraz nadzorze publicznym. Komentarz, Warsaw, WKP 2018, point 1–2.8.

Wróblewski B., Język prawny i prawniczy, Cracow 1948.

Zamojski Ł., Kilka uwag o firmie przedsiębiorcy, 'Prawo Spółek' 2006, no. 7–8, pp. 50–55.

Zaporowski P., Firma jako dobro osobiste przedsiębiorcy, 'Rejent' 2005, no. 12, pp. 113–123.

Zaporowski P., Spory wokół nowego prawa firmowego, 'Rejent' 2004, no. 5, pp. 143–148.

Zawadzki A., Rachunkowość małych firm, vol. 1. Podręcznik, Warsaw 2017.

Zawadzki A., Rachunkowość małych firm, vol. 2. Zbiór zadań, Warsaw 2017.

Zerilli J., Weller J., The Technology, (in:) M. Hervey, M. Lavy (eds.), The Law of Artificial Intelligence, London 2021.

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The Role of General Clause of (Public) Morals Based on Selected European Court of Human Rights' Judgments[1]

Abstract: (Public) morals is a specific example of a general clause that bridges the gap between legal norms and a wide array of non-legal rules. The indeterminacy of this clause allows the standard of morals to be construed with due consideration for various criteria, values, principles and local circumstances. At the same time, in a culturally diverse society, difficulties in translating ethical issues into the legal language come to light. Consequently, we have both national and international legislation in which the premise of (public) morals is the legitimate objective/aim for restricting certain freedoms and rights. In turn, judicial bodies such as the European Court of Human Rights, as described in this paper, encounter problems in interpretation and the need to use different interpretative methods to give the right meaning to this concept.
Keywords: ECtHR judgments, living together concept, margin of appreciation, morals (public morals) clause

Introduction

The starting point for the examination of the role of the (public) morals clause in law is a few basic assumptions. Firstly, it is difficult to construe a precise definition of morals which could be perceived as either a norm or a social fact. In consequence, determining the exact relationship between morals and law is problematic and for years has remained one of the most important problems in the philosophy of law.[2]

1 Publication financed under the program "DIALOG" of the Minister of Science and Higher Education in the years 2019-2022.
2 W. Lang, Prawo i moralność [Law and Morals], Warsaw 1989.

In the study of law, morals are defined as objectified, yet noninstitutionalised rules and principles of conduct and standards of judgment associated with the concepts of right and wrong. Moral norms thus constitute both the motives for people's own behaviour as well as the criteria for judging the behaviour of others.[3] Secondly, (public) morals is a general clause which, like any other general clause, is used by lawmakers deliberately and knowingly, so as to bridge the gap between legal norms and a wide array of non-legal rules.[4] "Morals" is therefore a vague term and this vagueness opens the door to elements of non-legal social axiology to be introduced into the legal system, that is for consideration to be given to certain criteria, values, principles and judgments that are not *expressis verbis* incorporated into the legal regulation. This process is needed in order to reconstruct the "full" legal norm from the source from which information can be derived about rights and obligations or which constitutes the basis for the determining legal consequences in the process of formulating authoritative decisions by competent bodies of public authority. This encourages the entities that apply the law to rely, in their legal decisions, on criteria offering them a greater freedom of interpretation than precise legal rules.[5]

The (public) morals clause is found in both national and international law, particularly in the field of human rights' protection. It is addressed not only to common subjects of the law or to the bodies applying the law, but also, and often above all, to the national lawmaker. It makes it possible to restrict or particularise human rights and to adapt them to the special nature of local conditions by bringing in non-legal values.[6]

"Morality", "morals" or "public morals" are referred to in numerous legislative instruments. The International Covenant on Civil and Political Rights recognises public morals to be admissible grounds for restricting many freedoms and rights.[7] Likewise, "the protection of morals" is one of the clauses that limit certain freedoms and rights enshrined in the European Convention for the Protection of Human Rights and Fun-

3 A. Kalisz, Klauzula moralności (publicznej) w prawie polskim i europejskim jako przykład regulacyjnej, ochronnej oraz innowacyjnej funkcji prawa, "PRINCIPIA" LVII–LVIII, 2013, p. 195.

4 A. Stelmachowski, Klauzule generalne w prawie cywilnym, "Państwo i Prawo" 1965, vol. 1, p. 5 et seq.; L. Leszczyński, Stosowanie generalnych klauzul odsyłających, Kraków 2001; L. Leszczyński, G. Maroń, Pojęcie i treść zasad prawa oraz generalnych klauzul odsyłających. Uwagi porównawcze, Lublin 2013.

5 L. Leszczyński, Tworzenie generalnych klauzul odsyłających, Lublin 2000, p. 10; E. Łętowska, Interpretacja a subsumpcja zwrotów niedookreślonych i nieostrych, "Państwo i Prawo" 2011, no. 7–8, p. 18.

6 A. Szot, Klauzula generalna jako ponadgałęziowa konstrukcja systemu prawa, "Annales Universitatis Mariae Curie-Skłodowska Lublin – Polonia", Vol. LXIII, 2, Section G, 2016, p. 293.

7 Such as the liberty of movement (Article 12(2)), freedom to manifest one's religion or beliefs (Article 18(3)), freedom of expression (Article 19(3b)), right of peaceful assembly (Article 21) and the right to freedom of association (Article 22(2)).

damental Freedoms (Articles 8 to 11).[8] National legislative instruments regulate this issue in a corresponding or similar way. By way of example, in the Constitution of the Republic of Poland of 2 April 1997, "protection of public morals" may be the reason for the limitation upon the exercise of constitutional freedoms and rights (Article 31(3)). "Morality" is one of the premises for an exception to the public nature of hearings (Article 45(2)), while the professed "moral principles" may justify a citizen's exemption from performing military service and being appointed to perform substitute service (Article 85(3)). Although the lawmakers have used the terms "morality", "morals" and "public morals", these concepts are regarded as being synonymous and stand for a body of rules of conduct, quite universally accepted as part of individual and collective conduct, based on the comprehension of the terms "morals" or "morality" recognised in a given society.[9] The Constitution of Ireland of 1 July 1937 also makes a number of references to morality, public order and morality and indecent matters.[10] Many other contemporary states invoke ethical norms in the form of limitation clauses in their constitutions as premises for limitations to the exercise of particular rights, and often in similar normative contexts, although not always with the use of the same wording. Thus, for example, limitations to the enjoyment of certain rights and freedoms may occur for the reasons of good mores (Article 7(3) of the Constitution of the Kingdom of the Netherlands), public order (Article 16 of the Spanish Constitution) or – much more generally – the constitutional order (Article 9 of the Constitution of the Federal Republic of Germany).

Incorporation into normative acts of notions that directly invoke morality or are associated with a system of ethical norms and, in a wide sense, with public order is, on the one hand, not at par with the concept of moral neutrality of law. On the other hand, it tallies with the concept of a system for the protection of human rights, both on a national as well as international level, as an instrument to guarantee a relative social order in the given political community, at a given time and place, as bolstered by the frequent addition of the adjective "public" to the notion of "morality" or "morals". In this sense, public morality is associated with either desirable or undesirable conduct in public that produces a public effect (i.e. taking place in a public environment). Accordingly, morality denotes a system of values that a given social group adopts as a reference point for their own conduct as well as for the conduct of others. Difficulties do, however, arise in identifying the general common values, particularly when

8 The right to respect for private and family life (Article 8), freedom of thought, conscience and religion (Article 9), freedom of expression (Article 10) and freedom of assembly and association (Article 11).

9 See L. Garlicki, K. Wojtyczek, comments to Article 31, (in:) Konstytucja Rzeczypospolitej Polskiej. Komentarz, Warsaw 2016, Vol. II, p. 88.

10 See Article 40(6) (freedom of expression, freedom of assembly and freedom to form associations and unions), Articles 42(1), 42(3), 42(4) and 42(5) (relating to education), Article 44 (freedom of religion).

those values are to be shared by a large community with diverse historical, cultural, religious or nationality backgrounds.

Europe is an open environment to communities of different cultures with different axiological values. Migration, so visibly prevalent in recent years, is a common phenomenon on the European continent. Ensuring a peaceful coexistence of these numerous diversities therefore requires an increased effort, and these problems have been present in the political, social and legal discourse for years. States and their citizens are constantly faced with new challenges, of not only economic, but also cultural, nature. Diversity existing in the world should not be ignored. In Europe, these dilemmas have long been resolved by the European Court of Human Rights, which grapples with the Dworkinian "balancing of principles" in the attempt at their uniformisation, all while respecting the tolerance and recognition of multiple cultural and legal identities. In doing so, the Court relies on both "individual and collective" values and the principles of "uniformity and subsidiarity" in international law.[11] The issue of morals finds a special place in this discourse as it is a specific example of how judicial bodies fill in legal norms with concepts and principles from beyond the positive law system(s).

For the purpose of examining the problem which is the subject of this paper, the author has chosen to limit her scrutiny to issues connected with the freedom of thought, conscience and religion (Article 9 ECHR) and the freedom of expression (Article 10 ECHR). This choice was determined by certain factors, as discussed below.

Firstly, the above-mentioned freedoms are enshrined in those provisions of the European Convention in which the "protection of morals" appears as one of the limitation clauses on the exercise of rights and freedoms (Articles 9 and 10 in addition to Articles 8 and 11 with comparable limitation clauses). It is a special attribute of these rights and freedoms that their essence and the consequent protective mechanisms put in place to safeguard them are interfused. There can be no doubt that the freedom of thought and conscience referred to in Article 9 cannot be examined in isolation not only from the right to privacy protected under Article 8, but also from the freedom of expression guaranteed under Article 10. One can say that the relationship between these rights and freedoms is the "relation of complementarity".[12] The "religious" element enhances the protection, or causes a shift in emphasis between the desire to set universal standards and the readiness to respect the national "margin of appreciation" (discussed below). Articles 9 and 10 of the Convention have the advantage of flexibility that facilitates the creation of jurisprudential precedents and the application of an evolutionary interpretative approach, as well as the need to harmonise and work out compromises. It is quite clear from those judgments of the European

11 R. Dworkin, The Original Position, "University of Chicago Law Review", 1972–1973, p. 500.

12 *Ibidem,* p. 554.

Court of Human Rights in which the protection of morals is regarded by the Court as a premise to legitimise the objective of limitations in cases that have a worldview or religious connotation or are related to artistic creativity in the broadest sense of the term.

Secondly, decisions in these types of cases have allowed the Court to develop interpretation tools for tacking those issues in the Convention that pose a challenge on account of significant cultural differences of relevance to analysing the problem of morals, such as recognition that the Convention: (i) is a minimum standards document, which permits Member States being the States Parties to the Convention to be granted a certain "room for manoeuvre" (margin of appreciation) in the context of norms and principles applied by these States (Section 1) and (ii) a "living instrument"[13] which is being adjusted to the changing social, political and cultural contexts and, therefore, the formation of common minimum standards can proceed based on related concepts and phenomena (the "living together" concept) (Section 2).

1. The (Public) Morals Clause and the Margin of Appreciation of States Parties to the European Convention

1.1. In its assessment of admissibility of restrictions on the exercise of rights and freedoms, the European Court of Human Rights (ECtHR) examines whether three basic "tests" are met, namely the lawfulness (i.e. whether the interference was prescribed by law), legitimacy of the aim pursued (i.e. whether the interference meets one of the legitimate aims referred to in paragraph 2 of Articles 8 to 11, which include the "morals" discussed in this paper) and the "necessity" in a democratic society (i.e. whether the interference was "necessary in a democratic society"). "The objective is to consider whether the authorities have struck "a fair balance between the competing interests of the individual and of society as a whole". It is the most subjective part of the application of paragraph 2, involving subtle distinctions about the proportionality of measures taken by the State that limit or restrict human rights. There is an important relationship between "necessity" and "democratic society", of which the hallmarks are pluralism, tolerance and broadmindedness. The terms seems to be little more than a gloss on the word "necessity". It employs two other notions in this context, insisting that the measure in question be "relevant and sufficient". The interference must also respond to an assessment of its proportionality, something

13 L. Garlicki, Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności, Comments to Article 1–18, vol. I, Warsaw 2010, pp. 482–483; Ibidem, The methods of interpretation, (in:) F. Melin-Soucramanien (ed.), L'interprétation constitutionnelle, Paris, Dalloz 2005, at 139–153.

that involves balancing the rights of the individual against the interests of the State and the society that it represents.[14]

In applying the "necessary in a democratic society" test, the Court relies on the "margin of appreciation" doctrine, which has developed over the years and remains well known and discussed in detail in legal scholars" writings.[15] The essence of this doctrine is that national authorities are granted a certain room for manoeuvre in fulfilling their obligations with respect to rights and freedoms under the European Convention on Human Rights. This stems from an assumption adopted by the ECtHR that the machinery of the protection of fundamental rights established by the Convention is subsidiary to the national systems safeguarding human rights.[16]

In certain categories of cases, the Court affords States Parties to the Convention a definite priority in deciding how rights and freedoms are to be respected. Firstly, the Court has observed that there is no European consensus on how to regulate a given issue (respect a given right). This is the case when the matter is to be determined based on the public morals clause. The Court noted that "the view taken of the requirements of morals varies from time to time and from place to place, especially in our era, characterised as it is by a far-reaching evolution of opinions on the subject".[17] The diversity of aspects that make up morals may also exist within the same State with different cultural, religious, civil or philosophical communities.[18] The margin of appreciation conception has found a particularly apt recognition in cases where morals interfere with the freedom of expression and the freedom of thought, conscience and religion.[19]

14 W.A. Schabas, The European Convention on Human Rights, Oxford University Press 2015, p. 438; Ch. Grabenwarter, European Convention on Human Rights. Commentary, Beck/Hart 2014, pp. 245, 266.

15 L. Garlicki, Wartości lokalne a orzecznictwo ponadnarodowe – „kulturowy margines oceny" w orzecznictwie strasburskim?, "Europejski Przegląd Sądowy", April 2008, p. 4.

16 *Handyside v. the United Kingdom*, Application no. 5493/72, 7 December 1976, para 48.

17 For example *Müller and others v. Switzerland*, Application no. 10737/84, 24 May 1988, para 35. This understanding of morals has been described as "*logique de flou*" by Koering-Joulin, Affaires de mœurs, (in:) M. Delmas-Marty (ed.), Raisonner la raison d'Etat. Vers une Europe des droits de l'homme, PUF, Paris 1989, p. 121.

18 S. Barbou Des Places, N. Deffains, Morale et marge nationale d'appréciation dans la jurisprudence des Cours européennes, (in:) S. Barbou Des Places; R. Hernu; Ph. Maddalon (eds.), Morale(s) et droits européens, Bruxelles 2015, p. 59 ;P. Muzny points out that this "*incertitude normative justifie l'autonomie des autorités étatiques*", La technique de proportionnalité et le juge de la Convention européenne des droits de l'homme. Essai sur un instrument nécessaire dans une société démocratique, PUAM, Marseille 2005, vol. II, at 402, § 538.

19 "*There is* no *consensus among Contracting States on what human rights individuals have*", G. Letsas, Two Concepts of the Margin of Appreciation, (in:) A Theory of Interpretation of the European Convention on Human Rights, Oxford 2007, at 10. The Court has used various terms to define the scope of the margin of appreciation, such as "a certain margin of appreciation" (*Otto-Preminger-Institut*, para 50); "a wider margin of appreciation" (*Wingrove*, para 58); "a wide

1.2. The scope of the margin of appreciation in the area in question is greatly influenced by the context and circumstances of the case in question and the approach to the given issue and its regulation in legal systems of the States Parties to the Convention.

In cases relating to freedom of expression, the margin of appreciation varies depending on the type (nature) of the sanctioned expression. Starting with the judgment in the case of *Wingrove v. the United Kingdom (1996)*[20], the Court took the view that a wider margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion (para 58). Determination of what constitutes an offence to religious feelings in an era of diverse beliefs and creeds varies significantly depending on the time and place of these transgressions.

There is, however, little scope for restrictions on addressing an issue of public interest, i.e. expressions aimed at initiating a public debate (as in *Wingrove*, para 58, incl. citations from other cases). Along the same lines, it follows from the *Giniewski v. France (2006)*[21] judgment that, when taking sanctioning measures, the national authorities must exercise utmost caution so as not to dissuade the press from taking part in the discussion of matters of legitimate public interest (para 54).[22] In the *Sekmadienis Ltd v. Lithuania (2018)*[23] ruling, a standard advertising campaign was the basis for according a wide margin of appreciation to the Lithuanian authorities.

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margin of appreciation" (*E.S.,* para 44; *S.A.S.*, para 83); "margin of appreciation limited – wider" (*Giniewski*, para 35). Other rights in respect of which states have been accorded a relatively wide margin of appreciation include, for example, title to property, electoral rights, and the right to respect for private and family life. Morale et marge nationale…, *op. cit.* at 18. Numerous cases are cited by authors of studies on the margin of appreciation, for example: E. Brems, The Margin of Appreciation Doctrine in the Case Law of the European Court of Human Rights, "Heidelberg Journal of International Law" 1996, vol. 56, pp. 243–256; R.St.J. Macdonald, The Margin of Appreciation, (in:) R.St.J. Macdonald, F. Matscher, H. Petzold (eds.), The European System for the Protection of Human Rights, Dordrecht 1993, pp. 85–122; A. Wiśniewski, Koncepcja marginesu oceny w orzecznictwie Europejskiego Trybunału Praw Człowieka, Gdańsk 2008.

20 *Wingrove v. the United Kingdom*, Application no. 17419/90, 25 November 1996.

21 *Giniewski v. France*, Application no. 64016/00, 31 January 2006.

22 It is an established principle in the case law of the ECtHR that politicians must accept an increased tolerance of criticism. Somewhat on the margin, it is perhaps worth mentioning that in the *Vereinigung Bildender Künstler v. Austria* judgment (application no. 68354/01, 25 January 2007), the authorities forbade the applicant association from exhibiting the *Apocalypse* painting depicting well-known Austrian politicians "in a somewhat outrageous manner" (para 32). The Court concluded that, despite its erotic (although at the same time religious) tinge, the display contained satirical elements which enjoy a wider degree of tolerance in respect of criticism. The Court also considered that the painting could hardly be understood to address the politicians' private lives, but was rather a caricature of their public standing. It is worthy of note that in this case, the Court did not rely on any margin of appreciation arguments.

23 *Sekmadienis Ltd. v. Lithuania*, Application no. 69317/14, 30 January 2018.

Quite on the contrary, if it were found that the expression in question was intended to incite a debate of a public nature, to raise a topic of importance for the general public, it would considerably narrow the room for manoeuvre of the States Parties to the Convention.

Examining the circumstances under which the respective right or freedom has been violated, the ECtHR assesses whether state interference meets current and local social needs and whether it is proportionate to the legitimate aim pursued.[24] The Court does not rule *in abstracto* (in a vacuum), but takes into account the place and time of the occurrence in question. The Court's rulings on seemingly identical cases may therefore differ, even within the same State.[25]

The above determinants impacting the scope of the margin of appreciation endorse the commonly accepted thesis that, inasmuch as the European Convention has its roots in certain universal axiological assumptions and proclaims moral, social and cultural values common to all, it does not remain indifferent to the fact that the Contracting Parties are States with differing legal systems, inhabited by societies with diverse traditions, histories, cultures and religions. It is reflected in, among other things, the hierarchy of moral values and the willingness to tolerate differences. For this reason, a broader margin is accorded to national authorities in cases where there is no consensus among the States Parties to the Convention as to the importance and significance of the various interests to be protected, particularly in cases involving ethically and morally sensitive issues. An affirmative answer to the question whether a European consensus has formed in a given field leads to a definite narrowing down of the margin of appreciation and setting a direction for the States to follow with a view to protecting freedoms and rights common to the pan-European social and legal sphere.[26]

The basic premises for the exercise of the margin of appreciation have been communicated by the Court in the most important cases for the discussed subject and remain relevant in the present day. Firstly, a uniform European conception of morals cannot be determined, while the legal view of the requirements of morals varies from time to time and from place to place, especially in our era, characterised as it is by a far-reaching evolution of opinions on the subject. By reason of their direct and continuous contact with the vital forces of their countries, state authorities are in

24 *Wingrove v. the United Kingdom,* para 53, incl. citations from other ECtHR cases.

25 In the *Müller and Others v. Switzerland*, supra n 12, para 36, the ECtHR was not convinced by the argument that the author of the paintings, J.F. Müller, had exhibited them in other regions of Switzerland and in other countries, as the Freiburg authorities could, given the local circumstances, have decided to limit the exhibition.

26 K. Dzehtsiarou, European Consensus and the Legitimacy of the European Court of Human Rights, Cambridge 2015 and the cited literature; A. Wiśniewski, Znaczenie zasady konsensusu w kształtowaniu europejskich standardów praw człowieka, "Gdańskie Studia Prawnicze" 2011, vol. XXV.

principle in a better position than the international judge to give an opinion on the exact content of the requirements to "protect morals" as well as on the necessity of a restriction or penalty intended to meet them. Such determination is a reflection of local ideas and values.[27]

Secondly, in cases where freedom of expression encroaches on the sphere of religious feelings, the ECtHR holds it is not possible to discern throughout Europe a uniform conception of the significance of religion in society, and even within a single country such conceptions may vary according to time, place and context. For that reason it is not possible to arrive at a common definition and adopt identical rules of what constitutes a permissible interference, and their assessment may even relate to criteria of a purely local nature, i.e. applicable within an organisational unit smaller than a state, such as land, region, department, city, etc.[28] Likewise, there is no uniform European conception (*conception uniforme*) of the requirements of "the protection of the rights of others" (*Murphy*, para 67), particularly in relation to attacks on their religious convictions, especially in an era characterised by an ever-growing array of faiths and denominations (*Wingrove*, para 58). In the *Sekmadienis Ltd v. Lithuania (2018)*[29] ruling, the ECtHR maintained that there was no international or European consensus on the contents of morality (para 55).

On the other hand, in the *Akdas v. Turkey (2010)*[30] case, the Court attempted to build a European consensus by "neutralising"[31] the margin of appreciation afforded to States for the protection of morals as it saw another special value, namely the European cultural heritage. The case involved Apollinaire's novel *The Eleven Thousand Rods*, which contained erotic themes. The Court noted that it could not disregard the passage of more than a century from the novel's first publication in France, later followed by many other countries, in various languages, and its commendation by inclusion in the "*Pleiades*" of the most outstanding works, some ten years before its seizure. Thanks to the author's recognition and acclaim, he could have been regarded as one of the artists shaping the European literary heritage, which in the Court's eyes was the determining argument for the need to guarantee access to his works to a wide public, also in a language other than the original, which in this case was the Turkish language (para 30).

The attempt to establish whether a European consensus has formed in the given field and the search for a standard approach under the Convention stimulates the

27 *Handyside v. the United Kingdom,* supra n 11*,* para 48; *Müller and Others v. Switzerland*, supra n 12, para 35. This view has been reiterated in almost identical wording in other similar cases.

28 *Otto-Preminger-Institut v. Austria*, Application no. 13470/87, 20 September 1994, para 50; almost identical rulings in, for example*: S.A.S v. France*, Application no. 43835/11, 1 July 2014, para 130; *Leyla Şahin v. Turkey*, Application no. 44774/98, 10 November 2005, para 109.

29 *Sekmadienis Ltd v. Lithuania*, Application no. 69317/14, 30 January 2018.

30 *Akdas v. Turkey*, Application no. 41056/04, 16 February 2010.

31 See S. Barbou Des Places, N. Deffains, Morale et marge nationale…*, op. cit.,* p. 19.

Court to either make bolder assessments and conclusions or, quite to the contrary, become more cautious in its interpretation of the Convention, which is probably the most frequent approach. Accordingly, the margin of appreciation granted to the authorities of the States Parties is all the wider, the more difficult it appears to be to be able to reach a common position on the interpretation of the protection of freedoms and rights in the issue in question in accordance with the requirements of the Convention.[32] The essence of consensus thus lies in the ECtHR's recognition that there has been such a significant social, cultural or legal change in the given issue since the Convention was adopted that it substantiates a different approach by the Court to the violation of rights and freedoms. It thus allows the Court to benefit from another interpretation tool, that is the "living instrument" doctrine.[33]

It is quite hard, however, to resist the impression that the prevailing perception is that there is no uniform European approach in the field of protection of the freedom of expression and the freedom of conscience and religion, where morals play a crucial role. Even laconic acknowledgements that changes did place in this field are not significant enough to witness the emergence of a general consensus. Hence, paraphrasing the Court's deliberations, it can be said that the best-formed consensus in the field under consideration is the consensus that it is extremely difficult to reach a common position of the States Parties to the Convention.

2. The Minimum Common Standard of (Public) Morals and Related Concepts and Phenomena (the "Living Together" Concept)

2.1. The European Court of Human Rights does not only rule on individual rights and freedoms. The Court also attempts to develop minimum criteria for a minimum common standard of safeguarding human rights and freedoms, taking into account local (national) circumstances, traditions and standards. The margin of appreciation plays an important role in this area. Drawbacks of the application of this interpretation tool to morals[34] appear to be compensated by other methods of argumentation.[35]

The criteria for assessing legislation remain closely related to the purposes behind the adoption of the legislative rules. The catalogues of grounds that may substantiate restrictions of the freedoms expressed in Articles 9 and 10 of the European Convention are of a similar nature, and, in addition to safeguarding health and morals, also include other objectives such as public security, protection of public order

32 Dialogue des juges, Conseil de l'Europe 2008, pp. 18–19.

33 See K. Dzehtsiarou, European Consensus and the Legitimacy…, *op. cit.*

34 J. Gerards, Margin of Appreciation and Incrementalism in the Case Law of the European Court of Human Rights, "Human Rights Law Review", 2018, no. 18, p. 505.

35 J. Gerard defines this process an "*incrementalism*".

as well as the rights and freedoms of others. In a general sense, it corresponds to the classical "public reasons".[36]

Over the years, the Strasbourg Court has developed a certain "test" for assessing national measures against the aforementioned articles of the Convention. One of the tested elements is to assess the existence of a "pressing social need" (*besoin social imperiaux*; *Handyside,* para 48)[37] for the interference and whether that interference was proportionate to the objectives pursued.

The question of the public (collective) dimension of the protection of rights and freedoms draws on the famous concept of public morality developed by Patrick Devlin, who took the view that in every community there are certain moral standards, the observance of which is absolutely required by society as a whole. Violation of these standards, whether committed in complete privacy or in public, is not an attack aimed solely against the affected person, but against society as a whole. In the eyes of this British jurist, each society has its own unique moral structure, and must therefore provide conclusive answers to critical questions relating to ethical problems.[38] The lawmaker is not entitled to discretion in deciding what is right or wrong, exercising control over views of individual nations or attempting to achieve the effectively unattainable goal of legislating a true, indisputable morality. Its role is, in fact, to identify the existing basic social norms and to safeguard their observance.[39]

In *Otto-Preminger-Institut v. Austria*, the Court introduced a new category of expressions which are gratuitously offensive to others and which therefore "do not contribute to any form of public debate capable of furthering progress in human affairs" (para 49). It can therefore be assumed that it is a certain utilitarianism in the context of public debate or the lack thereof that is regarded by the ECtHR as the admissibility criterion for the potential restriction on the right to freedom of expression (artistic expression) in accordance with the spirit of mutual tolerance and the aim of protecting religious peace.[40] Notably, a few of the judges who sat on the case, namely Palm, Pekkanen and Makarczyk, filed a joint dissenting opinion in which they highlighted there would be no rationale for the existence of Article 10 if freedom of expression were to be exercised only in conformity with generally accepted opinion. The dis-

36 W. Sadurski, Reason of State and Public Reason, "Ratio Juris" 2014, vol. 27, no. 1, pp. 21–46.

37 In this judgment, the Court made an important analysis of the concept of "necessary", giving it an autonomous character (para 48).

38 P. Devlin, The Enforcement of Morals, New York 1975; idem, Morals and the Criminal Law, 1959.

39 P. Devlin, Democracy and Morality, 1961, (in:) P. Devlin (ed.), The Enforcement…, *op. cit.,* pp. 86–101. The similarities between Devlin's reasoning and the conclusions of the ECtHR's public morality jurisprudence have been highlighted by: K. Jesiołowski, Koncepcja moralności publicznej Lorda Patricka Devlina a orzecznictwo Europejskiego Trybunału Praw Człowieka, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2020, no. 1, pp. 37–51.

40 J. Falski, Glosa do wyroku Europejskiego Trybunału Praw Człowieka z 25 października 2018 r. w sprawie E.S. vs. Austria, skarga nr 38450/12, "Przegląd Sejmowy" 2020, no. 4(159), pp. 215–230.

senting judges held that it should not be open to the authorities of the State to decide whether a particular statement is able to contribute to any form of public debate capable of furthering progress in human affairs, but did not mention who is able to make this decision. The dissenting judges also pointed out the dangers of protecting the interests of a powerful group in society.

In *E.S. v Austria*, the conclusion on the protection of the rights of others stemmed from the Court's assumption that the Convention States are required to ensure peaceful co-existence of religious and non-religious groups and individuals under their jurisdiction by ensuring an atmosphere of mutual tolerance. The Court reiterated that a religious group must tolerate the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith, as long as the statements at issue do not incite hatred or religious intolerance. Incrimination of behaviour that may hurt religious feelings requires that the circumstances of such behaviour were capable of arousing justified indignation. The Court shared the assessment of the national courts that in this case, the applicant's statements were not phrased in a neutral manner aimed at making an objective contribution to a public debate. The applicant's remarks, based partly on inaccurate facts, were capable of arousing (justified) indignation. As regards the sanctions imposed by Lithuanian authorities in *Sekmadienis Ltd v. Lithuania (case 2018)*, where the complaint concerned the advertising of clothes using the images of Jesus and Mary, the Court took a different view. In this case the Strasbourg Court rejected the Lithuanian authorities' arguments in favour of protecting the religious feelings of the Catholic majority. The Court reiterated that freedom of expression also extends to ideas which shock, offend or disturb, while those who choose to exercise the freedom to manifest their religion cannot reasonably expect to be exempt from all criticism.

2.2. In the context of matters of considerable social interest, the concept of *living together*, inspired by French rulings promoting the idea of "*vivre ensemble*", in society seems particularly interesting. It emerged predominantly in those rulings in which the protection of the rights of others clause was invoked in connection with the manifestation of beliefs by wearing clothes appropriate for the followers of a given religion or for performing other religious practices. The dilemmas were induced by the 2010 regulation banning face-covering in public places in France.[41]

The French regulation was not limited to the sphere of religion. Its focus was on concealment of the face, which was incriminated with a penalty (a fine of 150 euros and/or the obligation to complete a relevant civics course). In *S.A.S.*,[42] the Strasbourg Court acknowledged that the ban may have had a discriminatory effect against a cer-

41 *Loi n° 2010–1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public*. The Act defined "public space" as including "public roads as well as places open to the general public".

42 *S.A.S v. France*, Application no. 43835/11, 1 July 2014.

tain group of people and violated individual rights of the applicant.[43] However, the Court came to the conclusion that it was proportionate to the aim pursued, namely the intention to preserve the conditions of "living together" (*vivre ensemble*) as an element of the "protection of the rights and freedoms of others", which is necessary in a democratic society. Furthermore, in the light of the French State's arguments, the ban was objective, reasonable and proportionate to the aim pursued. At the same time, the Court did not share the opinions of third-party interveners who claimed that there was a European consensus against the ban.[44]

The French government's position was that the ban on face-covering in public areas was a response to practices considered by the authorities to be incompatible with elementary rules of social interaction in French society and, more broadly, with the requirement of "*vivre ensemble*". The State sought to protect the principle of interpersonal communication, which it perceived essential to the preservation of pluralism, tolerance and broadmindedness as the hallmarks of a "democratic society" (para 128). Lack of consent for wearing a full-face veil in public places was the choice society made. The Court did not assess whether this regulation was a desirable one (leaving a wide margin of assessment to the States). The Court did, however, note that a State which decides to do so runs the risk of contributing to the reinforcement of stereotypes against certain categories of the population and of encouraging intolerance where its duty is to promote tolerance.

Notably, although the case had a strong ethical and moral aspect, in its judgment the Court did not rely on the morals clause, but found the criterion of *vivre ensemble* to be an element of a limitation clause expressed in the Convention as the "protection of the rights and freedoms of others". The Court gave it a new meaning which was quite controversial from the point of view of the rights guaranteed under the Convention, as pointed out by dissenting judges. Judges Nußberger and Jäderblom did not agree with the sacrificing of individual rights to abstract principles and pointed out that the Court's case law is not clear as to what may constitute "the rights and freedoms of others" outside the scope of rights protected by the Convention. In the view of the dissenting judges, the very general, abstract and vague concept of

43 Although the ban affected mainly Muslim women, it did not have a religious connotation only, as it focused on the fact that the clothing resulted in the concealment of the face. This distinguished the *S.A.S.* case from *Ahmet Arslan and Others*, where it was solely a matter of religious dress, and not the covering of the face. In *S.A.S.* the Court emphasised that the wearing of religious dresses is an expression of cultural identity which contributes to the pluralism inherent in democracy. At the same time, the ECtHR acknowledged the variety of approaches to virtue and morals in the sphere related to the unveiling of the human body.

44 At about the same time, similar solutions were introduced in Belgium with the Act of 1 June 2011 on prohibiting clothing that cover or conceal one's face in whole or in part (*Loi du 1 juin 2011 visant a interdire le porte de tout vetement cachant totalement ou de maniere principale le visage*). Absolute bans on face-covering have also been imposed in Austria, Denmark, Bulgaria and two Swiss cantons. The Netherlands, Spain and Italy also introduced partial, local or by-law bans.

vivre ensemble does not fall directly under any of the rights and freedoms guaranteed within the Convention. It is essential to understand what is at the core of the wish to protect people against encounters with others wearing full-face veils. The majority speak of "practices or attitudes ... which would fundamentally call into question the possibility of open interpersonal relationships". The judges consented that *vivre ensemble* requires interpersonal exchange and it is also true that the face plays an important role in human interaction. According to the dissenting judges this idea cannot, however, lead to the conclusion that human interaction is impossible if the face is fully concealed.

In the light of the foregoing, it is important not to lose sight of an important factor in favour of the *vivre ensemble* conception promoted by the French authorities. In fact, the principle of secularism in France is one of the rudimentary republican principles that guided law-making and legal interpretation. Thus, on the one hand, the Republic should not recognise any religion, yet on the other hand, the State should at the same time guarantee the freedom to practise any religion, and even the obligation to respect any beliefs, including religious beliefs, as well as the equality of all the citizens regardless of their religion or other creed. According to the jurisprudence of the Constitutional Council, the exercise of one's beliefs is forbidden if it aims at liberating a person from the common rules governing relations between the spheres of the collective and the individual. It is *inter alia* for this reason that such behaviour may or even must be subject to some form of limitation in public spaces in France, that is in virtually every, apart from the strictly private, publicly accessible place where one's religious beliefs may potentially be manifested.[45] The Council of State, on the other hand, has regarded the ban on face-covering in public places as the minimum basis for mutual elementary requirements and guarantees of living in a society, which are the conditions for the exercise of other freedoms and which necessitate, where needed, the rejection of certain behaviours which are the manifestations of one's individual will. These fundamental pillars of the republican social contract can thus be the reason that, from the moment of entering a broadly understood public space, an individual cannot deny his or her belonging to a society or usurp the right to refuse showing her or his face to other citizens, thus preventing the person's identification.[46]

45 The decision of the Constitutional Council no. 2004–505 DC 19.11.2004 r. assessing the 2010 law on the face-cover ban (Decision of 7 October 2010, no. 2010–613 DC), the Council acknowledged that the purpose it sought to serve, i.e. the protection of public order, was legitimate and proportionate to the sanctions introduced. At the same time, the Council accepted the views (albeit not explicitly expressed in the Act) that the restrictions laid down in the Act were additionally a measure of counteracting violations of women's rights, particularly with regard to their freedom and equality. The scope of the "public order" notion thus embraced the criterion of the secularity of the public sphere, intended as a means of achieving the aim of *vivre ensemble*.

46 Etudes relatives aux possibilite d'interdiction du port du voile integral, La Documentation Francaise, Paris 2010, at 26 et seq., www.conseil-etat.fr, original citation: J. Falski, *op. cit.,* p. 53.

The Strasbourg Court invoked the *living together* conception in its later judgments,[47] although not always in reference to similar facts and circumstances. In *Osmanoğlu and Kocabaş v. Switzerland (2017)*,[48] it was the refusal of the Public Education Department of the canton of Basel-Stadt to exempt daughters of Muslim applicants from mixed swimming lessons at school that played the key role.

In this case the Court granted States a freedom to develop their curricular programmes "in accordance with their needs and tradition" (para 95). "Needs and tradition" becomes problematic when we consider the way in which "tradition" has been interpreted in previous case law, and most notably in *Lautsi v. Italy (2011)*. One of the critical questions was about the characterisation of the crucifix. In *Lautsi* the language of tradition secured the place of the crucifix within the "European" order. The crucifix is constructed as being a bearer of history, and its continuing legacy is now deemed a part of the heritage of the individual in European human rights.

2.3. It appears that the "living together" (*vivre ensemble*) conception has found solid ground amongst arguments in support of restrictions on rights and freedoms. In France, its birthplace, is has become an important element of the doctrinal con-

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The recent ruling of the Council of State on the rules relating to swimwear, applicable in municipal swimming baths of the city of Grenoble, is quite significant in this context. In fact, the new regulations corresponded to the rules promoted by Islam, that is, women were required to wear a garment commonly known as the "burkini" in public swimming areas. These regulations were challenged in the administrative courts and were subsequently passed on to the Council of State. Its ruling, which emphasises the neutral (secular) nature of public services and upholds the court's finding that the regulations are not compliant with the constitution, is very much rooted in France's republican tradition and the aforementioned principle of state secularism associated with it. The novelty lies in the fact that this principle has recently been supported by an additional regulation, i.e. the act of 24 August 2021 reinforcing respect for the principles of the Republic (loi n° 2021–1109 du 24 août 2021 confortant le respect des principes de la République. JORF no. 0197 of 25 August 2021). The enactment of this act stemmed from the need to intensify the process of rationing the religious beliefs manifesting behaviours. It resulted, *inter alia*, from relatively frequent acts of aggression and terrorism directed against French citizens and the French state. In another secular state, the protection of the rights and freedoms of others and the protection of public order have been recognised by the ECtHR as a necessary social need justifying the interference by the State in the form of introducing restrictions on the promotion of a religious symbol in a public space of a university (*Leyla Şahin v. Turkey*, Application no. 44774/98, 10 November 2005).

47 Similar to the *S.A.S.* case, the dilemmas surrounding the ban on veiling the face in public places have been at the core of the following judgments of 2017: *Belcacemi and Oussar v. Belgium*, Application no. 37798/13, 11 July 2017 (para 53) and *Dakir v. Belgium*, Application no. 4619/12, 11 July 2017 (para 56).

48 *Osmanoğlu and Kocabaş v. Switzerland*, Application no. 29086/1, 10 January 2017. See S. Trotter, 'Living together', 'learning together', and 'swimming together': Osmanoğlu and Kocabaş v. Switzerland (2017) and the construction of collective life, "Human Rights Law Review", 18(1), pp. 157–169.

ception of immaterial public order (*ordre public immaterial)*.[49] It is noteworthy that the issue of morals in the jurisprudence of French courts, particularly administrative courts, is examined precisely in the context of public order. Typically, if such an issue arises in a specific case, the courts would invoke immaterial public order when there is no other substantiation for the ruling.

In defining immaterial public order, emphasis is placed on the protection of an axiological system comprised of objective values which cannot be restricted by the principles of a system of individual rights and freedoms alone. The concept of immaterial public order thus refreshes an ideologically tinged debate as with its philosophical, social and political components, immaterial public order is a much broader issue than just a legal one. The concern is not only for an individual to be dominated by the State, but also that it is a moralistic State that relies on conceptions that are undefined and legally fragile (*juridiquement fragile*).

Conclusions

To summarise these deliberations, it is worth noting that there are still no clearly drawn limits to the possible interference of the lawmakers in the matter of (public) morals. The Convention does indeed set the minimum standards for the protection of human rights and indicates only in general terms that their limitations must necessarily exist in a democratic society. "Necessity" therefore represents the admissibility of interference with the rights of individuals on an exceptional basis, and this precludes an expansive interpretation of admissible actions by public authorities. Necessary measures are therefore those that meet the premise of a "pressing social need" and must be proportionate to the legitimate aim they are intended to achieve. The demonstration that these measures meet these criteria is the task of the State. The absence of the "pressing social need" premise implies a lack of recognition of necessity in a democratic society. The "necessity" in question has an autonomous meaning and evolves with the context in which conventions function in contemporary states and societies, thus contributing to the theory that the convention can indeed be deemed to be a "living instrument". The vagueness of this notion at the same time reveals dif-

49 In accordance with the national law, public order includes order, safety and health in the public (local self-government code). Local authorities have the duty to safeguard public order and the right to use administrative measures (police administrative: prohibitions, restrictions, etc.) under the control of courts. *Le Code général des collectivités territoriales* (L. 2212–1). This traditional catalogue of elements of public order has been expanded by the Council of State by adding respect for human dignity (*dignité de la personne humaine; CE, ass., 27.10.1995, Cne de Morsang-sur-Orge, no 136727: lancer de nains*) and the protection of public morals (*CE 18 dec., Ste 'Les films Lutetia' et Synd. Fr. des producteurs et exportateurs de films, no 36385: caractère immoral du film et circonstances locales; CE 30.09.1960, Sieur Jauffret: lieu de debauche; CE 8.06.2005, Cne de Houilles, no 281084: sex-shop*).

ficulties in making an objective assessment of what, when and under which circumstances the necessary protection of morals should be considered. The emphasis on the public aspect raises the fear of excessive moralism (moralising) by public authorities and the tendency to silence views that are contrary to their value system.

Since the *Handyside v. the United Kingdom* judgment, in which the ECtHR explicitly addressed the issue of morals, the Court has not changed its view that there is no common concept of morals in the European legal environment. Likewise, no uniform conception of the importance of religion in a society in Europe can be established at this point in time. Based on the (public) morals clause, this accords States a particular margin of appreciation to interfere in the rights and freedoms guaranteed under the Convention, viewed through the prism of national legal regulations and the distinct local conditions. According to the strand of the ECtHR's jurisprudence, national authorities are in a better position than an international judge to determine the exact content of the requirements or the necessity of restrictions. In the area of freedom of expression and freedom of thought, conscience and religion, a margin of appreciation is granted to States in many cases. The absence of a European consensus in these areas makes it possible for the national lawmakers to enjoy wide discretion.

The Court's jurisprudence is notable for its search for means to resolve problems with ethical overtones. This has allowed the Court to develop, based on the French judgments, the formula of "living together" (*vivre ensemble*), which is more flexible and perhaps better suited to the "public" aspect of morals. The concept of "living together" has been an important argumentative tool of the Strasbourg Court for some time now. The State seeks to protect the principle of interpersonal communication, which it perceives essential to the preservation of pluralism, tolerance and broad-mindedness as the hallmarks of a democratic society. This shows the protection of an axiological system comprised of objective values, which cannot be restricted by the principles of a system of individual rights and freedoms alone.[50] This in turn continues to necessitate difficult assessments of the extent of States' discretion in restricting individual rights and freedoms to protect society.

The necessity of balancing principles and recognising the interdependency and divergence between collective good and individual good reveals that this issue represents a special manner in which the ECtHR addresses the issue of morals. According a wide margin of appreciation to States helps in the balancing between safeguarding national values and respecting the Convention's requirements as regards protection

50 There are, however, voices in legal scholars' writings in the direction of abandoning the justification of the "protection of morals" by a social necessity, and placing emphasis on the need to protect the dignity of the individual or ensuring that the introduced restrictions do not result in the elimination of the essence of the rights of an individual. Jesiołowski, Koncepcja moralności publicznej…, *op. cit.,* p. 50. In this context the author points to, *inter alia*, ECtHR judgments of 6.03.2017, Yaroslav Belousov v. Russia (application nos. 2653/13, 60980/14); of 20.06.2019, Bayev and others v. Russia (application nos. 67667/09, 44092/12, 56717/12).

of freedoms and rights. Nonetheless, it also undercuts the universal nature of human rights' protection, undermines the solidity of the case law and permits not taking a position on sensitive issues. It is, however, of essence not to lose sight of other concerns highlighted by Judge Antonin Scalia, who said that in a democratic society the binding answer to that value-laden question should not be provided by unelected judges, unqualified to give the people's answer to the moral questions that are inherent in any a priori assessment of human rights.[51]

It seems, however, that in terms of morals, the diversity of cultures and values inherent to the States and societies falling under the ECtHR's jurisdiction will continue to be in favour of leaving a decisive role to national authorities in defining the principles of protecting fundamental rights and freedoms. And the Court will continue to assess and interpret it, as it has done so far, on *a casu ad casum* basis by taking into account the national regulations and the specific circumstances of the violations.

REFERENCES

Barbou Des Places S., Deffains N., Morale et marge nationale d'appréciation dans la jurisprudence des Cours européennes, (in:) S. Barbou Des Places, R. Hernu, Ph. Maddalon (eds.), Morale(s) et droits européens, Bruxelles 2015.

Brems E., The Margin of Appreciation Doctrine in the Case Law of the European Court of Human Rights, "Heidelberg Journal of International Law" 1996, vol. 56.

Delmas-Marty M. (dir.), Raisonner la raison d'Etat. Vers une Europe des droits de l'homme, Paris 1989.

Devlin P., Democracy and Morality, (in:) P. Devlin (ed.), The Enforcement of Morals, New York 1959.

Dworkin R., The Original Position, "University of Chicago Law Review", 1972–1973.

Dzehtsiarou K., European Consensus and the Legitimacy of the European Court of Human Rights, Cambridge 2015.

Etudes relatives aux possibilite d'interdiction du port du voile integral, La Documentation Francaise, Paris 2010, at 26 et seq., www.conseil-etat.fr.

Falski J., Glosa do wyroku Europejskiego Trybunału Praw Człowieka z 25 października 2018 r. w sprawie E.S. vs. Austria, skarga nr 38450/12, "Przegląd Sejmowy" 2020, no. 4(159).

Garlicki L., Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności, Comments to Article 1–18, vol. I, Warsaw 2010.

Garlicki L., The methods of interpretation, (in:) F. Melin-Soucramanien (ed.), L'interprétation constitutionnelle, Paris, Dalloz 2005.

Garlicki L., Wartości lokalne a orzecznictwo ponadnarodowe – „kulturowy margines oceny" w orzecznictwie strasburskim?, "Europejski Przegląd Sądowy", April 2008.

