RECHTSLINGUISTIK

Studien zu Text und Kommunikation
Studies on Text and Communication

Herausgegeben von
Claire Kramsch, Claus Luttermann und Karin Luttermann

Daniel Green, Luke Green (Eds.)

Contemporary Approaches to Legal Linguistics

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Geleitwort der Herausgeber zur Reihe

Sprache verbindet Menschen – auch in rechtlichen Dingen. Recht lebt in und durch Sprache. Von Rechtsetzung und Rechtsanwendung bis zu Begegnungen mit anderen Rechts- und Sprachkulturen im heimischen Recht wie im internationalen Rahmen, in Text und Kommunikation: Sprache ist das Medium.

Sprachgebrauch knüpft dabei an Alltagswissen an, das im juristischen Umfeld modifiziert wird. Jeder etwa hat eine Vorstellung von „Treue" und verbindet etwas mit „Glauben", aber was bedeutet „Treu und Glauben" als juristischer Begriff? – Ruft der Dichter Emile Zola: „J'accuse!", dann mag man manchen Gedanken daran binden. Tritt vor Gericht der Staatsanwalt mit „Angeklagt wird …!" auf und führt dies weiter aus, ist das eine gesetzlich bestimmte Handlung im Eingang von Hauptverhandlungen in Strafsachen. Recht hat also eigenartige Muster sprachlichen Handelns. Das berührt Verständlichkeit und Verständnis. Wie Sprache hier im Kontext wirkt, ist eine Aufgabe, die interdisziplinäre Arbeit fordert.

Die Reihe *Rechtslinguistik – Studien zu Text und Kommunikation* spannt zum Dialog einen Bogen zwischen Fakultäten, die Sprache und Recht behandeln. Das Untersuchungsspektrum umfasst etwa Gesetzestexte, mündliches und schriftliches Handeln in Rechtsinstitutionen wie Behörden und Gerichten, anwaltliche Beratungsgespräche, Fragen des Stils sowie bei internationalen Sachverhalten auch der Übersetzung. Versuche der Rechtsharmonisierung in der Europäischen Union sowie Handel und Kommunikation in globalen Netzen zeigen, wie notwendig hier vertiefende Betrachtung ist. Die Reihe bietet ein Forum für Begegnung und gemeinsame Projekte.

Berkeley / Kalifornien, im Mai 1996

Claire Kramsch Claus Luttermann Karin Luttermann

Editorial introduction to the series

Language unites people – also in the realm of law. Law lives in and through language. In the writing and in the application of the law, in the interpretation and transmission of legal texts, in the contact between legal culture and vernacular culture, in national and international law: language is the medium.

Language use in the legal realm is linked to everyday knowledge, modified to fit the legal setting. For instance, every German knows the meaning of „Treue" (faith) and „Glauben" (belief), but what does „Treu und Glauben" (in good faith) mean in legal terms? When the writer Emile Zola says: „J'accuse!", various meanings may come to mind. But when the prosecutor in a German court utters the words: „Angeklagt wird …!" (is accused) and strengthens this utterance with incriminatory details, this can only be heard as a conventionalized speech act, fixed by statute at the beginning of a German criminal procedure. The language of the law has specific linguistic patterns that affect intelligibility and comprehension. How language works in this context can be investigated through interdisciplinary collaboration.

The series *Rechtslinguistik – Studies on Text and Communication* brings together researchers from various disciplines that deal with language and the law: jurisprudence, sociology, anthropology, linguistics, literary and cultural studies. It explores the discourse of legal texts, the use of oral and written language in legal institutions and courts of law, the discourse of counselling, legal stylistics, translation and interpretation in multilingual settings, issues of language and power. Current attempts at the legal harmonization of the European Union and at solving cross-cultural problems of communication between trading partners point to the urgent need for such research. This series offers a forum for the exchange of ideas and for joint projects in this field.