51 A. Scalia, Mullahs of the West: Judges as Moral Arbiters, Rzecznik Praw Obywatelskich, Warsaw 2009, pp. 12, 15.

Garlicki L., Wojtyczek K., comments to Article 31, (in:) Konstytucja Rzeczypospolitej Polskiej. Komentarz, Warsaw 2016, vol. II.

Gerards J., Margin of Appreciation and Incrementalism in the Case Law of the European Court of Human Rights, "Human Rights Law Review" 2018.

Grabenwarter Ch., European Convention on Human Rights. Commentary, Beck/Hart 2014.

Jesiołowski K., Koncepcja moralności publicznej Lorda Patricka Devlina a orzecznictwo Europejskiego Trybunału Praw Człowieka, "Archiwum Filozofii Prawa i Filozofii Społecznej" 2020, no. 1, pp. 37–51.

Kalisz A., Klauzula moralności (publicznej) w prawie polskim i europejskim jako przykład regulacyjnej, ochronnej oraz innowacyjnej funkcji prawa, "PRINCIPIA" LVII–LVIII, 2013.

Lang W., Prawo i moralność, Warsaw 1989.

Leszczyński L., Stosowanie generalnych klauzul odsyłających, Kraków 2001.

Leszczyński L., Tworzenie generalnych klauzul odsyłających, Lublin 2000.

Letsas G., Two Concepts of the Margin of Appreciation, (in:) A Theory of Interpretation of the European Convention on Human Rights, Oxford 2007.

Lis-Staranowicz D., Prawo moralności publicznej, czyli o obowiązkach pozytywnych państwa po wyroku TK w sprawie K 1/20, "Państwo i Prawo" 2021, no. 8.

Łętowska E., Interpretacja a subsumpcja zwrotów niedookreślonych i nieostrych, "Państwo i Prawo" 2011, no. 7–8.

Macdonald R.St.J., The Margin of Appreciation, (in:) R.St.J. Macdonald, F. Matscher, H. Petzold (eds.), The European System for the Protection of Human Rights, Dordrecht 1993.

Muzny P., La technique de proportionnalité et le juge de la Convention européenne des droits de l'homme. Essai sur un instrument nécessaire dans une société démocratique, Marseille 2005, vol. II.

Pagotto T., The "living together" argument in the European Court of Human Rights case-law, "Studia z Prawa Wyznaniowego" 2017, no. 20.

Sadurski W., Reason of State and Public Reason, "Ratio Juris" 2014, vol. 27, no. 1.

Scalia A., Mullahs of the west: judges as moral arbiters, Rzecznik Praw Obywatelskich, Warsaw 2009.

Schabas W.A., The European Convention on Human Rights, Oxford University Press 2015.

Stelmachowski A., Klauzule generalne w prawie cywilnym, "Państwo i Prawo" 1965, vol. 1.

Szot A., Klauzula generalna jako ponadgałęziowa konstrukcja systemu prawa, "Annales Universitatis Mariae Curie-Skłodowska Lublin – Polonia", vol. LXIII, 2, Section G, 2016.

Trotter S., 'Living together', 'learning together', and 'swimming together': Osmanoğlu and Kocabaş v. Switzerland (2017) and the construction of collective life, "Human Rights Law Review", no. 18(1).

Wiśniewski A., Koncepcja marginesu oceny w orzecznictwie Europejskiego Trybunału Praw Człowieka, Gdańsk 2008.

Wiśniewski A., Znaczenie zasady konsensusu w kształtowaniu europejskich standardów praw człowieka, "Gdańskie Studia Prawnicze" 2011, vol. XXV.

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Poles' Attitudes to the Concept of Whistleblowing. Historical and Present Background

Abstract: The issue of whistleblowers is one of great interest and controversy because of EU Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. While the English meaning of "whistleblowing" is inherently positive and not associated with anything negative, the Polish translation of the word, "*sygnalista*", often does not evoke positive associations. Blowing the whistle versus snitching are two types of activity and it is important to understand the essence of these terms. Unfortunately, the linguistic connotations indicate that Poles do not always read the proper intentions when hearing the word "whistleblower". Whistleblowing is often seen in Poland as a reprehensible activity, and whistleblowers are usually referred to as denouncers. The meaning of the word "whistleblower" in Poland is rather pejorative. European history, experienced through Nazi practices, the spying age of the Cold War and invigilation by the Soviet Union, has developed firmly established hostility against so-called informers. That is why it is so difficult to attain a level of positive understanding of the meaning of this word in Poland. The current realities of operating an organization, regardless of its legal nature, force it to conform to certain standards. These standards, arising either from legal norms or good practice, form the so-called compliance system. Regulations on whistleblowing are inevitably part of it.
Keywords: compliance, informing, whistleblower, whistleblowing procedures

Introduction

Imagine a person who works in a particular organization and who is engaged in illegal activity. Say he uses the company's credit card to pay for private dinners, accounting them as if they were business ones. What would you do if you found out? Would you say something to your boss? Would you confront your colleague directly

or would you turn to your supervisor? Answering these questions is not that easy and depends on the perception of the role of whistleblowers in particular circumstances and cultures.

While the English meaning of "whistleblowing" is inherently positive and not associated with anything negative, the Polish translation of the word, *sygnalista*, often does not evoke positive associations. Blowing the whistle versus snitching are two types of activity and it is important to understand the essence of these terms. Unfortunately, the linguistic connotations indicate that Poles do not always read the proper intentions when hearing the word "whistleblower".

Whistleblowing is often seen in Poland as a reprehensible activity, and whistleblowers are usually referred to as denouncers. The meaning of the word "whistleblower" is very often pejorative, and in the Polish language one can find many terms used interchangeably for this concept. Examples of such words are: snitch, rat, mole, sleeper, informer, agent, spy, ear, collaborator. [1] None of these words capture the true nature of whistleblowing. For the purposes of this article, the term "whistleblower" will be used in a positive context, while the term "informer" will be used in its negative terms.

An informer in this spirit acts in his or her own self-interest for personal gain. A whistleblower reports information about suspected illegal or unethical activity in good faith, motivated by the good of his or her workplace, concern for the organization's interests or the public interest. It has been repeatedly stressed that negative evaluations of whistleblowing are closely related to the mentality of a given society and that former socialist societies have a greater problem accepting whistleblowing as a praiseworthy activity.[2]

In Poland, whistleblowers are most often associated with secret collaborators. The whistleblowing associated with denunciation may be conditioned by our history and times when cooperation with employer and state was seen as treason.

The issue of whistleblowers is very popular these days, thanks to Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law[3]. Member states were obliged to implement its provisions into national law by 17 December 2021. Poland has not yet fulfilled this obligation, and the Polish law on the protection of whistleblowers is currently in the legislative process.

The main objective of this paper is to determine what the contemporary attitudes of Poles towards the concept of whistleblowing are, considering the historical

1 A. Lewicka-Strzałecka, Instytucjonalizacja whistleblowingu w firmie jako wyzwanie etyczne, "Diametros" 2014, no. 41, p. 79.

2 *Ibidem*, p. 79.

3 Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, O.J. UE L 305/17.

background. Moreover, the author's intention is also to indicate the role that whistleblowing procedures play in organizations and to determine what the social and corporate benefits associated with whistleblowing are.

Due to the chosen purpose of the paper, the main research method adopted in this study is the descriptive and dogmatic method. It was not the author's intention to conduct her own research. For the purposes of this paper, available sources and studies were used. An in-depth source of information was the report by G. Makowski and M. Waszak referenced later in the paper.

European history, experienced by Nazi practices, the spying age of the Cold War and invigilation by the Soviet Union, has developed firmly established hostility against so-called informers. That is why it is so difficult for us to attain a level of positive understanding of the meaning of this word.[4]

The phenomenon of whistleblowing is much more favourably received in public opinion in Western European countries and the USA, particularly where the legal system is based on common law, than in post-Soviet or Eastern Bloc countries. In common-law countries, "ethical denunciations" and informers are protected by the state, while in countries with a continental legal system, such protection does not exist. This is particularly evident in countries that were under German occupation during World War II and in countries with totalitarian regimes after the war. Informers there were perceived by society in a negative context. For this reason, there is a tendency among Poles to "cover up" negative phenomena in the workplace rather than reveal them. Disclosing irregularities in the organization may be treated as unethical because of a lack of loyalty to the employer. The truth however is quite the opposite – whistleblowing is as ethical as the behaviour revealed by it is unethical.[5]

1. Definition of Whistleblowing and the Main Differences between Whistleblowing and Informing

The term "whistleblowing" made its appearance in the public debate in the late 1950s to present the idea of a sports referee who stops the action when players have committed a foul. At the beginning it was used for describing those professionals who reported threats to the safety of customers, finally becoming a way of describing the public exposure of examples of corruption or fraud. The core of whistleblowing lies in a dilemma between being loyal to the organization or exposing some wrongdoing in it. To make it all much harder, reporting wrongdoing typically has consequences for

4 H.Ch.L. Yurttagul, Whistleblower Protection by the Council of Europe, the European Court of Human Rights and the European Union, Brussels, 2021, pp. 3.

5 K. Ziółkowska, Whistleblowing jako przejaw dbałości o dobro zakładu pracy (in:), B. Baran, M. Ożóg (eds.), Ochrona Sygnalistów. Regulacje dotyczące zgłaszających nieprawidłowości, Warsaw 2021, p. 81.

the whistleblower and for the organization itself. Unfortunately, many whistleblowers face tragic personal consequences.[6]

This term was also used in the 1970s by Ralph Nader – a well-known, highly respected American lawyer and social activist – to describe the action of a pro-socially motivated individual informing those around him that his organization is violating the public interest. In reaching for the new term, Nader wanted to avoid the negative connotations associated with disclosing matters considered confidential.[7]

In the *Merriam-Webster Dictionary* the term "whistleblower" is explained as: "an employee who brings wrongdoing by an employer or by other employees to the attention of a government or law enforcement agency." [8]

Generally speaking, whistleblowing is the practice by which a person who is part of a particular organization voluntarily informs about some wrongdoings with the expectation that a proper response and action will be taken. Bearing in mind what was said above we can distinguish six main elements of whistleblowing: the action of reporting, the whistleblower, the place where the informing appears, the content of the compliant, the channel of reporting (internal and external) and the intention of the whistleblower. [9]

It is not the purpose of the article to precisely define the term "whistleblowing". Besides, this word is now widely known and understood. It is rather intuitional, so these remarks are of an orderly nature.

Breaking with the thesis that links the mentality of society to the way whistleblowing is understood requires the identification of several issues. The main point is to distinguish whistleblowing from other denunciatory and informing activities. Additionally, it is important to define the societal benefits of whistleblowing – the benefits that accrue to the organization itself.

It seems to be difficult to distinguish permissible whistleblowing from required whistleblowing. It happens that by reporting wrongdoing, whistleblowers face hard consequences such as retaliation, losing their job, or even death threats. Even if blowing the whistle is morally appropriate it could destroy relations among co-workers and harm the reputation of the organization.[10]

The basic and most important difference between whistleblowing and informing is the purpose for which the former is done. When we talk about whistleblowing, it is about actions done in the public interest, out of loyalty to colleagues and to one's organization. We see or suspect violations and we report them. We feel that boundaries have been crossed that should not have been crossed, and we report it to the

6 E. Ceva, M. Bocchiola, Is Whistleblowing a Duty? Cambridge 2019, pp. 4–5.
7 A. Lewicka-Strzałecka…, *op. cit.,* p. 3.
8 https://www.merriam-webster.com/dictionary/whistleblower.
9 E. Ceva, M. Bocchiola…, *op. cit.,* pp. 21–22.
10 *Ibidem,* pp. 11–13.

appropriate people. The whistleblower must act in good faith. This means that the whistleblower must believe that the information he provides is true and that he is reporting a behaviour or phenomenon that is contrary to specific rules, the violation of which constitutes a danger to others. In addition, a whistleblower informs about such behaviour that, if undertaken in connection with an activity, may cause harm to someone because it violates a specific legal or ethical framework. The whistleblower system assumes that awareness of irregularities occurring in an organization is a necessary element for its proper functioning. Therefore, when building the compliance system in our organization we act to systematize certain processes to minimize the risk of serious violations.[11]

Denunciation occurs when the person making the report is acting solely in his or her own interest or in retaliation against another person. He or she is not acting in the common interest, nor for the common good. When passing on information, he is often hoping to gain an advantage. The informer does not care about the truth of his words. He is only interested in whether he can be proven a liar. An informer reports violations that may humiliate another person or lower confidence in that person, although they are not related to that person's professional activity.[12]

2. The Situation of Whistleblowers in Polish History

When analysing the meaning of the term "whistleblowers" in the Polish organizational space, most references can be found to the contemporary situation and possible references to the communist period after World War II. For a complete picture of the situation, it is however also worth focusing on an earlier period, since the concept of whistleblowing was already known in Poland in the 16th century.

Reporting violations of the law is nothing new in Polish legislation. Only the socio-political context of this phenomenon has changed. The key issue is the question of the sources of law and the formation of a model of whistleblowing, whether in the category of a moral obligation, a social duty or a legal injunction, the violation of which may have specific consequences. Reaching back to past legal institutions does not provide a direct translation to the regulation of modern whistleblowing legal arrangements. However, their common denominator remains the reporting of deviations from legal norms.

The term "whistleblower" was not an expression of old Polish legal language. It was a term of Anglo-Saxon legal culture. However, regardless of the wording used, the fact remains that whistleblowing itself is a legal and factual phenomenon that has existed since the beginnings of Polish statehood. The issue of naming legal institu-

11 D. Tokarczyk, Whistleblowing i wewnętrzne postepowania wyjaśniające, Warsaw 2020, pp. 18–20.

12 *Ibidem,* pp. 18–19.

tions is merely a current convention of the legislator, and the problem of violation of law and whistleblowing has been present in the Polish legal system for a long time.[13]

In the historical context, from the point of view of signalling violations of the law, it is necessary to point out the special role of the Christian religion, which obliged to observe the law. The religious rota of the coronation obliged the king to obey the law, and immediately after the coronation the so-called general confirmation *(confirmatio generalis iurium*) was drawn up in the form of a royal privilege. Flagrant violations of the law could be grounds for disobedience in accordance with the doctrine of the right of resistance developed in the Middle Ages. The exercise of this right was related to a special procedure for signalling the violation of the law and evaluating the facts.[14]

In the 16th century, very serious political changes took place in the Crown of the Kingdom of Poland with the rise of the nobility. At that time there was talk about the so-called well-mannered state. This meant cooperation between the magnate oligarchy and noble democracy. In practice, both groups were supposed to complement and restrain each other to achieve harmony and prevent abuses and irregularities. The two groups were also seen as two centres of sovereignty and therefore no single authority could be identified in the system of government. Therefore, a superior had to be sought in the form of a system of norms and values. The supreme factor was the law.[15]

In such an arranged legal order, where the law was still customary law, the concept of exorbitance – irregularities referring to unlawful actions of state organs – appeared. The first legal bases for reporting exorbitances and their removal appeared in the Articles of Henrician (1573) and the pacta conventa.[16]

Their provisions implied the necessity for the king-elect to swear not only election promises, but also the implementation of the postulates for the remedy of exorbitance. This regulation was reflected in the pacta conventa, a public-legal agreement between the elector and the electors.

The Constitution of 1609 contained provisions on the procedure for admonishing the monarch in case of violation of the law by him and his officials. By exorbitance the nobility understood mainly those abuses which infringed on their rights and freedoms, and also constituted a transgression by the monarch of the rules of state functioning, leading to a change in the absolute system.[17]

13 M. Ożóg, Sygnalizacja naruszeń prawa a zasada praworządności w dziejach prawa polskiego- zarys problematyki (in:) B. Baran, M. Ożóg (eds.), *op. cit.,* pp. 241–242.

14 Ibidem, p. 246.

15 I. Lewandowska-Malec, Sposoby sygnalizowania nieprawidłowości w Rzeczypospolitej Obojga Narodów, (in:) B. Baran, M. Ożóg (eds.), *ibidem,* pp. 229–230.

16 Articles of Henricans, 11 May 1573, https://historia.org.pl/2009/10/27/artykuly-henrykowskie-11-maja-1573-r/.

17 I. Lewandowska-Malec, Sposoby sygnalizowania nieprawidłowości w Rzeczypospolitej Obojga Narodów, (in:) B. Baran, M. Ożóg (eds.), *op. cit.,* pp. 234–235.

It should be emphasized that the Constitution of 1609 guaranteed freedom of speech to the nobility, which in turn influenced the formation of the institution of the *liberum veto*.

Demanding the implementation of the law and taking action to eliminate abuses was mainly in the form of expressing the position of the nobility. The nobility verbally criticized the actions of royal officials, and by extension the king himself. There were also written anonymous reports.[18] It is worth pointing out that in some situations whistleblowers were even rewarded by the state.[19]

It is noteworthy that the implementation of exorbitance was very popular. Abuses against the law were exposed by the nobility very often. It was a kind of control over the management of the state. Exorbitance indicated not only irregularities in the application of the existing law, but also constituted demands for its change or the need to adopt new solutions.

What is most important, however, is that informing about irregularities was not perceived as denunciation and did not expose anyone to ostracism.

The period of partitions at the end of the 18th century significantly altered the development of the institution of whistleblowing on Polish soil. The legal situation in each partition differed due to the specificity of the political system of the individual partitioning powers. The common denominator, however, was the hostile attitude towards everything Polish, towards tradition, culture and language. The basic problem became the lack of identification of members of society with the law. For obvious reasons, reporting violations of the law was not received positively. Any activity in public life was often associated with social ostracism and accusations of national treason. This period in history significantly influenced later the public perception and meaning of the term "whistleblowers".

The legal system became an instrument of oppression, which led to a decline in respect for the law among Poles subjected to foreign jurisdiction. As a result, providing information about violations of the partition laws could not gain approval. This type of behaviour was often undertaken for selfish reasons and out of a desire for financial gain, which demoralized the Polish nation. The upholding of the law as a value was seriously undermined. History shows how important the concept of the rule of law is for the formation of citizens' attitudes about reporting violations of law. [20] During the partition period, no criticism of the government was permitted. All this was due to the lack of an effective system of human rights and freedoms, especially freedom of expression. Therefore, whistleblowing had no guarantee of fair consider-

18 S. Ochmann-Staniszewska, Pisma polityczne z czasów panowania Jana Kazimierza wazy 1648–1668. Publicystyka-eksorbitancje-projekty-memoriały, vol. 3, 1665–1668, Warsaw – Wrocław 1991, t.3.

19 J. Tazbir, Silva rerum historicum,, Warsaw 2002, p. 90.

20 M. Ożóg, *op. cit.,* pp. 249–250.

ation without fear of retaliation. Besides, the relaxed approach towards obeying the law by the authorities was not without its impact on the attitudes of the members of society.

In the years 1918–1945, Poland underwent enormous changes in its social and political system. From the point of view of the issue of whistleblowing the presence of administrative judiciary in the system of the Second Republic was of particular importance.

The Code of Criminal Procedure of 1928[21] regulated that everyone had the right, and every office within the scope of its activities the duty, to notify the competent authority of the commission of a crime prosecuted *ex officio*. It should be pointed out that the obligation to inform about violations of the law concerned only the public administration. Citizens had the right to do so.

This legal solution certainly affected the perception of the institution of whistleblowing and gave it a pejorative overtone.

The law of the People's Republic of Poland (PRL), in a decree of 30 October 1944[22], defined criminal responsibility for evading the obligation to denounce certain criminal acts under penalty of death.

In the above-mentioned Code of Criminal Procedure, citizens had the right to report irregularities, while in the decree, failure to report them could result in the death penalty.

Another example is the Little Penal Code of 1946[23], which made it obligatory to denounce persons who carried out activities against the government apparatus of the time. This led to a perpetuation of distrust in the organs of state and excessive cooperation with it. This situation certainly contributed to the emergence and consolidation of difficulties in the functioning of whistleblowers in Poland. The lack of systemic guarantees made it virtually impossible for whistleblowers to function.[24]

Such an approach shows that the development of civil society and the idea of shared responsibility for the common good were alien to the legislative authorities of the time, and past experiences effectively shaped later attitudes towards whistleblowing in Poland. In the communist era, whistleblowing concerned reports of violations against the interests of the state and of typical crimes, including criminal offences. Under the totalitarian regime, the scope of whistleblowing was very broad in the case of political crimes. This was especially true in the case of anonymous denunciations,

21 Code of Criminal Procedure of 19 March 1928 – consolidated text Journal of Laws 1928, no. 33, item 313, as amended.

22 Decree on State Protection of 30 October 1944, no. 10, item 50.

23 Decree on especially dangerous crimes during the period of national reconstruction of 13 June 1946 no. 30, item 192.

24 T. Kocurek, Działalność sygnalistów jako przejaw społeczeństwa obywatelskiego w szerokim kontekście historycznoprawnym (in:) B. Baran. M. Ożóg, *op. cit.,* pp. 263–264.

which were often actions aimed at harming another person. The social assessment of cooperation with the authorities was very negative.

Only the Constitution of 1997[25] enabled the realization of democratic standards. Its adoption made it possible to begin introducing protection for whistleblowers with a sense of responsibility for the community.[26]

3. Polish People's Attitudes to Whistleblowers Today

Despite the often negative attitudes towards whistleblowing, organizations have conducted a number of investigations. This issue has recently, through Directive 1937/2019, become an important element in the discussion of compliance management in organizations.[27]

Whistleblowing is still commonly associated with simple denunciation. Where it is a case of "denunciation for a good cause", it is assumed that the whistleblower should act for a good cause and not expect any additional reward.

In Anglo-Saxon societies, where the awareness of the "public interest" is much better developed, people are less likely to see anything sinister even in such matters as the story of Bradley Birkenfeld, who in the United States exposed the financial malpractice of leading European banks.

He himself was an accomplice, but he filed a report and served a prison sentence. In return for his services, he received a portion of the taxes recovered from the U.S. treasury (he was paid over $100 million).

Even though he himself was an accomplice, he ultimately did his part by ensuring that society lost less or regained the loss, and for that he should be rewarded.

In Anglo-Saxon culture, this is perfectly acceptable, otherwise it would be difficult to expect that legal regulations in this area would gain social and political support.[28]

In the Polish culture of compliance, the answer to the question of what an employee who witnesses a criminal act should do captures well the essence of the attitudes towards the institution of whistleblowing.

In order to present the most important aspects of the attitudes of Poles to the concept of whistleblowing, the author decided to use the results of a study by G. Makowski and M. Waszak[29]. The research was survey-based and aimed to show what the

25 Constitution of the Republic of Poland of 2 April 1997, no. 78, item 483.

26 M. Ożóg, *op. cit.,* pp. 253–257.

27 D. Tokarczyk, *op. cit.,* p. 9.

28 *Ibidem,* p. 9.

29 Most of the information in this section was taken from a report produced as part of the Making a real change in Poland project. Citizen's bill on whistleblowers implemented between 2017 and 2019, G. Makowski, M. Waszak, Gnębieni, podziwiani i… zasługujący na ochronę. Polacy o sygnalistach, Warsaw 2019.

attitudes of Poles to whistleblowing are. The background of the conducted research was the ongoing efforts in Poland to bring about the enactment of the Law on the Protection of Whistleblowers and the adoption by the EU in 2019 of the Directive on the protection of whistleblowers.

In the referenced survey, respondents were asked, among other things, about:

- compensation paid by the employer to a whistleblower who previously disclosed the abuse and was subsequently dismissed;
- access to free legal aid provided by the state;
- protection from accusations of defamation and violation of personal rights when they are related to the disclosed abuse;
- compensation paid by the state in the event of job loss, granted for the duration of a court hearing related to the disclosure of the abuse;
- guarantees of anonymity provided by external bodies to which the whistleblower goes with information about abuse (e.g., law enforcement, inspection authorities).

In addition, respondents were also asked if they would have informed their supervisor about the violation and how whistleblowers should not only be protected, but also rewarded by the state, in return for their contribution to protecting the public interest.

In the survey there were about as many respondents who said they would inform their superiors about such a situation (26%) as there were respondents who would not do so (27%). Some would make the decision dependent on certain circumstances (16%). However, as many as 29% of respondents gave the answer "I don't know". This testifies to the confusion of Poles about what to do and how to behave in difficult situations when one is a witness to a crime (violation of public interest) but remains bound by colleague and employee relations.

It is interesting to analyse the responses to the open-ended question posed to respondents who answered "It depends". Some respondents chose not to explain what they would depend on, but as many as 93% gave an expanded answer. There were four predominant types of factors that influence the decision:

- the scale and persistence of the violations/abuses – the recurrence of the abuse, the value of the bribe, and the type of bribe;
- relationship with the person committing the abuse – camaraderie, liking; personality type of the one committing the abuse;
- circumstances of abuse – in this case, the respondents' answers lacked any indication of what kind of circumstances might prompt them to report the abuse; the most common answers were general statements such as "it depends on the situation";

– the perpetrator's willingness to engage in dialogue before reporting - if an admonition would do nothing, respondents would have no qualms.

What is most interesting in these responses is the tendency to turn a blind eye when the scale of the abuse is small or when personal relationships are close. A bribe is a crime; even the promise of one is a crime, regardless of the type, scale or kind.[30]

Meanwhile, respondents seem to tend to absolve others of even obvious violations of the law, which, like bribes, are extremely amoral because they usually serve to extract personal benefits in exchange for something that is due to us anyway by law or other norms (e.g. access to some services or public goods). This in turn may indicate a deficit of education and civic culture (of which respect for the law is a part). The issue of indifference in responding to workplace corruption abuse is further illuminated by responses to the question of why people in general are reluctant to report violations. This is a kind of projective question because it does not directly concern the respondent but makes him think about why others don't do it, which is always filtered through their own attitudes and experiences.

It turns out that the most frequently cited reason for not reporting the abuse to superiors is fear of being seen as a "whistleblower". This means that a large proportion of Poles will not react to abuse in their workplace simply because they fear social ostracism. Such a reaction fully reflects the attitude of Poles towards the institution itself, which seems to derive to a large extent from understanding the meaning of the word "whistleblower" in Polish organizational culture.

It is impossible to talk about whistleblowers without making at least a few comments about compliance. It should be emphasized that the concept of whistleblowing and the related procedures for protecting whistleblowers are part of the broader compliance system in an organization. In Poland, this concept is still often a barrier that organization managers do not want to overcome. The reference point for compliance in an organization is the individual – a potential source of irregularities whose occurrence can have a number of dangerous consequences. These can include loss of credibility in business relationships, loss of customers and business partners or even liquidation of the entity. Compliance activities are designed to prevent irregularities, and if they do occur, to take appropriate countermeasures. A well-built compliance system is also an assessment of the risk in a given area, which the organization can afford.[31]

From the point of view of the organization's interests, internal proceedings as part of the compliance have many advantages over proceedings conducted by external bodies. By reacting to irregularities themselves, it is possible to prevent the occurrence of serious irregularities, which is not possible in the case of external bodies,

30 *Ibidem,* pp. 10–13.

31 B. Jagura, Rola organów spółki kapitałowej w realizacji compliance, Warsaw 2017, p. 21.

which usually initiate proceedings after a criminal act has already been committed. Conducting an internal investigation also allows a company to avoid a situation in which people from outside the organization gain knowledge about processes and irregularities occurring in the organization, which is often uncomfortable for the company. Moreover, acting internally, the organization can quickly react and take appropriate steps. And perhaps most importantly, disclosing certain circumstances to the outside is not in the interest of the organization. Internal investigations should be a key element of the compliance management system. Whistleblowing makes it possible to examine the state of implementation and application of procedures by the personnel of a given organization and to notice gaps in the implemented system, as well as its defects or areas requiring additional interference.[32]

As indicated above, the meaning of the word whistleblower simply connotes badly. It will take time to change these attitudes. The fact that compliance is also something relatively new which Polish employers are still getting used to does not help in this situation. Employers often ask: "Why do I need these regulations?" or "Do I have to have them?" The starting point for them is primarily the legal basis, which means that employers want to regulate only those areas that are covered by legal obligations. Wherever there is talk about ethical codes or principles of good cooperation, reactions are still very often different. Unfortunately, there are far fewer employers who approve of global trends, where building compliance systems is their ally. This situation, according to the author, greatly affects the understanding of the meaning of the word "whistleblower" in the Polish space and thus affects attitudes towards the concept itself.

This, in turn, indicates that there are significant deficits in general civic education concerning such issues as the ethos of the worker. If the issue of the public interest or the common good were better ingrained in Polish society (through formal education at school and informal education in peer groups, at work, etc.), then the word "*sygnalista*" would not have such a negative connotation and people would thus have a different attitude towards the institution of whistleblowing.

The fear of being considered a "whistleblower" when speaking out about a threat to society or a particular community (e.g. a workplace) would certainly not be so strong. It is worth thinking about the development of the organization's culture and the compliance system in its broadest sense.

32 D. Tokarczyk, *op. cit.,* pp. 10–11.

Conclusions

The main objective of this paper was to determine what the contemporary attitudes of Poles towards the concept of whistleblowing are, considering the historical background. The author's intention was also to measure the role that whistleblowing procedures play in organizations and to determine what the social and corporate benefits associated with whistleblowing are.

The attitudes of Poles towards the institution of whistleblowing are not very good. Many of us still view the functioning of this institution negatively, questioning its sense. This is undoubtedly influenced by our history, especially the era of the communist regime, in which this concept was mainly associated with denunciation. A lack of trust in the state and society has been passed down through the generations, learned through centuries of partitions and communism, which is not conducive to thinking in terms of the common good.

The growing role of compliance and the fact that more and more organizations understand its idea gives hope that in the future we will understand what the main purpose of whistleblowing is and we will stop referring pejoratively to people who report violations of law.

If whistleblowing is clearly separated from denunciation by a given organization and is free of negative linguistic or historical connotations, it should not meet with negative moral evaluation. It is the responsibility of management to ensure that whistleblowing is properly understood by those associated with the organization. Adequate training, encouraging ethical conduct, and explaining the difference between whistleblowing and denunciation help to increase public awareness of whistleblowing.

In connection with the direction of European law development and the obligation for member states to adopt national legislation in this regard, acceptance of the concept of whistleblowing can be expected. Wrongful historical associations require that appropriate educational measures be taken to properly shape attitudes of social responsibility for the common good.

REFERENCES

Ceva E., Bocchiola M., Is Whistleblowing a Duty? Cambridge 2019.

Code of Criminal Procedure of 19 March 1928 – consolidated text Journal of Laws 1928, no. 33, item 313.

Constitution of the Republic of Poland of 2 April 1997, no 78, item 483.

Decree on especially dangerous crimes during the period of national reconstruction of 13 of June 1946 no. 30, item 192.

Decree on State Protection of 30 October 1944, no. 10, item 50.

Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, O.J. UE L 305/17.

Jagura B., Rola organów spółki kapitałowej w realizacji compliance, Warsaw 2017.

Lewicka-Strzałecka A., Instytucjonalizacja whistleblowingu w firmie jako wyzwanie etyczne, "Diametros" 2014, no. 41, pp. 77–98.

Makowski G., Waszak M., Gnębieni, podziwiani i… zasługujący na ochronę. Polacy o sygnalistach, Warsaw 2019.

Ochmann-Staniszewska S., Pisma polityczne z czasów panowania Jana Kazimierza Wazy 1648–1668. Publicystyka- eksorbitancje-projekty-memoriały, vol. 3, 1665–1668, Warsaw – Wrocław 1991, t.3.

Ożóg M., Sygnalizacja naruszeń prawa a zasada praworządności w dziejach prawa polskiego – zarys problematyki (in:) B. Baran, M. Ożóg (eds.), Ochrona Sygnalistów. Regulacje dotyczące zgłaszających nieprawidłowości., Warsaw 2021, pp. 241–261.

Tazbir J., Silva rerum historicum, Warsaw 2002.

Tokarczyk D., Whistleblowing i wewnętrzne postepowania wyjaśniające, Warsaw 2020.

Yurttagul H.Ch.L., Whistleblower Protection by the Council of Europe, the European Court of Human Rights and the European Union, Brussels, 2021.

Ziółkowska K., Whistleblowing jako przejaw dbałości o dobro zakładu pracy (in:) B. Baran, M. Ożóg (eds.), Ochrona Sygnalistów. Regulacje dotyczące zgłaszających nieprawidłowości, Warsaw 2021.

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Legal and Non-Legal Image of Fox Hunting and Shooting – the Impact of Globalization on National and International Perceptions of the World

Abstract: The aim of this paper is to provide some insight into legal definitions of fox hunting in the United Kingdom and *polowanie na lisy* in the Republic of Poland and to scrutinize the differences in the legal meaning of the two terms in question and their social perception. The goal of the study is to show that apparently similar concepts may in fact differ significantly and treating them as equivalents may lead to miscommunication. The author will apply the following research methods: the comparative law analysis of legal concepts of fox hunting and *polowanie na lisy*, and the lexical analysis of the terms in question in legal and non-legal genres. The research findings strongly indicated that globalization and social media have a massive impact on perceptions of various phenomena by people, who frequently stereotype the reality, assuming that well-distributed and popularized "foreign" is identical to "native". The misunderstanding of such culture-bound terminology may have serious consequences which are already visible in social debates and may negatively affect the legislative process.
Keywords: culture-bound terminology, interlingual communication, legal language, legal translation, system-bound terminology

Introduction

Words, which in linguistics are called signs, in general enable us to communicate. However at the same time one needs to realize that words create our perceptions, and in order to communicate effectively we need to have the same associations when hearing a given selection of words constituting a message. Therefore some lin-

guistic theories distinguish communicative communities[1] or discourse communities,[2] that is to say groups of people who use a specific language which is understood by a given group of people and may not be properly understood by other people who are community outsiders. The process of translation is the process of effective communication in interlingual settings. In order to ensure efficiency of the process of communication between participants communicating in two different natural languages one needs to resort to the help of a translator or interpreter. When focusing on interlingual communication, translation scholars turn attention to the fact that in order to understand messages we need to know the culture of the source and target language communities. Without profound knowledge of those two cultures the transfer of meaning from one language into another may be unsuccessful due to the distortions of meanings. That phenomenon has been described in reference to numerous languages for specific purposes that are significantly affected by local cultures. Among such languages we may enumerate language of history, the language of the law, the language of ethnography, culinary language but also the language of zoology and botany as well as the language of hunting. In accordance with the Sapir–Whorf hypothesis the languages we use affect our perception of the world. In other words, languages are sort of lenses through which we perceive the surrounding world. The more the languages and cultures differ, the more difficult it is to translate messages from one language into another, and consequently the more knowledgeable the translator must be to successfully translate texts and avoid traps awaiting him or her. The extra linguistic knowledge is necessary to properly decode messages in one language and convert them into messages in another language. As it turns out the extralinguistic knowledge is on the one hand separate from the source and target languages but it is on the other hand affected by them to some extent. Therefore, not only does the structure of used language affect the perceptions and cognition of humans, but also does the culture, tradition, legislation, climate, geographical location, environmental features and many others. The purpose of this paper is to provide some insight into the difficulty of avoiding the negative impact of globalization on the perception of culture-bound concepts and their translation.

The author provides an analysis of the English term *fox hunting* (also sometimes spelled *foxhunting*) and the Polish term *polowanie na lisy* (literally translated "fox hunting") together with their connotations in the British and Polish hunting and legal realities. The terms are compared, despite their differences, because in numer-

1 L. Zabrocki, Wspólnoty komunikatywne w genezie i rozwoju języka niemieckiego. Część I. Prehistoria języka niemieckiego, Wrocław/Warsaw/Kraków 1963.

2 J. Porter, Audience and Rhetoric: An Archaeological Composition of the Discourse Community, New Jersey 1992; J.M. Swales, Genre Analysis: English in academic and research settings, Cambridge 1990; J.M. Swales, Reflections on the concept of discourse community, "ASp La revue du GERAS" 2016, vol. 69, pp. 7–19.

ous papers and books that are translated from English into Polish they are used as translational equivalents although they should not be. The authors of works on animal rights and the ethical treatment of animals frequently refer to fox hunting as the term denoting various methods of fox killing, which indicates that they do not fully understand the meaning of the terms referring to the issue at hand.[3] The aim of the paper is to show why they are not equivalent nowadays. Therefore, the essential and accidental characteristics of the two concepts are compared to prove that they are not translationally equivalent. What is more, the impact of globalization and the internet is highlighted to show how negative perceptions of a foreign phenomenon may affect human attitudes to native culture and tradition. For this purpose, the social and legal semiotic framework is established to analyse the issue at hand.

First the author will describe research methods and material. Second, a brief insight into the semiotic context of the issue at hand will be provided. Third, the legal regulations on hunting foxes in the United Kingdom and the Republic of Poland will be scrutinized and the essential and accidental characteristics of the meanings of the two terms will be juxtaposed. The terms have been selected because there are more and more publications condemning hunting nowadays. As far as Polish literature in that respect is concerned, authors who represent humanities and social sciences (law, philosophy, ethics) very frequently turn out not to be well versed in the Polish model of hunting and they frequently give examples from the UK or USA as if they were Polish hunting practices[4]. Possible translations of the two terms from English into Polish and from Polish into English aiming at avoiding communication distortions will be provided. Fourth, the impact of globalization on human perceptions of various concepts will be discussed. When deliberating the problem of misunderstanding culture-bound concepts such as Polish and UK fox hunting methods one cannot forget that consequences may be dire especially when they are used in legal settings or in social debates with inappropriate meanings attached to them. For instance if the terms are not properly understood, acceptable hunting practices may be banned and non-acceptable ones legalized. To be more exact, one of the consequences of not understanding the differences between the UK concept of fox hunting and the Polish *polowanie na lisy* results in some authors referring to the ban in England and Wales introduced by Tony Blair's government and expecting the same ban to be enacted in Poland[5].

3 E. Probucka (ed.), Etyczne potępienie myślistwa, Kraków 2020.
4 *Ibidem.*
5 *Ibidem.*

1. Research Methods and Material

The main research methods applied included (i) the legal semiotic analysis of provisions concerning fox hunting in Great Britain and Poland, (ii) the comparative diachronic and synchronic analysis of the meanings of the terms *fox hunting* and *polowanie na lisy*, and (iii) the sociolinguistic analysis of perceptions of fox killing in Poland and Great Britain on the basis of pop culture products (such as movies), pertinent literature, blogs and internet sources (including comments under newspaper articles and on social media).

The research material encompassed (i) repealed legislation on hunting in Great Britain, (ii) legislation in force on hunting in Great Britain, (iii) repealed legislation on hunting in the Republic of Poland, (iv) legislation in force on hunting in the Republic of Poland, (v) pertinent hunting-related literature on fox hunting in both Great Britain and the Republic of Poland, and finally (vi) the internet sources. The relevant legislation is listed in the references.

2. The Semiotic Context Resulting from the Perceptions Affected by Social, Economic and Political Transitions

The first human societies were hunter-gatherers. When human beings learnt how to cultivate plants and domesticated animals, the period of agrarianism started. With the development of societies, economists and sociologists started talking about the pre-industrial period[6], superseded by industrialism (in the course of which technological revolution enabled the construction of tools for mass production)[7] and finally post-industrialism[8]. The 19th and 20th centuries turned out to be the epoch of the development of information transmission tools starting with the telegraph, radio, cinema and television and ending with the internet. That way humans started living in information societies in the epoch called informationalism (or the information age[9]). Social transformations resulting from the presence of ubiquitous internet and social media in our lives led to the creation of a new concept, which is the network age and network society[10]. At the same time the awareness of humans concerning the impact of human activity, especially industry and technological development

6 P. Crone, Pre-industrial societies: Anatomy of the pre-modern world, London 2015.

7 Cf. C. Kerr, F.H. Harbison, J.T. Dunlop and C.A. Myers, Industrialism and industrial man, "Int'l Lab. Rev." 1960, vol. 82, p. 236.

8 D. Gibson, Post-industrialism: prosperity or decline?, "Sociological Focus" 1993, vol. 26, no. 2, pp. 147–163.

9 Cf. M. Castells, The information age, "Media Studies: A Reader" 2010a, vol. 2, no. 7, p. 152; M. Castells, The Rise of the Network Society. Chichester 2010b; A. Aneesh, Informationalism. The Wiley-Blackwell Encyclopedia of Globalization, New York 2012.

10 M. Castells, The Rise of the Network Society, Chichester 2010b.

(including new means of transportation and other pollution sources), has led to the emergence of the concept of ecologism,[11] which assumes the sustainable exploitation of nature and natural resources. The catastrophic visions of the end of the world as a result of environmental disasters led to the increased emergence of various pro-environmental movements. Green parties started being founded in numerous countries. Though initially they were treated as a sort of idiosyncrasy, with the flow of time they have gained social support and sufficient votes to be heard and to start impacting legislation. That has also resulted in people paying attention to the well-being of animals, and their mistreatment and exploitation[12]. Consequently, the increasing numbers of people are turning to vegetarianism and veganism for ideological reasons, that is to say saving the lives of animals and stopping their mistreatment. Some vegan movements aim at banning meat consumption as they perceive it as non-civilized behaviour that should be banned as it violates animal rights in the same way as slavery breached human rights. Simultaneously, the fiascos of numerous national and international initiatives aimed at introducing environment- and climate-friendly changes have led to the emergence of post-environmentalism and its transition into post-ecologism denying the possibility of implementing the principles of sustainable environment management[13]. All those transitions affect the world in which we live nowadays and the way in which we perceive the surrounding reality. One of the human activities that has been greatly affected is hunting. An activity which at the time of hunter-gatherer societies was a must, enabling the survival of the community, is now very frequently perceived as a blood sport, undertaken by people who enjoy killing animals and derive pleasure from their suffering. That led to the emergence of opposition to blood sports including hunting[14]. Nevertheless, hunting is far from being black and white, as the answer to the question whether hunting should be legal or not affects various groups of people[15]. There is no denying the fact that hunting no longer can survive as a sport or entertainment. But the urbanization of the Earth

11 Cf. T. Luke, Informationalism and ecology, "Telos" 1983, vol. 56, pp. 59–73; D. Anderson, Productivism and ecologism: changing dis/courses in TVET, (in:) Work, learning and sustainable development, Dordrecht 2009, pp. 35–57; J. Goodman, From global justice to climate justice? Justice ecologism in an era of global warming, "New Political Science" 2009, vol. 31, no. 4, pp. 499–514.

12 H. Salt, Animals' Rights, London 1892; P. Singer, Animal Liberation: A New Ethics for Our Treatment of Animals, New York 1975.

13 I. Blühdorn, Post-ecologism and the politics of simulation, (in:) Liberal democracy and environmentalism, London 2004, pp. 45–57; Ch. Certomà, Post-environmentalism, (in:) Essential Concepts of Global Environmental Governance, London 2014, pp. 174–175.

14 Cf. M. Tichelar, The History of Opposition to Blood Sports in Twentieth Century England. Hunting at Bay, London/New York 2017; E. Griffin, Blood sport. Hunting in Britain since 1066, New Haven and London 2007.

15 M. Conover, Resolving Human-Wildlife Conflicts. The Science of Wildlife Damage Management, London/New York 2002; M. Moulton and J. Sanderson, Wildlife issues in a changing world, London/New York 1999.

and the need to feed the growing population of humans are factors that cannot be ignored. Wild animals inflict damage to agricultural crops and farm animals, they are involved in road collisions, and their presence in towns and cities is very frequently perceived as a nuisance or even a danger to human life and health. The conflicts between humans and wildlife have led to the emergence of a new branch of natural sciences which is the science of wildlife damage management[16]. Wild birds also pose a lethal threat to people travelling by planes and their presence in the vicinity of airports must be limited to ensure safe take offs and landings. The Geneva Canton in Switzerland is given as an exemplary animal-friendly territory where hunting has been banned, but it is not really the case as wild animals are still legally killed there to protect crops. What has changed is the methodology, nomenclature, organization and financing of hunting[17].

Taking all that into account, the author aims at providing some insight into varying modern hunting traditions practised in Great Britain and the Republic of Poland with respect to foxes, which have been perceived for centuries as pests killing farm birds (e.g. chicken, ducks, geese) and other small game species (hares, rabbits, partridges, pheasants). From the farmers' perspective they inflict economic damage, from the perspective of environmentalists their increasing numbers may threaten the existence of other species because of the predator pressure, which is a threat to species biodiversity in a given territory. As a result of rabies vaccination programmes implemented in many European countries the population of foxes is no longer affected by that deadly disease, which means that their survival rates are much higher than three or four decades ago. So there is pressure on the one hand to save those beautiful animals and on the other hand to limit their numbers to keep the biodiversity and damage under control. As the Genevan example illustrates, sometimes it is not the act of killing animals itself, but the mode of it that is unacceptable to society. Therefore, one cannot deny the fact that modern people should aim at limiting cruelty towards animals and abandon practices that serve only the purpose of entertainment, sport or trophy acquisition[18]. But an overly emotional approach to environment-related issues may also lead to the extinction of species that are affected by the pressure of other invasive (destructive) or predatory ones. Hunting may be necessary, and that is why it is necessary to realize that local hunting practices vary one from another and they cannot be assessed through the prism of global popular culture products. Emotional actions of animal rights activists releasing animals farmed for fur from cages in the 1960s and '70s led to the emergence of invasive species in Europe which have been negatively affecting native flora and fauna ever since (more examples in the books

16 M. Conover, Resolving Human-Wildlife Conflicts. The Science of Wildlife Damage Management, London/New York 2002.

17 R. Probert, Roy, Hunt-free Geneva combats wild boar population, 2001.

18 G. Beattie, Trophy Hunting. A Psychological Perspective, London/New York 2020.

by Conover[19] and Moulton and Sanderson[20]). Nature is a complex phenomenon in which each organism has a role to play. Any change in the natural balance is going to have consequences, some of which will be beneficial and some of which may be dire. Humans have frequently made decisions that initially seemed to be good but in the long run turned out to be destructive to the environment. Thus, one cannot escape the conclusion that the road to hell is paved with good intentions. For that reason we need to communicate clearly and unambiguously. Otherwise, we are not going to understand each other and our environment-related decisions, including legal ones, are going to be based on misperceptions, stereotyping and prejudice.

3. Discussion and Findings on the Rough Road to Amendments of Law in the UK and Legal Status Quo in the Republic of Poland

Fox hunting in Great Britain was for a long time considered a national sport. Though extremely cruel it was not ostracized until the 20th century. The first opposition against cruel sports actually affected "hunting tame stags and bagged rabbits and hares, as well as wider animal welfare issues, such as vivisection, which attracted stronger public support, especially from elements within the Church of England."[21]. The impact of the Humanitarian League set up by Henry Salt[22] cannot be forgotten in that respect[23].

> "By the turn of the twentieth century, the royal family was very firmly identified with most forms of hunting – including fox hunting, which benefited from the patronage of King Edward VII – boosting blood sports' respectability and guaranteeing their survival. In particular, fox hunting thrived because it enjoyed both aristocratic and popular support, despite ongoing concerns about the funds that were required to keep the sport solvent. By the late nineteenth century, it had become an attractive means for social advancement among non-landed urban society as well as a growing number of farmers who had become owner-occupiers. According to the poet John Masefield, author of the famous poem *Reynard the Fox* (1919), fox hunting's survival into the twentieth century was due to its ability to bring all the ranks of society together on equal terms in a shared venture. Among their number were female riders who had started to participate on an increasing scale in equestrian activities, including fox hunting, in order to advance strong independent identities for themselves. According to one historian, hunting 'also helped to create and reinforce a specifically British national identity through horse sports'."[24]

19 M. Conover, Resolving Human-Wildlife Conflicts. The Science of Wildlife Damage Management, London/New York 2002.

20 M. Moulton and J. Sanderson, Wildlife issues in a changing world, London/New York 1999.

21 M. Tichelar, The History of Opposition to Blood Sports in Twentieth Century England. Hunting at Bay, London/New York 2017, p. 10.

22 H. Salt, Animals' Rights, London 1892.

23 M. Tichelar, The History of Opposition to Blood Sports in Twentieth Century England. Hunting at Bay, London/New York 2017; E. Griffin, Blood sport. Hunting in Britain since 1066, New Haven and London 2007.

24 M. Tichelar, The History of Opposition to Blood Sports in Twentieth Century England. Hunting at Bay, London/New York 2017, pp. 23–24.

In 1978 a survey was carried out by the League Against Cruel Sports which found that 60% of respondents actually supported a ban on fox hunting. The next surveys that were carried out in 1980 and 1984 in fact reflected the change in social attitudes to hunting with the support for a ban on fox hunting rising to 75%[25]. With such huge support for introducing a ban on fox hunting and the equally cruel stag hunting the change of legislation was unavoidable. Nevertheless it still took quite a long time to enforce new legislation due to the social composition of the British Parliament. The most obvious factor affecting the social attitudes to fox hunting and stag hunting were identified as the cruelty towards animals. It was not the act of killing the animal itself but the way in which the death was inflicted to the animal. The issues related to hunting in Great Britain are also affected by the fact that a right to hunt is connected with the ownership of land[26]. There are no nationwide limits on wild game (Game Act 1831; Wildlife and Countryside Act 1981; Deer Act 1991, etc.). Nevertheless the manifesto of the Labour Party published in 1978 finally started being implemented in the late 1990s. As a result the Hunting Act 2004 was enacted, in accordance with which "hunting wild mammals with a pack of dogs (3 or more)" became illegal in England and Wales on 18 February 2005.

> "1. Hunting wild mammals with dogs
>
> A person commits an offence if he hunts a wild mammal with a dog, unless his hunting is exempt.
>
> SCHEDULE 1 Exempt Hunting
>
> *Stalking and flushing out*
>
> 1(1) Stalking a wild mammal, or flushing it out of cover, is exempt hunting if the conditions in this paragraph are satisfied.
>
> *Use of dogs below ground to protect birds for shooting*
>
> (…) each dog used in the hunt is kept under sufficiently close control to ensure that it does not injure the wild mammal."[27]

Similar legislation was passed for Scotland in 2002 – hunting with dogs was banned in Scotland under the Wild Mammals Protection (Scotland) Act 2002 under which "A person who deliberately hunts a wild mammal with a dog commits an offence" (sec. 1.(1)) and "It is an offence for an owner of, or person having responsibility for, a dog knowingly to permit another person to use it to commit an offence" (sec. 1 (3)). However, under sec. 2 it is no longer an offence to use "a dog under control to stalk a wild mammal, or flush it from cover (including an enclosed space within rocks, or other secure cover) above ground" for the following purposes:

> "(a) protecting livestock, ground-nesting birds, timber, fowl (including wild fowl), game birds or crops from attack by wild mammals;
>
> (b) providing food for consumption by a living creature, including a person;
>
> (c) protecting human health;

25 *Ibidem,* p. 36.

26 T. Russ and J. Foster, Law of Field Sports, London 2010, p. 8.

27 Hunting Act 2004.

(d) preventing the spread of disease;
(e) controlling the number of a pest species; or
(f) controlling the number of a particular species to safeguard the welfare of that species, but only if that person acts to ensure that, once the target wild mammal is found or emerges from cover, it is shot, or killed by a bird of prey, once it is safe to do so."

It should be stressed here that the type of fox hunting banned is the one in which specially trained hounds and horse riders take part as a result of which the animal is killed by the dogs.

Analogously, it is not an offence to flush the animals from below – and above-ground covers.[28]

However, opposition to fox hunting in Northern Ireland has not been strong enough to enforce the amendments of law in respect of fox hunting with hounds. Thus it is still legal in that territory. The latest bill banning fox hunting in Northern Ireland was rejected by the Northern Ireland Assembly in December 2021[29].

In the past, hunting with hounds, including greyhounds, was practised in Poland too. But the present models of British and Polish hunting differ significantly. This is due to the fact that since 1954 hunting management has not been connected with land ownership. What is more, the communist nationalization of land and economic transformations led to the abandonment of some types of hunting methods. Hunts with greyhounds are now forbidden in Poland. Additionally, the usage of hunting dogs has been limited significantly. Furthermore, the purpose of hunting in Poland is to protect crops and forests as well as endangered species of animals. Thus the na-

28 "Sec. 2. (2) Where a person is using a dog in connection with the despatch of a wild mammal, being of a pest species, with the intention of flushing the wild mammal from cover or from below ground in order that it may be shot or killed by lawful means, that person does not commit an offence under section 1(1) by virtue of the dog killing that wild mammal in the course of that activity.

(3) A person does not commit an offence under section 1(1) by using a dog under control to flush a fox or mink from below ground or by using a dog under control to flush a fox from an enclosed space within rocks or other secure cover above ground, but only if that person—

(a) does so for one or more of the purposes specified in paragraphs (a) to (f) of subsection (1);

(b) takes reasonable steps to ensure that the fox or mink is flushed as soon as reasonably possible after it is located and shot as soon as possible after it is flushed;

(c) takes all reasonable steps to prevent injury to the dog including steps to prevent the dog becoming trapped underground and, if it does become trapped underground, steps to ensure it is rescued as soon as is practicable;

(d) is in possession of a firearm for which the person holds a valid firearms or shotgun certificate; and

(e) either—

(i) is the owner or lawful occupier of the land on which the activity takes place; or

(ii) has the permission of the owner or lawful occupier of that land to undertake that activity."

29 A. Gough, Fox hunting still legal in the UK? Stormont vote rejects ban in Northern Ireland, 8 December 2021.

ture of hunting for foxes is changing at present. In the past, these animals used to be hunted for entertainment and to limit the damage in farm animals. Today however, the reason for hunting is quite different and focuses on limiting the spread of infectious disease such as rabies as well as the protection of rare species from a predator (the fox). The fox, which is a species living in numerous parts of the world, is hunted almost everywhere. There are different practices of hunting those carnivores. In the USA in Alaska one may catch foxes in traps of various types, including irons. In Ireland one can hunt the animal with hounds, letting them tear the animal apart. In some regions the animals are poisoned. In many other countries foxes are killed with rifles, shotguns or bows. The approach to hunting methods that are allowed or forbidden by law varies from country to country and is based on tradition, ethical issues, technical possibilities, economic issues and laws on animal rights[30].

In Poland there is no tradition of such hunting due to a completely different approach to wildlife. In general the animals used to be killed for a variety of reasons. First of all the meat of wild animals was a source of food. Therefore stag hunting with hounds could be organized only if the dogs were trained in such a manner that they could hold an animal in one place but were able to refrain from biting it and wounding it. The second reason for hunting was to obtain the fur of animals, which was used for clothing and other purposes. This was the main reason why foxes were not hunted with hounds tearing them to pieces. It was important to damage the fur of the animal as little as possible. The next reason for hunting was of course connected with reducing the damage inflicted by animals to crops and farm animals. Additionally, Poles wanted to protect some species that were negatively affected by the abundance of other (predatory, invasive, etc.) species. But there was a period in the Polish history when animal hunting for entertainment was practised and that fashion arrived in Poland with foreign kings and aristocrats (the so-called par force hunts)[31]. Usually more than one reason affects the manner of hunting and that is undeniably the case of Poland. Under the influence of research in natural sciences[32] the approach to hunting has changed in Poland. Hunting with greyhounds, using traps, and administering poison to animals became forbidden techniques of killing animals. Instead of hunting for entertainment, the idea of sustainable hunting management has gradually been introduced to ensure the proper balance of biodiversity in a given territory and limit the damage inflicted by animals to crops, forests and other species of animals[33]. As a result a system of drawing nationwide annual and multi-annual hunting

30 Cf. W. Daniłowicz, Prawo polowania, Warsaw 2018; M. Conover, Resolving Human-Wildlife Conflicts. The Science of Wildlife Damage Management, London/New York 2002; M. Moulton and J. Sanderson, Wildlife issues in a changing world, London/New York 1999.

31 K. Szpetkowski, Historia łowiectwa na ziemi krakowskiej, Warsaw 2002.

32 Cf. W. Szczerbiński. Łowiectwo. Podstawy ekologiczne. Skrypty WSR w Poznaniu, Poznań 1962.

33 Cf. W. Radecki, D, Danecka, Prawo łowieckie. Komentarz, Warsaw 2019; Rakoczy B., Stec R., Woźniak A., Prawo łowieckie: komentarz, Warsaw 2014.

plans based on the populations of animals and damage caused by them developed in the territory of the Republic of Poland. The detailed premises of hunting are included in the Polish Act of 13 October 1995 Hunting Law[34] in articles 1, 2, 3 and 4 which are as follows:

> "Art. 1. [The concept of hunting]
>
> Hunting, as an element of environmental protection, within the meaning of the Act, means the protection of game animals (game) and the management of their resources in accordance with the principles of ecology and the principles of rational agriculture, forestry and fishing.
>
> Art. 2. [Ownership of game animals]
>
> Wild game animals, as a national good, are the property of the State Treasury.
>
> Poland
>
> Art. 3. [The purpose of hunting]
>
> The purpose of hunting is:
>
> 1) protection, preservation of diversity and management of game animal populations;
>
> 2) protection and shaping of the natural environment to improve t he living conditions of animals;
>
> 3) achieving the highest possible individual condition and quality of trophies as well as the appropriate number of populations of individual game species while maintaining the balance of the natural environment;
>
> 4) …
>
> Poland
>
> Art. 4. 2.
>
> Sustainable hunting means:
>
> 1) tracking, shooting with hunting firearms, catching live game,
>
> 2) catching game with birds of prey with the consent of the minister responsible for the environment
>
> – intended to acquire it.
>
> 3. Poaching means an activity aimed at acquiring possession of wild game in a way that is not hunting or in violation of the conditions of admissibility of hunting."

At present there are a few methods of hunting foxes in Poland. They may only be shot with firearms either during individual or group hunts[35]. Polish law does not allow the use of bows for hunting purposes. Dogs cannot be used to kill the animals either. They may only assist hunters in finding and flushing the animals from cover. It is possible to wait in ambush for the fox on a hunting stand. During individual hunts, hunters may call foxes using mouse or hare calls. It is also possible to use dogs for finding the burrows of foxes and other predators or flushing them from below-ground and above-ground covers including haystacks into open space (under ar-

34 The Act of October 13, 1995 Hunting Law (Journal of Laws of 1995, No. 147 item 713 as amended).

35 Cf. The Act of October 13, 1995 Hunting Law (Journal of Laws of 1995, No. 147 item 713 as amended).

ticle 14a of the Regulation of the Minister of the Environment of 10 September 2019 amending the Regulation of the Minister of the Environment of 23 March 2005[36])[37].

The completely different approach to the use of hounds for hunting purposes has resulted in the creation of a special term in the Polish language describing a flaw frequently disqualifying a hound for hunting purposes. The term in question is *narzynacz* ("biter") and it denotes a hound which bites, or even roughs up, jars and devours slaughtered game. Such a dog is a serious problem and is considered unsuitable for hunting purposes[38].

Therefore, *fox hunting* and *polowanie na lisy* are indeed different. The terminological analysis presented below will provide some insight why those terms cannot be treated as equivalents. In order to achieve that aim, we need to focus on the similarities and differences between those two concepts of two realities, that is to say Polish and English. Thus, if we were to compare the essential features of British and Polish fox hunting and shooting (in accordance with the three-level scale developed by Šarčević[39]), we certainly find some common features, which include the fact that the quarry is a fox, as a result of both practices the animal is killed, and the main reason for the application of a lethal measure is pest control. The similarities end there. The methods of killing in the two cultures differ significantly. In the British tradition the animal is torn to pieces by hounds. In the Polish tradition the animal is shot dead in order to save its fur coat. Certainly, it is disputable whether any act of killing may be called humanitarian but having the animal torn to pieces by hounds is in general a much more cruel method of killing than shooting it dead. The juxtaposition of essential features is provided in the table below.

36 Regulation of the Minister of the Environment of 10 September 2019 amending the Regulation on detailed conditions for hunting and marking carcasses (Journal of Laws of 2019, item 1782).

37 D. Danecka, W. Radecki, Prawo łowieckie. Z komentarzem do wybranych przepisów, Warsaw 2021; W. Daniłowicz, Prawo łowieckie, Warsaw 2020.

38 S. Hoppe, Słownik języka łowieckiego, Warsaw 1970, p. 113; H. Okarma and A. Tomek, Łowiectwo, Kraków 2008.

39 "[...] when concepts A and B share all of their essential and most of their accidental characteristics (intersection) or when concept A contains all of the characteristics of concept B, and concept B all of the essential and most of the accidental characteristics of concept A (inclusion) [...]. In the majority of cases functional equivalents are only partially equivalent. Partial equivalence occurs when concepts A and B share most of their essential and some of their accidental characteristics (intersection) or when concept A contains all of the characteristics of concept B but concept B only most of the essential and some of the accidental characteristics of concept A (inclusion). [...] If only a few or none of the essential features of concepts A and B coincide (intersection) or if concept A contains all of the characteristics of concept B but concept B only a few or none of the essential features of concept A (inclusion), then the functional equivalent can no longer be considered acceptable. In such cases, one speaks of non-equivalence. Furthermore, non-equivalence also occurs in cases where there is no functional equivalent in the target legal system for a particular source concept. In such cases one speaks of exclusion." S. Šarčević, New approach to legal translation, The Hague 2000, pp. 238–239.

Table 1. Juxtaposition of essential and characteristic features of the terms *fox hunting* and *polowanie na lisy* (the author's juxtaposition)

	Fox hunting	**Polowanie na lisy**
Aim: killing the animal	yes	yes
Method: animal torn to pieces by hounds	yes	no
Method: animal culled	No	yes
Reason: pest control	yes	yes
Number of animals killed determined on the basis of valuation	No	yes
Can the animal carcass be used in any way?	No	yes
- Veterinary or medical purposes	No	yes (detection of rabies; *Echinococcus granulosus* – dog tapeworm, etc.)
- fur coat	No	yes (also for educational purposes)

The question may be posed here what shall we do with the terms in question when translating them from English into Polish and from Polish into English? The key issue is the difference in the approach to hunting in the two countries under scrutiny. Hunting in Poland is not considered a sport, a mode of spending leisure time. It is an element of the nature protection and conservation system. Therefore, if an animal is killed, it must be justified by the purposes of nature conservation, veterinary epidemic control or agricultural damage limitation. Killing for pleasure is unacceptable. Moreover, the death of the animal should be as quick as possible and without unnecessary pain and suffering (paragraph 34 of the Regulation of the Minister of the Environment of 23 March 2005). The British tradition focuses more on pest control and entertainment. Therefore, in order to reveal those differences in the process of translation it seems to be reasonable to translate the English term *fox hunting* using the technique of a descriptive equivalent: *tradycyjne angielskie polowanie na lisy (konno) z psami bez broni*, which may be literally translated into English as "traditional English fox hunting with hounds and without hunting weapon'. The Polish term *polowanie na lisy* should be translated as *fox shooting* or *fox culling* to put some emphasis on the manner of killing the species. Such equivalents, juxtaposed in table 2, would be much less deceiving than associating British fox hunting with its Polish counterpart as they differ significantly and connotations cannot be ignored.

Table 2. The juxtaposition of Polish and English equivalents of the terms *fox hunting* and *polowanie na lisy* respectively (the author's juxtaposition)

English	Polish
fox hunting	tradycyjne angielskie polowanie na lisy (konno) z psami bez broni
fox shooting, fox culling	polowanie na lisy

4. Impact of Globalization on Human Perception

As already mentioned, modern societies are said to live in the so-called information age, which means that the one who has access to information and means of spreading it (no matter whether the information is true or false) has power and resources sufficient to affect the perceptions and cognition of humans and influence people and laws. One of the most frequently used sources of information is undeniably Wikipedia – which is an enormous database, a sort of multilingual electronic encyclopaedia. The analysis of the Wikipedia entry *fox hunting* and its Polish counterpart *polowanie na lisy* reveals the problems connected with cultural differences and the impact of globalization. Figure 1 is a screenshot of the English-language Wikipedia entry. Figure 2 in turn is a screenshot of the Polish-language Wikipedia entry.

Figure 1. Screenshot of the entry "*fox hunting*" on Wikipedia (date of retrieval 1 June 2021).

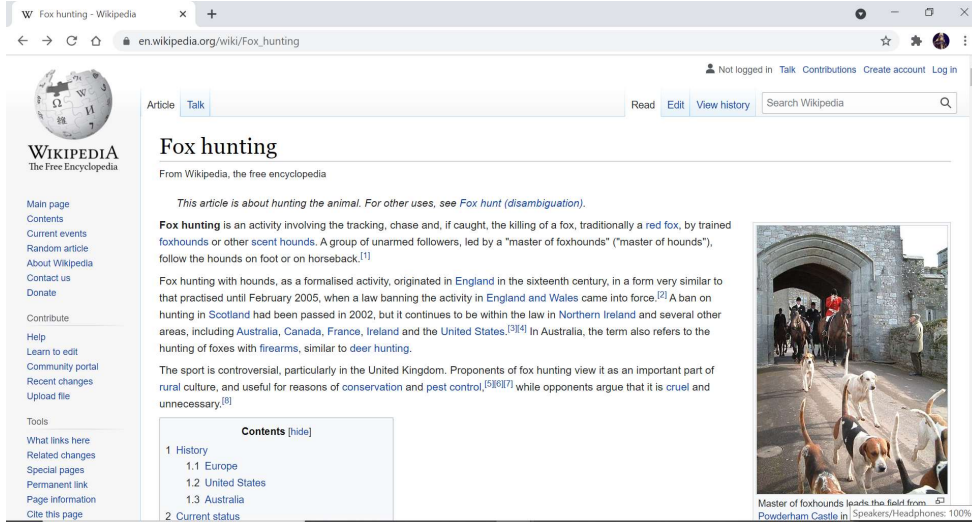
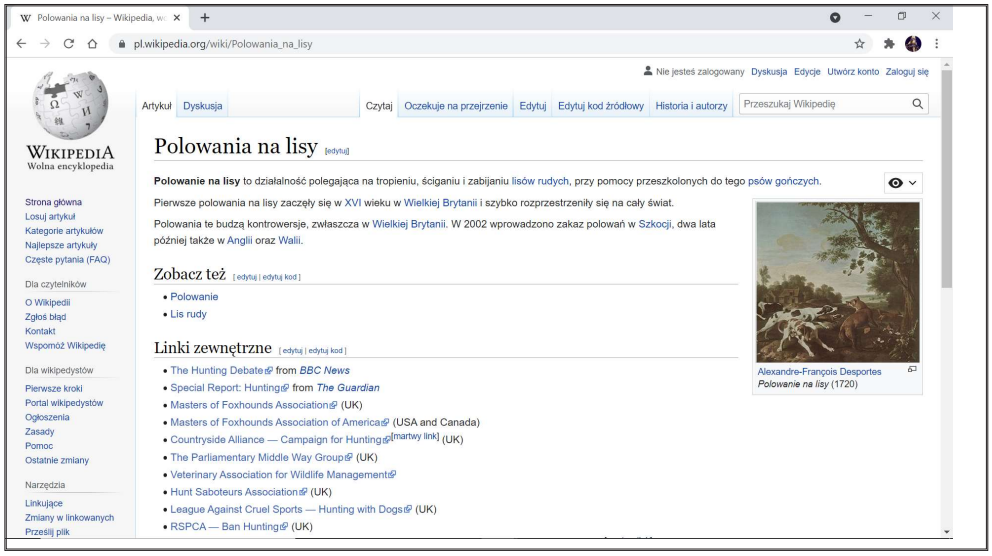


Figure 2. Screenshot of the entry "*polowanie na lisy*" on Wikipedia (date of retrieval 1 June 2021).



The analysis of both entries reveals that the Polish entry is in fact a summary translation of the English one. It does not contain any information about the Polish tradition of fox hunts and the differences between hunting practices of Brits and Poles in that respect. What is surprising is the fact that the author of the paper has been in touch with two Polish hunters who wanted to develop the Polish entry so that readers could learn about the differences, but Wikipedia administrators refused to introduce such modifications.

In the modern world, human perceptions are affected on an unprecedented scale by global products of pop culture such as movies, but also internet culture products, which include bloggers' posts and films, social media posts, etc. As a result of the globalization of economies and cultures people all over the world have access to Hollywood cinematography. American products dominate and shape perceptions of lesser known phenomena, customs, habits and traditions. They frequently supersede what is national or local, in a way overwriting foreign content and day after day becoming more familiar and recognizable than what is native. The native meanings are first relegated to the sidelines, and then they become replaced in people's conscience with foreign (usually American) meanings. School coursebooks contain information about other countries, problems of other nations. We also live in a world in which we experience the effects of the so-called information flood, information silence, information noise including purposeful infodemic or fake news.

There is no denying the fact that movies such as *The Belstone Fox* (1973), *The Fox and the Hound* (1981), *The Fox and the Hound 2* (2006), *The Fox & the Child* (2007)

and *Fantastic Mr. Fox* (2009) have a visible impact on children in numerous parts of the world and shape their perceptions of hunting and predator–prey relationships. The anthropomorphization of animals is ubiquitous in popular culture products. Animals are attributed human feelings, motivations and actions. They behave like humans, think like humans and speak human languages. Some predatory animals even become vegans in children's movies and literature, which is not possible under the laws of nature. Empathy towards animals is growing, whereas empathy towards humans is decreasing. More and more people prefer the company of dogs or cats than other human beings.

Conclusions

To sum up, images of niche activities depicted in global products (e.g. Hollywood movies) affect the perceptions of people living in other parts of the world, frequently making them believe that "foreign" is "national". The consequences of such misperceptions shaped by dominant foreign cultures are sometimes hard to predict. However, they are very frequently negative. The fact that the Polish tradition of fox shooting is perceived through the prism of the British blood sport may lead to a ban on fox hunting in Poland and increased poaching of the species. When local is replaced by something globally promoted, social attitudes change. Sometimes the changes are positive and members of society become more tolerant, open-minded, less xenophobic. But there are also instances when the effects are negative and they result in the creation of misperceptions, stereotyping, abandonment of valuable local traditions and denial of national identity. As has already been mentioned, one of the consequences of treating the UK concept of fox hunting and the Polish *polowanie na lisy* as identical, equivalent makes some people believe that English-style fox hunting with hounds is nowadays practised in Poland. From the perspective of translators and linguists, terms start functioning with two sets of meanings: one of the sets is traditional but known only to a narrow group of people knowing a given domain well, and the second set, which is much more widespread but tinted with foreignness. Translation in such instances is difficult. From the social and legal semiotic perspectives the problem is even more complicated, as the element of foreignness starts dominating and affecting laws enforced in one country as a result of false perceptions. But using terms that differ with respect to their essential features as equivalents is not professional and leads to communication distortions that usually have dire consequences.

REFERENCES

Act of October 13, 1995 Hunting Law [Ustawa z dnia 13 października 1995 r.—Prawo łowieckie] http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19951470713/U/D19950713Lj.pdf.

Anderson D., Productivism and ecologism: changing discourses in TVET, (in:) J. Fien, R. Maclean and M.-G. Park (eds.), Work, learning and sustainable development, Dordrecht 2009, pp. 35–57.

Aneesh A., Informationalism. The Wiley-Blackwell Encyclopedia of Globalization, London 2012.

Beattie G., Trophy Hunting. A Psychological Perspective, London/New York 2020.

Blühdorn I., Post-ecologism and the politics of simulation, (in:) Y. Levy and M. Wissenburg (eds.), Liberal democracy and environmentalism, London 2004, pp. 45–57.

Castells M., The information age, "Media Studies: A Reader" 2010, vol. 2, no. 7, p. 152.

Castells M., The Rise of the Network Society, Chichester 2010b.

Certomà Ch., Post-environmentalism, (in:) J.-F. Morin and A. Orsini (eds.), Essential Concepts of Global Environmental Governance, London 2014, pp. 174–175.

Conove M., Resolving Human-Wildlife Conflicts. The Science of Wildlife Damage Management, London/New York 2002.

Crone P., Pre-industrial societies: Anatomy of the pre-modern world, London 2015.

Danecka D., Radecki W., Prawo łowieckie. Z komentarzem do wybranych przepisów, Warsaw 2021.

Daniłowicz W., Prawo polowania, Warsaw 2018.

Daniłowicz W., Prawo łowieckie, Warsaw 2020.

Gibson D.E., Post-industrialism: prosperity or decline?, "Sociological Focus" 1993, vol. 26, no. 2, pp. 147–163.

Goodman J., From global justice to climate justice? Justice ecologism in an era of global warming, "New Political Science" 2009, vol. 31, no. 4, pp. 499–514.

Gough A., Fox hunting still legal in the UK? Stormont vote rejects ban in Northern Ireland, December 2021, https://www.surgeactivism.org/articles/fox-hunting-northern-ireland-rejects-ban.

Griffin E., Blood sport. Hunting in Britain since 1066, New Haven and London 2007.

Hoppe S., Słownik języka łowieckiego, Warsaw 1970.

Hunting Act 2004 https://www.legislation.gov.uk/ukpga/2004/37/pdfs/ukpga_20040037_en.pdf.

Kerr C., Harbison F.H., Dunlop J.T. and Myers C.A., Industrialism and industrial man, "Int'l Lab. Rev." 1960, vol. 82, p. 236.

Luke T., Informationalism and ecology, "Telos" 1983, vol. 56, pp. 59–73.

Moulton M. and Sanderson J., Wildlife issues in a changing world, London/New York 1999.

Okarma H. and A. Tomek, Łowiectwo, Kraków 2008.

Porter J., Audience and Rhetoric: An Archaeological Composition of the Discourse Community, New Jersey 1992.

Probert R., Hunt-free Geneva combats wild boar population, 2001, https://www.swissinfo.ch/eng/hunt-free-genev a-combats-wild-boar-population/2441024.

Probucka E. (ed.), Etyczne potępienie myślistwa, Kraków 2020.

Radecki W., Danecka D., Prawo łowieckie. Komentarz, Warsaw 2019.

Rakoczy B., Stec R., Woźniak A., Prawo łowieckie: komentarz, Warsaw 2014.

Regulation of the Minister of the Environment of 10 September 2019 amending the Regulation on detailed conditions for hunting and marking carcasses [Rozporządzenie Ministra Środowiska z dnia 10 września 2019 r. zmieniające rozporządzenie w sprawie szczegółowych warunków wykonywania polowania i znakowania tusz] http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190001782.

Russ T. and Foster J., Law of Field Sports, London 2010.

Salt H., Animals' Rights, London 1892.

Šarčević S., New approach to legal translation, The Hague 2000.

Singer P., Animal Liberation: A New Ethics for Our Treatment of Animals, New York 1975.

Swales J.M., Reflections on the concept of discourse community, "ASp La revue du GERAS" 2017, vol. 69, pp. 7–19.

Swales J.M., Genre Analysis: English in academic and research settings, Cambridge 1990.

Szczerbiński W., Łowiectwo. Podstawy ekologiczne. Skrypty WSR w Poznaniu, Poznań 1962.

Szpetkowski K., Historia łowiectwa na ziemi krakowskiej, Warsaw 2002.

Tichelar M., The History of Opposition to Blood Sports in Twentieth Century England. Hunting at Bay, London/New York 2017.

Wild Mammals Protection (Scotland) Act 2002 https://www.legislation.gov.uk/asp/2002/6.

Zabrocki L., Wspólnoty komunikatywne w genezie i rozwoju języka niemieckiego. Część I. Prehistoria języka niemieckiego, Wrocław/Warsaw/Kraków 1963.

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Choice of Language in Discussions on Law. Pregnancy Termination in the Legislative Process of the Polish Sejm of the Eighth Term

Abstract: The radicalization of views and the conflict concerning the possibility of, and the rationale for, the institutionalization of termination of pregnancy in Poland usually gain prominence before elections, when political parties, when presenting their programs, bring controversial issues that evoke extreme emotions to the debate. The appearance of the topic of abortion in the discourse is always accompanied by increased attention of the media, which makes the issue even more attractive for politicians. An analysis is presented of the bills amending the Act of 7 January 1993 on family planning, protection of the human fetus, and the conditions of permissibility of abortion, also known as the "Family Planning Act" or the "Anti-Abortion Act," as well as of parliamentary debates[1] focused on the issue of the right to abortion in Poland, that is primarily those debates where the issue of expanding or narrowing the enumerative catalog of prerequisites for permissibility of abortion was discussed. The temporal scope of the subject matter includes the legislative processes that took place before the eighth term of the Sejm. The paper is an attempt to interpret the regularities observed during the research and does not aspire to be an exhaustive description of the topic.
Keywords: pregnancy termination, abortion, language of law, Polish Sejm

Introduction

The debate on the shape of the law governing the permissibility of abortion has been continuing in the Polish public space for nearly 30 years and the law itself, the

1 The used transcripts are available at: www.sejm.gov.pl.

Act of 7 January 1993 on family planning, protection of the human fetus, and the conditions of permissibility of abortion,[2] has been described as an "abortion compromise"[3] reached between leaders of the Catholic Church and politicians[4]. During this period, the positions of the supporters and opponents of the permissibility of abortion have been institutionalized into organizations dedicated to lobbying for certain changes, and some of them are attempting to amend the current law by submitting a bill to the Sejm that tightens or liberalizes the abortion law through a citizens' legislative initiative[5]. In the literature on the dispute over the shape of the law, we can distinguish three basic positions, which were formulated in biojurisprudence[6]. These are: a model that delegalizes and penalizes all abortions[7]; model in opposition to the first one that makes abortion legally permissible if performed by medically qualified persons; and a third model that approves of the permissibility of termination of a pregnancy on the condition that the pregnant woman obtains the prior consent of government authorities, which have defined the medical or social criteria for the permissibility of the procedure in a universally binding law[8]. The "abortion compromise" has become the prevailing status quo, which politicians have not tried to change for years, for fear of a negative response from the public, feminist movements, and the Catholic Church.[9]

Since the beginning of the work on the Act *on family planning, protection of the human fetus, and the conditions of permissibility of abortion,* the procedure of pregnancy termination has ceased to be perceived as exclusively a procedure of an exclusively medical nature[10], as both the parliamentary debate and the public debate accompanying the ongoing legislative process began to refer to arguments other than those exclusively from the field of medicine. Two opposing positions have developed among the participants in the discussion and a division has emerged in the sphere of

2 Journal of Laws of 1993, No. 17, item 78, as amended.

3 A. Hennig, Morapolitik und Religion. Bedingungenpolitisch-roligiöser Kooperation in Polen, Italien und Spanien, Würzburg 2012, pp. 271ff.

4 D. Kozłowska, Prawo do decydowania, https://www.miesiecznik.znak.com.pl/prawo-do-decydowania-kozlowska/, (accessed 15 January 2022).

5 Art. 118 (2) of the Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1997, no. 78, item 483, as amended.

6 R. Tokarczyk, Prawa narodzin, życia i śmierci, Warsaw 2010, pp. 201–205.

7 A.M. Kania, Kontrowersje związane z kryminalizacją przerywania ciąży. Część II, "Nowa Kodyfikacja Prawa Karnego" 2012, No. 28, pp 71–87. K. Borkowska, Penalizacja przerywania ciąży w polskim prawie karnym, "Studia Prawnoustrojowe" 2022, No. 56, pp. 37–55.

8 M. Szczepaniec, Etyczne i prawne aspekty dopuszczalności aborcji ze względów eugenicznych, "Białostockie Studia Prawnicze "2013, Vol. 13, pp. 77–84.

9 E. Zielińska, Na pozór, czyli o prawach reprodukcyjnych, https://www.miesiecznik.znak.com.pl/na-pozor-czyli-o-prawach-reprodukcyjnych, (accessed 26 January 2022).

10 Abortion as a medical procedure is defined as the intentional removal of an embryo or fetus from the uterus before it has reached a stage of development that allows it to survive on its own - P.A. Lohr, M. Fjerstad, Abortion, 'BMJ (Clinical Research Ed.)' 2014, No. 7553 (January), pp. 1–7.

the language used between those advocating a woman's right to abortion and those opposing abortion.[11]

The purpose of this paper is to show the cultural and social situation and the legal consequences of the bills on amending the Act of 7 January 1993 on family planning, protection of the human fetus, and the conditions of permissibility of abortion (referred to as "anti-abortion act"). The paper verifies the hypothesis that in the submitted bills and in the parliamentary debate, the supporters and the opponents of the abortion procedure made completely different, opposing interpretations of norms and used essentially ideological arguments. The paper indicates those issues that relate to the influence of language on the shape and perception of the right to legal termination of pregnancy in Poland which the author considers the most important.

To verify the hypothesis, transcripts of parliamentary sessions focused on the analyzed issue are cited and discussed. In addition, the paper uses the dogmatic method necessary to analyze the bills brought to the Sejm of the eighth term, and the comparative method to compare the wording used in the bills and the statements made by participants in the debates held during the legislative process.

1. Bills submitted to the Sejm

During the terms preceding the period discussed herein, repeated attempts were made to amend the Act of 7 January 1993 on family planning, protection of the human fetus, and the conditions of permissibility of abortion. None of them, however, was successful. The Sejm of the eighth term (2015 – 2019) considered several bills liberalizing or tightening the abortion law. On 19 August 2016, the Sejm received a draft law prepared by the Legislative Initiative Committee "Stop Abortion", which aimed to amend the Act of 7 January 1993 on family planning, protection of the human fetus, and the conditions of permissibility of abortion and the Act of 6 June 1997 - Criminal Code (parliamentary print no. 784). The initiative, supported by the Ordo Iuris Institute Foundation[12], provided for the introduction of legal protection of the life and health of a child from the time of conception, and thus a complete ban on abortions: "Every human being has an inherent right to life from the time of conception, that is the joining of a female and male reproductive cell. The life and health of a child, from the time of its conception, remain under the protection of law."[13] In addition, a de-

11 Also see: I. Desperak, Antykoncepcja, aborcja i ...eutanazja o upolitycznieniu praw reprodukcyjnych w Polsce, „Acta Universitatis Lodziensis. Folia Sociologica" 2003, no. 30, pp. 198–199.

12 See: K. Jusińska, J. Kwaśniewski, K. Pawłowska, O. Szczypiński, K. Walinowicz, T. Zych, Równa ochrona prawna dla każdego dziecka zarówno przed, jak i po urodzeniu. Główne założenia projektu inicjatywy obywatelskiej „Stop aborcji", https://ordoiuris.pl/publikacje?page=2, (accessed 17 January 2022).

13 Art 1(3) of the citizens' draft of the Act of 19 August 2016 amending the Act of 7 January 1993 r. on family planning, protection of the human fetus, and the conditions of permissibility of abor-

mand was made (Article 2(1) of the draft law) to add the following legal definition of a conceived child to the Criminal Code: "A conceived child is a human being in the prenatal period of development, from the time of the joining of the female and male reproductive cell,"[14] as well as to penalize abortion (Art. 2(2–5) of the draft law)[15]. This was the most radical draft law of all the abortion-related legislative initiatives the Sejm has considered since the law of 7 January 1993 came into effect.

At the same time, the Sejm received a citizen's draft act on women's rights and informed parenthood (parliamentary print no. 830), submitted by the Legislative Initiative Committee "Save Women." This draft act was extensive and multi-faceted. According to the draft, a woman would have the right to terminate her pregnancy until the end of the 12th week; thereafter, abortion would be permitted in the same cases as allowed under the current law, namely when the pregnancy poses a threat to the life or health of the pregnant woman, there is a likelihood of severe and irreversible fetal impairment or an incurable disease threatening the life of the fetus, or when the pregnancy is the result of a criminal act. In cases of severe and irreversible fetal impairment or incurable disease, termination of pregnancy would be permitted up to the 24th week; in cases where the detected disease prevents the fetus from living independently and there is no possibility of cure, termination of pregnancy would be permitted without restrictions.

If a pregnancy is the result of a criminal act, abortion would be allowed until the 1eighth week of the pregnancy. The proposed law advocated the introduction of sex education into school curricula and required central and local government bodies to ensure that everyone, regardless of legal capacity, has access to methods and means of contraception. Contraception measures would be reimbursed and free for the poorest citizens.

The proposed law would also amend, among other things, the Act on the professions of physician and dentist to improve access to contraception for teenagers: at the request of a minor, a doctor would be required to provide pregnancy prevention services without the consent of the legal representative and the family court. The draft law also amended the provisions related to the conscience clause. It required the service provider to make publicly available a list of cooperating physicians who invoke

tion and the Act of 6 June 1997 - Criminal Code (parliamentary print no. 784), https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?documentId=CDB8B631C2EFE830C1258014002A4E47, (accessed 17 January 2022).

14 Art 2(1), *op. cit.*

15 According to the wording of the draft, whoever caused the death of a conceived child would be subject to imprisonment for a period of three months to five years, and in the case of an unintentional action - for up to three years. Imprisonment one to ten years would be the penalty for someone who, by using violence against the mother, has caused the death of a conceived child. In cases where an abortion was performed by the mother, the court could grant her extraordinary leniency or waive the penalty.

the conscience clause and refuse to provide healthcare services related to the termination of pregnancy. The list would be made available to the woman upon her individual request.

The two drafts were considered together at the session of the Sejm on 23 September 2016 and, despite the government's promises that neither draft will be rejected by members of the parliament in the first reading, only the draft of the "Stop Abortion" Committee was referred for further work in the Justice and Human Rights Committee. The draft of the "Save Women" Committee was rejected on first reading[16]. Such legislative actions resulted in the largest protests in defense of women's rights in modern Polish history, called "Black Monday" (3 October 2016), with some 100,000 demonstrators taking to the streets[17]. During its session held on 6 October 2016, the Sejm rejected in the second reading the draft of the amendments proposed by the "Stop Abortion" Legislative Initiative Committee.

However, the public resistance that was expressed in such a massive dissatisfaction with the attempts to tighten the abortion law in Poland and in opinion polls did not stop another attempt to amend the Act on family planning, protection of the human fetus, and the conditions of permissibility of abortion. On 30 November 2017, the Sejm received a draft law from the Legislative Initiative Committee "Stop Abortion," which provided for the erasure from the current law of the eugenic condition, namely the possibility of terminating a pregnancy due to a serious disease or irreversible change in the fetus (parliamentary print no. 2146). The grounds for the bill pointed to the need to prevent violations of human rights and discrimination against people with disabilities, which an ill or damaged fetus in the mother's womb was considered. On 10 January 2018, the first reading of the bill was held, as a result of which it was referred to the Social Policy and Family Committee of the Sejm, with the recommendation to obtain the opinion of the Justice and Human Rights Committee. On 19 March 2018, the bill received a positive opinion from the Justice and Human Rights Committee; however, the Social Policy and Family Committee, at its meeting on 11 April 2018 voted not to include the draft law submitted by the "Stop Abortion" Committee in its future work.[18]

The supporters of the liberalization of the abortion law also did not stop their efforts and, on 23 October 2017, the Sejm received the Citizens' bill on women's rights and informed parenthood (parliamentary print no. 2060), submitted by the Legis-

16 M. Chmielewska, M. Druciarek, I. Przybysz, Czarny protest, w stronę nowego „kompromisu aborcyjnego"?, Instytut Spraw Publicznych, Warsaw 2017, p. 8.

17 Cf.: A. Domańska, Constitutionality of Restrictions on Freedom of Assemblyduring the COVID-19 Pandemic in Poland, "Białostockie Studia Prawnicze" 2022, Vol. 27, No 2, pp: 147–161; I. Kozłowska, D. Béland, A. Lecours , Nationalism, religion, and abortion policy in four catholic societies, 'Nations and Nationalism' 2016, No 22 (4), pp. 824–844.

18 Vote no. 10 during the 55th session of the Sejm on 10 January 2018, https://www.sejm.gov.pl/sejm8.nsf/PrzebiegProc.xsp?nr=2146, (accessed 12 February 2022).

lative Initiative Committee "Save Women 2017," with its name referring to the 2016 bill. The bill covered a broad scope of issues and its provisions pertaining to the subject matter of this paper and the issue of abortion stipulated that a woman has the right to terminate her pregnancy up to its 12th week, and beyond the 12th week, the pregnancy could be terminated if any of the conditions listed in the current act existed, with the decision to terminate the pregnancy being made by the woman herself. The bill introduced a statutory definition of abortion, defining it as "a health service consisting of a medical action aimed to prevent a further development of an embryo or fetus using pharmacological, mechanical, or combined methods." In the event of a threat to a woman's life or health, an abortion would be performed in no more than 72 hours after she had given her written consent. At the session of the Sejm on 10 January 2018, the bill was rejected, which ended the procedure.

A dichotomous division is evident in the bills submitted to the Sejm of the eighth term, which demonstrates immanent, constitutive issues. The bills that provide for tightening the existing laws emphasize the subjectivity of a "conceived child" and his or her right to life. A woman is defined by being assigned the role of a mother who has, in a positive sense, to the right to have a child and not the right to kill a growing fetus.[19] The term "woman" appears only in the context of a "pregnant woman" - on the contrary, in bills that propose liberalization of the law, the terms "mother" and "maternity" does not appear and legal subjectivity is granted in them to a "woman," who has the right to choose and decide about her body and informed parenthood. The fundamental issue that prevents the conflicting parties from reaching an agreement is the opinion on when human life begins, but this issue, by its very nature, cannot be regulated by law.

None of the bills received by the Sejm of the eighth term that proposed amending the Act of 7 January 1993 went through the entire legislative process. The bills were either rejected as early as at the first reading, or went through a very long procedure in parliamentary committees. Only the bill of 19 August 2016 (parliamentary print no. 784) was rejected in the second reading, which allows us to assume that the conflicting parties are not willing to reach a compromise and, due to their absolute lack of flexibility, reject the possibility of finding a solution.[20]

19 The judgment of the Constitutional Tribunal of the Republic of Poland of 28 May 1997, file no. K26 / 96, www.trybunal.gov.pl, (accessed 1 February 2022).

20 M. Kozub-Karkut, Religia w dyskursie polityki - polski spór o aborcję, 'Annales Universitatis Mariae Curie – Skłodowska Lublin - Polonia, Sectio K ' 2017, vol. XXIV, no. 2, p. 252.

2. Parliamentary debate[21]

In the parliamentary debates, the participants, who presented mutually conflicting and often extreme positions on the direction of possible legal changes concerning the prerequisites for permissibility of abortion, used different terminology. Those in favor of tightening the abortion law and imposing a total ban on abortion in Poland, or of outlawing one of the prerequisites for abortion, replaced the medical, scientific, and worldview-neutral terms used by the proponents of liberalization of the law, such as "embryo" and "fetus," with such phrases as "little boy/girl," "infant," and "child in the womb." The physiological state of pregnancy was referred to as "blessed state" and the medical procedure of termination of a pregnancy - as "homicide," "murder" and "transgression against the fifth commandment" by a doctor - "abortionist," which justifies the perception of abortion as a criminal, cruel, and sinful act. The proponents of liberalization of the abortion law, on the other hand, pointed at the need to decriminalize abortion due to the recognition of the embryo as an integral part of a woman, rather than an independent human being capable of life outside the mother's body.

An interesting issue was the perception of abortion as a society-wide problem, which means that an individual woman's decision to terminate her pregnancy results in a reduction in the national birth rate and thus has an impact on the general population. Such argumentation appealed to the sense of community of the nation, which cannot kill its citizens, and was in opposition to slogans about a woman's free choice and her right to decide about motherhood. Those in favor of legalization of abortion denied its public nature and considered termination of a pregnancy as an individual, unstigmatized decision by a woman to protect herself from an unwanted pregnancy. They argued that motherhood as a woman's social role must be seen as an informed choice, which a woman has the right (but not the obligation) to make.

Those in favor of a woman's right to abortion referred to human rights in their arguments. In their opinion, the arguments in support of tightening the abortion laws are flawed and one-sided, because the defined human dignity and right to life do not include reference to the dignity of women and informed decisions about having children. The narrative used by the opponents of abortion identifies only one perspective: that of protection of life in the prenatal stage. At the same time, it ignores the perspective of women, whose dignity, life, and health are undoubtedly values that are protected by the constitution, and does not address the problem of the relationship between the rights of a pregnant woman and the human rights in the prenatal phase of life.

21 The analysis was based on the transcripts of: 26th session of the Sejm, 22–23 September 2016, items 16 and 17 of the agenda; 27th sessions of the Sejm, 5–6.October 2016, item 27 of the agenda, 55th session of the Sejm, 10 January 2018, item 15 of the agenda.

It has also been pointed out that the standards of application of the applicable law with regard to the possibility of legal performance of an abortion are far from satisfactory and, due to the failure to comply with them, lead to violations of a pregnant woman's human rights and in fact to discrimination against her.[22] Termination of pregnancy, once the statutory prerequisites have been met, is not readily available, and women face lengthy procedures and doctors who use the conscience clause very freely.[23] The impeded access even to legal abortion results in women performing illegal abortions, which, due to the fact that they are not performed by qualified medical personnel, very often pose a direct threat to the health or life of the mother[24].

Human rights issues were not left out of the language used in their discourse by the opponents of abortion either. They, on the other hand, stressed that the opposition of the Catholic Church to abortion is formulated as a consequence of its commitment to the defense the world's poor - those people who are threatened and despised, and whose human rights are violated. The right to life is a fundamental right of every innocent human being, and termination of pregnancy is considered a violation not only of this right, but also of human dignity, which directly threatens the entire culture of human rights[25]. In general, the Polish anti-abortion discourse was centered on "defending the unborn," "protecting women," and "preserving culture and nation."[26]

In the debate, the proponents of liberalization of the abortion law also referred to the teaching of the Catholic Church. Most importantly, they argued that the Church and its officials sought, through the proposed legal changes, to limit women's rights. The cited selected statements by Church officials were meant to discredit the Church and prove its backwardness. Disapproval of women's right to choose was equated with objectification of women and the belief was expressed that religious law could not stand above secular law.