Berkeley / California, May 1996

Claire Kramsch Claus Luttermann Karin Luttermann

Austrian Association for Legal Linguistics

Österreichische Gesellschaft für Rechtslinguistik

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ÖGRL Österreichische Gesellschaft für Rechtslinguistik

AALL Austrian Association for Legal Linguistics

To our family

and to the great family of humanity

to which we all belong

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This volume was made possible thanks to the support and contributions of many people through the various stages of publication.

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We would like to extend our thanks to our fellow members of the executive board of the AALL at the time of the 2019 conference: Thomas Kronschläger, Vanessa Krebs, Richard Bonomo and Klara Kager. Our gratitude also goes to Doha Nasr, who joined us along with Vanessa Krebs and Klara Kager in the conference organising committee.

Thank you to the team of peer reviewers for their diligent appraisal and feedback on all the articles in this volume. This helped to ensure the high quality of the work presented in this volume.

We would also like to thank Hannah Adametz, Claudia Gschwendt and Bibi Resetarits for their invaluable support as voluntary proofreaders of this volume.

Finally, our thanks go to all members, friends and supporters of the AALL, without whom our work, including this volume, would not be possible.

Vienna, March 2022

Daniel Green Luke Green

Editorial Note

The content of each author's article may contain opinions that do not necessarily align with the views and practices of the AALL.

Likewise, while the AALL encourages the use of gender-neutral or gender-sensitive language, the decision as to whether or not to use such language has been consciously left to each author. The individual authors' decision to use or not to use gender-neutral, gender-inclusive or gender-sensitive language does not necessarily reflect the views and practices of the AALL.

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Daniel Green / Luke Green

Introduction to the Volume

This volume represents the culmination of two academic events organised by the Austrian Association for Legal Linguistics (AALL) in 2019: the 1st international conference of the AALL, held in Vienna, and the 2nd International Legal Linguistics Workshop (ILLWS19), held in Salzburg. The papers included in this book present innovative and interdisciplinary methods and ideas for tackling issues within the still developing field of legal linguistics. This is why this volume carries the same title as the 2019 conference where many of these articles were presented: *Contemporary Approaches to Legal Linguistics*. This book is significant in multiple respects, one being that it is the first volume of its kind to be compiled by the AALL.

The AALL (German: *Österreichische Gesellschaft für Rechtslinguistik; ÖGRL*) was formally founded on 4th May 2017 in Vienna, Austria, with the official foundation ceremony taking place at the University of Vienna four months later. With only eleven members at that time, the AALL has since grown both in terms of numbers and reach, and has gone on to establish regular academic events such as its annual International Legal Linguistics Workshop (ILLWS), which has been a staple in the AALL yearly programme since 2018. In 2019, the first international conference of the AALL, "Contemporary Approaches to Legal Linguistics", was organised with the intention of bringing together researchers from the fields of linguistics, law, and beyond. We were pleased to welcome so many linguists, law scholars and legal professionals from all areas, from all over the world, including those who work in law offices, those who work for regulators and those who work for government agencies here in Austria and abroad. In 2021, the General Assembly of the AALL passed the Vienna Declaration on Research Ethics in Legal Linguistics (*Wiener Erklärung zur Forschungsethik in der Rechtslinguistik*) with a view to emphasising that knowledge and conscience are inextricably connected in research within legal linguistics. Governments will undoubtedly continue to look at regula-

tory models concerning the use of research in legislative drafting, law enforcement and forensic linguistics as the basis for reforms at home.

The institutionalisation of legal linguistics in Vienna in 2017 constituted a further step in establishing the discipline and providing a solid basis for research in the area of language and law in Austria. In addition, high-profile cases in the United States such as People vs. Harris or the State of Utah vs. Andy Rasabout have shone the spotlight on the application of linguistic expertise in courtrooms and other areas, including corpus analysis as an interpretation aid for judges. Debates have raged over the appropriate response to these developments which we encounter in the United States, in Europe and in many other parts of the world. In response to the foundation of various research associations such as the International Language and Law Association (ILLA), the relationship between language and law has shifted to the centre of attention in a number of legal professions. It is the rapid technological development and ethical challenges in our field that make interdisciplinary conferences and the fruits thereof, such as this volume, both valuable and enriching.