22 L. Berro Pizzarossa, L. Sosa, Abortion laws: the Polish symptom of a European malady?, 'Ars Aequi'2021, p. 588.

23 H. Bhakuni, L. Miotto, Conscientious Objection to Abortion in the Developing World: The Correspondence Argument, 'Dev. World Bioeth' 2021, No 21 (2), pp. 90–95.

24 On 30 October 2018, members of the UN Human Rights Committee adopted the contents of the General Commentary to Article 6 of the International Covenant on Civil and Political Rights. The documents that regulates the issue of protection of life obliges states that are parties to the Covenant to legally guarantee their female citizens' access to safe abortion. According to the text of the document, states that are parties to the Covenant are not allowed to regulate pregnancy and abortion in a way that would conflict with the obligation to protect women and girls from termination of pregnancy in unsafe conditions.

25 M. Bucholc, Abortion Law and Human Rights in Poland: The Closing of the Jurisprudential Horizon, 'Hague Journal on the Rule of Law' 2022, No. 14, pp. 73–99.

26 I. Koralewska, K. Zielińska, 'Defending the unborn', 'protecting women' and 'preserving culture and nation': anti-abortion discourse in the Polish right-wing press, 'Culture, Health and Sexuality' 2022, Vol. 24, No. 5, pp. 673–687.

The theme alluded to was a "debate about hell." Phrases such as "hell" and "drama" were given different meanings. According to the opponents of termination of pregnancy, abortion is hell for the woman and for the unborn, defenseless human being (child). For proponents of "pro-choice" arguments, for women, hell is the current abortion law and any attempts to tighten it. What some consider "choice" is "drama" for others. When those in favor of a ban on abortion talked about the child and life, their adversaries, who focused on human rights and social issues, made women and their physical and mental health the center of their argument.

The debate also involved the use of war-related terms by both sides: phrases such as "war," "fight," and "battle" were quite frequent. Connotations of the Holocaust and Nazi practices were invoked in the discussion on "eugenic abortion," i.e. abortion performed due to a child's severe and incurable disease. The conflicting parties also accused each other of violating the Constitution, which guarantees the right of all citizens to life, with "pro-life" advocates talking about the life of the unborn child and the supporters of abortion talking about the life of the mother and her right to her own body, which their opponents wanted to violate[27].

They also used opposing adjectives, for example to describe pregnancy as a natural and normal state, and consequently, to describe abortion as unnatural and abnormal. The issue of pregnancies that pose a threat to the life and health of the mother and pregnancies caused by crimes, which were described as "difficult pregnancies" ("pro-life" advocates), was dismissed. Proponents of pro-abortion changes in law pointed to the negative effects of the restrictive bills themselves, which, in their view, had a negative impact on the political position of women and a strong effect on the medical community, which began to be concerned about the consequences of legal medical procedures.

The stylistic contrast noticeable in the parliamentary debate corresponds to the contrast between the attitudes, interests, and needs of the political actors. In particular, the citizens' legislative initiatives articulate the interests of a certain part of the society[28], but the formulated grounds for the proposals to amend the law include a broad group interest through references to universal values: solidarity, human life, and the struggle for dignity and freedom, the definitions of which are ultimately found by both parties to the "abortion dispute" in other sources. Debates on the bills related to tightening or liberalizing the abortion law are not aimed at working out the best common legal regulation that satisfies those with a factual or legal interest, but

27 W. Bryła, Skandalizacja jako sposób walki o wartości, "'Białostockie Archiwum Językowe" 2017, no 17, pp. 60–61.

28 See:, M. Michalczuk-Wlizło, An institution that gives citizens a real impact on applicable law? Casus of the civic draft amendment to the act of 7 January 1993 on family planning, protection of the human foetus and conditions for the admissibility of termination of pregnancy, submitted to the Sejm of the 8th term, "Przegląd Prawa Konstytucyjnego" 2019, no 6 (52), pp. 395–406.

rather at presenting the position of the speaker and indicating his or her position on one of the two sides of the argument. This arrangement coincides with the dichotomous division of the global debate into "pro-life" and "pro-choice"[29] groups, and each confrontation becomes a ritual, a performance to be played[30].

The polarized "pro-life" and "pro-choice" groups, with a high level of hostility, failing to reach consensus in their discussions, lead to the dramatization of the dispute, which further fuels the interest of the media in the topic and thus achieves the intended effect of influencing public opinion. Indeed, the supporters and opponents of amending the current abortion law, through exegesis of the same norms, create completely different and competing images of what is right and proper.

The language of the parliamentary debate on pregnancy termination is subject to ideological pressure[31] It seems that the two sides have forgotten that the legal language used to establish normative acts[32] should be clear, comprehensible, and communicative, and as a specialized language should be characterized by precision, unambiguity, and conciseness [33]. Regulations that have a worldview context are always just an interpretation of socio-political reality. The terminology used in the discussions on the content of law is a tool to dismiss the opposing approach.[34]

Each of the parliamentary debates on the bills aimed to amend the current law on termination of pregnancy was accompanied by other means of persuasion, such as demonstrations, pickets, events, exhibitions, press conferences, etc.[35], which aimed to reinforce the verbal message so as to present each position in the most attention-grab-

29 The author of this paper is aware of the simplifications inherent in the use of the terms "pro-life" and "pro-choice" coming from the analogous debate taking place in the United States. However, due to the intent and nature of the paper, the issue indicated above was not subjected to critical analysis.

30 J. Berendt, Bitwę o język w Polsce wygrali pro-liferzy. Poseł mówi: Kazałbym żonie rodzić. A żony nikt już nie pyta, https://www.tokfm.pl/Tokfm/7,103085,13166039,bitwe-o-jezyk-w-polsce-wygrali-pro-liferzy-posel-mowi-kazalbym.html, (accessed 11 February 2022).

31 A. Szczerbiak, Coraz okrutniejsze argumenty w dyskusji o aborcji, https://www.polityka.pl/tygodnikpolityka/spoleczenstwo/1735102,1,coraz-okrutniejsze-argumenty-w-dyskusji-o-aborcji.read, (accessed 9 February 2022),

32 B. Wróblewski, Język prawny i prawniczy, Cracow 1948, pp. 51ff; A. Malinowski, Polski język prawny. Wybrane zagadnienia, Warsaw 2006, pp. 21–23.

33 K. Siewert, Semantische Analyse juristischer Fachwörter am Beispiel der Terrminologie des Handelsrechts. Eine deutsch-polnische kontrastive Studie, Bydgoszcz 2010, p. 73; U. Bukowska-Pelc, Precyzja języka prawnego jako przykład precyzji języka fachowego, "Lingwistyka Stosowana" 2017, vol. 24, no. 4, pp. 37–43.

34 K. Ćwierz, R. Cossengue Casimiro, B. Konat, Różnice leksykalne w wypowiedziach zwolenników i przeciwników dopuszczalności aborcji - analiza anglojęzycznych grup w serwisie Facebook, 'Investigationes Linguisticae' 2017, Vol. XXXVII, p. 36.

35 Also see: K. Kowalczyk, Wpływ prokościelnych grup interesu na ustawodawstwo. Casus regulacji antyaborcyjnych w Sejmie VIII kadencji, 'Annnales Universitatis Mariae Curie–Skłodowska Lublin - Polonia, Section K' 2019, Vol. XXVI, no. 1, pp. 102–103.

bing way possible. The arguments formulated in the parliamentary debates served to consolidate party positions, motivate the electorate (especially in the pre-election period), and position political parties, and were most often ideological and philosophical - related to the status of humans and the origins of human life, rather than logical or empirical and based on the available knowledge[36]. Introducing legal solutions that substitute for standards based on current medical knowledge and medical ethics, or that cause conflicts in this area, seems likely to lead to unfavorable solutions. Indeed, only the guidelines derived from the above reasons can serve as a criterion for the evaluation of what is best for the patient.[37] The analyzed discussions clearly demonstrate that the arguments of the opponents of abortion emphasized by the need to protect values identical to those highlighted in the teaching of the Catholic Church[38]. The use of the rhetoric of the Church by political actors testifies to the strong position of the Church officials, who set the direction of political changes and influence the content of existing laws.

Conclusion

An analysis of the legislative initiatives submitted to the Sejm of the eighth term regarding amendments to the Act of 7 January 1993 on family planning, protection of the human fetus, and the conditions of permissibility of abortion and the discussions held in the Sejm as part of the legislative process allows us to conclude that in fact this is a clash of two completely incompatible rhetorics created by the supporters and opponents of amendments to the current law. During the parliamentary debates taking place in the legislative process on the bills, the scientific and medical languages describing the medical procedure of pregnancy termination were forgotten. The vast majority of the participants of the discussions did not distinguish between the zygote, the embryo, and the fetus, and when in the discussions about conception, this very complicated and complex process was overly simplified. When starting the discussions, the participants had clear, predetermined views and beliefs and recognized a certain hierarchy of axiological values, and the manner in which the dispute was

36 The actual medical practices pose difficulties and dilemmas that lawyers, parliamentarians, and legislators are unaware of, regardless of their best intentions, ethical sense, extensive legal knowledge, and political skills. Also see: R. Lopez, Perspectives on Abortion: Pro-Choice, Pro-Life and What Lies in Between, 'European Journal of Social Sciences' 2012. no. 27/4, pp. 511ff.

37 Article 4 of the Act on the profession of physician and dentist, consolidated text: Journal of Laws of 2022, item 1731.

38 See: E. Kużelewska, M. Michalczuk-Wlizło, Same-sex marriage and the Catholic Church in Europe. Any chance of Understanding?, 'Studies in Logic, Grammar, and Rhetoric' 2021, no. 66 (79), pp. 267–281; J. Hussein, J. Cottingham, W. Nowicka, E. Kismodi, Abortion in Poland: politics, progression and regression, 'Reproductive Health Matters' 2018, vol. 26, no. 52, p. 11.

conducted was characterized by misconceptions incompatible with scientific explanation.

It should be noted that both politicians and representatives of the proponents (in the case of bills submitted to the Sejm as part of a citizen's legislative initiative, speaking during the consideration of the submitted bills), even people representing extreme positions structured their argumentation by reference to such values as dignity and freedom. These values, however, were understood in different ways. The conceived child's dignity, freedom, and right to live were placed in opposition to the pregnant woman's dignity and freedom, understood as the right to choose and decide about her body. The objectification of the mother objectifies the conceived child and the objectification of the fetus objectifies the mother by marginalizing her rights as a human being and a woman.[39] The ambivalence of the language used makes the words defining abortion vague and full of contradictions. Language, which structures the reality it describes, requires legislators to choose their words carefully and be wary of ideological appropriation of various terms.

Characteristic of the statements made by the participants in the discussion who are in favor of tightening abortion laws in Poland were emotionally charged evaluative terms, such as "abortion is barbarism," "friends and enemies of life," and "selection of people." The bills they brought to the Sejm and supported were seen as "a big step toward the moral repair of society.[40]" In contrast, the advocates of easing abortion laws emphasized the value of women's freedom and their autonomy in deciding about motherhood, and saw women - metaphorically compared to "living incubators" - as helpless victims of the current system. For both sides of the discourse, life is a non-negotiable value. For one group, it means ensuring the inviolability of human life from conception to natural death. The other group looks at this concept through the lens of the mother's life and her temporal needs, and considers the freedom of choice as a fundamental value in human life.

It seems that the condition for success and for cessation of the use of the issue of abortion for increasing the level of hostility in both the parliament and the society is an intentional departure from symbolic and ideological treatment of the procedure of pregnancy termination toward a scientific and pragmatic approach. However, this requires an end in the debate to the strategy of reversal, denigration of adversaries and political opponents, and manipulation of knowledge, language, and law. The consolidation of extreme positions and the reinforcement of the verbal message with,

39 H. Dąbrowski, Witaj w świecie obrońców zygot i przyjaciół morderców, Salon24.pl, https://www.salon24.pl/u/ alfabet/706516,witaj-w-swiecie-obroncow-zygot-i-przyjaciol-mordercow, (accessed 10 February 2022).

40 M. Grabowska, Prawa człowieka w polskiej debacie nad aborcją w perspektywie wojen kulturowych, in: Wielkie religie świata w języku i kulturze: Chrześcijaństwo, University of Gdańsk, 2019., pp. 59–72.

for example, a visual one will only lead to an escalation of the conflict and an even greater polarization among policymakers who, having a majority in parliament, hold in their hands the most powerful tool, which is the ability to pass law that is binding *erga omnes*.

REFERENCES

Act of 7 January 1993 on family planning, protection of the human fetus, and the conditions of permissibility of abortion , (Journal of Laws of 1993, No. 17, item 78).

Act on the 5 December 1996 on profession of physician and dentist, consolidated text: (Journal of Laws of 2022, item 1731.).

Berendt B., Bitwę o język w Polsce wygrali pro-liferzy. Poseł mówi: Kazałbym żonie rodzić. A żony nikt już nie pyta, https://www.tokfm.pl/Tokfm/7,103085,13166039,bitwe-o-jezyk-w-polsce-wygrali-pro-liferzy-posel-mowi-kazalbym.html.

Berro Pizzarossa, L., L. Sosa, Abortion laws: the Polish symptom of a European malady?, 'Ars Aequi' 2021.

Bhakuni H., Miotto L., Conscientious Objection to Abortion in the Developing World: The Correspondence Argument, "Dev. World Bioeth " 2021, no. 21 (2).

Borkowska K.., Penalizacja przerywania ciąży w polskim prawie karnym, "Studia Prawnoustrojowe" 2022, no. 56.

Bryła W., Skandalizacja jako sposób walki o wartości, "Białostockie Archiwum Językowe" 2017, no 17.

Bucholc M., Abortion Law and Human Rights in Poland: The Closing of the Jurisprudential Horizon, 'Hague Journal on the Rule of Law' 2022, no. 14.

Bukowska-Pelc U., Precyzja języka prawnego jako przykład precyzji języka fachowego, "Lingwistyka Stosowana" 2017, vol. 24, no. 4.

Chmielewska M., Druciarek M., Przybysz I., Czarny protest, w stronę nowego „kompromisu aborcyjnego"?, Instytut Spraw Publicznych, Warsaw 2017.

Constitution of the Republic of Poland of 2 April 1997, (Journal of Laws of 1997, No. 78, item 483).

Ćwierz K., Cossengue Casimiro R., Konat B., Różnice leksykalne w wypowiedziach zwolenników i przeciwników dopuszczalności aborcji - analiza anglojęzycznych grup w serwisie Facebook, ' Investigationes Linguisticae' 2017, vol. XXXVII.

Dąbrowski H., Witaj w świecie obrońców zygot i przyjaciół morderców, Salon24.pl, https://www.salon24.pl/u/alfabet/706516,witaj-w-swiecie-obroncow-zygot-i-przyjaciol-mordercow.

Desperak I., Antykoncepcja, aborcja I … eutanazja. O upolitycznieniu praw reprodukcyjnych w Polsce, 'Acta Universitatis Lodziensis. Folia Sociologica' 2003, no. 30.

Domańska A., Constitutionality of Restrictions on Freedom of Assembly during the COVID-19 Pandemic in Poland, "Białostockie Studia Prawnicze" 2022, vol. 27, no 2.

Grabowska M., Prawa człowieka w polskiej debacie nad aborcją w perspektywie wojen kulturowych, [in:] Wielkie religie świata w języku i kulturze: Chrześcijaństwo, University of Gdańsk, 2019.

Hennig A., Morapolitik und Religion. Bedingungenpolitisch-roligiöser Kooperation in Polen, Italien und Spanien, Würzburg 2012.

Hussein J.,Cottingham J., Nowicka W., Kismodi E., Abortion in Poland: politics, progression and regression, 'Reproductive Health Matters' 2018, vol. 26, no. 52.

Jusińska K., Kwaśniewski J., Pawłowska K., Szczypiński O., Walinowicz K., Zych T., Równa ochrona prawna dla każdego dziecka zarówno przed, jak i po urodzeniu. Główne założenia projektu inicjatywy obywatelskiej „Stop aborcji", https://ordoiuris.pl/publikacje?page=2.

Kania A.M., Kontrowersje związane z kryminalizacją przerywania ciąży. Część II, "Nowa Kodyfikacja Prawa Karnego " 2012, no. 28.

Koralewska I., Zielińska K., 'Defending the unborn', 'protecting women' and 'preserving culture and nation': anti-abortion discourse in the Polish right-wing press, 'Culture, Health and Sexuality' 2022, vol. 24, no. 5.

Kowalczyk K., Wpływ prokościelnych grup interesu na ustawodawstwo. Casus regulacji antyaborcyjnych w Sejmie VIII kadencji, 'Annnales Universitatis Mariae Curie–Skłodowska Lublin - Polonia, Section K' 2019, Vol. XXVI, no. 1.

Kozłowska D., Prawo do decydowania, https://www.miesiecznik.znak.com.pl/prawo-do-decydowania-kozlowska/.

Kozłowska I., D. Béland, A. Lecours , Nationalism, religion, and abortion policy in four catholic societies, 'Nations and Nationalism' 2016, No. 22 (4).

Kozub-Karkut M., Religia w dyskursie polityki - polski spór o aborcję, 'Annales Universitatis Mariae Curie – Skłodowska Lublin - Polonia, Sectio K ' 2017, vol. XXIV, no. 2.

Kużelewska, E., Michalczuk-Wlizło, M., Same-sex marriage and the Catholic Church in Europe. Any chance of Understanding?, 'Studies in Logic, Grammar, and Rhetoric' 2021, no. 66 (79) .

Lohr P.A., Fjerstad M., Abortion, 'BMJ (Clinical Research Ed.)' 2014, no 7553.

Lopez R., Perspectives on Abortion: Pro-Choice, Pro-Life and What Lies in Between, ' European Journal of Social Sciences' 2012, no. 4(27).

Malinowski A., Polski język prawny. Wybrane zagadnienia, Warsaw 2006.

Michalczuk-Wlizło M., An institution that gives citizens a real impact on applicable law? Casus of the civic draft amendment to the act of 7 January 1993 on family planning, protection of the human foetus and conditions for the admissibility of termination of pregnancy, submitted to the Sejm of the eighth term," Przegląd Prawa Konstytucyjnego" 2019, no. 6 (52).

Siewert K., Semantische Analyse juristischer Fachwörter am Beispiel der Terrminologie des Handelsrechts. Eine deutsch-polnische kontrastive Studie, Bydgoszcz 2010.

Szczepaniec M.,, Etyczne i prawne aspekty dopuszczalności aborcji ze względów eugenicznych, "Białostockie Studia Prawnicze "2013, vol. 13.

Szczerbiak A., Coraz okrutniejsze argumenty w dyskusji o aborcji, https://www.polityka.pl/tygodnikpolityka/spoleczenstwo/1735102,1,coraz-okrutniejsze-argumenty-w-dyskusji-o-aborcji.read.

The judgment of the Constitutional Tribunal of the Republic of Poland of 28 May 1997, file no. K26 / 96.

Tokarczyk R., Prawa narodzin, życia i śmierci, Warsaw 2010.

Transcript of the 26th session of the Sejm of 22–23 September 2016.

Transcript of the 27th session of the Sejm of 5–6 October 2016.

Transcript of the 55th session of the Sejm of 10 January 2018.

Vote no. 10 during the 55th session of the Sejm on 10 January 2018, https://www.sejm.gov.pl/sejm8.nsf/PrzebiegProc.xsp?nr=2146.

Wróblewski B., Język prawny i prawniczy, Cracow 1948,

Zielińska E., Na pozór, czyli o prawach reprodukcyjnych, https://www.miesiecznik.znak.com.pl/na-pozor-czyli-o-prawach-reprodukcyjnych.

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Teaching English for Legal Purposes (ELP) in the Era of the Covid-19 Pandemic: A Case Study of Students' Perspectives

Abstract: The emergence of coronavirus in early 2020 and its rapid spread led to the pandemic that has affected almost all aspects of our lives, including education, law[1] and the economy. After the first downtime and the initial shock it became clear that it was extremely important that learning continued; therefore, when schools and universities were closed and lockdowns introduced, online teaching became a priority. For the vast majority of teachers and students, however, it posed an enormous challenge as the situation required leaving their comfort zones, adapting to new conditions and / or acquiring new skills. Some of them were also forced to confront their prejudices towards this mode of instruction. This paper endeavours to provide some insights into the teaching English for Legal Purposes online in the times of the Covid-19 pandemic, and the course of Legal English carried out for Slovak judges, prosecutors and court staff in 2020 and 2021 provides a specific case background for the research. The study aimed to investigate how the course participants perceive learning Legal English online. The research particularly addresses the questions what their approach towards this mode of instruction was before the outbreak of the coronavirus pandemic, what they like and dislike about online language learning, whether they find learning Legal English online more difficult than studying in a real classroom as well as whether online classes can be as effective and enjoyable as traditional ones. The study assumed both a quantitative and qualitative methodology encompassing a questionnaire and a semi-structured interview. The findings of the research show that an overwhelming majority of the respondents favourably evaluated the course and would definitely participate again in a similar format or recommend it to other learners.
Keywords: COVID-19 pandemic, English for Legal Purposes, mode of instruction, online teaching

1 M. Bulla, Legal Regulation of Remote Work in Slovakia and the Covid-19 Pandemic, "Eastern European Journal of Transnational Relations" 2021, vol. 5(2), pp. 7–22; H. Lorenz, E. Turhan, The Pandemic and Criminal Law – A Look at Theory and Practice in Germany, "Białystok Legal Studies" 2021, vol. 26(6), pp. 9–26.

Introduction

The ability to communicate effectively with others in the legal profession is incredibly important, especially when working in a global setting. Therefore, there is the continuous need to provide effective, motivating and attractive instruction of English for Legal Purposes (ELP) and consequently to equip legal professionals with such linguistic competences, knowledge and skills that are most valuable for their work. The ELP instructor's task is not easy for various reasons[2]. One of the most compelling seems to be the language that needs to be taught/learnt itself. The teachers have to teach the language, which is deeply affected by history[3], ethics, philosophy, religion and the culture of a particular nation, so quite frequently they have to, as numerous scholars remark, understand legal culture[4].

Long before the coronavirus pandemic, language teachers attempted to introduce technology into the process of instruction as a natural consequence of the fact that technological devices are present in almost every aspect of their students' daily lives. The research that investigates language learning with technology in and beyond the classroom is extensive[5], encompassing computer-assisted language learning,

2 H. Basturkmen, Ideas and Options in English for Specific Purposes, New York 2006; T. Dudley-Evans, M.J. St John, Developments in English for Specific Purposes, Cambridge 1998; H. Sierocka, Curriculum Development for Legal English Programs, Newcastle upon Tyne 2014.

3 K. Doliwa, Disputes about the concept of childhood and the child's subjectivity from the Middle Ages to the early modern times, "Miscellanea Historico-Iuridica" 2021, vol. 19(1), pp. 23–39.

4 V.K. Bhatia, A. Bhatia, A. Legal discourse across cultures and socio-pragmatic contexts, "World Englishes" 2011, vol. 30(4), pp. 481–495; L.M. Friedman, The Concept of Legal Culture: A Reply, (in:) D. Nelken (ed.) Comparing Legal Cultures, Dartmouth 1997, pp. 33–40; L. Kordić, Pravna lingvistika – sinergija jezika i prava /Legal Linguistics – A Synergy of Language and the Law, Osijek 2015; A. Matulewska, In Quest of Sufficient Equivalence. Polish and English Insolvency Terminology in Translation. A Comparative Study, "Studies in Logic, Grammar and Rhetoric" 2014, vol. 38(51), pp. 167–188; N. Medrea, C. Caraiman, The problem of legal Romanian-English/English-Romanian dictionaries and glossaries and legal translations, "Curentul Juridic, The Juridical Current, Le Courant Juridique" 2011, vol. 47, pp. 269–274; A. Piszcz, H. Sierocka, The Role of Culture in Legal Languages, Legal Interpretation and Legal Translation, "International Journal for the Semiotics of Law" 2020, vol. 33(3); S. Šarčević, New Approach to Legal Translation, The Hague–London–Boston 2000; S. Šarčević, Legal Language in Action: Translation, Terminology, Drafting and Procedural Issues, Zagreb 2009; H. Sierocka, Cultural dimensions of legal discourse, "Studies in Logic, Grammar and Rhetoric" 2014, vol. 38(51), pp. 189–196; H. Sierocka, How Vague Is the Third Space for Legal Professions in the European Union?, "International Journal for the Semiotics of Law" 2021, vol. 34, pp. 1401–1416.

5 E. Banados, A blended-learning pedagogical model for teaching and learning EFL successfully through an online interactive multimedia environment, "CALICO Journal" 2006, vol. 23(3), pp. 533–550; J. Burston, MALL: Global prospects and local implementation, "CALL-EJ" 2017, vol. 18(1), pp. 1–8; E. de Gregorio-Godeo, Blended Learning as a Resource for Integrating Self-Access and Traditional Face-to-Face Tuition in EFL Tertiary Education. 2005, http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.122.8123&rep=rep1&type=pdf; G. Dudeney, N. Hockly, How to Teach English with Technology, Harlow 2007; P. Gruba, J. Hinkelman, Blended

blended learning, mobile-assisted language learning (MALL) and the online informal learning of English[6]. There is also considerable research to date that relates to using technology to instruct students of different specialisations, including English for Legal Purposes[7]. It needs to be highlighted here that despite the unquestionable role of modern technology and its benefits in language learning and the positive approach of language instructors, ESP teachers had as Li (2018:7) remarked "demonstrated slow adoption in using new technologies for various reasons, including lack of awareness and deficient computer literacy and ICT pedagogy"[8]. The students, as some research shows, doubted whether online or even blended-learning classes could be as effective as face-to-face ones[9].

Due to the complexity of teaching/learning languages (or languages for specific purposes) online as well as due to the constraints imposed by the length of the paper, the author limits her efforts to giving readers a glimpse of the growing body of research[10] in the area of teaching/learning languages online under special conditions,

Technologies in Second Language Classrooms, Basingstoke 2012; N. Hockly, Five things you always wanted to know about blended learning (but were afraid to ask), "English Teaching Professional" 2011, vol. 75, p. 58; H. Jarvis, M. Achilleos, From Computer Assisted Language Learning (CALL) to Mobile Assisted Language Use, "TESL-EJ" 2013, vol. 16(4), pp. 1–18, https://files.eric.ed.gov/fulltext/EJ1004355.pdf; H. Jarvis, S. D. Krashen, "Is CALL obsolete?" Language acquisition and language learning revisited in a digital age, "TESL-EJ" 2014, vol. 17(4), pp. 1–6; C. Jones, It's not so much the program, more what you do with it: the importance of methodology in CALL, "System" 1986, vol. 14(2), pp. 171–178; V. Jurkovič, Online informal learning of English through smartphones in Slovenia, "System" 2019, vol. 80, pp. 27–37; A. Kukulska-Hulme, Smart devices or people? A mobile learning quandary, "International Journal of Learning and Media" 2012, vol. 4(3–4), pp. 73–77. https://doi.org/10.1162/IJLM_a_00105; P. Sharma, B. Barrett, Blended Learning, Oxford 2007; G. Socket, The Online Informal Learning of English, Basingstoke 2014; B. Tomlinson, C. Whittaker, (eds), Blended Learning in English Language Teaching: Course Design and Implementation. London 2013; R. Trinder, Informal and deliberate learning with new technologies, "ELT Journal" 2017, vol. 71(4), pp. 401–412.

6 *Ibidem*

7 E. Arnó-Macià, The role of technology in teaching languages for specific purposes courses, "Modern Language Journal" 2012, vol. 9, pp. 89–104; R. Muñoz-Luna, L. Taillefer, Integrating Information and Communication Technologies in English for Specific Purposes, Cham 2018; J. Rusanganwa, Multimedia as a means to enhance teaching technical vocabulary to physics undergraduates in Rwanda, "English for Specific Purposes" 2013, vol. 32, pp. 36–44.

8 L.Li, Integrating Technology in ESP: Pedagogical Principles and Practice, (in:) R. Munoz-Luna, L. Taillefer, (eds.), Integrating Information and Communication Technologies in English for Specific Purposes 2018, pp. 7–25.

9 H. Sierocka, The pains and gains of using blended learning in ESP classroom – finding a balance between the efficiency and the inevitability, "English for Specific Purposes World" 2020, vol. 60(22), http://esp-world.info/Articles_60/PAINS_AND_GAINS.pdf.

10 G.D. Erlam, N. Garrett, N. Gasteiger, K. Lau, K. Hoare, S. Agarwal, A. Haxell, What really matters: experiences of emergency remote teaching in university teaching and learning during the COVID-19 Pandemic, "Frontiers" 2021, https://doi.org/10.3389/feduc.2021.639842; A. Jansem, The feasibility of foreign language online instruction during the Covid-19 pandemic: A qualita-

like in the era of the Covid-19 pandemic. With the rapid spread of this "unpredictable" virus, it became clear that some views and prejudices needed to be challenged or at least modified. Thus, after the first shock, it became obvious how crucial it was for learning to continue, so when schools and universities were shut down and lockdowns were implemented, online instruction became a top focus.

It is noteworthy that an abundance of research tackles the issue of students' perceptions, reflections or emotions towards this method of instruction, which due to these extraordinary circumstances became a forced mode of language learning/teaching. The analysis of the literature shows that most of the research presents negative emotions like boredom, stress, sadness, resignation or disappointment[11]. For example, the research conducted by Ibrahim et al. among 600 students from five private specialised educational institutions in Moscow (the Russian Federation) in 2021 revealed that during this forced language learning instruction the perception of online English learning as far as the three areas researched, i.e. the usefulness, comfort and acceptability of e-learning, decreased significantly in all the aspects[12]. Pawlak et al.[13], on the other hand, studied which class mode (online versus physical classes) was more boring for teachers and learners. The research showed that the majority of teachers and students found online classes more boring than traditional ones. These are merely two examples of interesting research, but language learners' emotions, perceptions and readiness for online language learning have unquestionably emerged as a popular topic within research on online learning/teaching today.

1. Purpose and Context of the Research

The main aim of the research was to examine the course participants' perception of learning Legal English online in the era of the Covid-19 pandemic. The research mainly covered the following questions: How did they approach this mode of instruction prior to the coronavirus pandemic? What do they like and dislike about on-

tive case study of instructors' and students' reflections, "International Education Studies" 2021, vol. 14(4), pp. 93–102. https://files.eric.ed.gov/fulltext/EJ1291383.pdf;

J.T. Xuesong (Andy) Gao, Teaching and learning languages online: Challenges and responses, "System" 2022, vol. 107, pp. 1–9.

11 R. Hastowohadi, W. Setyaningrum, F. Pangesti, Forced remote learning during the Covid-19 outbreak: international students' stories from a Bahasa Indonesia (the Indonesian language) for foreigners classroom. "Journal of International Students" 2020, vol. 10(S3), pp. 180–197; M. Penado Abilleira, M.L. Rodicio-García, M. P. Ríos-de Deus, M.J. Mosquera-González, Technostress in Spanish University Teachers During the COVID-19 Pandemic, "Frontiers" 2021.

12 M.K. Ibrahim, N. Spitsyna, A. Isaeva, Learning foreign languages in a digital environment: learners' perception of the sudden transition to e-learning during COVID-19 lockdown. "The Electronic Journal of e-Learning" 2021, vol. 19(6), pp. 548–558.

13 M. Pawlak, A. Derakhshan, M. Mehdizadeh, M. Kruk, Boredom in online English language classes: mediating variables and coping strategies, "Language Teaching Research" 2022.

line language learning? Is it harder to learn Legal English online than in a traditional classroom? Can online courses be as effective and enjoyable as traditional ones?

The research was carried out in the years 2020–2021 among members of the Slovak judiciary and prosecutors who participated in the EU-funded project "Development of the system of specialized training of judges and judicial staff" (project code ITMS2014 +: 314021M248). The project aimed to provide training in Legal English to 222 members of the Judicial Academy of the Slovak Republic (JASR – Justičná Akadémia Slovenskej Republiky) in the form of 120-hour traditional face-to-face courses. After the resources were granted and the project was about to be implemented the pandemic started and lockdowns were introduced. The organisers, i.e. EUPC s.r.o (the EU project consultant) and JASR, were confronted with a serious dilemma under these unforeseen and difficult circumstances on how to proceed. There were two options to choose from: either to return the EU funds granted or implement the project by means of IT tools. It is important to point out that the sum of the EU funds was significant, and some efforts were made to obtain them, so the decision to return them would not be warmly welcomed by the stakeholders. On the other hand, it was difficult to predict how long the pandemic and lockdowns would last, so the launch and implementation of the project could not be postponed much as the EU funds were supposed to have been spent by 2021 at the latest. After many discussions and deliberations, the decision was taken to start and implement the project by means of distance learning tools, i.e. the Zoom software program developed by Zoom Video Communications. Interestingly enough, an overwhelming majority of those who enrolled in the project with the thought that they are going to learn Legal English in a traditional form took up the challenge and were eager to learn English for Legal Purposes online.

2. Research Methodology

2.1. Sample

The sample for the whole study comprised 151 respondents (78 court clerks, 43 judges, 23 prosecutors, 2 trainee judges and 5 trainee prosecutors), which constitutes 68% of the total number of participating legal professionals (i.e. 222 people attended the course). The questionnaire was supported by semi-structured interviews conducted with 20 respondents from the sample group.

2.2. Research Instruments and Research Questions

The research study assumed a qualitative and quantitative methodology including a questionnaire (Appendix A[14]) and semi-structured interviews (Appendix B) to

14 Appendix A presents the translation of the original questionnaire, which was distributed by the course organisers in Slovak.

examine the main research problem, i.e. the perception of the legal professionals towards utilising online tools in their language education. The questionnaire, which used the Likert scale, was designed and conducted by the course organisers, i.e. JASR and EUPC, and distributed among all the course participants, whereas the interview was designed and conducted by the author of this paper. The interviewees were selected based on the practicality criterion as the organisers did not permit the author to contact all the participants. The author therefore conducted the interviews among the participants she was currently teaching. The statistical data were processed and visualised in Microsoft Excel 2017.

The main research question was as follows:

– *What is the course participants' perception of learning Legal English online in the era of the Covid-19 pandemic?*

The specific research questions included in the questionnaire and interview were as follows:

– *How do the participants evaluate the content focus of their language learning?*
– *How do the participants evaluate the language pace (intensity)of their language education?*
– *What were the respondents' attitudes towards online language learning before the pandemic?*
– *What do they like about online language learning?*
– *What don't they like about online language learning?*
– *Do they think that online learning can be as effective and enjoyable as face-to-face (F2F) classes?*
– *Do they think that online learning will replace F2F traditional teaching one day?*
– *What are their feelings/attitudes towards online learning overall?*
– *What mode of language learning will they choose when the pandemic is over?*
– *Do they think that learning Legal English might be more difficult online?*
– *Would they recommend language education in the distance form to their colleagues?*

The data essential to answering the research questions is both quantitative and qualitative in nature and were collected by means of the questionnaire (Appendix A) carried out among the JASR project participants. The questions included in the questionnaire were expanded and/or clarified during the interviews (Appendix B). The respondents' reflections were of a qualitative character. The data gathered were interpreted, and conclusions reached. Finally, further suggestions and recommendations were made.

3. Results of the Study

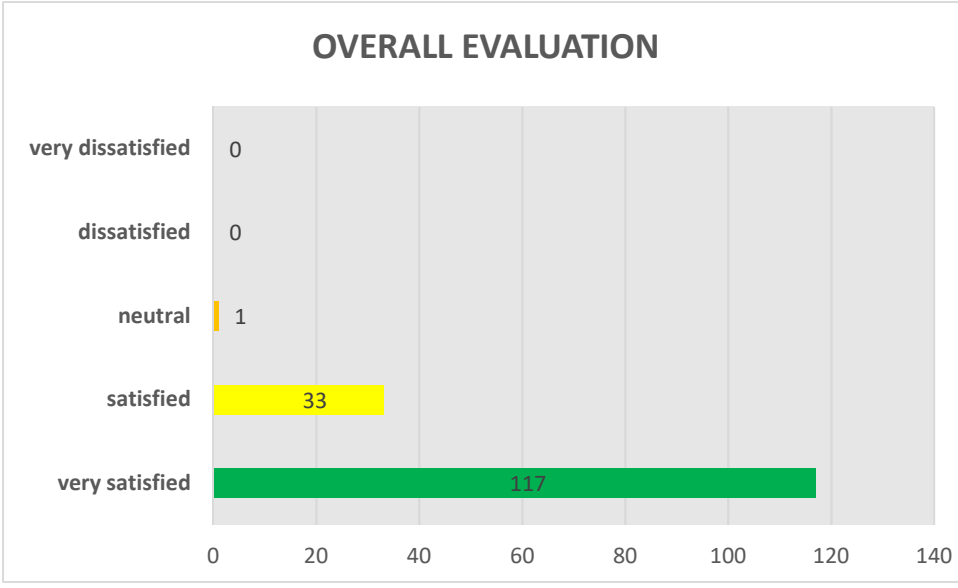
3.1. The Questionnaire

The questionnaire (Appendix A), which was fairly general in character, was distributed by the organisers at the end of December 2020 after the groups had covered 60 teaching hours. The aim was mainly to check how the participants perceive this form of language education under these somewhat "forced" conditions.

The overall evaluation of the course

On the basis of the results obtained, it can be ascertained that the participants who replied to the questionnaire evaluated the Legal English course very positively. Of the total respondents, 117 (77%) were very satisfied with the course and 33 (22%) were satisfied (*Fig. 1*). Only one person (not even 1% of the research group) remained neutral. None of the respondents were dissatisfied or very dissatisfied.

Figure 1. The evaluation of the Legal English online course

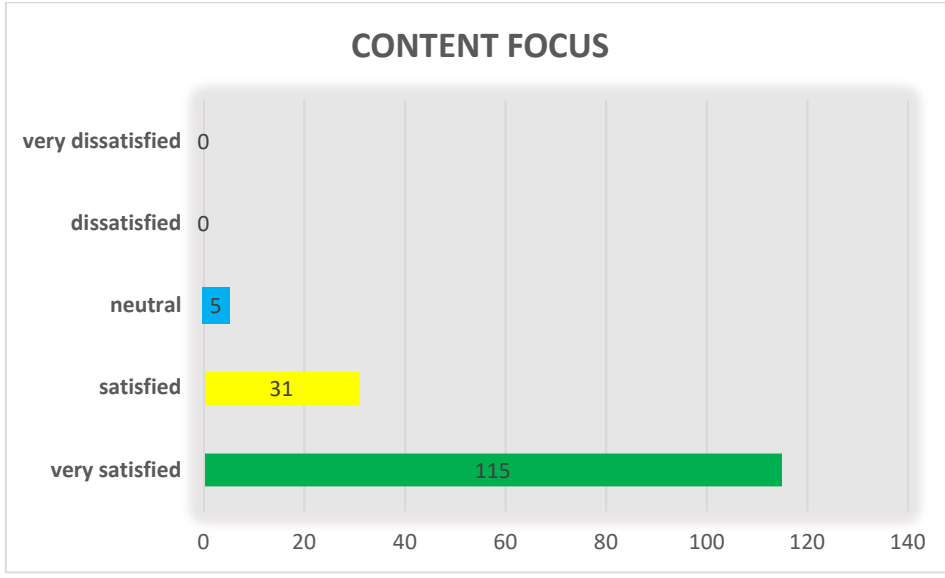


Source: the questionnaire distributed by the course organisers

The evaluation of the course content

The respondents were also asked to evaluate the course content. As *Fig.2* shows, an overwhelming majority of the participants who completed the questionnaire were either very satisfied (115) or satisfied (31) with the course content focus, which respectively constitutes 76% and 21% of the total number of those who completed the questionnaire. Only five respondents (i.e. 3% of the research group) took a neutral attitude, and interestingly enough there was no one among them who found the course content either unsatisfactory or very unsatisfactory.

Figure 2. The evaluation of course content

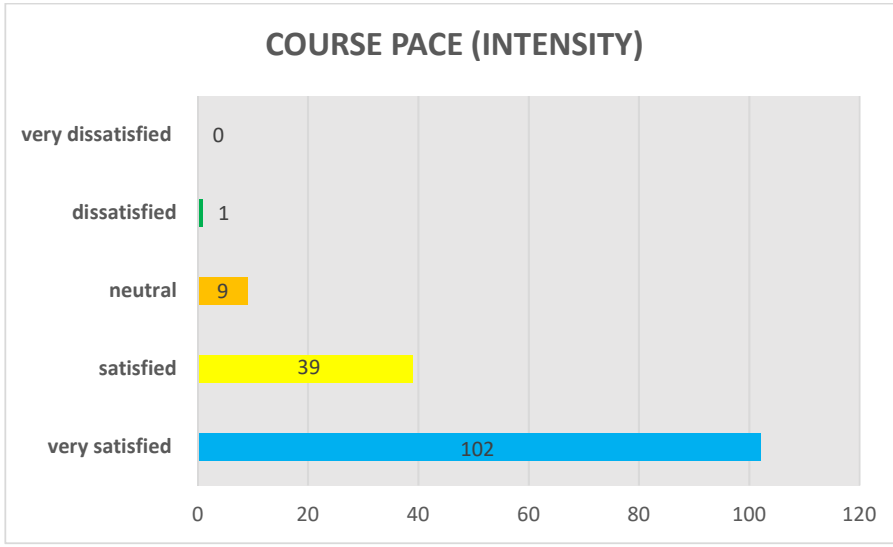


Source: the questionnaire distributed by the course organisers

The evaluation of course pace (intensity)

As far as the course pace is concerned, the results presented below (*Fig. 3*) reveal that the course intensity was adequate. Some 102 of the respondents (67%) were very satisfied and 39 of them were satisfied (28%) with the course pace. Nine people (6%) could not say if it was satisfactory or not, and only one person (not even 1% of the research group) did not like the intensity of the course.

Figure 3. The evaluation of the course pace (intensity)

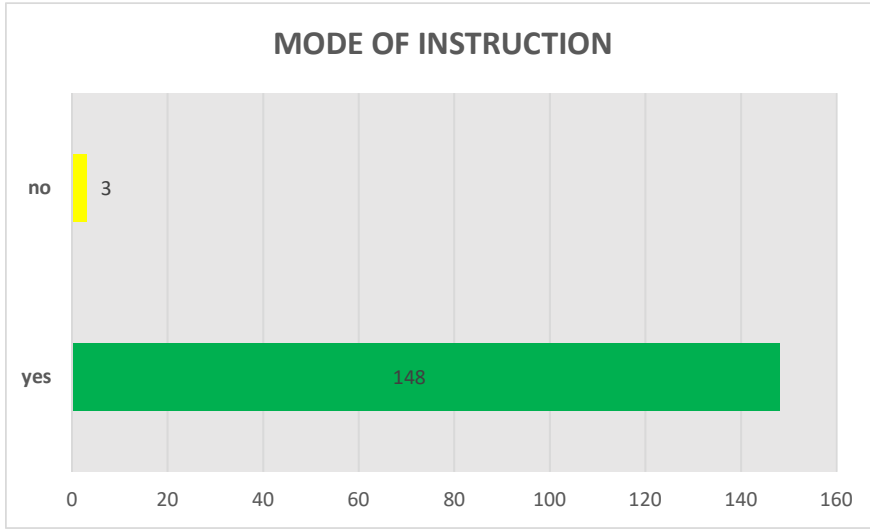


Source: the questionnaire distributed by the course organisers

The evaluation of the online mode of instruction

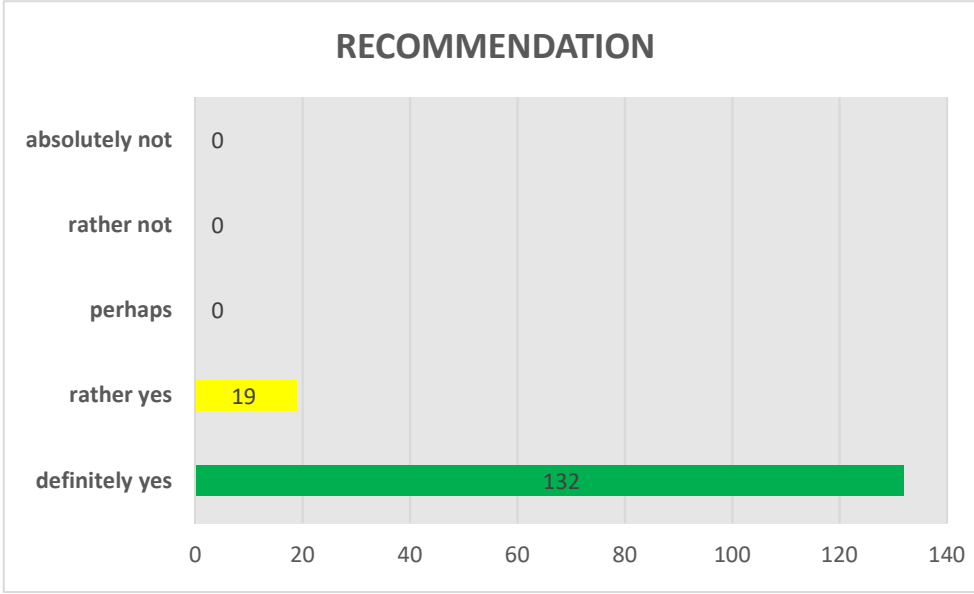
Another issue the course participants were asked about in the questionnaire was their perception of online tools in their language education and their willingness to recommend this mode of instruction to other learners of Legal English.

Figure 4. The perception of the online mode of instruction



Source: the questionnaire distributed by the course organisers

Figure 5. Recommendation of the online mode of instruction to peers



Source: the questionnaire distributed by the course organisers

As far as the perception of the online mode of instruction is concerned (*Fig. 4*), a massive majority of the respondents, i.e. 148 of them (98%), perceived this form of language education positively. Only three people (i.e. 2%) claimed the opposite. Also, as *Fig. 5* depicts, all of the participants who completed the questionnaire would recommend distance learning to their colleagues. It is worth pointing out here that an overwhelming majority was completely convinced about that – 132 of the respondents, i.e. 87%, would definitely recommend this mode of instruction.

3.2. The Interviews

As the questionnaire was quite general, to gain a deeper insight as to how the research group perceive their language education in that form of instruction and under these specific conditions, 20 respondents out of the research group were interviewed. They were asked what they liked and did not like about the course, what they thought of this mode of instruction before and after the course, whether, as far as learning English for Legal Purposes is concerned, studying Legal English is more difficult online, and finally whether they were going to continue learning English for Legal Purposes via online tools.