Whether it is the application of artificial intelligence in litigation; the question of multilingualism in supranational organisations; the challenge of legal indeterminacy in administrative law; the role of contract interpretation across civil and common law systems; the applied linguist as an expert witness; or clarity and intelligibility of legal language, to give a few examples, we all work towards the very same goal: to explore the relationship between language and law and to understand its societal implications.

Following the conference and the ILLWS in 2019, this volume addresses two main topic areas within research in legal linguistics: *Theoretical Legal Linguistics* and *Applied Legal Linguistics*. The papers in this book have been grouped according to these two areas, whereby this by no means implies that any single paper belongs only to the one topic area and not also to the other; rather the categorisation of each article is based on what we determined to be its main focus.

Similar to legal theory, *Theoretical Legal Linguistics* aims to make propositions about legal language as an abstractum, and the discourses which shape the relationship between form and function of language within the normative space. Insights gained from such inquiry can then be demonstrated by reference to particular legal systems, such as the civil and common law systems in place today. Indeed, there are plenty of intersections between linguistic theory and the various subdisciplines of legal scholarship, such as legal philosophy, legal sociology, comparative law and legal history, among others.

Applied Legal Linguistics, in turn, is concerned with questions as to how legal language actually manifests itself in a given context and seeks to identify problems which are inextricably linked to legal language use. Applied legal linguists typically aim to provide solutions to the challenges they find within the various fields of legal practice, with the three most prominently featuring subfields being discourse linguistics, computer-aided legal linguistics and forensic linguistics. It is noteworthy that there are stark discrepancies between different research traditions across the globe, which has produced a plethora of opportunities for exchange and cooperation.

Section I of this volume contains papers which have a more theoretical focus in that they put forward considerations as to the description and explanation of legal language use from multiple perspectives. This is not to say that these papers have no direct practical implications, which is far from the case. The papers in this section have been grouped together since they discuss matters, models and issues concerning the role and function of legal language from various theoretical perspectives.

Peter Andreas Eschig and *Richard Calnan* provide an in-depth legal assessment of contract interpretation in Austrian (German) and English law, drawing attention to the lack of supplementary interpretation under English law. They find that the doctrinal and legal differences in the two legal systems do not necessarily lead to a difference in outcomes.

Irina Gvelesiani discusses contemporary challenges in translation between the two distinct juridical traditions in Canada. She draws attention to the ambiguity inherent in terms and proposes the renaming of legal concepts related to fiduciary relationships.

Claus Luttermann presents a critical discussion of the language question within the European Union, raising various issues such as the perceived dominance of the English language, and proposes a European Reference System for Languages (*Europäisches Referenzsprachensystem*).

Karin Luttermann discusses the question as to how applied linguistics may contribute to comprehensible legal communication, proposing the concept of *Clear Language* within the framework of pragmatics and the Legal-Linguistic Comprehensibility Model (*Rechtslinguistisches Verständlichkeitsmodell*).

Ayşe Yurdakul deals with the challenges of polysemy and problems of equivalence in legal terminology. She provides a discussion of the polysemous term *Schuld* in German legal language and shows how translation of the term into Turkish legal language leads to the emergence of various types of equivalence.

Section II features papers which deal with more applied aspects of legal linguistics. All but one of the papers in this section each present an empirical study on a specific phenomenon encountered at the intersection of law and language. The one exception, by Kniffka, has been grouped here due to the nature of this paper being firmly practical.

Paolo Canavese turns to translation in multilingual contexts of Switzerland and the European Union, and tests the hypothesis that legislative acts translated into Italian in multilingual contexts are in reality more accessible than their counterparts originally drafted in Italian.

Paulina Dwużnik addresses the choice of content and tasks for a course of English for Legal Purposes (ELP), which is aimed at practising lawyers who seek to develop written mediation skills. She provides the findings of a questionnaire and interview-based study, which was conducted in an ELP course for lawyers.

Presenting a corpus-based case study, *Jens Fleischhauer* and *Dila Turus* discuss light verb constructions (LVCs) as a characteristic of German legal language, seeking to show that there is neither a qualitative nor a quantitative difference between ordinary language and German legal language concerning the use of LVCs.

Hannes Kniffka provides an essay on the practical aspects of Forensic Linguistic Expert Testimony (FLET) in Germany and discusses what he refers to as 'practical Dos and Don'ts and other hints' within Forensic Linguistics.

Stavros Kozobolis compares the binding force of regulations and directives by investigating deontic modality, i.e. modals, semi-modals and related patterns that convey obligation and permission. He provides a quantitative and qualitative analysis of a bilingual English-Greek corpus of 68 legislative texts.

Daniel Green and *Luke Green* present an analysis of adult secondary students' self-perceived legal literacy and attitudes towards legal competence in secondary education. They argue that standardised curricula for legal literacy classes in secondary schools may be highly beneficial to students in Austria and potentially throughout the European Union.

María José Marín Pérez presents an analysis of a 3.7-million-word corpus of judicial decisions issued by British courts between the years 2016 and 2017. The decisions in this corpus all revolve around the phenomenon of immigration. Marín Pérez investigates the portrayal of migrants as seen through the lens of the judiciary.

Maria Mushchinina discusses appeals (*Aufrufe*) in Russian and presents the results of a survey amongst 32 L1 speakers of Russian on the perception of appeals realised as indirect speech acts.

Mila Seppälä and *Attila Krizsán* investigate the use of force via state statutes in order to determine how the possible abuse of power and lack of accountability has been legitimised by the legislature of the United States. They find that patterns of graduation in the statutes allow for the broaden-

ing of the scope of actions of law enforcement on the one hand, and narrow the scope of their obligations on the other.

In **section III**, the Vienna Declaration on Research Ethics in Legal Linguistics (*Wiener Erklärung zur Forschungsethik in der Rechtslinguistik*) is printed in full in the authentic German version, which was ratified on 9th May 2021 by the General Assembly of the Austrian Association for Legal Linguistics. An English translation is also provided. The Vienna Declaration addresses ethical issues which may arise in the context of legal linguistic fields of research and practice. Much focus has been placed on how to do legal linguistics, but relatively little attention has been given to the various ethical problems in Austria and in many other countries. For the Austrian context, the Vienna Declaration makes reference to the Basic Law on the General Rights of Citizens in the Kingdoms and Länder 1867, the European Convention on Human Rights 1950 including its protocols, the Declaration of Helsinki 1964, the Klagenfurt Declaration on Austrian Language Policy 2011, and to the relevant statements of the Executive Board of the AALL and the opinions issued by members of the advisory board. It is noteworthy that the text is undergoing annual review and should not be considered binding for legal linguistics in Austria or elsewhere.

We are confident that this is an interdisciplinary book which can be helpful to researchers, practitioners and students of legal linguistics due to its breadth of content and diversity of focus. We are hopeful that our decision to publish papers in both English and German is understood as an affirmation of the linguistic egalitarianism on which the AALL is built.

It is our conviction that legal linguists should use their knowledge and their skills to act in the best interests of humankind. They should promote peace, social justice and integrity with a view to improving the legal systems of the world and the lives of their subjects. By challenging unbalanced or even discriminatory institutions and structures; by advocating clear and understandable legal language for all; by helping to make legal language and knowledge more accessible; and by contributing to the ever-growing body of work in this relatively young field, legal linguists, such as the authors in this volume, are working towards the goal of achieving a fairer and more

participatory legal system for all citizens. We hope this volume will contribute to the realisation of such goals and inspire its readers to equally strive towards these aims.