The attitude towards online language learning before the pandemic

The results of the interview revealed that most of the interviewees (15 people, i.e. 75%) were sceptical and pessimistic about this mode of instruction before the course

started. They said that they could not imagine this would work and some also added that they were quite pessimistic about it or were even worried if they could learn anything. Six interviewees commented that they preferred face-to-face, i.e. traditional, classes. Only two people (10%) said that they had some experience with online training courses, and they had enjoyed them.

Advantages and disadvantages of online language learning

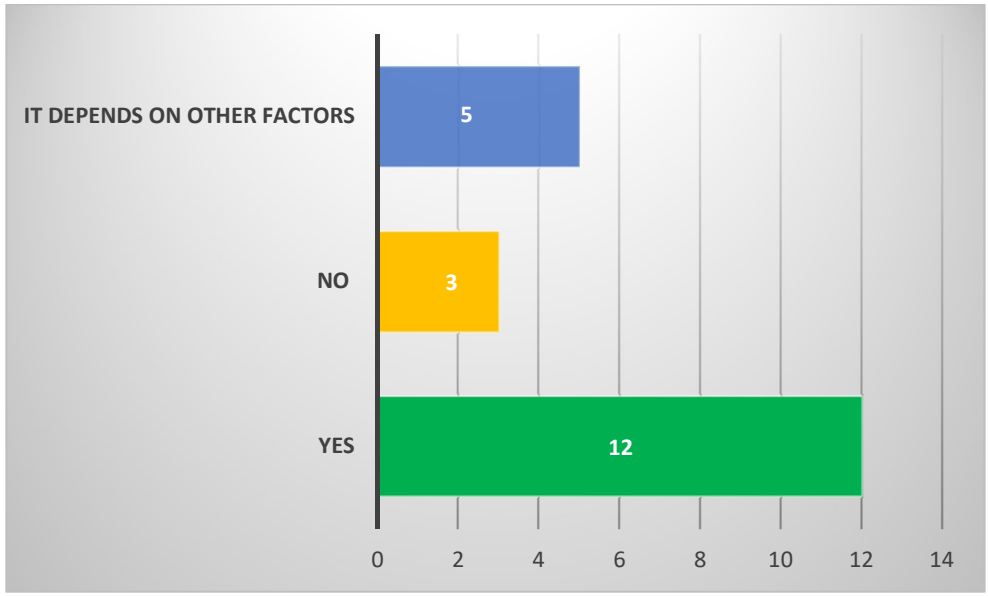
All of the interviewees valued the convenience of this form of instruction in terms of time management. They remarked that as they don't have to travel anywhere, and they can connect from anywhere, they can use their time more effectively. One person also added that because of online tools they can meet more people of their profession in Slovakia, which is an added value of the project apart from language learning.

As far as disadvantages are concerned, a majority of the interviewees (12 people, i.e. 60%) missed "human contact" and socialising. They would have loved to meet their peers in person, not see "only their faces". They also commented that no matter how advanced technology is, it cannot replace real face-to-face contact. Another aspect the interviewees complained a lot about concerned technical issues such as the quality of sound or the internet connection as well as technical limitations when someone was connected by a mobile phone (reading the whiteboard or sharing the screen). Some remarked that due to the technical issues online classes are slower than the traditional ones, which makes people more tired. Interestingly enough, there were two respondents who claimed that they cannot see any disadvantages, and some activities are even more fun and more effective than during face-to-face classes; therefore, they benefit more from online classes than traditional ones.

Online vs. traditional classes

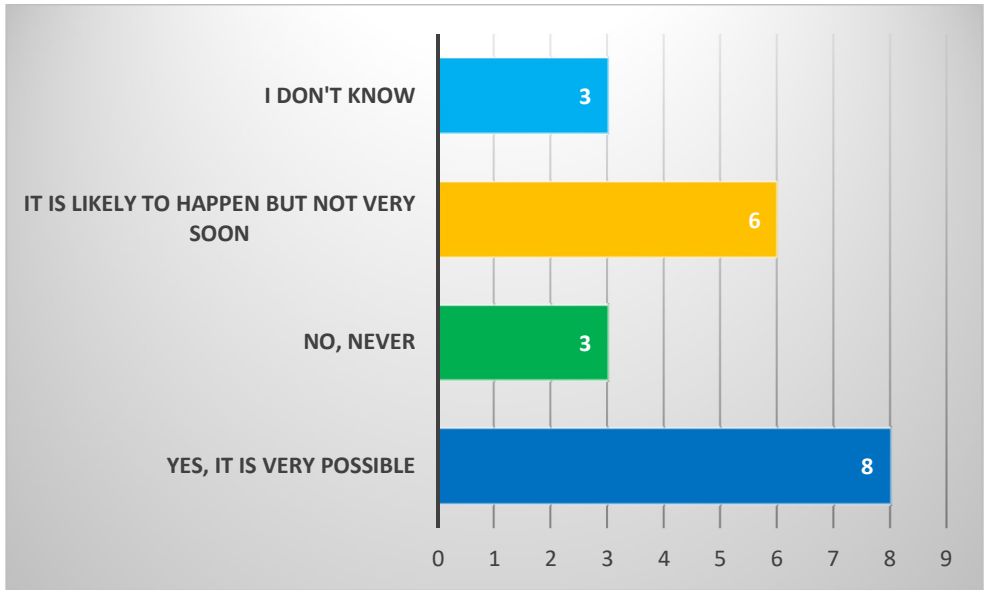
When asked if online learning is more effective and enjoyable than F2F classes, a majority of the interviewees (12 people (60%) remarked that they found such classes more effective and enjoyable, three people disagreed, whereas five of them (25%) claimed that it depends not on the mode of instruction but on other factors such as the teacher, the materials, the classmates or the time of the day, etc. (*Fig. 6*).

Figure 6. Online vs. traditional classes (in terms of effectiveness and enjoyment)



Source: the author's own research

Figure 7. Online vs. traditional classes (in terms of the future of language education)

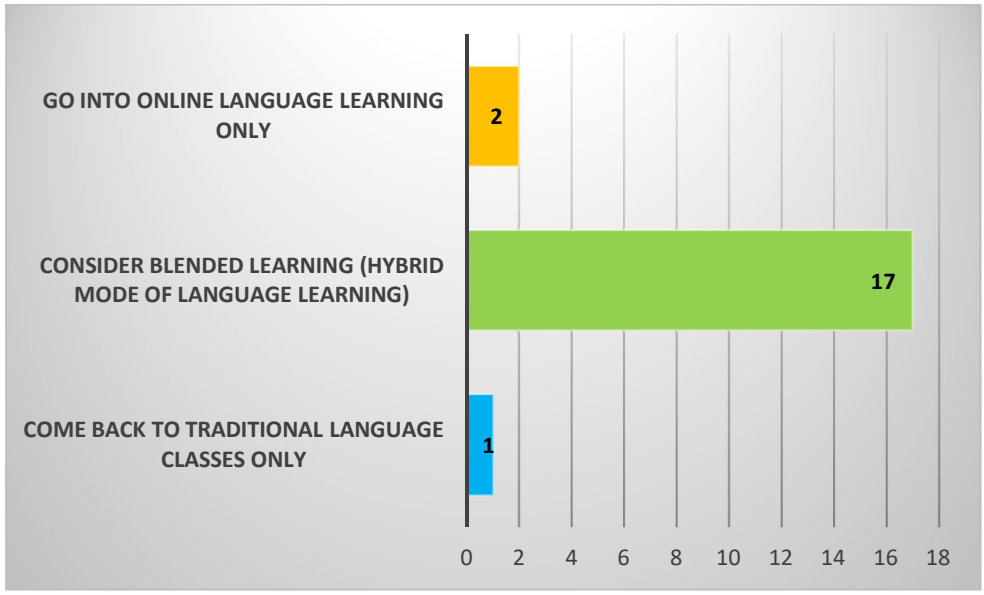


Source: the author's own research

As far as the future of online instruction is concerned, the results reveal (*Fig. 7*) that the interviewees are not uniform in their opinions. When asked whether online learning is going to replace the traditional mode of instruction, a majority of the interviewees stated that this is going to happen (14 people, i.e. 70%), although six of them claimed that this is not going to happen very soon. Three participants (15%) doubted that it will ever happen, and the other three did not know if it is going to happen.

When asked how they are going to continue their language education when the pandemic is over, the vast majority of them, i.e. 17 (85%), stated that they would opt for a hybrid mode of instruction, combining both face-to-face and distance learning methods. As *Fig. 8* illustrates, only two of the interviewees (10%) considered using only online language learning, and one participant (5%) would return to the traditional mode of instruction.

Figure 8. Online vs. traditional classes (in terms of continuing language education)

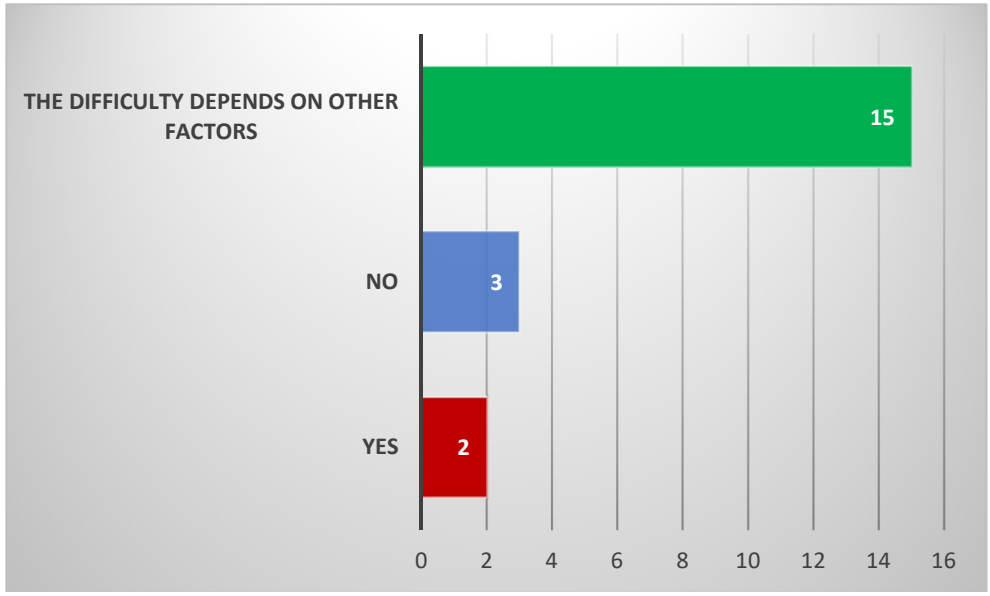


Source: the author's own research

The respondents were also asked whether learning English for Legal Purposes was more difficult online. The results obtained under this section of the study (*Fig. 9*) clearly indicate that the difficulty of learning English for Legal Purposes does not depend on the mode of instruction. Fifteen out of 20 interviewees (i.e. 75%) claimed that the difficulty depends on other factors such as the complexity of the topic and vocabulary, the materials or different systems of law. Only three people (i.e. 15%)

stated that it is not more difficult, whereas the remaining two (10%) believed the opposite.

Figure 9. Online vs. traditional classes (in terms of learning English for Legal Purposes)

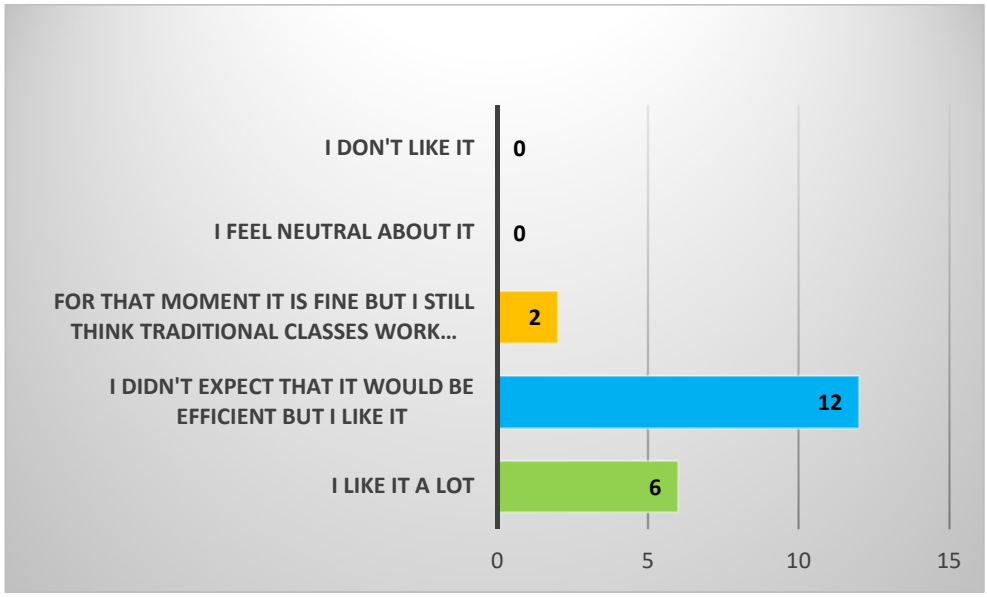


Source: the author's own research

The attitude to online language learning after the course

On the basis of the results obtained, it can be ascertained that an overwhelming majority of the interviewees liked the online course (*Fig. 10*). Six (i.e. 30%) of the respondents stated that they like it, and 12 of the 20 interviewees admitted that they did not expect that this mode of instruction would be efficient, but it was, and they liked it. Only two people expressed the opinion that under the special circumstances distance learning is fine but still thought that traditional classes would work better for them.

Figure 10. The attitude to online language learning after the course



Source: the author's own research

4. Discussion

The first research aspect examined related to the evaluation of the online course of English for Legal Purposes. The results have shown a high degree of satisfaction among the course participants here. It was expressed both in the questionnaire completed by 151 respondents and supplemented by semi-structured interviews among 20 of them. They evaluated the course very positively, both in terms of course content and its intensity. Only one participant did not like the course intensity; the others were either satisfied or very satisfied. The course was indeed quite intensive as classes were held twice a week and lasted 90 minutes each, so for some learners who had never attended online classes, it might have been fairly demanding in terms of attention span. One commented: *I think when you have a 90-minute online meeting it is not that bad but I cannot imagine having an online summer school for example. Or for me even one-day seminars managed by Zoom are not as good as face-to-face seminars.* The results of the research (with a rather enthusiastic approach of the participants) are interesting, especially in the context of other studies conducted on forced, remote language learning where negative emotions like boredom, disappointment, sadness and resignation dominate.

In addition, one important comment needs to be made here. The fact that not all of the course participants responded to the questionnaire (151 out of 222, i.e. 68%) might pose a question why the remaining 71 (i.e. 22%) did not complete the questionnaire. Were they too busy to answer or was their enthusiasm not equal to those who did? The picture would definitely be more complete if all the participants had given their feedback.

Another research area approached, and the most complex, relates to the perception of IT tools utilised for learning/teaching English for Legal Purposes. The research outcomes indicate that despite initial fears, reluctance and scepticism all of them found this mode of instruction adequate for learning Legal English, and all of them would recommend it to other learners. In fact their comments were more than favourable:

- *It is an excellent way to improve language skills during this pandemic situation.*
- *I also have experience with other types of online seminars not only online language lessons (communication skills course, specific law topic course) and these were excellent too.*
- *I think that this kind of learning – online language learning – is not a problem for me because as mentioned above I am glad that I don't have to travel during my worktime to the different city.*
- *I couldn't imagine learning online, because I didn't have to try yet. After this experience, I can only recommend this method of teaching.*
- *Generally I think that online learning can be fun and efficient but it depends on the people.*
- *It is sure that demand for online teaching will rise also after the end of the pandemic.*

In addition, it is worth pointing out that the research group, i.e. judges and prosecutors, being aware of the complexity of their subject specialisation, do not find learning Legal English more difficult online. They remark that the difficulty is related to a number of other factors such as the teacher, the teaching materials, and the subject specialisation itself like various legal systems and legal cultures.

Interestingly enough, most of those interviewed (75%), when asked how they were going to continue their language education when the pandemic is over plan to exploit a hybrid mode of instruction, combining both face-to-face and distance learning methods, probably for the benefits online learning can give them like better time management and the possibly to connect from any place. They do notice some drawbacks of this mode of instruction like technical problems and lack of real face-to-face contact, which both however can be remedied with time – the first one with increasing the IT skills of users and better equipment, the latter with lifting the lockdown and social distance restrictions and coming back to "pre-Covid reality".

Conclusion

The coronavirus pandemic, which started in early 2020 and continued throughout 2021, has affected almost all areas of our lives. It presented a significant challenge in the area of education, for the great majority of both teachers and students, since they had to adjust to novel circumstances and learn new abilities and skills, which often meant leaving their comfort zones and testing their preconceptions. The course participants who served as the research group in the above study are a good example.

The research project described in this paper aimed to investigate how members of the judiciary and prosecution in Slovakia attending the Legal English course online perceive this form of instruction and whether they found it effective and enjoyable. The qualitative and quantitative methodology presented in this study has revealed that the course participants expressed a high degree of satisfaction as far as the Legal English online course was concerned. Despite initial reluctance and scepticism they positively evaluated the course itself, both in terms of its content and pace. The study has also shown that they highly recommend this mode of instruction to their colleagues and other learners of English for Legal Purposes as they see numerous advantages of learning English by means of online tools. This even applies in the case of English for Legal Purposes, which due to the specificity of the topic may pose a considerable challenge. Moreover, the study also shows that it is worth dispelling some misconceptions, as most of the participants consider continuing their language education with the use of IT tools after the course, something they would probably not have thought of had it not been for the extraordinary circumstances they had to face.

Finally, it needs to be underscored that the author is aware that since 32% of the participants in the online course did not participate in the study the results of the research are more of an indicative character and the findings were limited to the one online course researched here. Undoubtedly, this is a field that needs further examination, especially in the context of its pedagogical effectiveness.

REFERENCES

Arnó-Macià E., The role of technology in teaching languages for specific purposes courses, "Modern Language Journal" 2012, vol. 9, pp. 89–104.

Basturkmen H., Ideas and Options in English for Specific Purposes, New York 2006.

Bhatia V.K., Bhatia A., Legal discourse across cultures and socio-pragmatic contexts, "World Englishes" 2011, vol. 30(4), pp. 481–495.

Bulla M., Legal Regulation of Remote Work in Slovakia and the Covid-19 Pandemic, "Eastern European Journal of Transnational Relations" 2021, vol. 5(2), pp. 7–22.

Burston J., MALL: Global prospects and local implementation, "CALL-EJ" 2017, vol. 18 (1), pp. 1–8.

de Gregorio-Godeo E., Blended Learning as a Resource for Integrating Self-Access and Traditional Face-to-Face Tuition in EFL Tertiary Education. 2005, http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.122.8123&rep=rep1&type=pdf.

Doliwa K., Disputes about the concept of childhood and the child's subjectivity from the Middle Ages to the early modern times, "Miscellanea Historico-Iuridica" 2021, vol. 19(1), pp. 23–39.

Dudeney G., Hockly N., How to Teach English with Technology, Harlow 2007.

Dudley-Evans T., St John M. J., Developments in English for Specific Purposes, Cambridge 1998.

Erlam G.D., Garrett N., Gasteiger N., Lau K., Hoare K., Agarwal S., Haxell, A., What really matters: experiences of emergency remote teaching in university teaching and learning during the COVID-19 pandemic, "Frontiers" 2021.

Friedman L.M., The Concept of Legal Culture: A Reply, (in:) D. Nelken (ed.) Comparing Legal Cultures, Dartmouth 1997, pp. 33–40.

Gruba P., Hinkelman J., Blended Technologies in Second Language Classrooms, Basingstoke 2012.

Hastowohadi, Setyaningrum, R.W., Pangesti F., Forced remote learning during the Covid-19 outbreak: international students' stories from a Bahasa Indonesia (the Indonesian language) for foreigners classroom, "Journal of International Students" 2020, 10(S3), pp.180–197.

Hockly N., Five things you always wanted to know about blended learning (but were afraid to ask), "English Teaching Professional" 2011, vol. 75, p. 58.

Ibrahim M. K., Spitsyna N., Isaeva A., Learning foreign languages in a digital environment: learners' perception of the sudden transition to e-learning during COVID-19 lockdown, "The Electronic Journal of e-Learning" 2021, vol. 19(6), pp. 548–558.

Jansem A., The feasibility of foreign language online instruction during the Covid-19 pandemic: A qualitative case study of instructors' and students' reflections, "International Education Studies" 2021, vol. 14(4), pp. 93–102.

Jarvis H., Achilleos M., From Computer Assisted Language Learning (CALL) to Mobile Assisted Language Use, "TESL-EJ" 2013, vol. 16(4), pp. 1–18.

Jarvis H., Krashen S.D., "Is CALL obsolete?" Language acquisition and language learning revisited in a digital age, "TESL-EJ" 2014, vol. 17(4), pp. 1–6.

Jones C., It's not so much the program, more what you do with it: the importance of methodology in CALL, "System" 1986, vol. 14(2), pp. 171–178.

Jurkovič V., Online informal learning of English through smartphones in Slovenia, "System" 2019, vol. 80, pp. 27–37.

Kordić L., Pravna lingvistika – sinergija jezika i prava /Legal Linguistics – A Synergy of Language and the Law, Osijek 2015.

Kukulska-Hulme A., Smart devices or people? A mobile learning quandary, "International Journal of Learning and Media" 2012, vol. 4(3–4), pp. 73–77.

Li L., Integrating Technology in ESP: Pedagogical Principles and Practice, (in:) R. Munoz-Luna, L. Taillefer, (eds), Integrating Information and Communication Technologies in English for Specific Purposes, 2018, pp. 7–25.

Lorenz H., Turhan E., The Pandemic and Criminal Law – A Look at Theory and Practice in Germany, "Białystok Legal Studies" 2021, vol. 26(6), pp. 9–26.

Matulewska A., In Quest of Sufficient Equivalence. Polish and English Insolvency Terminology in Translation. A Comparative Study, "Studies in Logic, Grammar and Rhetoric" 2014, vol. 38(51), pp. 167–188.

Medrea N., Caraiman C., The problem of legal Romanian-English/English-Romanian dictionaries and glossaries and legal translations, "Curentul Juridic, The Juridical Current, Le Courant Juridique" 2011, vol. 47, pp. 269–274.

Muñoz-Luna R., Taillefer L, Integrating Information and Communication Technologies in English for Specific Purposes, Cham 2018.

Pawlak M., Derakhshan A., Mehdizadeh M., Kruk M., Boredom in online English language classes: mediating variables and coping strategies, "Language Teaching Research" 2022.

Penado Abilleira M., Rodicio-García M.L., Ríos-de Deus M.P., Mosquera-González M.J., Technostress in Spanish University Teachers During the COVID-19 Pandemic, "Frontiers" 2021.

Piszcz A., Sierocka H., The Role of Culture in Legal Languages, Legal Interpretation and Legal Translation, "International Journal for the Semiotic of Law" 2020, vol. 33(3).

Rusanganwa J., Multimedia as a means to enhance teaching technical vocabulary to physics undergraduates in Rwanda, "English for Specific Purposes" 2013, vol. 32, pp. 36–44.

Šarčević S., New Approach to Legal Translation, The Hague–London–Boston 2000.

Šarčević S., Legal Language in Action: Translation, Terminology, Drafting and Procedural Issues, Zagreb 2009.

Sharma P., Barrett B., Blended Learning, Oxford 2007.

Sierocka H., Curriculum Development for Legal English Programs, Newcastle upon Tyne 2014.

Sierocka H., Cultural dimensions of legal discourse, "Studies in Logic, Grammar and Rhetoric" 2014, vol. 38(51), pp. 189–196.

Sierocka H., The pains and gains of using blended learning in ESP classroom – finding a balance between the efficiency and the inevitability, "English for Specific Purposes World" 2020, vol. 60(22).

Sierocka H., How Vague Is the Third Space for Legal Professions in the European Union?, "International Journal for the Semiotics of Law" 2021, vol. 34, pp. 1401–1416.

Socket G., The Online Informal Learning of English, Basingstoke 2014.

Tao J., Gao X.A, Teaching and learning languages online: Challenges and responses, "System" 2022, vol. 107, pp. 1–9.

Tomlinson B., Whittaker C. (eds.), Blended Learning in English Language Teaching: Course Design and Implementation, London 2013.

Trinder R., Informal and deliberate learning with new technologies, "ELT Journal" 2017, vol. 7 (4), pp. 401–412.

APPENDIX A

How do you evaluate the course in general? Choose one from the following:
I am…

✓ very satisfied
✓ satisfied
✓ neutral
✓ dissatisfied
✓ very dissatisfied

How do you evaluate the content of the course? Choose one from the following:
I am…

✓ very satisfied
✓ satisfied
✓ neutral
✓ dissatisfied
✓ very dissatisfied

How do you evaluate the pace (intensity) of the course? Choose one from the following:

✓ I am…
✓ very satisfied
✓ satisfied
✓ neutral
✓ dissatisfied
✓ very dissatisfied

Do you find this form of learning (by means of IT tools) suitable/adequate for you?

✓ yes
✓ no

Would you recommend distance language learning to your colleagues? Choose one from the following:

✓ definitely yes
✓ rather yes
✓ perhaps
✓ rather not
✓ absolutely not

APPENDIX B

INTERVIEW

1. What was your attitude towards online language learning before the pandemic?
2. What do you like about online language learning?
3. What don't you like about online language learning?
4. Can online learning be as effective and enjoyable as F2F classes?
   a) Yes
   b) No
   c) It depends on other factors too (e.g. the teacher, the materials, the classmates, the time of the day, other)
5. Will online learning replace F2F traditional teaching one day?
   a) Yes, it is very possible
   b) No, never
   c) It is likely to happen but not very soon
   d) I don't know
6. When the pandemic is over, I will …
   a) come back to traditional language classes only. Why?
   b) consider blended learning (hybrid mode of language learning). Why?
   c) go into online language learning only. Why?
7. Thinking about learning online overall, which of the following best describes your feelings about it:
   a) I like it a lot
   b) I didn't expect that it would be efficient but I like it
   c) For that moment it is fine but I still think traditional classes work better for me
   d) I feel neutral about it
   e) I don't like it
8. Learning Legal English might be more difficult online:
   a) Yes
   b) No
   c) The difficulty does not depend on the mode of studying but on other factors (e.g. the topic, the vocabulary, the materials, the system of law etc.)
9. Additional comments to the questions above

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Evaluation of Compliance with the Provisions of the European Charter for Regional or Minority Languages in the Light of the First Report of the Republic of Poland

Abstract: Poland's ratification of the European Charter for Regional or Minority Languages has imposed several obligations on the Republic of Poland. At the moment of ratification, Poland indicated which languages would be considered regional or minority, referring to the Act on National and Ethnic Minorities and Regional Language. This article outlines the mechanism for assessing Poland's compliance with the Charter and indicates which responsibilities rest with the executive power that needs to present detailed reports on the Charter's implementation to the Secretary General of the Council of Europe. The article presents the contents of the first report from 2010. It also shows the position of the Committee of Experts that initially evaluated the 2010 report, while analysing the existing normative acts in Poland in this regard to other regulations and actual practices. The activities of the Committee of Experts resulted in a report suggesting recommendations submitted to the Committee of Ministers of the Council of Europe. The Polish government referred to the Report of the Committee of Experts with its comments and objections. Based on all these documents, the Committee of Ministers of the Council of Europe formulated recommendations for Poland, fully sharing, despite the reservations of the Republic of Poland, the position of the Committee of Experts. From the content of the documents analysed in this article, it follows that the Committee of Ministers of the Council of Europe believes that Poland still has a lot of work to do in promoting awareness and tolerance of regional or minority languages. Poland also needs to improve in the field of education, relating to media, and finally in the delicate matter of communication between minorities and public authorities.

Keywords: Committee of Experts, Council of Europe, European Charter for Regional or Minority Languages, minority language, regional language

Introduction

Numerous peace agreements and other acts of international law have long addressed the problem of protecting national minorities, drawing attention from the 20th century on this occasion to issues relating to the use of languages by these minorities.[1] The work on the status of regional or minority languages in the legal system of the Council of Europe was completed with the adoption by the Committee of Ministers of the Council of Europe of the text of the Charter for Regional or Minority Languages (hereinafter: Charter) as a Convention of the Council of Europe on 25 June 1992.[2] The Charter's preamble states that the protection and promotion of regional or minority languages in the different countries and regions of Europe constitutes a significant contribution to building Europe based on the principles of democracy and cultural diversity within a framework of national sovereignty and territorial integrity[3].

The purpose of the study was to consider to what extent the solutions presented in the Charter were reflected in the administrative actions of the Republic of Poland. The creators of the Charter were concerned that it should not become yet another well-meaning document for international law, the meaning of which will be reduced

1 J. Sobczak, Europa mniejszości. Standardy prawne ochrony mniejszości narodowych i etnicznych oraz ich realizacja w polskim systemie prawnym, (in:) M. Musiał-Karg (ed.), 'Europa XXI wieku. Pespektywy i uwarunkowania integracji europejskiej', Poznań 2007, pp. 167–201 (ibid. presentation of relevant literature); J. Sobczak, Ochrona mniejszości narodowych w prawie europejskim, (in:) W. J. Burszta, M. J. Dudziak, R. Piotrowski (eds), 'Europa – Slavia – Germania. W poszukiwaniu tożsamości', Warsaw/Gorzów Wielkopolski 2009, pp. 167–188; J. Sobczak, Wokół problemu definicji mniejszości narodowych, 'Środkowoeuropejskie Studia Polityczne', 2003, no. 1, pp. 25–62; A. Furier, Wersalskie źródła międzynarodowej ochrony mniejszości narodowych, 'Sprawy Narodowościowe – Seria Nowa' 2001, no. 18, pp. 93–108; S. Sierpowski, Kwestia narodowa w stosunkach międzynarodowych, 'Sprawy Narodowościowe' 1993, vol. II, no. 2–3, pp. 9–28; C. Mik, Ochrona mniejszości narodowych w prawie europejskim, 'Państwo i Prawo' 1996, no. 3, p. 19, V. Czepek, E. Karska, Peace Agreements as International Legal Acts Protecting National Minorities, 'Białostockie Studia Prawnicze' 2021, vol. 26, no. 5, pp. 75–89.

2 Work on the Charter began with Council of Europe Parliamentary Assembly Resolution 928 (1981). An initial draft of the Charter was presented in 1988 at the 23rd session of the Standing Conference of Local and Regional Authorities of Europe as Resolution 192. The presented text was the result of the work of the ad hoc committee of experts on regional and minority languages of Europe set up by the Committee of Ministers of the Council of Europe in its opinion No. 142 (1998) which interacted with the Standing Conference of Local and Regional Authorities of Europe.

3 J.M. Woehrling, The European Charter for Regional or Minority Languages. A Critical Commentary, Strasbourg 2005. See: P. McDermott, Language rights and the Council of Europe: A failed response to a multilingual continent?, 'Ethnicities' 2017, no. 17(5), pp. 603–626.

to mere theoretical analyses among specialists. They were aiming for the Charter's provisions to create a possibility to control the compliance of the signatory states with the solutions adopted in its content. This was to be served by the control mechanism and the obligation imposed on states bound to the content of the Charter to submit reports, subsequently evaluated by the Committee of Experts. The considerations presented below aimed to show the not very formalized procedures for assessing compliance with the Charter, as well as trying to answer the question of how far the statutory solutions adopted by Poland appeared, in light of the first report, as rational and reasonable. Although the authors intend to present the full spectrum of the situation of existing regional or minority languages in Poland, unfortunately, due to the need to enclose the considerations in a reasonably sized framework, it was necessary to be limited to presenting only the first of the reports. Its content and subsequent evaluation by the entities appointed for this purpose is the starting point for further action in the area of Polish ethnic policy[4] and, consequently, language policy[5]. The authors considered as particularly important whether the concept, adopted quite arbitrarily in the Polish Law on National and Ethnic Minorities and the Regional Language[6], of distinguishing national, ethnic minority languages and the regional languages did not turn out to impose too great an obligation on the executive authorities, or whether it did not cause an excessive financial burden, unreasonable in relation to the expectations of minorities, which are often not very numerous.

4 Without going into a debate on ethnic politics, both those of global and regional international organizations and those of individual states, it is only appropriate to refer to the extensive literature in this regard, leaving aside the questions of the relationship between ethnic politics and geopolitics. Cf. on geopolitics K. Cordell, S. Wolff, Ethnopolitics in Contemporary Europe, (in:) The Ethnopolitical Encyclopedia of Europe, Palgrave 2004; S. Wolff, Ethnic Conflict: A Global Perspective, New York 2006; G. Sasse, The Foundations of Ethnic Politics or a House Built on Sand?, 'Nations and Nationalism' 2011, no. 4; R. Zendrowski, Polityka etniczna – próba (re)konceptualizacji, (in:) H. Chałupczak, R. Zendrowski, E. Pogorzała, T. Browarek (eds.), Polityka etniczna. Teorie, koncepcje, wyzwania, Lublin 2015, pp. 32ff. On the relationship between ethnic politics and geopolitics, see C. Jean, Geopolityka, Wrocław/Warsaw/Cracow 2003, pp. 31–59; P. Eberhardt, Twórcy polskiej geopolityki, Cracow 2006; J. Mondry, Powrót geopolityki. Ameryka, Europa i Azja w XXI wieku, Warsaw 2010, pp. 1–80; J. Potulski, Wprowadzenie do geopolityki, Gdańsk 2010, pp. 28–48.

5 On language policy, see H. Krasowska, Language Policy, (in:) H. Krasowska, Języki mniejszości. Status, prestiż, dwujęzyczność, Warsaw 2020, pp. 39–58; S. Gajda, Program polskiej polityki językowej (rozważania wstępne), (in:) J. Mazur (ed.), Polska polityka językowa na przełomie tysiącleci, Lublin 1999, p. 38; H. Kurkowska, Polityka językowa a zróżnicowanie społeczne współczesnej polszczyzny, (in:) W. Lubaś (ed.), Socjolingwistyka 1. Polityka językowa, Katowice 1977, p. 17; N. Dołowy-Rybińska, Języki i kultury mniejszościowe w Europie. Bretończycy, Łużyczanie, Kaszubi, Warsaw 2011, passim; A. Pawłowski, Zadania polskiej polityki językowej w Unii Europejskiej, (in:) D. Krzyżyk, J. Warchała (eds.), Polska polityka językowa w Unii Europejskiej, Katowice 2008, pp. 113–147.

6 Journal of Laws 2017 item 823.

The issues addressed in this work required the use of several research methods that would meet the postulate of adequacy. Firstly, analysis of the texts of normative acts was used, interpreting them according to the indications contained in the concept of derivational concept in terms of M. Zieliński. This was accompanied by linguistic analysis, both in Ch. Perelman's topical-rhetorical approach, and to a somewhat lesser extent in procedural terms. In doing so, the need to draw on legal hermeneutics was not forgotten as a method of explaining the text. Among the research methods, it was also impossible to escape the descriptive method. With difficulty and hesitation, the authors resisted the temptation to use the comparative method as well as the desire to compare the assessment of the report submitted by Poland with the opinions that were formulated towards the reports of other countries. However, it was decided to indicate these positions on several issues that the writers of these words considered particularly important.

1. Ratification of the European Charter for Regional or Minority Languages by Poland

The Charter was opened for signature on 5 November 1992. It entered into force one month after its fifth ratification, on 1 March 1998. Poland ratified the Charter on 12 February 2009, effective 1 June 2009[7]. The Charter consists of a preamble and five parts. The first part formulates general provisions, which include definitions, minimum obligations of the parties ratifying the Charter, and the relationship of the Charter to existing regulations relating to minorities[8]. The second part sets out the

7 Journal of Laws 2009, No. 137, item 1121. Compare also the Government statement of 22 May 2009 on the validity of the European Charter for Regional or Minority Languages, drawn up in Strasbourg on 5 November 1992, Journal of Laws 2009, No. 137, item 1122. Consent to ratify the Charter was granted by an Act of 13 June 2008 on the ratification of the European Charter for Regional or Minority Languages, drawn up in Strasbourg on 5 November 1992, Journal of Laws 2008, No. 144, item 898. In the justification of the bill on ratification of the European Charter for Regional or Minority Languages, it was emphasized that ratification is consistent with bilateral agreements signed on behalf of the Republic of Poland with neigh bouring countries and the Law on National and Ethnic Minorities and Regional Language, as well as with the applicable educational legislation. It was also noted that the Charter's provisions do not require the state that wishes to adopt it to apply the entire document. It was stressed that under Article 2 of the Charter, each state is required to apply at least 35 paragraphs or points selected from the provisions of Part III of the Charter, including at least three paragraphs from each of Articles 8 and 12 of the Charter and one from each of Articles 9, 10, 11 and 13 of the Charter. The text of the bill's justification explains in great detail and unambiguously why Poland wants to ratify the relevant articles of the Charter, and which ones it is, as it were, abandoning. Sejm, Druk Sejmowy no. 4158 of 7 June 2005, RM 10–87–05.

8 Article 4 of the Charter made it clear that nothing in the Charter will be construed as limiting or diminishing any of the rights guaranteed by the Convention on Human Rights and Fundamental Freedoms. It was also noted that the Charter's provisions would not affect any more favorable

goals that state parties to the Charter must pursue with regard to all regional or minority languages. Part III sets out measures to promote the use of regional or minority languages in public life. These measures do not have to be applied in their entirety, but according to Article 2(2) of the Charter, state parties may choose these measures but under the terms of that provision. The Charter's preamble states that the protection and promotion of regional or minority languages in the various countries and regions of Europe are an important contribution to building a Europe based on the principles of democracy and cultural diversity within the framework of national sovereignty and territorial integrity. In doing so, it emphasized that this should be done taking into account the specific conditions and historical traditions in the various regions of the European countries[9].

While ratifying the Charter, it was declared that, according to Article 3(1), 'the Republic of Poland recognizes as regional or minority languages within the meaning of the Charter' the following languages: Belarusian, Czech, Hebrew, Yiddish, Karaim, Kashubian, Lithuanian, Lemko, German, Armenian, Roma, Russian, Slovak, Tatar, Ukrainian. It was said that Kashubian is considered a regional language, and Belarusian, Czech, Hebrew, Yiddish, Lithuanian, German, Armenian, Russian, Slovak and Ukrainian as national minority languages. Karaim, Lemko, Roma and Tatar were recognized as ethnic minority languages. The status of non-territorial languages was given to Hebrew, Yiddish, Karaite, Armenian and Romani. In addition, it was declared that Poland intends to apply the European Charter for Regional or Minority Languages under the Law of 6 January 2005 on National and Ethnic Minorities and Regional Languages[10]. In the following part of the statement, it was indicated which

provisions concerning the status of regional or minority languages or the legal status of individuals belonging to minorities covered by relevant international bilateral or multilateral agreements. Article 5 of the Charter also noted that nothing in the Charter shall be interpreted as providing the basis for any authority to engage in any action or activity contrary to the purposes of the UN Charter or other obligations under international law. Nor can it compromise the principle of sovereignty and territorial integrity of states. The parties were also obliged to ensure that all authorities, organizations and persons are informed of the rights and obligations established by the Charter (Article 6 of the Charter).

9 It is worth noting that the legal construction of the Charter does not establish any individual or group rights for people who speak regional or minority languages, but only formulates positive obligations for states to protect such languages. Thus, the Charter does not protect minorities using languages but the languages themselves. See: J. Sozanski, Ochrona mniejszości w systemie uniwersalnym, europejskim i wspólnotowym, Warsaw 2002, p. 100; M. Pentikainen, Integration of minorities into society, (in:) M. Scheinin, R. Toivanen (eds.), 'Rethinking Non-discrimination and Minority Rights', Institute for Human Rights, Åbo Akademi University, Turku 2004.

10 Journal of Laws 2017, item 823. The basis for the law was the Framework Convention for the Protection of National Minorities drawn up in Strasbourg on 1 February 1995, ratified by Poland on 10 November 2000, Journal of Laws 2002, No. 22, item 209. This convention was preceded by: a draft convention on the protection of minorities, developed by the European Commission for Democracy through Law (Venice Commission); Explanatory Report on the Proposal for Euro-

provisions of Part III of the Charter the Republic of Poland undertakes to apply to the listed regional or minority languages[11]. Without going into an analysis of the content

pean Convention for the Protection of Minorities CDL91/8, Strasbourg 1991, p. 6; and the Instrument for the Protection of Minority Rights of the Central European Initiative opened for signature in Turin on 19 November 1994. J. Janusz, P. Bajda, Ochrona mniejszości. Standardy europejskie, Warsaw 2000, p. 61. For work on the definition of national and ethnic minorities and minority languages, see: J. Sobczak, Europa mniejszości. Standardy prawne ochrony mniejszości narodowych i etnicznych oraz ich realizacja w polskim systemie prawnym, (in:) M. Musiał-Karg (ed.), Europa XXI wieku. Pespektywy i uwarunkowania integracji europejskiej, Poznań 2007, pp. 167–201; same, Mniejszości narodowe i wyznaniowe w polskim porządku prawnym, (in:) J. Sobczak, A.W. Mikołajczak (eds.) with B. Hordeckiego, Zderzenie czy dialog państw narodowych w Europie?, Poznań 2008, pp. 9–43; same, Ochrona mniejszości narodowych w prawie europejskim, (in:) W.J. Burszta, M.J. Dudziak, R. Piotrowski (eds.), 'Europa – Slavia – Germania. W poszukiwaniu tożsamości, Warsaw/Gorzów Wielkopolski 2009, pp. 167–188; same, Języki regionalne i etniczne a problem tożsamości narodowej, (in:) T. Gardocka, J. Sobczak (eds.), Prawa mniejszości narodowych, Toruń 2010, pp. 127–174.

11 Such a statement causes uncertainty and rather significant confusion as to the legal status, given that the content of the statement was published in a different Journal of Laws than the text of the European Charter for Regional or Minority Languages. The content of the aforementioned Government Statement of 22 May 2009 indicates which states have already become parties to the Charter, at the same time informing about the content of the declarations they have made on the validity of specific provisions of the Charter. It was pointed out that these are in Article 8, paragraph 1, points a(i), b(i), c(i), d(iii), e(ii), g, h, i; paragraph 2; in Article 9, paragraph 2, point a; in Article 10, paragraph 2, points b, g, paragraph 5; in Art. 11(1) items a(ii), a(iii), b(ii), c(ii), d, e(i), f(ii), g; para. 2; para. 3; in Art. 12(1) items a, b, c, d, e, f, g; para. 2; para. 3; in Art. 13(1) items b, c, d; para. 2 pt. b; in Art. 14 pt. a, b. It should be noted that the Czech Republic recognized Slovak, Polish, German and Romani as minority languages on its territory. At the same time, the provisions on minorities in the Silesian-Moravian region on the territory of the districts of Frýdek-Místek and Karvina indicated in the statement of the provisions of Part III of the Charter will apply to the Polish language. It can be noted that in the Polish statement, Czech is the language to which the Charter applies without territorial restrictions. The Federal Republic of Germany, in its statement, did not indicate Polish as a minority language despite the fact that a significant group of Poles resides on its territory. It indicated that the minority languages are Danish, Upper Lusatian, Lower Lusatian, North Frisian and East Frisian, as well as Romani, German Sinti and Roma, and the regional language Lower German. Romania declared that the Charter's provisions apply to minority languages spoken on the territory of Romania, among which Polish is listed as a regional and minority language, with the territory where a regional or minority language is spoken meaning the geographic area where a regional or minority language is spoken by at least 20% of the population of that geographic area. The Slovak Republic has recognized that regional or minority languages are Bulgarian, Croatian, Czech, German, Hungarian, Polish, Roma, Ruthenian and Ukrainian. At the same time, it laid down rules for implementing the Charter's provisions. Ukraine said it wants to apply the Charter's provisions to the languages of Ukraine's ethnic minorities, namely: Belarusian, Bulgarian, Gagauz, Greek, Jewish, Crimean Tatar, Moldavian, German, Polish, Russian, Romani, Slovakian and Hungarian. From today's point of view, the statement in the Declaration 'that measures aimed at establishing Ukrainian as an official language, its development and functioning in all areas of social life on the territory of Ukraine were not taken to counteract or threaten the preservation or development of the languages to which the Charter applies...' ought to be considered important. It should be emphasized that at the time of the Government

of the Charter, as it has already been discussed,[12] it should be noted that Poland, like other states ratifying the Charter, obligated itself under Article 15 of the Charter to periodically submit to the Secretary General of the Council of Europe a report on Poland's policies implemented in accordance with Part II of the Charter (relating to the objectives and principles it pursues) and referring to measures taken to implement the provisions of Part III of the Charter (concerning the promotion of the use of regional or minority languages in public life). The reports, according to the Charter, should be made available to the public, although the manner of this release was not specified.

It should be noted that the Charter defines regional or minority languages as languages that are traditionally spoken in a specific territory of a state by citizens of that state, who form a group smaller than the rest of the population of that state, and are different from the official language or languages of that state. By the term territory where a regional or minority language is spoken, the Charter wants to understand the geographic area where the said language is the means of communication of such a number of people as to justify the adoption of the various protective and supportive measures provided for in the Charter. There are many regional languages in the territory of the states forming the Union[13]. By 'non-territorial language', the Charter wants

Statement of 22 May 2009, the Charter was not ratified by Lithuania, Latvia and Estonia. To date, 25 countries have ratified the Charter, apart from Lithuania, Latvia, Estonia and the Russian Federation. Nor has Belarus, which is the only one not a member of the Council of Europe. However, the Charter is also open to countries that are not members of the organization. It should be noted that the status of the Polish language as a minority language is of particular interest to Poland, precisely in those countries indicated above that did not ratify the Charter.

12 See: J. Sobczak, Europejska Karta języków regionalnych lub mniejszościowych jako instrument integracji międzynarodowej, 'Rocznik Integracji Europejskiej' 2009, no. 3, pp. 25–46; W. Sobczak, Język jako wyznacznik tożsamości narodowej w europejskim systemie prawnym, 'Studia Prawnoustrojowe' 2018, no. 42, pp. 425–435. See: J. Sozański, Ochrona mniejszości w systemie uniwersalnym, europejskim, wspólnotowym, Warsaw 2002, p. 101; A. Chrościcka, Ochrona praw mniejszości narodowych w systemie Rady Europy, 'Ius Novum' 2013, no. 4, pp. 84–103; A. Urbanik, Polska polityka etniczna lat 1989–2015 w świetle standardów prawa międzynarodowego i stopień realizacji przez Polskę postanowień głównych dokumentów Rady Europy z zakresu ochrony praw mniejszości, 'Przegląd Geopolityczny' 2020, no. 33, pp. 140–154; A. Oszmiańska-Pagett,Regional and Minority Languages, (in:) A. Wiesand, K. Chainoglou, A. Śledzińska-Simon, Y. Donders (eds.), Culture and Human Rights: The Wroclaw Commentaries, Berlin 2016, pp. 255–257; A. Oszmiańska-Pagett, Escape from the Museum of Ethnography: the Right to Culture as the Core of the ECRML, 'Investigationes Linguisticae' 2018, no. 42, pp. 58–70.

13 The following languages have such status: in Spain, Catalan, Galician, Basque; in France, Champagne, Provençal, Alsatian and Breton; in Germany, plattdeutsch, or Lower German or Lower Saxon, which is spoken in northern Germany in the states of Brandenburg, Mecklenburg-Vorpommern, Lower Saxony, Saxony-Anhalt, Schleswig-Holstein, Bremen and in Hamburg, Mista on the rights of a federal state; it is also in use in the Kingdom of the Netherlands. Lower Lusatian and Upper Lusatian, which are West Slavic languages in danger of extinction, are sometimes considered regional languages. Also Walloon, Lëtzebuergesch, Frisian, Faroese, Sardinian, Ligurian,

to mean languages spoken by citizens of a specific state that differ from the language or languages spoken by the rest of the population of that state but which, although traditionally spoken in the territory of such state, cannot be identified with a specific area[14].

The Polish legislator faced the need to define the terms 'national minority' and 'ethnic minority', as well as 'regional language' when working on the law. The original text did not distinguish between the terms 'national minority' and 'ethnic minority', attempting to define these terms only in the justification of the draft. Defining the term 'national minority' posed great difficulties. Draft Article 2 of the law formulated a descriptive definition of a national or ethnic minority, stating: 'A national or ethnic minority, hereinafter referred to as a "minority", shall mean a group of citizens of the Republic of Poland with a distinct origin traditionally residing on the territory of

Sami, Roma and Rhaeto-Romance, spoken in the Italian city of Udine and the Alpine areas of Italy and Switzerland are considered regional languages. See: K. Karasiewicz, Komentarz do art. 290, (in:) A. Wróbel (ed.), Traktat Ustanawiający Wspólnotę Europejską. Komentarz, Warsaw 2010, p. 893. Rhaeto-Romance is also one of the official languages of Switzerland, which, as you know, is not part of the European Union. It has three dialects: Romansh (in Switzerland, mainly in the canton of Grisons), Ladin (Italy, central Dolomites and South Tyrol, province of Belluno), and Friulian or Friulian (Italy, an autonomous region of Friuli – Venezia Giulia) sometimes treated as separate standard languages, i.e. adopted by society for official communication, having a uniform orography and linguistic norms. See: E. Finegan, Language: Its Structure and Use, Boston 2008, http://staffnew.uny.ac.id/upload/132107096/pendidikan/Book+one+for+Int.pdf (30.10.2018).

14 In Polish practice, in the course of work on the Law on National and Ethnic Minorities and the Regional Language, the problem of recognizing the Silesian language as a regional language arose. J. Miodek, referring to this issue in his opinion on the draft law on national and ethnic minorities and regional language, as well as some other laws (1 October 2012, The Bureau of Research. Commissioned opinion), came to the conviction that the speech of Silesians does not differ from the official Polish language. It is only its regional variant or dialect. He added that the concept of 'regional language' does not function in the conceptual area of linguistics. A similar position seems to be taken by B. Wyderka in his opinion of 30 April 2011 on the parliamentary bill on national and ethnic minorities and regional language, as well as some other laws (Print No. 3835, The Bureau of Research. Commissioned opinion). B. Wyderka stated that the Silesian dialect belongs to the group of dialects of the Polish language (p. 4). He also added that a related Polish West Slavic language is emerging. This position is also shared by B. Cząstka-Szymon in her opinion of 5 October 2012 on the draft amendment to the Law on National and Ethnic Minorities and Regional Language and Some Other Laws (The Bureau of Research. Commissioned opinion), stating that the Silesian dialect is a Polish dialect and not a regional language (p. 14 of the opinion). A similar position was presented by A. Markowski in his opinion of 1 October 2012 on the draft law on national and ethnic minorities and regional language and some other laws (Print No. 567, pp. 6–8) and F.A. Marek in his opinion of 1 October 2012 on proposed amendments to the Law on National and Ethnic Minorities and Regional Language and Some Other Laws (The Bureau of Research. Commissioned opinion). A different position is presented by J. Tambor in his opinion of 3 May 2011 on the parliamentary bill on amendments to the Law on National and Ethnic Minorities and Regional Language and Some Other Laws (The Bureau of Research. Commissioned opinion, p. 13), recognizing that 'Silesian' has fully deserved the status of a regional language.

the Republic of Poland, remaining in the minority concerning the rest of the citizens characterized by a desire to preserve their language, customs, traditions, culture, religion or national or ethnic consciousness.'

In the course of the work, however, it was noted that this kind of framing is highly unsatisfactory and that the mere declaration of members of a collective is insufficient for it to become a national or ethnic minority. It was noted that the condition for the existence of such a group, in addition to the declaration of its members, is the simultaneous recognition of distinctiveness by other collectivities[15]. It was emphasized that self-identification always takes place concerning other groups, and that group distinctiveness can be perceived in such a context. In other words, the subjective declaration of subjectivity to a particular nationality group presupposes a prior social acceptance of the existence of such a group[16].

Under Article 8(1)(i) of the Charter, the states acceding to the European Charter for Regional or Minority Languages undertook to establish a supervisory body or bodies responsible for monitoring the measures taken and the progress in the introduction or development of the teaching of regional or minority languages, and for drawing up periodic reports containing conclusions on the work carried out, which will be made public[17].

15 The Supreme Court held that the registration of the association 'Union of People of Silesian Nationality' was inadmissible and emphasized that a national minority can exist only as a national group formed in the historical process and socially accepted. See Supreme Court's decision of 18 March 1998, I PKN 4/98, OSN IAP and US, 1999, pos. 170. The European Court of Human Rights, while recognizing the complaint against the Supreme Court's decision, did not go into the issue of the definition of national and ethnic minorities. It only stated that such a definition would be difficult to define, as it was not defined in any document of international law, including the Framework Convention of the Council of Europe. It found no violation of the law by refusing to register the association. As a result, the refusal to register was deemed necessary in a democratic society in light of Article 11(2), concluding that there was no violation of the European Convention on Human Rights and Fundamental Freedoms. See Gorzelik and others v. Poland – judgment of 17 February 2004, Application no. 44158/98, cf. New European Court of Human Rights. M.A. Nowicki, Nowy Europejski Trybunał Praw Człowieka. Wybór orzeczeń 1999 – 2004, Zakamycze 2005, pp. 1159–1168.

16 B. Wójtowicz, Opinia projektu ustawy o mniejszościach narodowych i etnicznych w RP (druk 223) a sytuacje konfliktogenne, Biuro Studiów i Ekspertyz, Warsaw, 8 lipca 2002 r., p. 5.

17 The obligations assumed by the state parties to the Charter were analysed by W. Sobczak, Język jako wyznacznik tożsamości narodowej w europejskim systemie prawnym, 'Studia Prawnoustrojowe' 2018, no. 42, pp. 425–435; see: J. Sobczak, Europejska Karta języków regionalnych lub mniejszościowych jako instrument integracji międzynarodowej, 'Rocznik Integracji Europejskiej' 2009, no. 3, pp. 25–46.

2. Explanatory Report

The Charter is accompanied by a very comprehensive and detailed 'Explanatory Report'[18] that outlines the circumstances under which the Charter was created and then explains its purposes[19]. The report also emphasizes that its provisions do not apply to the new, often non-European languages that have emerged as a result of recent economic migration flows. Such languages deserve to be treated separately with a different legal tool. The Charter was created to protect and promote regional or minority languages as an endangered element of European cultural heritage. For this reason, the Charter contains not only non-discrimination clauses against languages but also enumerates measures for their active support, ensuring the use of these languages in education and the media, as well as in administration, the judiciary, economic and social life and culture. The Charter does not protect linguistic minorities and does not provide any individual or collective rights for users of regional or minority languages.

It was argued that although the Charter respects the principles of national independence and territorial integrity, it does not undermine any political or institutional order and requires each state to consider cultural and social realities. It was noted that while presenting the draft Charter, the problem of nations striving for independence or struggling to change their borders was not taken into consideration. Furthermore, it merely wanted to alleviate the problems of minorities speaking a regional or minority language so that they could feel at ease in the state in which they found themselves as a result of a confluence of historical events. It does not address the relationship between official and regional or minority languages, consciously representing an intercultural and multilingual attitude.

The Explanatory Report goes on to explain what the Charter means by language, noting that it does not define the term linguistic minorities because the Charter was not created to define the ethnic or cultural rights of minorities but to protect and promote regional or minority languages. It was argued that the adjective 'regional' refers to languages spoken in a small part of a country's territory, where they are spoken by the majority of citizens. The phrase 'minority' refers to languages spoken by people who do not reside in dense concentrations or spoken by a group of people who, although concentrated in a part of the State's territory, is numerically smaller than

18 Explanatory Report on the European Charter for Regional or Minority Languages, http://mniejszosci.narodowe.mswia.gov.pl/download/86/13147/RaportwyjasniajacydoEuropejskiejkartyjezykowregionalnychlubmniejszosciowych.pdf (25.06.2022).

19 It was pointed out that the Charter aimed to achieve greater unity among its members in promoting their common heritage, arguing that Europe's cultural identity cannot be built based on linguistic standardization. The normative acts of international law referred to in the Charter were recalled.

the population in the region that speaks the state language[20]. The concept behind the construction of the Charter text is explained in great detail, explaining the principles that arise from Parts II and III of the Charter in particular[21].

Further, the procedure for implementing the principles set out in the Charter was described, explaining that states are not obliged to accept Parts II and III of the Charter simultaneously. It was also indicated how the Charter's provisions and national laws or international agreements establishing the legal status of linguistic minorities can be applied jointly. Finally, it was emphasized that the obligations to provide information will not be fully effective if the authorities and organizations concerned are not aware of the obligations arising from this document.

The concept of regional or minority language territory in the context of Article 7(1)(b) of the Charter and the issue of non-territorial languages were defined. Yiddish and Romani were identified as examples of such languages. It was noted that only a part of the Charter's provisions can be applied to languages without a territorial basis. It was stressed that state parties to the Charter have no discretion in granting or denying the status of regional or minority languages guaranteed by Part II of the Charter, but they can decide whether a language spoken on a particular territory by a group of citizens constitutes a regional or minority language within the meaning of the Charter. states may also declare that a regional or minority language existing in some of their territories will not enjoy the benefits of Part III of the Charter, but the reasons for such exclusion must be consistent with the spirit and principles of the Charter.

Attention was given to promotional activities for languages, guarantees for the teaching and learning of regional or minority languages, facilities to allow people who do not speak regional or minority languages to study and learn them, contacts between groups using regional or minority languages, the need to eliminate discrimination, and the need to create institutions representing the interests of regional or minority languages. The problem of applying the Charter's principles to non-territorial languages was also considered, as well as the measures to promote the use of regional or minority languages in public life, including education and higher education, as well as the use of regional or minority languages by the judiciary, administrative

20 The Explanatory Report points out that the Charter does not indicate which European languages correspond to the concept of regional or minority languages, as set out in Article 1.

21 The Explanatory Report explains that the Charter gives states the option of choosing different variants of the provisions by which they will wish to be bound. The purpose of such an arrangement was to increase the flexibility of the Charter, which should take into account the disparity in the actual situation of regional or minority languages in different states. The role of the states, however, is not to make arbitrary choices between the alternatives but to seek, for each regional or minority language, the solutions and formulations which best define the characteristics and state of development of that language. The Report explains which indicators should guide the states (point 46 of the Report).

bodies, public services and the media. The functioning of these languages in cultural activities and economic and social life was also addressed. The issue of cross-border exchange and the important issue of applying the Charter and monitoring its observance was discussed, emphasizing that this is not a quasi-judicial procedure.

3. The Mechanism for Monitoring the Application of the Charter

The Charter also established a monitoring mechanism to assess the application of the Charter by states that ratified it. Provision was made for the introduction of recommendations to improve the laws, policies and practices applied by those states. The Committee of Experts, established under Article 17 of the Charter, is a key element of this procedure. It is composed of one representative of each signatory to the Charter. It is appointed for a period of six years, with the right of reappointment, by the Committee of Ministers from a list proposed by the state party to the Charter[22]. The Committee's main purpose is to examine the current situation of regional or minority languages in the various states and to report to the Committee of Ministers to assess the state's compliance with its obligations. To facilitate this work, the Committee of Ministers defined, regarding Article 15(1) of the Charter, the form of the reports.

The Committee's task is to evaluate existing normative acts, other regulations and actual practices. After a preliminary analysis of the reports, the Committee of Experts addresses questions to the countries concerned on issues that it considers unclear or insufficiently addressed in the report. This written procedure is followed by a visit of the Committee to the respective countries, during which the delegation is expected to meet with bodies and associations whose work is related to the Charter issue and to hold consultations with the relevant authorities. At the end of this process, the Committee of Experts issues its report, which it submits to the Committee of Ministers with suggestions for recommendations.

To date, the Republic of Poland submitted to the Secretary General of the Council of Europe three reports on the implementation of the Charter of 2010, 2014 and 2019. These documents are accompanied by annexes. The overall assessment of the state's activities is formulated by proposals for recommendations of the Committee of Experts, presented to the Committee of Ministers of the Council of Europe.

22 The Committee of Experts operates according to its own rules of procedure, and its secretariat is provided by the Secretary of the Council of Europe (Article 17(3) of the Charter).

4. First Report of the Republic of Poland on the Implementation of the Charter

The document, drawn up in 2010, consists of three parts. It is preceded by an introduction, where the normative basis for drawing up the Report and its content are presented. Part I discusses the issue of the Charter's implementation into the Polish legal system. It deals with territorial languages in the Republic of Poland, the number of speakers of minority and regional languages, the organizations and entities supporting the protection and development of minority and regional languages[23], the scope of consultations conducted during the preparation of the Report[24], and finally measures for the dissemination of information about the rights and obligations established by the Charter. Part II sets out the objectives and principles pursued under Article 2(1) of the Charter, while the following Part III presents measures to promote the use of regional or minority languages in public life, in line with the obligations assumed in Article 2(2) of the Charter. In discussing territorial languages, the Report indicates the area of the Republic in which each language is spoken and how many people, based on the 2002 census, declare that they speak such languages.

The most interesting part of the Report seems to be Part II, which presents the attitude of public authorities towards regional or minority languages with a brief reference to historical conditions[25]. Regarding the legal conditions in the field of language, Articles 27 and 35 of the Constitution of the Republic of Poland[26] and the relevant laws and regulations contained in the treaties with neighbouring countries

23 What is striking here is the large group of organizations that support the development of the German language, as well as the numerous organizations that promote the culture and language of the Roma. The omission of the Muslim Religious Union here is surprising.

24 It was indicated that during the preparation of the Report, its content was consulted with the Joint Commission of the Government and National and Ethnic Minorities, which is the opinion-advisory body of the Prime Minister. The Commission was established based on Article 23.1 of the Act on National and Ethnic Minorities and Regional Language as an opinion-giving body of the Prime Minister, i.e. Journal of Laws 2017, item 823. The following section of the Report introduces the composition of the Commission and discusses in more detail the scope of its activities.

25 It was emphasized that while constructing the new administrative division, the nationality structure was taken into account by creating the Sejny county, inhabited mostly by Lithuanian language speakers, and by forming the Opolskie province, inhabited largely by the German minority.

26 Article 2 point 2 of the Act of 7 October 1999 on the Polish language (consolidated text Journal of Laws 2021, item 672 and Article 8 points 1 and 2 in connection with Article 19 item 2 of the Act of 6 January 2005 on national and ethnic minorities and regional language, uniform text Journal of Laws 2017, item 823. On the legal status of the Polish language in the Republic see: M. Bartoszewicz, Język polski i jego ochrona prawna w porządku konstytucyjnym Rzeczypospolitej Polskiej, Warsaw 2017, passim; P. Czarnecki, Ustawa o języku polskim. Komentarz, Warsaw 2014, passim; A. Błaś, Niektóre aspekty ochrony prawnej języka polskiego, 'Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji' vol. XLVII, Warsaw 2001, pp. 13–21; K. Complak, Wolność języka zamiast języka urzędowego, (in:) R. Balicki, M. Masternak-Kubiak (eds), Księga jubileuszowa dedykowana Profesorowi Januszowi Trzcińskiemu, Warsaw 2012, pp. 595–611.

were presented. Measures for promoting regional or minority languages in public life were shown, discussing the provisions of Article 13 of the Act of 7 September 1991 on the Education System[27] and the Regulation of the Minister of National Education of 14 November 2007 on the conditions and manners of performing by public kindergartens, schools and institutions the tasks enabling students belonging to national and ethnic minorities and communities speaking a regional language to maintain their sense of national, ethnic and linguistic identity[28]. The Report emphasizes that learning a minority or regional language is organized by the headmaster of a kindergarten or public school voluntarily, at the request of parents or legal guardians of the student[29].

Under the Regulation of the Minister of National Education of 30 April 2007 on the conditions and manner of qualifying and promoting pupils and listeners and conducting tests and examinations at public schools[30], pupils can take matriculation exams in a minority language and post-primary school tests and exams in a minority or regional language. The establishment of a group of experts on the Romani language in 2008 resulted in the standardization of the notation of this language, taking into account dialectal differences. Data on teaching minority and ethnic languages and regional languages at different stages of education were presented in tables. The strategy for the Lithuanian minority's education development in Poland[31], adopted in

27 Journal of Laws 2021, item 1915

28 Journal of Laws 2007, No. 214, item 1579. This regulation is no longer in force. It was first replaced by the Ordinance of 18 August 2017, Journal of Laws 2017, item 1627 with an identical title. Another regulation was that of the Minister of Education and Science on 4 February 2022, partially amending the existing regulation in §8(3), reducing the hours of German minority language instruction to one hour per week. Teaching of the language of other national minorities, ethnic minorities and regional languages in the form of additional study of the language of these minorities is still three hours per week. The regulation came into effect on 1 September 2022. The change introduced by the regulation is undoubtedly discriminatory against the German minority in relation to other minorities.

29 When creating a class in which a native language other than Polish is taught, 7 pupils at the primary level and 14 pupils at the secondary level are sufficient. In kindergarten, at the level of a given division, seven children are sufficient.

30 Journal of Laws 2007, No. 83, item 562. This regulation is no longer in force. The Regulation of the Minister of National Education of 10 June 2015 on detailed conditions and manner of assessing, classifying and promoting students and listeners in public schools, currently in force in this respect, Journal of Laws 2015, item 843, does not regulate the mentioned issue.

31 See: Strategy for development of Lithuanian minority education in Poland, Interministerial Team for National Minorities, Ministry of National Education and Sport, Warsaw, December 2001, http://mniejszosci.narodowe.mswia.gov.pl/download/86/12957/mnstrategia.pdf(25.06.2022). After the work related to the First Report on the implementation of the Charter was completed, a working team for the education of the Lithuanian minority in Poland was established. The first meeting of this team took place in Sejny on 20 April 2012, http://mniejszosci.narodowe.mswia.gov.pl/download/86/13480/ProtokolzIposiedzeniaZespoluroboczegods_oswiatymniejszoscilite-

2002, and a similar strategy for the German minority[32] are also mentioned. The possibility of studying minority languages in Poland at the university level is discussed.

It was pointed out that the Law on National and Ethnic Minorities and Regional Language provides for the possibility of using before the municipal authorities, in addition to the official language, national and ethnic minority languages and regional languages as auxiliary languages[33]. It is emphasized that the minority language may be used while dealing with the municipal authorities. Furthermore, it should be noted that the auxiliary language may be used only in the context of the government office with persons belonging to the minority. The law provides for the possibility of introducing additional traditional names of streets, places and physiographic objects in the languages of national and ethnic minorities and the regional language of the territory of the municipality[34].

Polish citizens belonging to national and ethnic minorities, under Polish legislation, may change their name and surname to a version that is consistent with the sound and spelling of their native language in an administrative procedure, based on the Act of 17 October 2008 on the Change of Name and Surname[35]. It was indicated

wskiejwPolsceSejny.pdf (25.06.2022), and the next on 9 November 2012, http://mniejszosci.narodowe.mswia.gov.pl/download/86/13481/ProtokolzIIposiedzenia.pdf (25.06.2022).

32 See Strategy for the Development of German Minority Education in Poland, http://mniejszosci.narodowe.mswia.gov.pl/download/86/12965/2007.pdf (25.06.2022).

33 Under Article 9 of the above-mentioned Act, the auxiliary language may be used only in communes in which the number of inhabitants belonging to minorities or speaking a regional language is not less than 20% of the total number of inhabitants of the commune, and the commune itself has been entered into the Official Register of Communes in which the auxiliary language is used. In 2010, there were 30 such communes, including six in Podlaskie Voivodeship (in one commune the auxiliary language was Lithuanian, in the remaining five Belarusian). There are also two communes in Pomorskie Voivodeship, where Kashubian is the auxiliary language, and 22 communes in Opolskie Voivodeship, where German is the auxiliary language. It is possible to introduce the auxiliary language in 51 counties, including 13 in Podlaskie Voivodeship, 27 in Opolskie Voivodeship, ten in Pomorskie Voivodeship, and one in Śląskie Voivodeship.

34 Additional place names may be introduced in a municipality under two circumstances: if the last census has shown that the officially established number of inhabitants of the municipality declaring their affiliation to a minority or use of a regional language is not less than 20%, or if this requirement has not been met, but there are places within the municipality, the majority of whose inhabitants voted in favour of introducing additional place names in the minority or regional language. The additional place names may not refer to the names from the period from 1933 to 1945 given by the authorities of the Third German Reich or the USSR. Applications for determining the additional name of a locality or physiographic object shall be reviewed by the provincial governor and the Names of Places and Physiographic Objects Commission. The procedure for giving opinions on the names of places and physiographic objects by the Commission is specified in the Act of 29 August 2003 on official names of places and physiographic objects, consolidated text Journal of Laws 2019, item 1443.

35 Journal of Laws 2021, item 1988. This right is guaranteed by Articles 7(1) and (2) of the Law on National and Ethnic Minorities and Regional Language. Names and surnames of persons belonging to minorities, written in an alphabet other than Latin, are subject to transliteration.

in the Report that television broadcasts in national and ethnic minority languages and regional languages are broadcast on Polish territory, financed by the National Broadcasting Council[36]. It was emphasized that there are also radio broadcasts in minority languages by public and non-public stations[37]. Titles of magazines published in national and ethnic minority languages and regional languages were listed[38].

The activities of public authorities towards national and ethnic minorities in the field of culture were reported in great detail. General reference was made to issues of economic and social life and transborder exchange. In the final part of the Report, agreements concluded by Poland with Belarus, the Czech Republic, Slovakia, Lithuania, Germany, Russia and Ukraine are presented. Five appendices supplement the contents of the Report[39].

5. Position of the Committee of Experts on the First Report

The Committee of Experts has formulated its position on the first Report in three chapters. The first contains general information presenting the work of the Committee of Experts, the situation of regional and minority languages, and general issues regarding the evaluation of the Charter's application in Poland[40]. The second chapter contains the evaluations of the Committee of Experts concerning Parts II and III of the Charter, while this evaluation for Part III of the Charter deals separately with the situation of minority and regional languages in Poland, except for Armenian, Czech, Karaite, Romani, Russian, Slovak, Tatar and Yiddish, whose comments were collected together. The third, relatively short chapter contains the experts' conclusions. The document is furnished with two annexes, the first relating to the instrument of ratification and the second to the observations of the Polish authorities.

The Report notes that representatives of associations from Upper Silesia informed the Committee of Experts that they demanded the Silesian language be rec-

36 These programmes are broadcast in Belarusian, Kashubian, Lithuanian, Lemko, German, Romani, Russian and Ukrainian languages.

37 The Report indicates the activity of the non-public radio station 'Kaszëbë' and also non-public stations: Belarusian Radio Racja, Radio Vanessa and Radio Park FM.

38 A cursory glance at this list shows that it is incomplete because the 'Tatar Review' and the 'Tatar Yearbook' are not indicated, even if only concerning the Tatar minority.

39 The first one indicates the minority languages taught at universities and colleges; the second contains a list of municipalities where the minority language is used as an auxiliary language; the third is a list of municipalities where names in the minority language are used; the fourth is a list of selected legal provisions from the interstate agreements concluded by Poland with Belarus, the Czech Republic, Slovakia, Lithuania, Russia, Ukraine and Germany; the fifth contains comments submitted to the Report, which have not been included in the main text.

40 Report of the Charter Expert Committee, 7 December 2011, ECRML (2011)5, http://mniejszosci.narodowe.mswia.gov.pl/download/86/13154/Raport_Komitetu_Ekspertow_ds__Karty.pdf (25.05.2022).

ognized as one of the regional languages, pointing out that in the opinion of the Polish authorities, this language was a dialect of the Polish language. It was stressed that between 1945 and 1989 the use and teaching of the German language were prohibited in Poland. This was followed by the removal of traces of this language from public places and an official refusal to recognize the rights of the German minority in Poland. As far as Hebrew is concerned, it was emphasized that in Poland mainly the New Hebrew language is used, which differs significantly from classical Hebrew. The Committee of Experts did not know whether Hebrew was used in Poland for everyday communication. After the Polish authorities clarified these issues, the Committee of Experts promised to return to this matter.

The Kashubian language is classified as a Slavic language, and it is emphasized that Polish legislation does not recognize Kashubians as an ethnic minority, but Kashubian is defined as a regional language. It was argued that only a small part of Karaites and a slightly larger group of Tatars use their native language in domestic contact. Poland's decision to apply Part III of the Charter to Armenian, Czech, Hebrew, Karaite, Romani, Russian, Slovak, Tatar and Yiddish, given the small number of speakers of these languages, is a very ambitious step and entails great responsibility. It was also stressed that the legal obligations accepted by Poland must be put into practice, taking into account the situation of each of the languages.

It was noted that the Polish authorities should develop flexible and innovative measures to implement the provisions of the Charter, adopt a medium-term strategy for the implementation of the provisions of the Charter concerning each language[41], and define the territory that constitutes the historical basis for individual languages. Poland should cooperate with other countries by exchanging teachers and journalists, importing textbooks and retransmitting radio and television broadcasts. The Committee of Experts referred to the Karaim minority with some reserve, demanding that the Polish authorities explain whether this minority was interested in the restitution of the Karaim language as a living language. It was indicated that in this respect, one should not rely on the results of censuses.

It was noted during the visit of the Committee of Experts to Poland that no initiatives were being taken to raise public awareness of minorities and regional or minority languages. These tasks should be undertaken by the media, as well as the education system. The Committee noted the destruction of plaques with place names in German or bilingual in villages inhabited by Lemkos. It was concluded that the Polish

41 Immediately after the preparation of the First Report, the following were prepared: Education development strategy for the Ukrainian minority in Poland, Warsaw, 28 June 2011, http://mniejszosci.narodowe.mswia.gov.pl/download/86/12966/StrategiaUkrainskapodpisana.pdf (25.06.2022); and Education development strategy of the Belarusian minority in Poland, Białystok 2014,http://mniejszosci.narodowe.mswia.gov.pl/download/86/15653/Strategiarozarańoswiatymszymoscibialoruskiejw Polsce.pdf (25.06.2022).

authorities should make further efforts to actively oppose intolerance and to increase the knowledge of broad social circles about regional and minority languages, as well as the cultures that these languages represent.

In assessing education issues, it urged the Polish authorities to take measures to make education available in the Belarusian language at the primary and secondary levels to ensure its continuity from the primary to the secondary level in areas where the Belarusian language is spoken. It was also considered that Poland has not fulfilled its commitment to establish at least one radio station and one television channel in regional or minority languages, and that the existence of a programme in the Belarusian language is not sufficient to fulfil the commitment made. Poland was found not to have fulfilled its commitment to encourage the stateuse of regional or minority languages in economic or social life.

The Committee concluded that Poland failed to fulfil its obligation to set up a board responsible for monitoring the introduction and development of the teaching of regional or minority languages. It said that the rigid adherence to the 20% limit set by Polish law on the number of inhabitants speaking a regional or minority language as a basis for using that language in contact with authorities was inappropriate.

It was indicated that Poland has fulfilled the obligations set out in Article 9(2) of the Charter, consisting in not questioning the validity of legal documents drawn up in a regional or minority language. Furthermore, it was recognized that Poland should take steps to create one radio station and one TV channel in regional languages, admitting that it is fully possible to freely receive radio and television programmes broadcast from neighbouring countries in languages used in an identical or similar form to a regional or minority language. Regarding the cultural commitments, the lack of sufficient information on the measures taken by Poland in this respect was highlighted, making it impossible to carry out a reliable assessment. Nevertheless, most commitments were considered unfulfilled. Most of the obligations in the area of economic and social life related to the Kashubian language were found to be unfulfilled, pointing to information gaps in this regard. It was noted, with some surprise, that many parents find teaching in a regional or minority language too burdensome and counterproductive in the long term. The Committee of Experts considered the measures taken by Poland to be insufficient for all minorities, particularly emphasizing this fact concerning the Lemko language.

Concerning the Armenian, Czech, Karaite, Roma, Russian, Slovak, Tatar and Yiddish languages (taken together in the Committee's work), it was stated that for each of these languages, the nature and scope of the measures to be taken to implement the provisions of the Charter must be flexible, focusing as far as possible on municipalities where the language is historically established.

The Committee of Experts considered that Poland's commitments concerning Articles 9–11 and 13 of the Charter and Article 12 of the Charter concerning most languages were not fulfilled. However, the Committee of Experts highlighted the fact

that the Republic of Poland is a party to bilateral agreements that contain regulations enabling the protection of minority languages.

6. Comments of the Polish authorities to the Report of the Committee of Experts of 5 May 2011

The Polish Government, in a rather extensive document, referred to the position taken in the Report of the Committee of Experts, explaining, among other things, that the Silesian dialect of the Polish language does not fulfil the conditions laid down in the Charter, and therefore it is not legitimate to refer to it as a language. It was proposed to replace the term 'Silesian language' with 'Silesian dialect' or 'Silesian ethnolect'. Some doubts of the Committee of Experts on the 2002 population census as to the declaration of membership of Armenian, Belarusian, Czech, Lemko, Roma, Russian, Ukrainian minorities were clarified. The comments of the Committee of Experts on the resettlement of Germans were protested against.

The Polish authorities also stated that the results of the census cannot be the basis for allocating funds and airtime. Polish legislation provides the possibility of organizing kindergarten classes in a regional or minority language, but users of these languages are not interested in such an offer. It was also emphasized that the Report did not note the existence of an education development strategy for the Ukrainian minority.

It was pointed out that the Polish authorities react strongly to every case of vandalism connected with the destruction of plaques with place names in minority and regional languages. Likewise, it was noted that the amount of subsidies for the education of minority and regional languages was systematically increasing. It was said that, contrary to the concerns of the Committee of Experts, there is no threat to the continuation of education in these languages. It disagreed with the view that the possibility of submitting applications in minority or regional languages was being restricted, stressing that the Committee had not presented convincing arguments that the 20% threshold adopted in the Polish Act was too high. Furthermore, it was pointed out, incidentally, that it was possible to use additional place names in the regional languages and minority languages, and the Committee did not indicate any cases in which the Polish legislation in this regard would not be respected. The Committee's doubts about the need for radio and television stations broadcasting in the Belarusian language were also clarified. It was emphasized that the state provides subsidies for the activities of numerous cultural undertakings[42].

42 It does not add that the Tatars and Karaites do not use their languages in everyday life, the former having lost the language already in the 17th century. The representatives of these minorities have not expressed a desire to publish newspapers in such languages. However, periodicals addressed to the representatives of these minorities are published in Polish.

The Polish side argued that the allegation of non-fulfilment of obligations under Article 10 of the Charter, which the Committee formulated quite often in the context of different languages, is false, since additional place names in a regional language or minority languages can be adopted in municipalities where a minority constitute not less than 20% of the total population. This possibility also exists in localities located in municipalities that do not meet this condition. It was pointed out that the establishment of an additional name for a locality in the aforementioned languages was supported in the consultations by more than half of the participating residents of that locality.

The reading of the Comments to the Report of the Committee of Experts leaves an impression of a certain chaotic communication, forced to a large extent by the desire to refer to specific charges related to individual regional and minority languages. Regrettably, the repeated allegations concerning individual languages were not collected and addressed together. On several occasions, the Comments to the Report of the Committee of Experts raised issues concerning broadcasting, the printed press, subsidies for education, etc.

7. Recommendations of the Committee of Ministers on the implementation of the European Charter for Regional or Minority Languages by Poland

The Committee of Experts submitted to the Committee of Ministers of the Council of Europe its proposed recommendations for Poland, and the Committee of Ministers, at its 1129th meeting held on 7 December 2011, approved them[43]. In this short document, the Committee of Ministers of the Council of Europe fully shared the position of the Committee of Experts with regard to its recommendations on the measures to be taken in the future by Poland in relation to its obligations under the Charter. The Committee of Ministers of the Council of Europe indicated that: 'Taking note of the comments of the Polish authorities on the content of the report of the Committee of Experts; recommends that the Polish authorities accept all the observations and recommendations of the Committee of Experts and give priority to six actions.' First, to promote awareness and tolerance in Polish society towards regional or minority languages and the cultures they represent. Second, making education in Belarusian, German, Kashubian, Lemko and Ukrainian available as languages of instruction at preschool, elementary and secondary school levels. Third, providing up-to-date textbooks for teaching in the regional or minority language under the new core curriculum and providing basic and extended training for a sufficient number

43 See Recommendation RecChL (2011) 4 of the Committee of Ministers on the implementation of the European Charter for Regional or Minority Languages by Poland.

of teachers who can teach subjects in Belarusian, German, Kashubian, Lemko and Ukrainian. Fourth, taking steps to improve the range of programmes broadcast in all regional and minority languages. Fifth, reconsidering the application of the 20% threshold for the obligation in Article 10 of the Charter and creating a legal possibility for oral or written requests in regional or minority languages also in counties and provinces. Sixth, creating, in close cooperation with the speakers of the language concerned, a coherent policy and taking flexible measures to facilitate the application of the Charter concerning Armenian, Czech, Karaite, Roma, Russian, Slovak, Tatar and Yiddish.

Conclusions

The European Charter for Regional or Minority Languages plays a significant role in safeguarding the rights of national minorities. The Charter obliges the state parties to develop their policies and legislation based on the objectives and principles set out in its text. It obliges them to take measures to promote regional or minority languages, protect them, facilitate their use in public and private life, enable teaching and studying in these languages, and enable study and research on them. The Charter is undoubtedly an essential instrument for the protection of these languages.

The procedure of evaluating compliance with the Charter assumes the cooperation of Poland with the organs of the Council of Europe. It must be based on dialogue and goodwill. From a broader perspective, it entails the necessity of closer cooperation, firstly, with the states neighbouring the Republic of Poland. It may contribute to better integration within the Council of Europe and strengthen bilateral relations. The procedure for evaluating compliance with the Charter is not, as seems obvious, an ideal tool. However, its necessity can hardly be denied. It seems that, if only about the presented Report, one should expect a more 'friendly' way of cooperating with the states that have adopted the Charter. Surprisingly, the Committee of Ministers did not consider some essential elements contained in the comments to the Report of the Committee of Experts on the European Charter for Regional or Minority Languages.

The Polish side, in its Comments to the Report of the Committee of Experts, indicated, among other things, that it could not agree with the statements that the 2002 census did not provide reliable data on the national and linguistic structure of the population of the Republic of Poland (as emphasized in the Committee's Report). The Notes also stated that the Committee 'does not state reasons for casting doubt on the data collected based on scientific research methods. It also does not state what research tools are available to language speakers that the researchers conducting the census do not have, and what basis there is for the data provided by these speakers to be more reliable than the data collected by the researchers of the Central Statisti-

cal Office.' On the other hand, with regard to the frequently formulated accusation of Poland's failure to meet its obligations under Article 9 of the Charter, the Polish side noted that 'the provisions of Polish law provide for the possibility of organizing kindergarten classes in a minority or regional language and conducting schooling in these languages, but the question arises regarding the possibility of the existence of such schools in the absence of interest in the educational offer from users of minority languages and regional language. The Polish government can only create opportunities and encourage their use. However, it does not and cannot have instruments that would mandate the use of these opportunities.'[44] According to the Polish side, it provides education in a minority or regional language at the level of the law. In the opinion of the Polish government, the lack of kindergartens or schools with instruction in some minority languages and regional languages, caused by the lack of those willing to take up language instruction in such a form, cannot be the basis for an allegation. It was also pointed out that the Polish government is taking measures to promote the use of additional traditional place names in minority languages and regional languages.

The undoubted problem was that the Committee of Experts' understanding of national minorities was different from the Polish Law on National and Ethnic Minorities and Regional Languages. The Committee of Experts accepted with evident surprise and doubt the fact that Poland had granted national minority status to the Karaite, Tatar and Armenian communities. It was stressed that it had thus assumed an obligation to provide them with the kind of treatment accorded to much more numerous minorities. It was noted that such obligations were essentially impossible for Poland to meet, failing to acknowledge the arguments that representatives of the aforementioned less numerous minorities do not at all seek access to television stations and radio broadcasts in their languages, and do not even always want their children to benefit from adequate instruction in their national language. In doing so, the Committee overlooked the fact that the minorities in question have become deeply assimilated, with the younger generation most often no longer speaking the language of their ancestors.

It hasn't been recognized that in Poland, in addition to the minorities affected by the Polish law, there are now quite numerous minorities whose representatives cannot enjoy the benefits of the law, including Vietnamese, Korean, Chinese, Indian and Pakistani minorities. However, it should be noted that the preamble to the

44 Providing parents with the opportunity to maintain their children's linguistic and cultural identity, Polish law offers them the choice of one of three options: instruction in a minority or regional language, instruction in two equivalent languages, and language instruction in the form of a subject. The parents' decision to choose a model for their child's education is a sovereign one. In matters concerning the choice of how to sustain children's linguistic and cultural identity (which is related to the choice of a model of language teaching), any interference from the authorities is statutorily impermissible.

Charter emphasizes the need to protect 'the historic regional or minority languages of Europe', among which there are some that are in danger of total extinction. This protection aims to preserve and develop the cultural richness and traditions of Europe. The concept of 'historic regional or minority languages of Europe' is not explained in any way in the text of the Charter. This gives reason for the view that it refers to the languages of populations that have lived on European territory for years, and therefore does not apply to the languages of those residents who have settled in European countries in recent years. This position is confirmed by the content of Article 1a of the Charter. It explicitly states that the term 'regional or minority languages' does not include within its scope the language of migrants, i.e. all those who arrived and settled in the European area in the second half of the 20th century and the beginning of the 21st century. Thus, the Charter stipulates two groups of regional or minority languages and, consequently, two groups of minorities – the privileged European minority group and the remaining non-European group. It must raise doubts since the preamble indicates that the right to use a regional or minority language in private and public life is an inalienable right 'under the principles contained in the UN International Covenant on Civil and Political Rights and the spirit of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms'. As a result, it is difficult to approve the subjective limitation of the Charter's content.

The evaluation of the Report did not result in a broader view of the problem of minorities and the protection of languages. Completely ignored were important definitional issues, which also relate to the issue of dialects and regional languages. The latter problem seems to be particularly acute in Poland because of the demands of some residents of Silesia.

It is worth noting that the Charter did not create detailed, strictly framed mechanisms for verifying reports, limiting itself to generally outlined principles. An analysis of the documents indicates that the Expert Committee's work is characterized by insight and detail, although it does not always demonstrate an understanding of the conditions existing in the country in which the Committee has come to operate.

An assessment of Poland's compliance with the Charter would therefore require a broader, more in-depth look at several problems. This was lacking in the work of the Committee of Experts. Nevertheless, forging European standards based on the Charter, although certainly not an easy matter, is an essential contribution to the protection of national minorities and their cultures and languages, contributing to the preservation of the cultural heritage of Europe and building open civil societies, aware of the linguistic and national diversity in the areas they inhabit.

REFERENCES

Bartoszewicz M., Język polski i jego ochrona prawna w porządku konstytucyjnym Rzeczypospolitej Polskiej, Warsaw 2017.

Błaś A., Niektóre aspekty ochrony prawnej języka polskiego, 'Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji' vol. XLVII, Warsaw 2001, pp. 13–21.

Chrościcka A., Ochrona praw mniejszości narodowych w systemie Rady Europy, '„Ius Novum"' 2013, no. 4, pp. 84-–103.

Complak K., Wolność języka zamiast języka urzędowego, (in:) R. Balicki, M. Masternak-Kubiak (eds), Księga jubileuszowa dedykowana Profesorowi Januszowi Trzcińskiemu, Warsaw 2012, pp. 595–611.

Cordell K., Wolff S., Ethnopolitics in Contemporary Europe, (in:) The Ethnopolitical Encyclopedia of Europe, Palgrave 2004;

Czarnecki P., Ustawa o języku polskim. Komentarz, Warsaw 2014, passim.

Dołowy-Rybińska N., Języki i kultury mniejszościowe w Europie. Bretończycy, Łużyczanie, Kaszubi, Warsaw 2011.

Czepek V., Karska E., Peace Agreements as International Legal Acts Protecting National Minorities, 'Białostockie Studia Prawnicze' 2021, vol. 26, no. 5, pp. 75–89.

Eberhardt P., Twórcy polskiej geopolityki, Cracow 2006.

Education development strategy of the Belarusian minority in Poland, Białystok 2014, http://mniejszosci.narodowe.mswia.gov.pl/download/86/15653/StrategiarozarańoswiatymszymoscibialoruskiejwPolsce.pdf.

Education development strategy for the Ukrainian minority in Poland, Warsaw, 28 June 2011, http://mniejszosci.narodowe.mswia.gov.pl/download/86/12966/StrategiaUkrainskapodpisana.pdf.

Explanatory Report on the Proposal for European Convention for the Protection of Minorities CDL91/8, Strasbourg 1991, p. 6.

Explanatory Report on the European Charter for Regional or Minority Languages, http://mniejszosci.narodowe.mswia.gov.pl/download/86/13147/RaportwyjasniajacydoEuropejskiejkartyjezykowregionalnychlubmniejszosciowych.pdf.

Finegan E., Language: Its Structure and Use, Boston 2008, http://staffnew.uny.ac.id/upload/132107096/pendidikan/Book+one+for+Int.pdf.

Furier A., Wersalskie źródła międzynarodowej ochrony mniejszości narodowych, 'Sprawy Narodowościowe – Seria Nowa' 2001, no. 18, pp. 93–108.

Gajda S., Program polskiej polityki językowej (rozważania wstępne), (in:) J. Mazur (ed.), Polska polityka językowa na przełomie tysiącleci, Lublin 1999, p. 38

Janusz J., Bajda P., Ochrona mniejszości. Standardy europejskie, Warsaw 2000.

Jean C., *Geopolityka*, Wrocław/Warsaw/Cracow 2003.

Karasiewicz K., Komentarz do art. 290, (in:) A. Wróbel (ed.), Traktat Ustanawiający Wspólnotę Europejską. Komentarz, Warsaw 2010, p. 893.

Krasowska H., Language Policy, (in:) H. Krasowska, Języki mniejszości. Status, prestiż, dwujęzyczność, Warsaw 2020, pp. 39–58.

Kurkowska H., Polityka językowa a zróżnicowanie społeczne współczesnej polszczyzny, (in:) W. Lubaś (ed.), Socjolingwistyka 1. Polityka językowa, Katowice 1977, p. 17.

McDermott P., Language rights and the Council of Europe: A failed response to a multilingual continent?, 'Ethnicities' 2017, no. 17(5), pp. 603–626.

Mondry J., Powrót geopolityki. Ameryka, Europa i Azja w XXI wieku, Warsaw 2010, pp. 1–80.

Nowicki M. A., Nowy Europejski Trybunał Praw Człowieka. Wybór orzeczeń 1999–2004, Zakamycze 2005.

Oszmiańska-Pagett A., Escape from the Museum of Ethnography: the Right to Culture as the Core of the ECRML, 'Investigationes Linguisticae' 2018, no. 42, pp. 58–70.

Oszmiańska-Pagett A., Regional and Minority Languages, (in:) A. Wiesand, K. Chainoglou, A. Śledzińska-Simon, Y. Donders (eds.), Culture and Human Rights: The Wroclaw Commentaries, Berlin 2016, pp. 255–257.

Pawłowski A., Zadania polskiej polityki językowej w Unii Europejskiej, (in:) D. Krzyżyk, J. Warchała (eds.), Polska polityka językowa w Unii Europejskiej, Katowice 2008, pp. 113–147.

Pentikainen M., Integration of minorities into society, (in:) M. Scheinin, R. Toivanen (eds.), Rethinking Non-discrimination and Minority Rights, Institute for Human Rights, Åbo Akademi University, Turku 2004.

Potulski J., Wprowadzenie do geopolityki, Gdańsk 2010, pp. 28–48.

Report of the Charter Expert Committee, 7 December 2011, ECRML (2011)5, http://mniejszosci.narodowe.mswia.gov.pl/download/86/13154/Raport_Komitetu_Ekspertow_ds__Karty.pdf.

Sierpowski S., Kwestia narodowa w stosunkach międzynarodowych, 'Sprawy Narodowościowe' 1993, vol. II, no. 2–3, pp. 9–28.

Sobczak J., Europejska Karta języków regionalnych lub mniejszościowych jako instrument integracji międzynarodowej, 'Rocznik Integracji Europejskiej' 2009, no. 3, pp. 25–46.

Sobczak J., Europa mniejszości. Standardy prawne ochrony mniejszości narodowych i etnicznych oraz ich realizacja w polskim systemie prawnym, (in:) M. Musiał-Karg (ed.), Europa XXI wieku. Pespektywy i uwarunkowania integracji europejskiej, Poznań 2007, pp. 167–201.

Sobczak J., Języki regionalne i etniczne a problem tożsamości narodowej, (in:) T. Gardocka, J. Sobczak (eds.), Prawa mniejszości narodowych, Toruń 2010, pp. 127–174.

Sobczak J., Mniejszości narodowe i wyznaniowe w polskim porządku prawnym, (in:) J. Sobczak, A.W. Mikołajczak (eds.) with B. Hordeckiego, Zderzenie czy dialog państw narodowych w Europie?, Poznań 2008, pp. 9–43.

Sobczak J., Ochrona mniejszości narodowych w prawie europejskim, (in:) W.J. Burszta, M.J. Dudziak, R. Piotrowski (eds.), Europa – Slavia – Germania. W poszukiwaniu tożsamości, Warsaw/Gorzów Wielkopolski 2009, pp. 167–188.

Sobczak J., Wokół problemu definicji mniejszości narodowych, 'Środkowoeuropejskie Studia Polityczne' 2003, no. 1, pp. 25–62.

Sobczak W., Język jako wyznacznik tożsamości narodowej w europejskim systemie prawnym, 'Studia Prawnoustrojowe' 2018, no. 42, pp. 425–435.

Sozański J., Ochrona mniejszości w systemie uniwersalnym, europejskim, wspólnotowym, Warsaw 2002.

Strategy for the Development of German Minority Education in Poland, http://mniejszosci.narodowe.mswia.gov.pl/download/86/12965/2007.pdf.

Strategy for development of Lithuanian minority education in Poland, Interministerial Team for National Minorities, Ministry of National Education and Sport, Warsaw, December 2001, http://mniejszosci.narodowe.mswia.gov.pl/download/86/12957/mnstrategia.pdf.

Urbanik A., Polska polityka etniczna lat 1989–2015 w świetle standardów prawa międzynarodowego i stopień realizacji przez Polskę postanowień głównych dokumentów Rady Europy z zakresu ochrony praw mniejszości, 'Przegląd Geopolityczny' 2020, no. 33, pp. 140–154.

Woehrling J. M., The European Charter for Regional or Minority Languages. A Critical Commentary, Strasbourg 2005.

Wójtowicz B., Opinia projektu ustawy o mniejszościach narodowych i etnicznych w RP (druk 223) a sytuacje konfliktogenne, Biuro Studiów i Ekspertyz, Warsaw, 8 lipca 2002 r., p. 5.

Wolff S., Ethnic Conflict: A Global Perspective, New York 2006.

Zendrowski R., Polityka etniczna – próba (re)konceptualizacji, (in:) H. Chałupczak, R. Zendrowski, E. Pogorzała, T. Browarek (eds), Polityka etniczna. Teorie, koncepcje, wyzwania, Lublin 2015.

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Acquisition of Polish among Foreigners in Bilingual Couples with Poles: Impact Factors

Abstract: The article considers bilingual couples of Poles with foreigners residing in Poland with a special focus on the acquisition of Polish by the latter. Foreigners from such couples function not only in their families but also in wider circles of the host society. Communication needs resulting from contacts outside a bilingual couple and job commitments lead to situations when life in the host society becomes a challenge if these needs are not met. Theoretical framework for the analysis and interpretation of this phenomenon is the Complementarity Principle (Grosjean) and the concept of a domain (Fishman). Data were obtained from 24 in-depth interviews with bilingual couples. Qualitative methodology made it possible to grasp the complexity of the researched cases and phenomena which unveiled specific trends. Findings of the study revealed major factors that had a direct impact on the acquisition of Polish among foreigners in bilingual couples with Poles. The key impact factors referred to (1) the way of communication in the couple, (2) the couple's language strategies towards children, and (3) the contact with the partner's extended family, including the type of professional activity.
Keywords: bilingual couples, immigrants language acquisition, Poland, qualitative methodology

Introduction

The number of bilingual couples in Poland has increased since its accession to the EU. Though bilingual couples or families belong to different settings, e.g. Japanese[1], German[2] or Swiss[3], the Polish context appears to be quite original. Until re-

1 I. Hardach-Pinke, Interkulrurelle Lebenswelten: Deutsch-japanische Ehen in Japan, New York 1988.
2 I. Piller, Bilingual couples talk: The discursive construction of hybridity, Amsterdam 2002.
3 K. Gonçalves, Conversations of intercultural couples, Berlin 2013.

cently mixed couples of Poles and foreigners decided to settle down outside Poland, but this trend has ceased to be so unidirectional. The growing number of bilingual couples has brought about specific changes in the awareness of Polish society. Recent years have shown that not only has the number of linguistically mixed couples grown, but so has the social acceptance of them. However, at the time of the recent migration crisis in Europe, the image of an immigrant has been supplanted by the image of a refugee, which is approached in different ways among the EU member states[4]. At the same time we become more and more aware of how little we know about such couples.

The article presents the findings from a study of bilingual couples in Poland, based on the data obtained via qualitative methodology[5]. The main emphasis of the article falls on the linguistic adaptation among foreigners in couples with Poles. The key question concerns the degree of adaptation by foreigners to the Polish language, including the level of its mastery. Linguistic and cultural adaptation is a multifaceted and long-lasting process influenced by at least three impact factors detectable from the collected data. The first one relates to the way in which partners communicate in the couple, understood as language choices. The second factor is the partners' decision about bilingual childrearing that enforces consistency in language use. The third factor refers to contacts outside the couple, including extended families, friends and the occupational milieu of bilingual couples. The main issues of the above-mentioned practices relate to motivation, personal experience and the consequences of language policies adopted by bilingual couples. Findings summarise the extent of the impact factors on the level of the mastery of Polish among foreigners in bilingual couples with Poles.

1. Theoretical Concepts for the Study

The main theoretical concepts in this study include bilingualism and bilinguals, the Complementarity Principle and the domain. The assumptions are based on a definition of bilingualism proposed by Grosjean, who described it as a regular use of two or more languages, and bilingual persons as those who 'use two or more languages (or dialects) in their everyday lives'[6]. Grosjean postulated a holistic view of bilingualism featuring a bilingual as an integral entity that cannot be split into two parts[7]. In other words, a bilingual is not a sum of two monolinguals but someone who

4 E. Kużelewska and A. Piekutowska, The EU member states' diverging experiences and policies on refugees and the New Pact on Migration and Asylum, 'Białostockie Studia Prawnicze' 2021, vol. 26, no. 1, pp. 23–36.

5 A. Stępkowska, Pary dwujęzyczne w Polsce, Poznań 2019.

6 F. Grosjean, Studying bilinguals, Oxford 2008, p. 10.

7 *Ibidem*.

has a definite and unique language repertoire. The holistic perspective positions bilinguals as language users with competences matching their needs.

Bilinguality of a couple is not tantamount to bilinguality of both partners, though at least one of them needs to use the other partner's language or both need to use a third language. Language repertoire is shaped by the motivation to learn the partner's language and its position and significance in the global language system[8] as well as by the couple's language awareness and children's bilinguality. Bilingual couples make decisions about their private communication, thereby manifesting their language attitudes and various levels of awareness with regard to their own language behaviour. Most mixed couples become a specific type of a bilingual family when they agree on the bilingual development of children.

Communicative competence in two or more languages develops in everyday life depending on situations and interlocutors. Language needs and the level of language command tightly interconnect, though at the same time this correlation is unstable and subject to several factors. This interdependence is referred to as the Complementarity Principle, which says that the bigger the need, the higher the level of language skills[9]. Bilinguals learn and use languages for different reasons, in different domains of life and with different people. Different languages are used in different aspects of life. Some languages cover more domains of life and others less, while some domains are covered by two languages. It is rare to see all domains of life covered by all languages of a bilingual[10]. The Complementarity Principle has an impact on fluency, since language develops poorly if it is spoken in few domains and with a small group of people. Another impact of the Complementarity Principle concerns language dominance. Many bilinguals are dominant in one language, as opposed to 'balanced' bilinguals. Dominance escapes a clear definition because it depends on language fluency and use, as well as on the language distribution across domains of life. Bilinguals are globally dominant in one language but they may be dominant in another language for specific domains.

Fishman introduced the concept of domain to find purposefulness of language choices in the situation of stable bilingualism[11]. In certain situations a given language is not used accidentally but connected with a given context, topic and interlocutors.

8 A. De Swaan, Words of the world: The global language system, London 2001.

9 F. Grosjean, The bilingual individual, 'Interpreting: International Journal of Research and Practice in Interpreting' 1997, no. 2, pp. 163–87; F. Grosjean, Bilingual: Life and reality, Cambridge, MA 2010.

10 F. Grosjean, Bilingualism: A short introduction, (in:) F. Grosjean and P. Li (eds.), The psycholinguistics of bilingualism, Malden, MA 2013, pp. 5–25.

11 J. Fishman, Domains and the relationship between micro- and macro-sociolinguistics, (in:) J. Gumperz and D. Hymes (eds.), Directions in sociolinguistics: Ethnography of communication, New York 1972a, pp. 435–453; J. Fishman, The sociology of language: An interdisciplinary social science approach to language in society, Rowley 1972b.

He named such a context a domain which he defined as 'a cluster of social situations typically constrained by a common set of behaviour rules' and 'social nexus which brings people together for a cluster of purposes'[12]. Fishman indicated five domains, namely family, education, work, acquaintance, and government and administration. Since domains are clusters of several factors, like place, topic and participants, the concept of a domain offers an analytical framework for language choices. In most bilingual situations it is the domain in which an event occurs that imposes a given language, thereby making it possible to describe language choices within linguistically mixed couples. In other words, the choice of language in any given situation is conditioned by 'the speaker's proficiency in language (zero proficiency normally preventing choice), the desire of the speaker to achieve advantage by using his or her stronger language and the desire of the speaker to derive advantage by accommodating to the wishes of the audience'.[13]

2. Methodology

The thematic scope of in-depth interviews was planned with the aim to capture a wide array of relations concerning different aspects of private language contact, which belonged to personal experiences of participants. The study aimed to obtain data about their language repertoires, language choices, identity in the couple and the family language policies with regard to bilingual childrearing. At a more detailed level, the focus of the article concerns the data about the command of Polish among non-Polish partners and their commitment to acquire the language. The study was anonymous and the names of participants were changed. Interviews were recorded, transcribed and analysed by means of NVivo11, software for processing qualitative data. The interview structure combined with detailed questions intended to elicit open-ended answers resembled a natural conversation with each target couple[14]. Participants were aware of their role of informants, and thus were prepared for the topics included in the interview instructions. During the conversation I adopted the role of a learner, someone of smaller authority than my interlocutors by using 'counter-strategy of the sociolinguistic interview'[15]. The emotional involvement of participants made them formulate statements less consciously by concentrating on what they were saying rather than how they were expressing themselves.

Qualitative interviewing is about conducting conversations with a limited number of participants, i.e. bilingual couples in the case of this study. The main selection criterion was the linguistically mixed couplehood made up of Poles and foreigners,

12 J. Fishman, Who speaks what language to whom and when? 'La Linguistique' 1965, no. 2, p. 75.
13 B. Spolsky, Language policy, Cambridge 2004, p. 43.
14 L. Milroy and M. Gordon, Sociolinguistics: Method and interpretation, Oxford 2003, p. 65.
15 W. Labov, Sociolinguistic patterns, Philadelphia 1984, p. 40.

and their permanent residence in Poland. The study featured 24 bilingual couples, i.e. 48 individuals. Their relationships had lasted from one year to more than thirty. At the time of data collection, nine couples had lived in Poland for less than a decade, while seven couples had been together between one and two decades. Five couples had spent between 20 and 29 years together. Three couples had been together for 30 years or more. As a result, foreigners in these couples differed in terms of their competence in Polish, from near native-like fluency to very limited knowledge of the language. All interviews were qualitatively analysed. In total, the target couples represented 22 nationalities, came from six continents and communicated in seven languages, including Polish. The recruitment of participants was based on a judgment sampling, namely on the availability of bilingual couples. Some participants were helpful in recruiting new couples for the study, which was typical of a 'snowball technique'[16]. The recording of all conversations took about 25 hours, so the approximate time of one interview amounted to an hour. Interviews were conducted in Polish, though a few couples spoke in English. The transcription of the interviews was followed by a semantic analysis.

3. Discussion of the Impact Factors

Through language it is possible to accomplish many activities in private language contact between bilingual partners, though these activities are not reducible solely to language[17]. They include acquiring a language, expressing emotions, maintaining the bonds, and negotiating responsibilities with regard to bilingual childrearing. Language attitudes of bilingual couples in Poland were reflected in the quality of their everyday communication. A poor command of the Polish language among foreigners led to difficulties in the mutual understanding between partners and with the couples' family networks. Still, very problematic for such couples appeared to be their limited participation in social life, which resulted in the Polish partner acting as a lay interpreter. Therefore, couples applied 'strategies of power' by investing in the acquisition of the dominant language (of the host society) or resorted to the use of a *lingua franca*[18].

16 L. Milroy, Language and social networks, 2nd ed., Oxford 1987.

17 J. Cenoz and D. Gorter, A holistic approach to multilingual education: Introduction, 'Modern Language Journal' 2011, vol. 95, no. 3, pp. 339–343; S. Colombo, A. Ritter and M. Stopfner, Identity in social context: Plurilingual families in Baden-Wuerttemberg and South Tyrol, 'Zeitschrift für Interkulturellen Fremdsprachenunterricht' 2020, vol. 25, no. 1, pp. 53–83; A. Stępkowska, Identity in the bilingual couple: Attitudes to language and culture, 'Open Linguistics' 2021c, no. 7, pp. 223–234.

18 V. Ugazio and S. Guarnieri, A couple in love entangled in enigmatic episodes: A semantic analysis, 'Journal of Marital and Family Therapy' 2018, vol. 44, no. 3, pp. 438–457.

The study focuses on the acquisition of Polish among foreigners in bilingual couples with Poles in relation to the potential factors of impact. The study sample of 24 couples offered for the scrutiny the same number of foreigners, namely eight women and sixteen men. These individuals showed different levels of mastering Polish, thereby forming three discrete groups. In the biggest group there were 14 foreigners who had acquired a native-like proficiency in Polish. All of them worked professionally in business, education and culture. It was significant that this group had as many as six women out of the eight included in the whole sample. The other two groups had five individuals each. The second group referred to foreigners whose Polish represented the lower intermediate level, i.e. allowing them to meet the basic needs and get by in everyday life. The other two women were in this group. The third group of foreigners consisted of five men who did not know Polish and in terms of communication outside their couples they were completely dependent on their Polish wives.

The ensuing discussion of the factors conducive to acquisition of the dominant language builds on three main categories of phenomena that were fateful for the development of second language skills. Section 3.1 deals with communication in the couple, section 3.2 discusses language strategies towards children, and section 3.3 emphasises the role of the couples' family networks in motivating non-Polish partners to learn the language. Each category, not least a combination of them, creates specific circumstances for the acquisition of Polish among the sampled foreigners.

3.1. Communication in the Couple

The collected sample of bilingual couples made it possible to distinguish three patterns of communication based on specific language choices of each couple[19]. The use of Polish (dominant language) did not turn out to be the most frequent choice among the target couples. Ten couples maintained Polish as the language of communication. This choice was typical of couples in which the non-Polish partner had lived in Poland longer than a decade. Nine couples used the first language of the foreign partner (minority language) and five couples relied on a *lingua franca* (LF). Language mixing was reported particularly by couples who resorted either to the minority language or to a LF in their daily communication. The decision of partners which language to use was liable to change as the relationship developed, though apparently most target couples were keen on retaining the language of their first meeting.

As the data showed, mutual understanding in the couple was informed by language attitudes and the second-language skills of either partner[20]. In other words, language competence was directly proportional to the quality of communication in

19 A. Stępkowska, Language choices between partners in bilingual relationships, 'GEMA Online Journal of Language Studies' 2021a, vol. 21, no. 4, pp. 110–124.

20 A. Stępkowska, Poles and their non-Polish partners: Languages, communication and couplehood identity, 'Kwartalnik Neofilologczny' 2017a, vol. LXIV, no. 3, pp. 350–365.

cross-cultural couples. Linguistic and cultural barriers that were difficult to overcome caused much dissatisfaction among less proficient participants. They described their language deficiencies with serious concern and, as a result, found themselves excluded, alienated, isolated and frustrated[21]. A few couples stuck to a LF they initially used at their first meeting and made the language their tool of communication. The sample contained four such couples, namely Polish–Brazilian (English), Polish–German (English), Polish–Chinese (Esperanto) and Polish–Turkish (German). In each couple, both partners expressed a positive evaluation of their LF communication due to the fact that they saw the language as a common denominator putting them on a par with each other, thereby creating equal chances to negotiate meanings (e.g. the Polish–Brazilian couple). A LF may not be regarded as the best solution, unless continuously improved by both partners, which was not always the case (e.g. the Polish–Turkish couple).

Couples that chose a minority language, i.e. the first language of the non-Polish partner, strived to ensure a sense of 'being in contact' between partners and, in a way, to 'compensate' for migration for the foreign partner[22]. The possible domains reserved for the minority language in Poland included distant family, workplace and the circles of friends and acquaintances. All target couples in the study had relatives whom they contacted regularly and who were not bilingual. Therefore, most couples used their minority languages, not just Polish.

Referring to communication in the couple, all non-Polish women in the sample presented impressive language repertoires, with foreign languages known at B2–C2 level[23]. Out of eight, five women were proficient in Polish, which was also the language of their couples, except for one case of a German woman. The other three women (American, Brazilian and Chinese) represented a lower intermediate level of Polish and used other languages in communication with their husbands. Despite that, women less fluent in Polish were independent enough to get by in all daily situations unsupported by their husbands. The analysis indicated that the main reason for all the women's satisfactory command of Polish was explained by the fact of a marriage to a native-speaking Pole as well as having lived for years in Poland and being parents of children who had Polish as their dominant language.

3.2. Bilingual Childrearing

Every bilingual and cross-cultural couple faces a language dilemma in the context of children's upbringing. Such couples differ in several respects, including the

21 A. Stępkowska, Language as a source of problems in bilingual couples, (in:) B. Lewandowska-Tomaszczyk and M. Trojszczak (eds.), Language use, education, and professional contexts, New York 2022, pp. 99–113.

22 I. Piller, Bilingual couples talk: The discursive construction of hybridity, Amsterdam 2002.

23 A. Stępkowska, Language experience of immigrant women in bilingual couples with Poles, 'International Journal of Bilingualism' 2021b, vol. 25, no. 1, pp. 120–134.

level of language awareness, language command and the determination to pass bilinguality on to their children. The strategies of language choice in families that lead to bilinguality in children are conditioned by several factors, such as the parents' first languages, the language of society and communication strategies adopted by the parents towards their children[24]. The bilingual couples under study opted for one of two scenarios of bilingual parenting practices, namely 'one person – one language' and 'non-dominant home language'.

In the 'one person – one language' strategy, parents address children in two different languages. Communication in the family without excluding either parent is possible with this strategy if parents have at least passive knowledge of each other's first languages. Five out of nine couples in the study spoke a non-dominant language, i.e. the language of the foreigner. Two couples communicated in the dominant language (Polish), and the other two couples used a LF (the Polish–Turkish couple used German and the Polish–Chinese couple used Esperanto). There was also a group of six couples who either planned or had just begun to implement the 'one person – one language' strategy. Yet at the time of data collection those couples' opinions were rather avowals than reports of actual language practices. Still, if all the couples mentioned were put together, then they would form a group of fifteen couples that either applied or would start to apply the 'one parent – one language' strategy. Fifteen out of twenty-four represents nearly two thirds of the whole sample. This strategy did not guarantee unequivocal success and the degree of bilinguality in children achievable by this strategy was diverse and in some cases even disillusioning for parents.

The other most popular strategy of bilingual childrearing proved to be 'non-dominant language at home', which assumed the use of a minority language at home and the other language outside the home. The exclusive use of a non-dominant language at home brought quite satisfactory results of effective language acquisition. However, when children started school, the dominant language permeated into the home more easily, thereby putting at a disadvantage the non-dominant language. In the researched sample, the non-dominant language was used at home by two couples, the Polish–Brazilian and the Polish–Spanish[25].

3.3. Communication Outside the Couple

Communication in the couple may occasionally be influenced by the presence of other persons (family, acquaintances). Contact with the partner's family enforces taking the decision about which language to use depending on how frequent this contact is. In the study, English was chosen as a LF by couples where non-Polish partners spoke other languages than English, and Polish partners and their families did not

24 S. Romaine, Bilingualism, Oxford 2008.

25 A. Stępkowska, Rodzinna polityka dwujęzyczności w Polsce na wybranym przykładzie, 'Scripta Neophilologica Posnaniensia' 2017b, no. 17, pp. 329–343.

know these languages. This did not apply for couples where Polish partners were fluent in the languages of their foreign partners. Foreigners fluent in Polish used it for communication with the families of Polish partners, while three Polish partners used English when in contact with the families of their foreign partners (Indonesian, Brazilian and Ethiopian). Some participants had to resort to interpreting to facilitate the contact between the two families. Interpreting occurred in couples where one partner did not know the language of the other, and in couples where either partner had a poor knowledge of the other language. An impeded communication with the immediate family of a partner presented a burden for the one who needed to interpret and a source of frustration for the one who needed interpreting assistance.

Foreign partners who made efforts to learn Polish showed involvement, thereby symbolically entering the Polish culture. They demonstrated openness to tightening the family ties. Individual relations, above all, were relations of specific persons not cultures or typical representatives of nations. All couples outright rejected or discredited national stereotypes. In other words, partners refused to look at each other through a national lens or stereotypes related to nationality[26]. The partners' resistance to differences informed by their languages and cultures stood in stark contrast to their parents' attitudes, which strongly relied on symbolic national differences[27]. For parents of Polish partners, the stereotypical concept of foreign culture became the trigger for discovering and adjusting themselves to the individual traits of the foreign newcomers in their families.

Conclusions

Today adult learners acquiring Polish as a foreign language are mature individuals in many respects. They are aware of the goals and benefits of language knowledge. They are autonomous, motivated and well disposed towards the language and culture of a given country. Such individuals learn the language by choice, though at the same time may be obligated to do so by life circumstances or professional situation. Adult learners are not necessarily knowledgeable about relevant strategies, whereas bad habits and experiences may effectively hinder this process. On the other hand, life experience and the knowledge of other foreign languages facilitate the acquisition of another language. Basic needs are usually related to studies, work and the family context. Most foreigners in the researched sample (regardless of age) had a certain experience of learning foreign languages. Even when at the beginner's level, adult

26 A. Stępkowska, Identity in the bilingual couple: Attitudes to language and culture, 'Open Linguistics' 2021c, no. 7, pp. 223–234.

27 A. Stępkowska, Family networking of bilingual couples: Reactions to otherness, (in:) B. Lewandowska-Tomaszczyk (ed.), Cultural conceptualizations in language and communication, New York 2020, pp. 115–128.

learners had a number of competences acquired so far. For example, they were able to purchase essential products, effectively use a computer and the internet, could discover analogies and juxtapose the languages already learnt and known. They understood the necessity of obtaining linguistic qualifications and realised what should be improved to attain success in learning.

The present article aimed to contribute to our understanding of the key factors that keep motivating foreigners in bilingual couples with partners who are native to their host country on the example of the less studied Polish setting. By way of juxtaposing the obtained results with other studies pertaining to Poland, some of them need to be mentioned. There are a few up-to-date works featuring the Polish context or related to individuals of Polish ethnicity living elsewhere. The researched problems ranged from the areas of family language policy[28], bilingual or trilingual childrearing[29] to transnational families in Great Britain[30]. The studies devoted to bilingual socialisation of teenagers of Polish descent in Ireland[31] and Germany[32] form a distinct line of linguistic investigation.

Lastly, the list of social needs is infinite, from more commonplace motives (Polish partner) to most prestigious (working in diplomacy), from learning for pleasure (maintain family tradition, travelling, entering into contact with people of other nationalities, spending free time etc.) to acquiring a language under pressure of life situations, such as the change of place of residence and the craving for integration with a community speaking a foreign language, the perspective of professional advancement or obtaining a certificate. Nevertheless, it is quite common to see the co-occurrence of several incentives, e.g. work, personal and family relations, studies and

28 P. Romanowski, Family Language Policy in the Polish Diaspora: A focus on Australia, London 2021.

29 J. Murrmann, Rodzinna polityka językowa: Strategie w wychowaniu dzieci trójjęzycznych, 'Socjolingwistyka' 2019, no. XXXIII, pp. 193–207; P. Romanowski, Early bilingual education in a monolingual environment: Showcasing Polish families, 'Complutense Journal of English Studies' 2018, no. 24, pp. 143–164; S. Szramek-Karcz, The success of non-native bilingualism in Poland, 'Lingwistyka Stosowana' 2016, vol. 17, no. 2, pp. 93–102.

30 E. Wąsikiewicz-Firlej E. and H. Lankiewicz, The dynamics of Family Language Policy in a trilingual family: A longitudinal case study, 'Applied Linguistics Papers' 2019, vol. 26, no. 1, pp. 169–184.

31 M. Machowska-Kościak, To be like a home extension: Challenges of language learning and language maintenance – lessons from Polish-Irish experience, 'Journal of Home Language Research' 2018, vol. 2, no. 1, pp. 82–104.

32 H. Pułaczewska, Mütter sprechen. Erziehung mit Herkunftssprache Polnisch am Beispiel Regensburg, Hamburg 2018; H. Pułaczewska, Studying parental attitudes to intergenerational transmission of a heritage language: Polish in Regensburg, (in:) B. Lewandowska-Tomaszczyk (ed.), Contacts and contrasts in educational contexts and translation, Berlin 2019, pp. 8–17; H. Pułaczewska, Adolescence as a 'critical period' in the heritage language use. Polish in Germany. 'Open Linguistics' 2021, no. 7, pp. 301–315.

the desire to learn about the culture of a given country. This is also indicative of integrative motivation demonstrated as a greater openness to foreign cultures and the wish to actively participate in cultural life. Lack of language knowledge pushes those people into the margin of society and causes a sense of exclusion. Thus, the prime motivation of language learning is to better understand the world. Nearly half of participants pointed out that their family members and friends spoke at least one foreign language. Ever better command of a foreign language was a motivating factor *per se* for the majority.

REFERENCES

Cenoz J. and Gorter D., A holistic approach to multilingual education: Introduction, 'Modern Language Journal' 2011, vol. 95, no. 3, pp. 339–343.

Colombo S., Ritter A. and Stopfner, M., Identity in social context: Plurilingual families in Baden-Wuerttemberg and South Tyrol, 'Zeitschrift für Interkulturellen Fremdsprachenunterricht' 2020, vol. 25, no. 1, pp. 53–83.

De Swaan A., Words of the world: The global language system, London 2001.

Fishman J., Who speaks what language to whom and when?, 'La Linguistique' 1965, no. 2, pp. 67–88.

Fishman J., Domains and the relationship between micro- and macro-sociolinguistics, (in:) J. Gumperz and D. Hymes (eds.), Directions in sociolinguistics: Ethnography of communication, New York 1972a, pp. 435–453.

Fishman J., The sociology of language: An interdisciplinary social science approach to language in society, Rowley 1972b.

Gonçalves K., Conversations of intercultural couples, Berlin 2013.

Grosjean F., The bilingual individual, 'Interpreting: International Journal of Research and Practice in Interpreting' 1997, no. 2, pp. 163–87.

Grosjean F., Studying bilinguals, Oxford 2008.

Grosjean F., Bilingual: Life and reality, Cambridge, MA 2010.

Grosjean F., Bilingualism: A short introduction, (in:) F. Grosjean and P.Li (eds.), The psycholinguistics of bilingualism, Malden, MA 2013, pp. 5–25.

Hardach-Pinke I., Interkulrurelle Lebenswelten: Deutsch-japanische Ehen in Japan, New York 1988.

Kużelewska E. and Piekutowska A., The EU member states' diverging experiences and policies on refugees and the New Pact on Migration and Asylum, 'Białostockie Studia Prawnicze' 2021, vol. 26, no. 1, pp. 23–36.

Labov W., Sociolinguistic patterns, Philadelphia 1984.

Machowska-Kościak M., To be like a home extension: Challenges of language learning and language maintenance – lessons from Polish-Irish experience, 'Journal of Home Language Research' 2018, vol. 2, no. 1, pp. 82–104.

Milroy L., Language and social networks, 2nd ed., Oxford 1987.

Milroy L. and Gordon M., Sociolinguistics: Method and interpretation, Oxford 2003.

Murrmann J., Rodzinna polityka językowa: Strategie w wychowaniu dzieci trójjęzycznych, 'Socjolingwistyka' 2019, no. XXXIII, pp. 193–207.

Piller I., Bilingual couples talk: The discursive construction of hybridity, Amsterdam 2002.

Pułaczewska H., Mütter sprechen. Erziehung mit Herkunftssprache Polnisch am Beispiel Regensburg, Hamburg 2018.

Pułaczewska H., Studying parental attitudes to intergenerational transmission of a heritage language: Polish in Regensburg, (in:) B. Lewandowska-Tomaszczyk (ed.), Contacts and contrasts in educational contexts and translation, Berlin 2019, pp. 8–17.

Pułaczewska H., Adolescence as a 'critical period' in the heritage language use. Polish in Germany, 'Open Linguistics' 2021, no. 7, pp. 301–315.

Romaine S., Bilingualism, Oxford 2008.

Romanowski P., Early bilingual education in a monolingual environment: Showcasing Polish families, 'Complutense Journal of English Studies' 2018, no. 24, pp. 143–164.

Romanowski P., Family Language Policy in the Polish Diaspora: A focus on Australia, London 2021.

Spolsky B., Language policy, Cambridge 2004.

Stępkowska A., Poles and their non-Polish partners: Languages, communication and couplehood identity, 'Kwartalnik Neofilologczny' 2017a, vol. LXIV, no. 3, pp. 350–365.

Stępkowska A., Rodzinna polityka dwujęzyczności w Polsce na wybranym przykładzie, 'Scripta Neophilologica Posnaniensia' 2017b, no. 17, pp. 329–343.

Stępkowska A., Pary dwujęzyczne w Polsce, Poznań 2019.

Stępkowska A., Family networking of bilingual couples: Reactions to otherness, (in:) B. Lewandowska-Tomaszczyk (ed.), Cultural conceptualizations in language and communication, New York 2020, pp. 115–128.

Stępkowska A., Language choices between partners in bilingual relationships, 'GEMA Online Journal of Language Studies' 2021a, vol. 21, no. 4, pp. 110–124.

Stępkowska A., Language experience of immigrant women in bilingual couples with Poles, 'International Journal of Bilingualism' 2021b, vol. 25, no. 1, pp. 120–134.

Stępkowska A., Identity in the bilingual couple: Attitudes to language and culture, 'Open Linguistics' 2021c, no. 7, pp. 223–234.

Stępkowska A., Language as a source of problems in bilingual couples, (in:) B. Lewandowska-Tomaszczyk and M. Trojszczak (eds.), Language use, education, and professional contexts, New York 2022, pp. 99–113.

Szramek-Karcz S., The success of non-native bilingualism in Poland, 'Lingwistyka Stosowana' 2016, vol. 17, no. 2, pp. 93–102.

Ugazio V. and Guarnieri S., A couple in love entangled in enigmatic episodes: A semantic analysis, 'Journal of Marital and Family Therapy' 2018, vol. 44, no. 3, pp. 438–457.

Wąsikiewicz-Firlej E. and Lankiewicz H., The dynamics of Family Language Policy in a trilingual family: A longitudinal case study, 'Applied Linguistics Papers' 2019, vol. 26, no. 1, pp. 169–184.

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Predictive Analysis for Text Classification: Discrete Units in Company Registration Discourse

Abstract: Legal discourse shows variation most commonly in terms of contrasts between languages, textual genres, communicative settings (professional vs. lay communication), translation methods and categories of authors, the last constituting a testing ground for the text-prediction task presented in this article. The research project involves quantitative analysis of selected discrete units and their statistical processing with the R tool for the purpose of generating random forest and decision tree models. It is hypothesised that it is possible to effectively predict text authorship based on the grammatical profile of the texts. The prediction model proposed here covers two authorship categories, institutional name and professional title, and these encapsulate authorship sub-categories related to institutional and work position background. The prediction accuracy parameters for the authorship-based text classification in both cases prove to be statistically satisfactory. More specific findings show that the text classification models for some authorship sub-categories are more effective than for others. Further, some discrete units have distinctively high discriminative power for the texts. The analysis is conducted on a custom-designed corpus, composed of English texts processed in company registration proceedings. The corpus is homogenous in terms of the function and the communicative context of the texts, which assures reliability of the findings and at the same time captures the variationist aspect of legal communication by taking the varied authorship factor into account.

Keywords: authorship factor, decision tree, legal discourse, predictive analysis, random forest, text classification

Introduction

This article fits into the strand of linguistic corpus studies that concern stylistic distinctions in legal discourse[1] based, for example, on the categories of genre,[2] cross-linguistic distinctions,[3] institutional conventions[4] or authorship, the last being largely underrepresented within legal linguistics[5] but extensively present in literary studies as part of stylometric analyses.[6] Here, the authorship-based study involves carrying out predictive analysis, conducted on a corpus of English legal texts, where random forests and decision trees are used for text classification according to context-related variables linked to two authorship categories. The article draws on the concept of variationist linguistics, and specifically it is believed that different drafting styles of distinct authorship categories systematically differentiate legal texts. Two assumptions lie at the root of the task operationalisation, and they are intended to allow the formulation of specific conclusions based on the relevant frequency data. Firstly, it is assumed that the quantitative distinction of a text, noted at the level of specific grammatical categories, translates into the stylistic distinctiveness of various authorship-based text categories. Discrete units, understood as closed class categories, although considered by some to have limited informative capacity,[7] are believed to be of value here as identifying the ground for the syntagmatic research to follow and as providing authentic data on text – prediction; this is legilinguistic research that has not received much attention so far. Secondly, there is no one-to-one correspondence

1 The concept of *discourse* is used here as denoting the nature of the corpus material. It is to emphasise that the material is strongly embedded in the sociolinguistic context and features systemic variation. The inclusion of the authorship-based distinctions is assumed to put the study at the level of discourse level descriptions. The related terms *text* or *language* are used in more specific contexts.

2 V.K. Bhatia, Critical Genre Analysis: Investigating Interdiscursive Performance in Professional Practice, New York 2017.

3 E. Więcławska, Discrete Units as Markers of English: Polish Contrasts in Company Registration Discourse, 'Linguodidactica' 2020, vol. 24, pp. 309–327; E. Więcławska, English/Polish Contrasts in Legal Language from the Usage-based Perspective, (in:) L. Lanthaler, R. Lukenda (eds.), Redefining and Refocusing Translation and Interpreting Studies: Selected Articles from the 3rd International Conference on Translation and Interpreting Studies TRANSLATA III (Innsbruck 2017), Berlin 2020, pp. 99–104.

4 Ł. Biel, Lost in the Eurofog: The Textual Fit of Translated Law, Berlin 2014.

5 The domain of law is represented here by authorship studies conducted for legal purposes (T.D. Grant, Quantitative Evidence for Forensic Authorship Analysis, 'International Journal of Speech Language and the Law' 2007, vol. 14, no. 1, pp. 1–25), rather than by studies conducted on legal texts.

6 D. Longerée, S. Mellet, Towards a Topological Grammar of Genres and Styles: A Way to Combine Paradigmatic Quantitative Analysis with a Syntagmatic Approach, (in:) D. Legallois, T. Charnois, M. Larjavaara (eds.), The Grammar of Genres and Styles: From Discrete to Non-Discrete Units, Berlin 2018, pp. 140–163.

7 *Ibidem*, p. 142.

between the individual authorship categories and textual genres distinguished in the corpus, which ensures that the analysis may lay the ground for identifying new qualitative criteria of text categorisation.

The aim here is to build a prediction model[8] that, above a specific threshold accuracy level, allows for the identification of authors discerned within the two authorship categories of INSTITUTIONAL NAME and PROFESSIONAL TITLE, which are most effectively predicted on the grounds of a distribution scheme of 16 grammatical categories. In order to understand how the texts are assigned to classes corresponding to the authorship categories, and also with the aim of acquiring additional, qualitative knowledge on the subject, two relevant models of decision tree were developed. The statistical calculations fit in the well-established R-tool frameworks, and thus the discussion rests on presenting the results of the quantitative analysis (i.e. relevant models), without focusing on the interim stages of statistical data processing.

The general research question formulated in the study is: Can we construe high-quality prediction models for text classification on the basis of variables related to the authorship factor where the accuracy is above 60%? In other words, does the authorship factor allow us to effectively categorise legal texts automatically? Are the stylistics conventions of legal texts distinct, depending on the categories of the authors?

It is hypothesised that the construed models will have a satisfactory level of accuracy and will enable the identification of statistically significant outcomes. Moreover, the discriminative power of the variables related to the grammatical features and authorship categories varies. Finally, specific patterns exist which are built around a series of consecutive conditions to be fulfilled by the texts that demonstrate repetitiveness and consistency in the grammatical profile of the texts. Further, tendencies are to be discerned regarding the statistical salience of some of these patterns, their frequency and their composition-based scheme (which grammatical categories are involved and what their percentage share is in the prediction models).

More detailed questions are: Does the discriminative power of the individual grammatical features vary, and if so, which grammatical categories have the highest discriminative power in text classification? Further, which authorship-conditioned text categories are most effectively predicted by means of frequency distribution patterns with regard to discrete units? In other words, which authorship sub-categories are the most schematic or emblematic for their stylistics and what are the schemata? And finally, what are the dominating, statistically effective automatic text-identification paths within the prediction models identified?

8 The term *model* relates to the concepts of prediction model or text classification model. *Models* refer to the schemes derived individually for the two authorship categories and/or specific outcomes in the prediction analysis (decision tree, random forest).

1. Methodology

The analysis involved the processing of a custom-designed, monolingual, thematically homogeneous corpus compiled of company registration texts (1, 124, 204 tokens, 932, 839 words). The corpus, referred to as the CorpCourt tool, comprises English legal texts that invariably relate to the same thematic range of company law, and are further limited to the category of texts processed in a court environment for the purpose of company registration. Such an authentic composition of the corpus increases the reliability of the results in that, by capturing the complete range of text types in the said communicative environment and including exhaustive data from court files, it ensures the identification of true and new linguistic distinctions, in our case an authorship-based text classification system that exceeds the classical genre-related text classifications.

The research contributes to linguistic studies on authorship factor which variably take the form of authorship identification/attribution,[9] authorship verification,[10] authorship classification,[11] text categorisation methodologies[12] and plagiarism detec-

9 The terms 'authorship attribution' and 'authorship identification' are considered to be synonymous (E. Stamatatos, A Survey of Modern Authorship Attribution Methods, 'Journal of the American Society for Information Science and Technology' 2009, vol. 60, no. 3, p. 539). M. Bhargava, P. Mehndiratta, K. Asawa, Stylometric Analysis for Authorship Attribution on Twitter, (in:) V. Bhatnagar, S. Srinivasa (eds.), Big Data Analytics. Second International Conference, BDA 2013 Mysore, India, December 2013 Proceedings. New York/Dordrecht/London 2013, pp. 37–47; H. Baayen, H. van Halteren, A. Neijt, F. Tweedie, An Experiment in Authorship Attribution, (in:) Proceedings of JADT 2002, St. Malo 2002, pp. 29–37; H. Baayen, H. van Halteren, F. Tweedie, Outside the Cave of Shadows: Using Syntactic Annotation to Enhance Authorship Attribution, 'Literary and Linguistic Computing' 1996, vol. 1, no. 13, pp. 121–131; C.E. Chaski, Who's at the Keyboard? Authorship Attribution in Digital Evidence Investigations, 'International Journal of Digital Evidence' 2005, vol. 4, no. 1, pp. 1–13; R.M. Coyotl-Morales, L. Villaseñor-Pineda, M. Montes-y-Gómez, P. Rosso, Authorship Attribution Using Words Sequences, (in:) J.F. Martínez-Trinidad, J.A. Carrasco-Ochoa, J. Kittler (eds.), Progress in Pattern Recognition, Image Analysis and Applications, New York/Dordrecht/London 2006, pp. 844–853; S. Nirkhi, R.V. Dharaskar, Comparative Study of Authorship Identification Techniques for Cyber Forensic Analysis, 'International Journal of Advanced Computer Science and Applications' 2013, vol. 4, no. 5, pp. 32–35.

10 S. Nirkhi, R.V. Dharaskar, V.M. Thakare, Authorship Verification of Online Messages for Forensic Investigation, 'Procedia Computer Science' 2016, vol. 78, pp. 640–645; H. van Halteren, Author Verification by Linguistic Profiling: An Exploration of the Parameter Space, 'ACM Transactions on Speech and Language Processing' 2007, vol. 4, no. 1, pp. 1–17.

11 S. Kim, H. Kim, T. Weninger, J. Han, H.D. Kim, Authorship Classification: A Discriminative Syntactic Tree Mining Approach, (in:) Proceedings of the ACM SIGIR, July 24–28, Beijing 2011, pp. 455–464.

12 F. Fukumoto, Y. Suzuki, Manipulating Large Corpora for Text Classification, (in:) Proceedings of the Conference on Empirical Methods in Natural Language Processing (EMNLP), Philadelphia 2002, pp. 196–203; R. Sprugnoli, S. Tonelli, Novel Event Detection and Classification for Historical Texts, 'Computational Linguistics' 2019, vol. 45, no. 2, pp. 229–265; E. Stamatatos, N. Fakotakis,

tion.[13] This authorship analysis task follows prediction-oriented research,[14] and specifically, it constitutes a testing ground for a text-prediction study, whereby which grammatical features have discriminative power will be investigated and whether and to what extent the frequency distribution scheme of the grammatical features covered by the analysis can constitute a basis for a text-prediction model.

The authorship-related stylometric research is conducted with the application of distinct methodologies, ranging from technologically advanced tools[15] to methodologies more common in literary studies, like cluster analysis.[16] The prediction model presented here is generated with the use of the R-tool methodology.[17]

The methodology applied here, making use of the manually annotated authorship metadata and the text-prediction results obtained in the analysis, contributes to text classification research.[18] The research legitimises the classification of legal texts conducted according to the authorship criterion, which may be considered as complementary to the existing genre-based typologies. Adopting yet another perspective, the methodology employed here contributes to variationist linguistic studies, where distinctions run most commonly through register,[19] type of translation[20] or are determined by institutional conditions. Here the analysis focuses on the distinction criterion that is less commonly studied in the context of legal secondary genres. Legal style varies according to the author, not only according to legal genres as is commonly assumed, and the authorship-based text classification is believed to constitute

G. Kokkinakis, Automatic Text Categorisation in Terms of Genre and Author, 'Computational Linguistics' 2000, vol. 26, no. 4, pp. 471–495.

13 B. Stein, S. Meyer zu Eissen, Intrinsic Plagiarism Analysis with Meta Learning, (in:) Proceedings of the SIGIR Workshop on Plagiarism Analysis, Authorship Attribution, and Near-Duplicate Detection, Amsterdam 2007, pp. 45–50.

14 S. Cordeiro, A. Villavicencio, M. Idiart, C. Ramisch, Unsupervised Compositionality Prediction of Nominal Compounds, 'Computational Linguistics' 2019, vol. 45, no. 1, pp. 1–57.

15 E. Stamatatos, A Survey of…, *op. cit*.

16 D. Longerée, S. Mellet, Towards a Topological Grammar…, *op. cit*.

17 N. Levshina, How to Do Linguistics with R. Data Exploration and Statistical Analysis, Amsterdam/Philadelphia 2015.

18 F. Fukumoto, Y. Suzuki, Manipulating Large Corpora…, *op. cit.*; R. Sprugnoli, S. Tonelli, Novel Event Detection…, *op. cit.*; E. Stamatatos, N. Fakotakis, G. Kokkinakis, Automatic Text Categorisation…, *op. cit*.

19 S. Goźdź-Roszkowski, Patterns in Linguistic Variation in American Legal English, Frankfurt am Main 2011.

20 E. Lapshinova-Koltunski, VARTRA: A Comparable Corpus for Analysis of Translation Variation, (in:) Proceedings of 6th Workshop on Building and Using Comparable Corpora; Association for Computational Linguistics, Sofia 2013, pp. 77–86; E. Lapshinova-Koltunski, Variation in Translation: Evidence from Corpora, (in:) C. Fantinuoli, F. Zanettin (eds.), New Directions in Corpus-based Translation Studies, Berlin 2015, pp. 93–114; E. Lapshinova-Koltunski, M. Zampieri, Linguistic Features of Genre and Method Variation in Translation: A Computational Perspective, (in:) D. Legallois, T. Charnois, M. Larjavaara (eds.), The Grammar…, *op. cit.*, pp. 92–117.

a more general text-categorisation category compared to the genre-based categorisation.

The operationalisation of the task involves generating frequency data for the distribution of specific grammatical categories in texts, as distinct for the authorship categories, and subsequently generating prediction models upon the relevant quantitative data. The discriminative power of specific grammatical categories is assessed based on the quantitative salience of specific values in the random forests and on the prediction potential of the decision trees or parts of these. The operationalisation of the hypothesis is grounded on the potential of the corpus, which rests on the annotation of metadata providing for the authorship information in a representative and comprehensive way. The specificity of the texts (their thematic homogeneity and at the same time their contextual variantivity), together with their authenticity and the involvement of manual data processing at the pre-computational phase, which involved detailed study of the origin of the text, made it possible to identify and record the computational qualification-relevant values referring to authorship categories (hereinafter also referred to as variables) at two levels. Both levels exceed the scope of possible individual stylistic preferences and focus on potential stylistic distinctions emerging from group-specific/collective conventions. Thus, it is expected that the individuals affiliated to one type of institution follow consistent linguistic conventions, and their texts were accordingly annotated with the metadata corresponding to the variable (authorship category) INSTITUTIONAL NAME and to the related variable indicators (authorship sub-categories) labelled ENTITY ENTERED INTO THE REGISTER, AUTHENTIFICATION AUTHORITY, COMPANY REGISTRATION AUTHORITY, COMPANY EXTERNAL ENTITY PROVIDING PROFESSIONAL SERVICES NOT CLASSIFIED ELSEWHERE, and MISCELLANEOUS. The second level of authorship category covered by this analysis was identified according to the same principles; namely, linguistic distinctions are assumed to be noted depending on the work position of the individual drafting a given document, which justified the identification of 13 variable indicators conceptually linked to the variable (authorship category) PROFESSIONAL TITLE. The variable indicators (authorship sub-categories) in question include ENTITY ESTABLISHING THE COMPANY, COMPANY MANAGER, COMPANY OFFICER, ENTITY PARTICIPATING IN THE COMPANY, ENTITY AUTHORISED TO REPRESENTATION, NOTARISATION OFFICER, FOREIGN SERVICE POST, STATE CERTIFICATION AND LEGALISATION AUTHORITY, HEAD OF REGISTRATION AUTHORITY, OFFICER OF REGISTRATION AUTHORITY OF LOWER LEVEL, LEGAL COUNSEL, TAX AUTHORITY, and MISCELLANEOUS.[21] The extract from the database

21 The authorship factor making use of the categories exploited in this study has already been subjected to another analysis conducted by the author, but the analysis was limited in scope with regard to the range of the grammatical categories covered and made use of distinct methodol-

presented below is illustrative of the type of texts making up the corpus and the manual coding system applied. Sensitive data have been removed.

<doc headline="no" paragraph="yes" krs="044" krsitem="3" styear="2008" title="10" professional_title="4" institutional_name="1" country="UK" legal_form="Ltd." stpages="1" stwordcount="2" type_of_translation="1" ttpages="1" ttwordcount="2" sex="K" ttyear="2010">
Company Number: xxx
COMPANIES ACT 1985, 1989 AND 2006 COMPANY LIMITED BY SHARES SHAREHOLDERS' WRITTEN RESOLUTION OF
xxx FIN BET INVEST LTD.
(the 'Company')
The signatories, being at the date hereof the sole members of the Company entitled to receive notice of and to attend and vote at a general meeting of the Company, hereby unanimously RESOLVE and agree the following resolutions pursuant to and in accordance with the Companies Act 1985 (as amended) (the 'Act') and such resolutions shall be for all purposes as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held:
SPECIAL RESOLUTIONS
Share Capital
* IT IS RESOLVED THAT the share capital of the Company of GBP 100 with 100 shares of GBP 1.00 each is hereby sub-divided into 10,000 shares of GBP 0.01 each.
* IT IS RESOLVED THAT the Company's Articles of Association and Memorandum of Association be amended to reflect the change made by the resolution 1 above.
Dated 1 April, 2008 and signed by all members of the Company:
Xxx
Xxx
Xxx
xxx </doc>

As emerges from this extract, the resolution has been assigned the authorship sub-categories of ENTITY ENTERED INTO THE REGISTER (code 1) and ENTITY PARTICIPATING IN THE COMPANY (code 4) under INSTITUTIONAL NAME

ogy (E. Więcławska, Quantitative Distribution of Verbal Structures with Reference to the Authorship Factor in Legal Stylistics, 'Studies in Logic, Grammar and Rhetoric' 2021, vol. 66, no. 79, pp. 147–165). Also, the grammatical categories employed in the foregoing were selectively processed for the identification of generic distinctions, either with regard to the English language alone (E. Więcławska, Sociolinguistic and Grammatical Aspects of English Company Registration Discourse, 'Humanities and Social Sciences' 2019, vol. 26, no. 4, pp. 185–195) or in cross-linguistic perspective (E. Więcławska, Discrete Units…, *op. cit.*; E. Więcławska, English/Polish Contrasts…, *op. cit.*). The present study extends the number of grammatical features in that it provides a cumulative account of the discrete units studied so far and proposes the automatic text-classification methodology of random forests and decision trees.

and PROFESSIONAL TITLE. Coding was conducted on the basis of the text content and, when needed, court file examination.

After the corpus had been manually coded with relevant authorship-related metadata, it was subsequently tokenised and tagged with part-of-speech information according to the standards accepted in related analyses.[22] SketchEngine was used to process and extract the relevant raw frequency data together with the relevant metadata. A random manual check followed the automatic extraction stage.

The construction and interpretation of the prediction models are based on the operationalisation scheme making use of the concept of random forests and decision trees. The analysis involves calculating the frequency-distribution patterns for 16 grammatical categories having the status of discrete units of two types: verbal structures and selected parts of speech categories. These units were selected as grammatical categories that are quantitatively[23] and qualitatively[24] significant for legal stylistics, and, in the case of the verbal structures, the categories covered by the analysis exhausted the repertoire of the verbal structures used in the texts. No other forms were identified in the random sample analysis conducted in the pre-processing stage. The set of verbal structures covered by the analysis includes *modal with past reference followed by active infinitive*, *modal with present reference followed by active infinitive*, *modal with present reference followed by passive infinitive*, *present perfect active form*, *present perfect passive form*, *simple past active form*, *simple past passive form*, *simple present active form* and *simple present passive form*. The remaining grammatical categories involve *adjective*, *noun*, *coordinate conjunction*, *subordinate conjunction*, *adverb*, *pronoun*, and *preposition*.

The data related to the raw frequencies of these categories were extracted from SketchEngine and statistically processed with the R tool to derive the random forest and decision tree models for the two authorship categories. The models are construed on the basis of the normalised data.

The order of the discussion is based on the presentation of the quantitatively overrepresented data, and regarding the random forest data, it involves: (i) identifying the accuracy of the prediction model for the two authorship categories (high quality or not – above 60%); (ii) identifying the variable indicators (authorship sub-categories) that are statistically most prominent within the framework of the two

22 K. Aijmer, Parallel and Comparable Corpora, (in:) A. Lüdeling, M. Kytö (eds.), Corpus Linguistics: An International Handbook, Berlin/New York 2009, pp. 275–291; T. Lehmberg, K. Wörner, Annotation Standards, (in:) A. Lüdeling, M. Kytö (eds.), Corpus Linguistics, *op. cit.*, pp. 484–501; H. Schmidt, Tokenizing and Part-of-speech Tagging, (in:) A. Lüdeling, M. Kytö (eds.), Corpus Linguistics, *op. cit.*, pp. 527–552.

23 M. Gotti, Investigating Specialised Discourse, Bern 2005; C. Williams, Tradition and Change in Legal English, Bern 2005.

24 E. Więcławska, Quantitative Distribution…, *op. cit.*; E. Więcławska, Sociolinguistic and Grammatical Aspects…, *op. cit*.

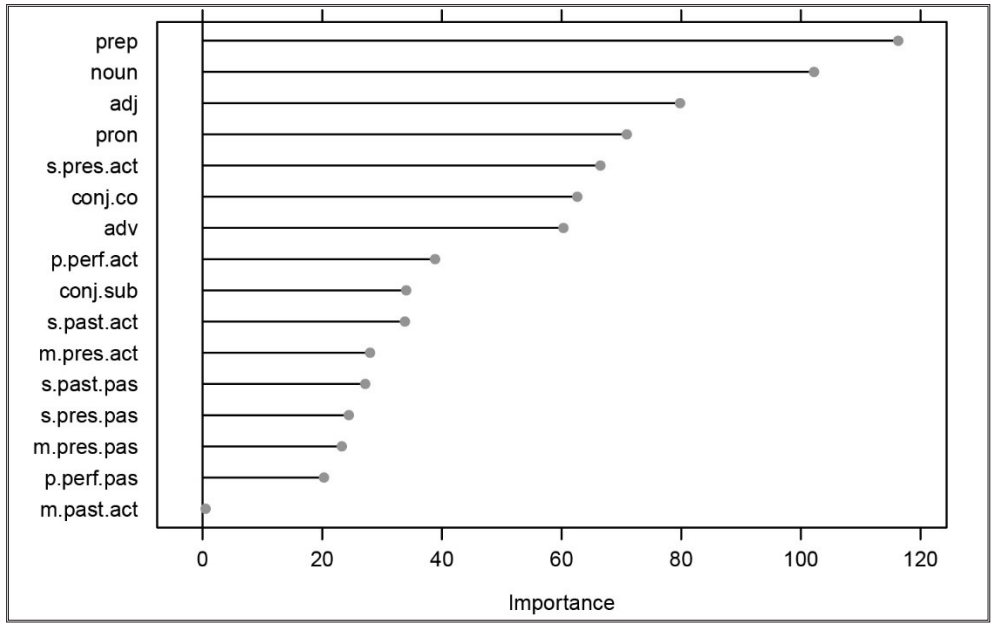
authorship categories; and (iii) identifying the grammatical categories that have the most significant discriminative power in the context of the two authorship categories. In order to obtain the interpretability of the model and extract additional information, decision trees were prepared; the interpretation at this stage is also based on the concept of quantitative overrepresentation of some variable indicators and/or grammatical categories. The trees are scrutinised to identify the most effectively predictable variable indicators (authorship sub-categories) and the linguistic features that are most prominent in terms of their discriminative power for predicting specific texts, that is, texts authored by distinct entities. Closer discussion covers presentation of the prediction path corresponding to one variable indicator that scores the highest percentage value from among those listed in the lowest row of the decision tree (the bottom leaves).

2. Discussion

Institutional Name

The accuracy of the final text-classification model with the variable INSTITUTIONAL NAME is at the level of 87%, which is considered a very good result. Figure 1 visualises the distribution schemes of the 16 grammatical features covered by the analysis, and the interpretation of the data allows us to identify three significance ranges, the borders being assumed at points of significant quantitative divergence between the neighbouring categories.

Figure 1. Discriminative power of the grammatical categories in the prediction model for the variable INSTITUTIONAL NAME

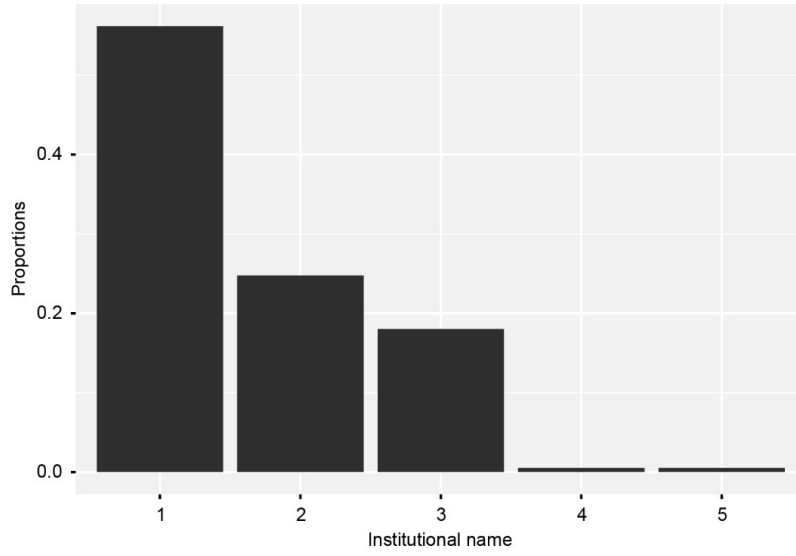


Hence, prepositions and nouns are the leaders among the grammatical categories that have significant discriminative power here, and they may be said to be quantitatively salient in this respect. The next significance range comprises adjective, pronoun, simple present active form and coordinate conjunction, and it closes with adverb. The significance range that is found to be in third place in prominence covers the following grammatical categories: present perfect active form, subordinate conjunction, simple past active form, modal with present reference followed by active infinitive, simple past passive form, simple present passive form, modal with present reference followed by passive infinitive and present perfect passive form. The final significance range is represented by one category, which is modal with past reference followed by active infinitive, which corresponds to almost zero value, confirming the low discursive relevance of this category.

Such distinct distribution of frequency data showing sharp ranges points to (i) varied significance of grammatical categories in the stylistic profile of legal texts, and (ii) marked distinction in the discriminative power between the verbal structures considered as a group and the remaining grammatical part of speech categories.

The random forest model also brings in information related to the types of authors related conceptually to the category of INSTITUTIONAL NAME that are most effectively predicted on the basis of the grammatical categories covered by the analysis. Figure 2 visualises the data in question.

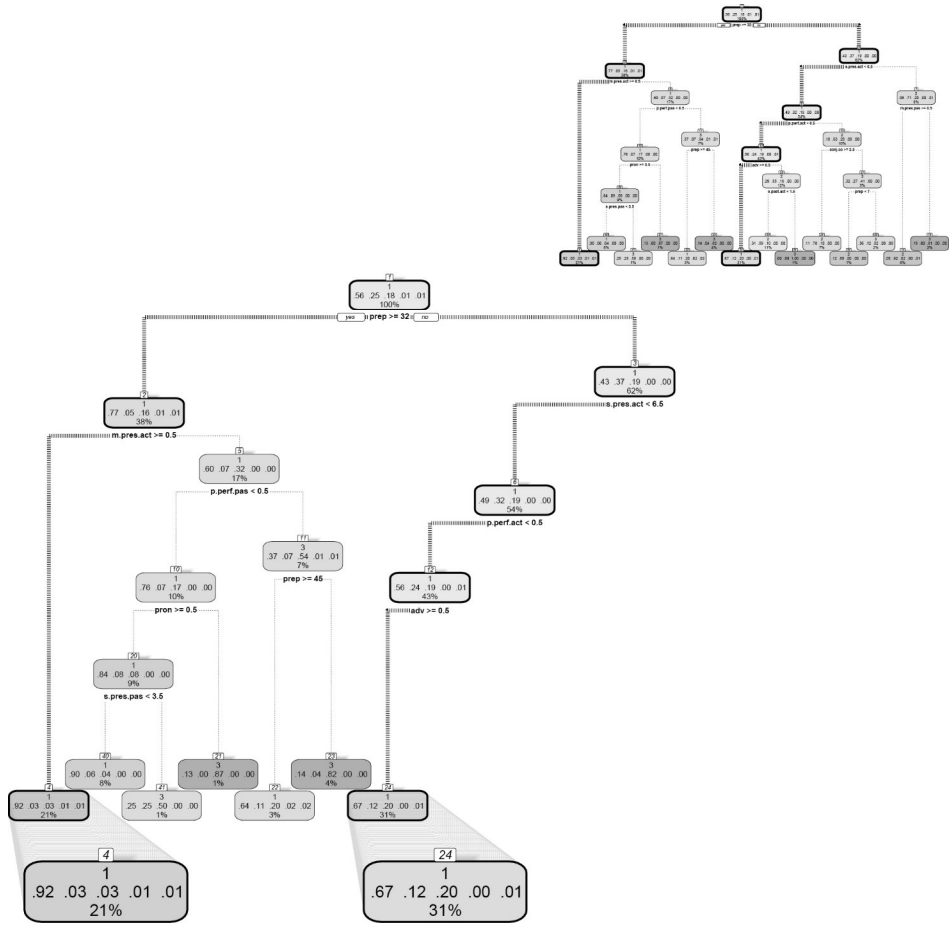
Figure 2. Predictability potential of the variable indicators for the category INSTITUTIONAL NAME



As stated in the previous section, the manual annotation resulted in a 5-degree scale of variable indicators for the category INSTITUTIONAL NAME which were assigned numerical codes as follows: '1' ENTITY ENTERED INTO THE REGISTER, '2' AUTHENTIFICATION AUTHORITY, '3' COMPANY REGISTRATION AUTHORITY, '4' COMPANY EXTERNAL ENTITY PROVIDING PROFESSIONAL SERVICES NOT CLASSIFIED ELSEWHERE, and '5' MISCELLANEOUS. The vertical axis allows us to specify exact values for the variable indicators and single out the most salient ones. Here the relevant values registered in Figure 2 run in descending order, which coincidentally matches the numerical order. As emerges from Figure 2, when it comes to the discriminative power of the said variable indicators, there are two categories. The first three items are shown to be markedly more significant that the other two categories, with low distinction margins among the categories within the two groups. The dominance of the three categories in question can be accounted for by reference to some contextual conditions in which the texts are drafted. Hence, the winning category covers texts authored by entrepreneurs themselves, and the significant homogeneity of the texts and their repetitiveness, and thus high conventionality and prediction potential, is to be attributed to the institutionally recognised stylistic conventions. The same may be assumed to hold true for the authorship category occupying second place. In turn, the shared stylistics and high predictability potential of the texts drafted by the authentication agents is to be attributed to the stylistic conventions imposed on them by the performativity condition. Messages need to be conveyed in a prescribed way, using standard formulae in order to bring about a specific legal effect. The high score of the third topmost variable indicator, that is, COMPANY REGISTRATION AUTHORITY, is to be attributed to the largely prefabricated, form-like type of communication. Here belong, for example, company extracts which are known for their inclusion of tabular-like, automatically generated information.

Based on the statistics used for generating a random forest model, a decision tree was trained with the aim of understanding how specific texts are assigned to the classes. The maximum depth of the tree was kept to 5. The accuracy of the final model is 74%, which is a very good result for a decision tree. Figure 3 is composed of a visualisation of the whole decision tree model placed in the top right corner and a section thereof zooming in on the prediction path corresponding to the variable indicator scoring the highest result with regard to the level of text-classification accuracy.

Figure 3. Decision tree model – INSTITUTIONAL NAME



The decision tree model is discussed by referring to the content of the individual boxes, referred to as leaves on the tree with the numbers assigned to them above (knots) and also with reference to the flow of the prediction paths, the direction of which is conditioned by the fulfilment or non-fulfilment of the conditions specified below. Starting from the topmost row, the information included in the individual boxes (leaves) specifies: (i) the code for the variable indicator corresponding to the authorship category INSTITUTIONAL NAME; (ii) the percentage corresponding to the discriminative power for the said variable indicator in the specific prediction scenario; and (iii) the percentage of the predictability potential with regard to the given prediction path.

In general, the data to be interpreted from the decision tree largely confirm what was stated before, but they also bring in additional information compared to the random forest model and thus enhance the interpretability of the prediction model, specifying the salient prediction paths at the quantitative and qualitative levels. More specifically, the said decision tree model is consistent with the random forest data regarding the discriminative potential of the individual authorship sub-categories discerned within the domain of INSTITUTIONAL NAME. The graphical representation in Figure 3 also reflects the priority order of the authorship sub-categories established according to the values specified in Figure 2. Hence the only three variable indicators here include ENTITY ENTERED INTO THE REGISTER coded with '1', AUTHENTIFICATION AUTHORITY coded with '2' and COMPANY REGISTRATION AUTHORITY coded with '3', represented, for example, in knots 3, 12 and 6 for the code '1' and in knots 13, 26 and 50 and 11, 21 and 23 respectively for the codes '2' and '3'. With regard to the additional information on the text classification potential to be extracted from the decision tree, the data in question (i) disclose the set of grammatical features that are significant for the operation of the salient statistical prediction schemes for the individual variable indicators, and (ii) specify the accuracy level for the prediction scenarios, visualised as prediction paths, and single out the statistically most effective ones. Referring to the first point, in the text classification scenarios (prediction paths) included in the model, almost all the grammatical features are activated in generating the decision tree (11 out of 16). Notably, the missing ones include the top frequency categories, that is, nouns and adjectives. The statistically insignificant participation of nouns and adjectives in the prediction model may be accounted for by the thematic homogeneity of the corpus, which ensures processing of the same concepts/denotations and thus largely the same terms. It is usually nouns and nominal phrases composed of nouns and adjectives that are carriers of legal concepts, and these stay the same throughout the corpus in order to achieve thematic consistency. It may be assumed that the text categories authored by distinctive entities differ in the structures that are relevant for other levels of text organisation. With regard to the second aspect of information to be identified from the decision tree model as complementing the random forest model data, the accuracy level of the prediction paths (text classification) scenarios, as derived from the decision tree model, varies, and in the most general terms, the model accounts for the set of scenarios showing a descending level of accuracy, starting from 11% and ending at 1%. The difference margin among the quantitatively close cases does not exceed 3%. The only exceptions to this pattern are the scores of 21% (knot 4) and 31% (knot 24), as shown in detail in Figure 3, which are markedly salient compared to the others (the difference margin to the closest case is 10%). This testifies to there being two patterns in text-classification models that markedly dominate with regard to the efficiency of the model, both relating to the variable indicator coded as '1', that is, ENTITY ENTERED INTO THE REGISTER.

The logic of the decision tree is described on the basis of a series of conditions that lead to (knot) 24. This leaf/knot, which is the fourth bottom-most leaf counting from the left, contains 31% of the texts from the training group; the dominating variable indicator here is ENTITY ENTERED INTO THE REGISTER, coded as '1'. This authorship sub-category is assigned to 67% of the texts that satisfy the following conditions. The tree shows a series of conditional formulae and the texts are directed to the left or right, depending on whether they fulfil the condition or fail to do so, respectively. The prediction path for knot 24 starts with knot 1, the topmost one, and the prediction scenario is as follows:

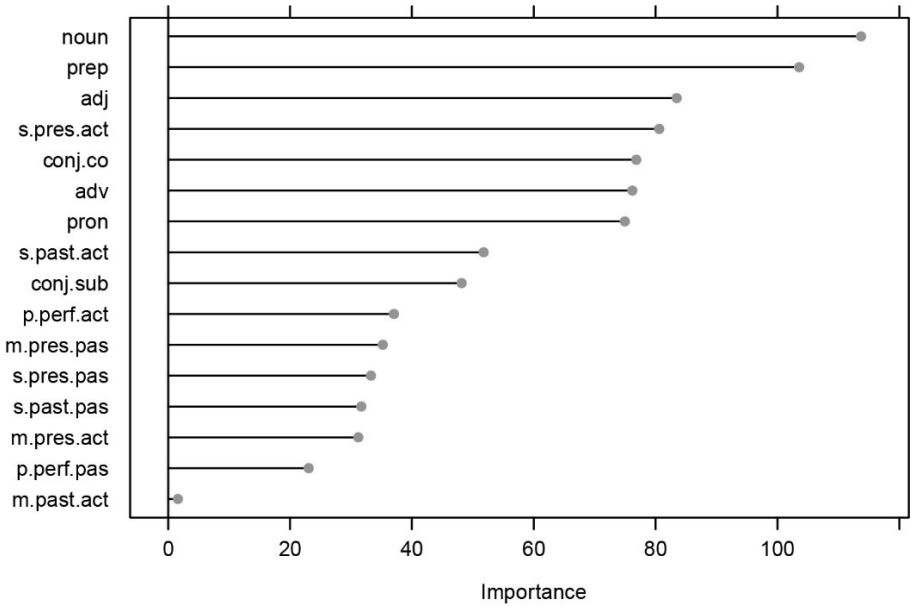
1) 62% of the texts go to the right because they fail to satisfy the condition 'prep>=32',
2) subsequently, 54% of the texts go to the left because they successfully fulfil the condition specified under knot '3', that is 'simple perfect active form <6.5',
3) and then 43% of the texts go to the left since they satisfy the three conditions mentioned so far, including the condition 'present perfect active form <0.5',
4) finally, the last condition is formulated as 'adverb <=0.5'; according to the prediction model 31% of the texts satisfy this condition and the previous ones.

The stylistic structure of the texts is shown to be distinctive by virtue of varied sets of grammatical features, which may be inferred from the range of grammatical categories appearing in the prediction paths generated on the decision tree. To specify, 11 out of 16 grammatical categories act as components of the prediction paths. Furthermore, the participation of verbal structures is significant here. Finally, with regard to the prediction potential of the five variable indicators, a bipolar pattern emerges, where three categories have quantitatively marked text-classification potential and two remain almost at zero level. This can testify to the low stylistic distinctiveness of the texts ranked in the latter group and/or the low level of stylistic repetitiveness, which can hinder the operation of the prediction process.

Professional Title

PROFESSIONAL TITLE is the second authorship category that was identified for verifying the hypotheses posed in this study. The random forest model generated on the basis of this variable noted accuracy at the level of 73%. The importance of the grammatical categories in the model for the authorship category in question is shown in Figure 4.

Figure 4. Discriminative power of the grammatical categories in the prediction model for the variable PROFESSIONAL TITLE



As emerges from Figure 4, the distribution pattern largely resembles the one evidenced for the variable (authorship category) INSTITUTIONAL NAME. The resemblance of the relevant patterns relates to the distribution scheme of the significance ranges, and specifically to the grouping of the data in four ranges, based on the criterion of an insignificant relative distinctiveness margin between the items of the same significance range. Furthermore, the top and bottom grammatical categories are largely the same for INSTITUTIONAL NAME and PROFESSIONAL TITLE. Prepositions and nouns come to the fore here, with the reservation that the order of precedence is reversed compared to the distribution scheme for INSTITUTIONAL NAME. The high position of prepositions in the ranking of their discriminative power can be accounted for by their status as markers of legal discourse in general.25 Nouns prove to rank high in this distribution scheme presumably by virtue of the highly specialised scope of competences ascribed to the authors of the texts, which causes the texts produced to recurrently use the same concepts and thus terms.

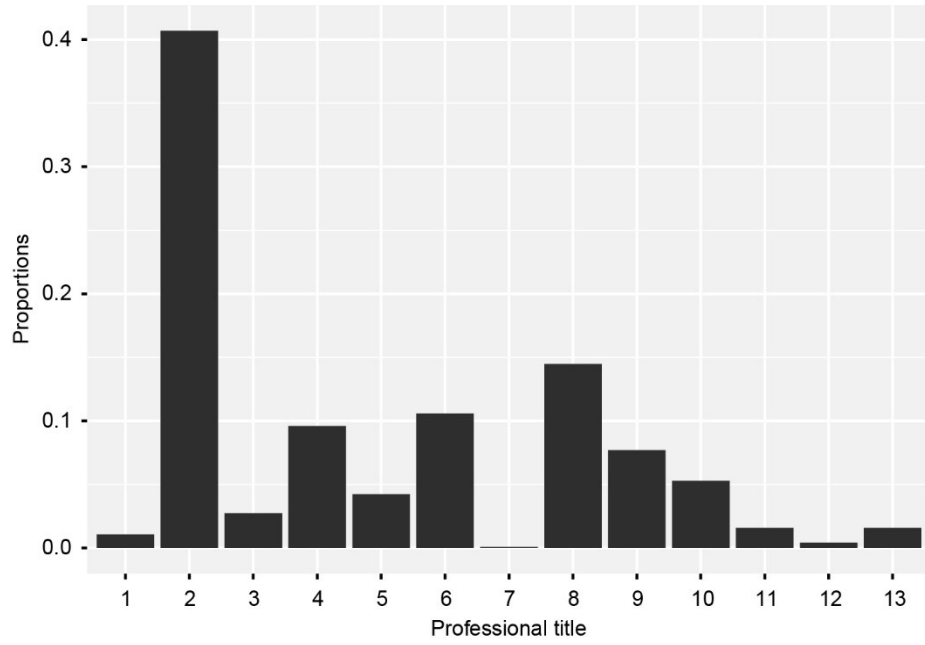
The discriminative power of the grammatical categories with regard to the authorship category PROFESSIONAL TITLE proves to be distinct from INSTITUTIONAL NAME in that the significance ranges corresponding to the middle values

25 Ł. Biel, Phraseological Profiles of Legislative Genres: Complex Prepositions as a Special Case of Legal Phrasemes in EU Law and National Law, 'Fachsprache' 2015, vol. 37, nos. 3–4, pp. 139–160.

are different. Hence, here modal present passive forms and coordinate conjunctions rank lower for PROFESSIONAL TITLE, while simple present forms and modal present active forms score higher values.

Further, the analysis of the random forest model in question provides us with a set of values ascribed to the individual variable indicators and discloses their varied discriminative power.

Figure 5. Predictability potential of the variable indicators for the category PROFESSIONAL TITLE



The horizontal axis in Figure 5 registers individual variable indicators with the numbers corresponding respectively to '1' ENTITY ESTABLISHING THE COMPANY, '2' COMPANY MANAGER, '3' COMPANY OFFICER, '4' ENTITY PARTICIPATING IN THE COMPANY, '5' ENTITY AUTHORISED TO REPRESENTATION, '6' NOTARISATION OFFICER, '7' FOREIGN SERVICE POST, '8' STATE CERTIFICATION AND LEGALISATION AUTHORITY, '9' HEAD OF REGISTRATION AUTHORITY, '10' OFFICER OF REGISTRATION AUTHORITY OF LOWER LEVEL, '11' LEGAL COUNSEL, '12' TAX AUTHORITY, and '13' MISCELLANEOUS.

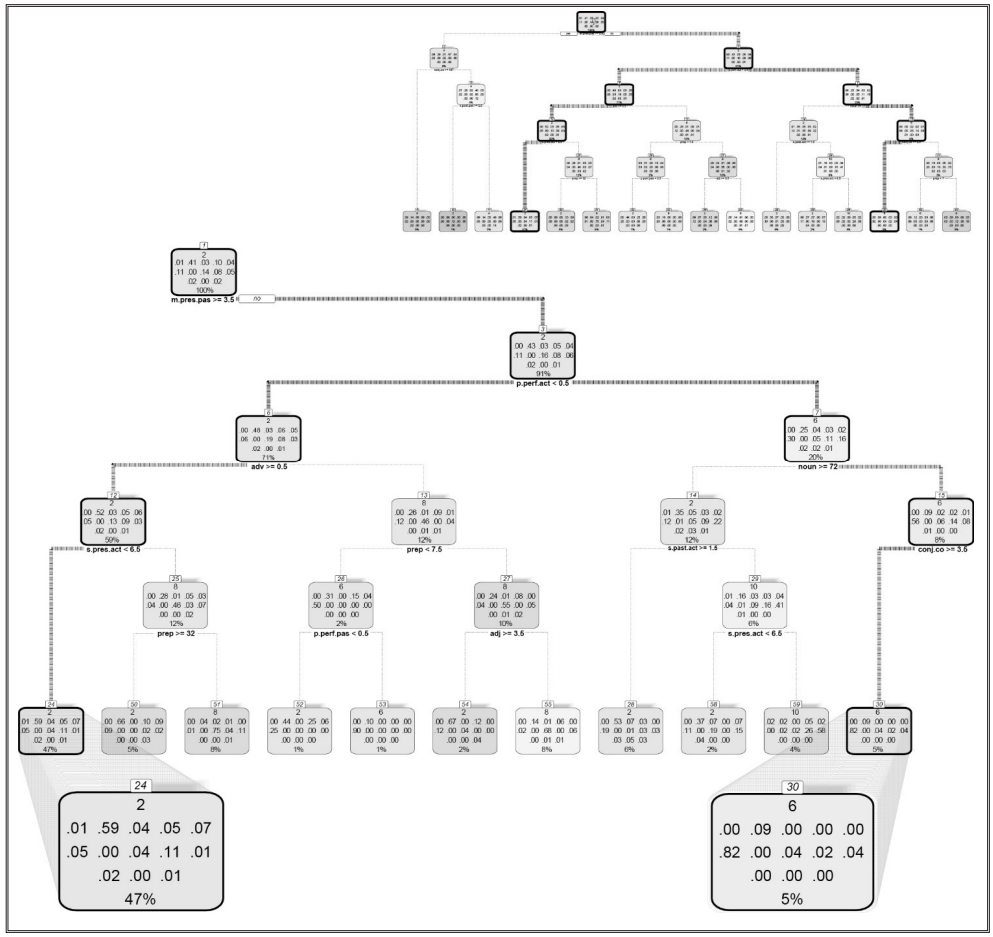
If we interpret the values presented in Figure 5 in relation to the ones registered for INSTITUTIONAL NAME, we see that here the scheme is more dispersed and di-

verse. We have one undisputable winner – COMPANY MANAGER, scoring much higher than the others. The strong stylistic distinctiveness of the texts produced by the entities related to this authorship sub-category may be assumed to be due to there being strong and consistent stylistic conventions for drafting legal documents that are observed by company officers of a higher level and these being distinct from those followed by other agents acting on the professional level, such as, for example, the category NOTARISATION OFFICER. Further, the distribution of the values within the said authorship category can be interpreted by reference to four significance ranges determined by the criterion-of-difference margin not exceeding the value of 5% between the highest and lowest value in the group.

The discriminative force is spread more equally across the authorship category. There are no zero or near-zero values, as was the case for INSTITUTIONAL NAME. The text classification based against these authorship categories is supposed to cover more stylistic details because more sub-categories have been identified at the start and, as emerges from Figure 5, they are shown to have fairly strong discriminative power. The winning category constitutes a significance range of its own with a score of more than 40%. The second significance range covers NOTARISATION OFFICER and STATE CERTIFICATION AND LEGALISATION AUTHORITY. The third group is composed of ENTITY PARTICIPATING IN THE COMPANY, HEAD OF REGISTRATION AUTHORITY, and OFFICER OF REGISTRATION AUTHORITY OF LOWER LEVEL. Finally, ENTITY ESTABLISHING THE COMPANY, COMPANY OFFICER, ENTITY AUTHORISED TO REPRESENTATION, LEGAL COUNSEL, TAX AUTHORITY and MISCELLANEOUS have registered discriminative power at the level of less than 5% and are thus put in the significance range 4.

Plotting the decision tree model adds another dimension to the interpretability data of this prediction analysis. Figure 6 presents the data in question, zooming in on the leaves representing the most effective text-classification models.

Figure 6. Decision tree model – PROFESSIONAL TITLE



The tree here is to be interpreted by reading the technical categories specified for Figure 3. As was the case for INSTITUTIONAL NAME, here the decision tree model (i) confirms the general findings gathered in generating the relevant random forest model, and (ii) allows us to identify the specific text-classification scenarios with regard to the quantitative and compositional context of the individual prediction paths emerging from the model.

Hence the decision tree model confirms the findings emerging from the random forest analysis with regard to the set of authorship sub-categories that have the strongest discriminative power. The three quantitatively topmost sub-categories are COMPANY MANAGER coded as '2', included in knots 1, 3, 12, 14, 24, 50, 52, 54, 28 and 58, STATE CERTIFICATION AND LEGALISATION AUTHORITY coded as

'8', included, for example, in knots 13 and 25, and NOTARISATION OFFICER coded as '6' and included, for instance, in knots 26 and 30.

As before, the decision tree model allows us to complement the random forest model with information regarding (i) the set of grammatical categories that are salient as part of the proposed text-classification scenarios; (ii) the effectiveness result of the prediction model for the individual authorship sub-categories, including the comparative context; and (iii) the compositional structure of the individual prediction paths within the model, including the order of conditions and quantitative conditionings. With regard to the first point, the text classification scenarios composed of the specific prediction paths included in the model exploit the following grammatical categories: simple present active forms, present prefect active forms, present perfect passive forms, and modal with present reference followed by active infinitive, and a set of non-verbal categories that include preposition, adjective, noun and coordinate conjunction. The set emerging here includes the top four frequency categories inferred from the random forest model, and it becomes more selective further down the frequency ladder (Figure 4). For example, when it comes specifically to the verbal structures that invariably scored lower positions in the significance ranking compared to others (Figure 4), simple past active form and modal with present reference followed by passive infinitive are absent from the text classification paths generated as part of the decision tree model.

With regard to the second aspect of information to be identified from the decision tree model as complementing the random forest model data, the accuracy level of the prediction paths derived in the decision tree model is in the range from 47% to 1%. The highest efficiency prediction level is ascribed for the authorship sub-category COMPANY MANAGER, and the logic of the tree is described based on this example. The case in point is knot 24, as shown in Figure 6 and presented against a section of the background data (full graphic in the top right corner of Figure 6) delineated with a somewhat thicker line. This variable indicator of COMPANY MANAGER is shared by 67% of the texts that satisfy the following series of conditions:

1) the number of the modal present passive forms is equal or lower than 3.5 (>=3.5) and thus the prediction path goes to the right,
2) the number of the present perfect active forms is lower than 0.5 (<0.5) and thus the prediction path goes to the left,
3) the number of adverbs is equal to or higher than 0.5 (>=0.5), which directs the prediction path to the left,
4) and finally, the number of simple present active forms is lower than the value 6.5 (<6.5), causing the prediction path to go to the left. In the event that all these conditions are satisfied, the probability that the text was drafted by a COMPANY MANAGER is recorded at the level of 47%.

The findings discussed above allow to us to formulate a few conclusions related to text characterisation. Firstly, the texts of varied authorship within the conceptual domain of PROFESSIONAL TITLE are recognisable by a distinctive grammatical structure, which allows us to generate text-classification models at a satisfactory level of accuracy (57%). Secondly, the stylistic significance of the authorship factor within the prediction scenarios covered by the decision tree for the quantitative and qualitative composition of the grammatical scheme varies, which is confirmed by the distinct discriminative power of the individual authorship categories (variable indicators). Thirdly, the high score of the COMPANY MANAGER coded as the authorship sub-category (variable indicator) '2' testifies to the marked stylistic salience of the texts drafted by the individuals placed in this authorship category; this allows us to conclude that prefabrication and stylistic repetitiveness is a feature of legal texts in general, exceeding the institutional dimension and prescriptive legal texts. Consistency in this sense is noted also with regard to a text drafted in a non-institutional *sensu stricte* environment, exceeding the borders of one country, or one corporation as in our case.

3. Conclusions

It is hoped that this article is a modest contribution to legilinguistic studies approached from the perspective of computational methodology, addressing the issue of intra-disciplinary variation in the grammatical structure of texts produced by distinct categories of authors. It confirms the complexity of legal communication with regard to stylistic conventions and shows that the criterion of genre is not the only one that can be used to classify legal texts. Distinctions and consistency are noted depending on the authorship category. In particular, the author has presented a paradigmatic approach to the automatic detection of a set of grammatical features and has used quantitative data to construe prediction models for automatic text classification where the classes of texts are distinct in that they are produced by different categories of authors.

An additional contribution of this research is that the analysis is conducted on an authentic, custom-designed, manually annotated corpus of texts, representing secondary legal genres. To the author's knowledge, and as voiced in the literature on the subject, such texts are rather understudied in linguistic analyses, and specifically in computational analyses with a focus on text-classification methods. It remains a fact that legilinguistic studies are dominated by institutional (EU) and largely prescriptive texts due to their easier availability and also their larger accessibility for computational processing, thanks to their higher prefabrication level by virtue of institutionally controlled stylistics and ready-made text repositories. Moreover, this analysis includes the context of English as a lingua franca and a global language in legal com-

munication in that the corpus compilation methodology was aimed at making the corpus thematically and situationally homogeneous, and representative for texts of various Anglo-Saxon provenance.

The annotation of the authorship data for the purpose of text classification has been approached in a possibly comprehensive and exhaustive way at the stage of manual annotation. The analysis covered all the relevant data available in the authentic materials, which led to identification of two domains, PROFESSIONAL TITLE and INSTITUTIONAL NAME. The conclusions involve a rough comparison of the values and patterns identified for the two authorship categories, based on the random forest and decision tree models.

The results show that the authorship factor is an effective criterion to classify texts. The most general thesis regarding the accuracy level of the two relevant text-classification models was positively verified, since both models are at a level exceeding 60%. This confirms a few assumptions: firstly, the authorship criterion has significant discriminative power for the texts classified. Secondly, the authorship category can be perceived from the perspective of collective stylistic conventions, not in the traditional individualistic way. Thirdly, the findings show the multi-dimensional character of the authorship variable. The data demonstrate that the prediction models construed for the two distinct authorship categories (INSTITUTIONAL NAME and PROFESSIONAL TITLE) operate effectively and may disclose well-drained details of corpus structure, acting as complementary models.

The secondary theses formulated in this study are also positively confirmed, both by the data emerging from the random forest models and by the decision tree data. Hence, the discriminative power of the individual grammatical features varies, and this model is largely similar for the two authorship categories, with prepositions leading. Further, with regard to the thesis on the presumably varied text-classification potential of the proposed model with respect to the individual sub-categories of authors, the findings point to significant quantitative discrepancies, which leads us to conclude that the stylistic consistency and distinctiveness of the text classes authored by distinct sub-categories of authors vary. Specifically, the texts authored by ENTITY ENTERED INTO THE REGISTER and COMPANY MANAGER are most effectively classified under INSTITUTIONAL NAME and PROFESSIONAL TITLE respectively. Importantly, the consistency and quantitative salience of the patterns identified in the models show that the grammatical structure of the corpus texts remains largely unchanged in the diatopic and diachronic perspectives, the text being varied in terms of publication date and country of origin. This allows us to conclude that repetitiveness and largely schematic stylistics remain a character of legal texts in general, including outside the realm of institutional legal texts, *sensu stricte*, where clear rules and the mostly professional human factor ensure grammatical homogeneity.

The findings and conclusions drawn therefrom deserve further, more detailed, analysis that would extend the qualitative aspect of the data, which at this stage of

analysis was limited to formulating general conclusions, setting the statistics derived in this analysis against the relevant findings gathered in the literature on the subject. It is believed that the analysis of wider lexical context, exceeding the discrete unit paradigm and at the same time including the syntagmatic perspective, would be informative about other linguistic aspects of legal communication. This would bring valuable information regarding the nature and discursive relevance of the grammatical categories that came out here as salient with regard to their discriminative power, and would ultimately allow us to find out whether there are cross-categorial distinctions in the expression of parallel functions with distinct linguistic tools used by distinct sub-categories of authors. Although it was verified at the pre-computational stage that the authorship criterion and genre criterion for text classification do not produce parallel results, it remains to be investigated in more detail how these text-classification models relate to each other, and cross-tabulation analysis would need to be conducted for this purpose. Finally, the proposed model did not take account of the factor of time and place, and the inclusion of the diatopic and diachronic context could bring still finer distinctions with regard to the text-prediction models.

REFERENCES

Aijmer K., Parallel and Comparable Corpora, (in:) A. Lüdeling, M. Kytö (eds.), Corpus Linguistics: An International Handbook, Berlin/New York 2009, pp. 275–291.

Baayen H., van Halteren H., Neijt A., Tweedie E., An Experiment in Authorship Attribution, (in:) Proceedings of JADT 2002, St. Malo 2002, pp. 29–37.

Baayen H., van Halteren H., Tweedie F., Outside the Cave of Shadows: Using Syntactic Annotation to Enhance Authorship Attribution, 'Literary and Linguistic Computing' 1996, vol. 1, no. 13, pp. 121–131.

Bhargava M., Mehndiratta P., Asawa K., Stylometric Analysis for Authorship Attribution on Twitter, (in:) V. Bhatnagar, S. Srinivasa (eds.), Big Data Analytics. Second International Conference, BDA 2013 Mysore, India, December 2013 Proceedings. New York/Dordrecht/London 2013, pp. 37–47.

Bhatia V.K., Critical Genre Analysis: Investigating Interdiscursive Performance in Professional Practice, New York 2017.

Biel Ł., Lost in the Eurofog: The Textual Fit of Translated Law, Berlin 2014.

Biel Ł., Phraseological Profiles of Legislative Genres: Complex Prepositions as a Special Case of Legal Phrasemes in EU Law and National Law, 'Fachsprache' 2015, vol. 37, no. 3–4, pp. 139–160.

Chaski C.E., Who's at the Keyboard? Authorship Attribution in Digital Evidence Investigations, 'International Journal of Digital Evidence' 2005, vol. 4, no. 1, pp. 1–13.

Cordeiro S., Villavicencio A., Idiart M., Ramisch C., Unsupervised Compositionality Prediction of Nominal Compounds, 'Computational Linguistics' 2019, vol. 45, no. 1, pp. 1–57.

Coyotl-Morales R.M., Villaseñor-Pineda L., Montes-y-Gómez M., Rosso P., Authorship Attribution Using Words Sequences, (in:) J.F. Martínez-Trinidad, J.A. Carrasco-Ochoa, J. Kittler (eds.), Pro-

gress in Pattern Recognition, Image Analysis and Applications, New York/Dordrecht/London 2006, pp. 844–853.

Fukumoto F., Suzuki Y., Manipulating Large Corpora for Text Classification, (in:) Proceedings of the Conference on Empirical Methods in Natural Language Processing (EMNLP), Philadelphia 2002, pp. 196–203.

Gotti M., Investigating Specialised Discourse, Bern 2005.

Goźdź-Roszkowski S., Patterns in Linguistic Variation in American Legal English, Frankfurt am Main 2011.

Grant T.D., Quantitative Evidence for Forensic Authorship Analysis, 'International Journal of Speech Language and the Law' 2007, vol. 14, no. 1, pp. 1–25.

Halteren H. van, Author Verification by Linguistic Profiling: An Exploration of the Parameter Space, 'ACM Transactions on Speech and Language Processing' 2007, vol. 4, no. 1, pp. 1–17.

Kim S., Kim H., Weninger T., Han J., Kim H.D., Authorship Classification: A Discriminative Syntactic Tree Mining Approach, (in:) Proceedings of the ACM SIGIR, July 24–28, Beijing 2011, pp. 455–464.

Lapshinova-Koltunski E., Variation in Translation: Evidence from Corpora, (in:) C. Fantinuoli, F. Zanettin (eds.), New Directions in Corpus-based Translation Studies, Berlin 2015, pp. 93–114.

Lapshinova-Koltunski E., VARTRA: A Comparable Corpus for Analysis of Translation Variation, (in:) Proceedings of 6th Workshop on Building and Using Comparable Corpora. Association for Computational Linguistics, Sofia 2013, pp. 77–86.

Lapshinova-Koltunski E., Zampieri M., Linguistic Features of Genre and Method Variation in Translation: A Computational Perspective, (in:) D. Legallois, T. Charnois, M. Larjavaara (eds.), The Grammar of Genres and Styles: From Discrete to Non-Discrete Units, Berlin 2018, pp. 92–117.

Lehmberg T., Wörner K., Annotation Standards, (in:) A. Lüdeling, M. Kytö (eds.), Corpus Linguistics: An International Handbook, Berlin/New York 2009, pp. 484–501.

Levshina N., How to Do Linguistics with R. Data Exploration and Statistical Analysis, Amsterdam/Philadelphia 2015.

Longerée D., Mellet S., Towards a Topological Grammar of Genres and Styles: A Way to Combine Paradigmatic Quantitative Analysis with a Syntagmatic Approach, (in:) D. Legallois, T. Charnois, M. Larjavaara (eds.), The Grammar of Genres and Styles: From Discrete to Non-Discrete Units, Berlin 2018, pp. 140–163.

Nirkhi S., Dharaskar R.V., Comparative Study of Authorship Identification Techniques for Cyber Forensic Analysis, 'International Journal of Advanced Computer Science and Applications' 2013, vol. 4, no. 5, pp. 32–35.

Nirkhi S., Dharaskar R.V., Thakare V.M., Authorship Verification of Online Messages for Forensic Investigation, 'Procedia Computer Science' 2016, vol. 78, pp. 640–645.

Schmidt H., Tokenizing and Part-of-speech Tagging, (in:) A. Lüdeling, M. Kytö (eds.), Corpus Linguistics: An International Handbook, Berlin/New York 2009, pp. 527–552.

Sprugnoli R., Tonelli S., Novel Event Detection and Classification for Historical Texts, 'Computational Linguistics' 2019, vol. 45, no. 2, pp. 229–265.

Stamatatos E., A Survey of Modern Authorship Attribution Methods, 'Journal of the American Society for Information Science and Technology' 2009, vol. 60, no. 3, pp. 538–556.

Stamatatos E., Fakotakis N., Kokkinakis G., Automatic Text Categorisation in Terms of Genre and Author, 'Computational Linguistics' 2000, vol. 26, no. 4, pp. 471–495.

Stein B., Meyer zu Eissen S., Intrinsic Plagiarism Analysis with Meta Learning, (in:) Proceedings of the SIGIR Workshop on Plagiarism Analysis, Authorship Attribution, and Near-Duplicate Detection, Amsterdam 2007, pp. 45–50.

Więcławska E., Discrete Units as Markers of English: Polish Contrasts in Company Registration Discourse. 'Linguodidactica' 2020, vol. 24, pp. 309–327.

Więcławska E., English/Polish Contrasts in Legal Language from the Usage-based Perspective, (in:) L. Lanthaler, R. Lukenda (eds.), Redefining and Refocusing Translation and Interpreting Studies: Selected Articles from the 3rd International Conference on Translation and Interpreting Studies TRANSLATA III (Innsbruck 2017), Berlin 2020, pp. 99–104.

Więcławska E., Quantitative Distribution of Verbal Structures with Reference to the Authorship Factor in Legal Stylistics, 'Studies in Logic, Grammar and Rhetoric' 2021, vol. 66, no. 79, pp. 147–165.

Więcławska E., Sociolinguistic and Grammatical Aspects of English Company Registration Discourse, 'Humanities and Social Sciences' 2019, vol. 26, no. 4, pp. 185–195.

Williams C., Tradition and Change in Legal English, Bern 2005.

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