Section I

Theoretical Legal Linguistics

Peter Andreas Eschig / Richard Calnan

Contract Interpretation under Austrian and English Law: A Short Comparison between Civil Law and Common Law from a Doctrinal and Practical Legal Perspective for Linguists

Abstract

This article provides a brief overview of the basic concepts of contract interpretation from a comparative perspective. It aims to give linguists a general idea about the ways in which Austrian and English deals with the conflict caused by the deviation of the (subjective) intention of a contractual party from the objective meaning of the contractual language as interpreted by a third party. Although English law can be perceived as 'stricter' due to its principal disregard for the subjective intention of the parties, it is argued that the ultimate result might even be the same when applying the subjective-objective standard of contract interpretation established by Austrian law.

I. Introduction

Linguists in the context of legal interpretation of contracts (e.g. in the course of the submission of expert evidence in legal proceedings[1]) tend to focus on the meaning of particular words and their use in a specific contract. The tasks of lawyers, and ultimately the competent domestic courts, goes beyond the scope of a mere literal and contextual ('grammatical interpretation'[2]) analysis.

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[1] For example, Austrian Supreme Court (*OGH*), decision of 16 December 1986, 1Ob 672/86 regarding the adverb *exclusively* in a case relating to a contract drafted in English and subject to US law.

[2] The so-called 'grammatical interpretation' is a mere starting point of any interpretation process relating to the meaning of a law (statutory interpretation (*Gesetzesauslegung*)) or contracts (contract interpretation (*Vertragsauslegung*)).

Our observations are limited to the main doctrinal views and practical approaches to interpretation of contracts under Austrian law (with references to German law[3]) in comparison to the English legal system.[4] Although the United Nations Convention on Contracts for the International Sale of Goods (CISG)[5] is part of Austrian and German law, the 'Vienna Convention' has not been signed and implemented by the United Kingdom to date. It will thus not be further discussed.

II. History and comparative framework

There are many conceptual differences between the English legal system as a common law jurisdiction and (Germanic) civil law systems such as Austria and Germany relating to the legal requirements for human conduct, or its expressions by the use of language, to be deemed as having entered into a contract.[6] From a comparative perspective, it can be said that a contract is a legally binding and enforceable agreement between at least two parties.

The idea that external expressions may differ from the internal intention, and the development of various unsystematic approaches to provide for

[3] Although there are many (legal and doctrinal) differences between these two Germanic legal systems, the results and processes of contract interpretation employed by German or Austrian courts are in principle quite similar and legal terminology is sometimes even 'imported' by Austrian courts (e.g. the concept of the requirement of good faith (*Treu und Glauben*), which has no general application under Austrian law). See Vonkilch in Fenyves / Kerschner / Vonkilch (2011: 449), § 914 at para [212].

[4] There is no such thing as 'UK law' as the United Kingdom is comprised of three different jurisdictions: England and Wales, Scotland, and Northern Ireland.

[5] Section 8 CISG contains specific provisions for the interpretation of a party's declarations and conduct, and, by extension, to the content of a contract for the international sale of goods. CISG, as the more specific law (*lex specialis*), takes precedence over the more general provisions (*lex generalis*) of the Austrian Civil Code (*ABGB*). Compare Schmidt-Kessel in Schlechtriem / Schwenzer / Schroeter (2019: 228), Article 8 at para [14], and Posch in Schwimann / Kodek (2014), Article 8 CISG at para [1] – Article 8 CISC preliminary focuses on a party's subjective intention (*subjektiver Parteiwille*).

[6] For English law, compare Peel (2020: 5), at [1-009]. For a brief introduction to Austrian contract law, see Hinteregger (2015).

solutions, dates back centuries and was also known in Roman law.[7] However, it took hundreds of years of legal history until scholars developed general concepts of legal interpretation. Most notably, they established the principle that the overall purpose of interpretation would be to ascertain the intention of the parties. This 'subjective' (or 'intentionalist') approach was promoted by the German scholar Christian Thomasius (1655-1728), an important representative of the legal philosophy of natural law. He categorised the previous unsystematic approaches to interpretation by distinguishing between "grammatical" (based on text) and "logical" (relying on external factors) aids to interpretation (Vogenauer 2018: 745, at para [11]). Some continental jurisdictions implemented the various interpretation maxims developed by different schools of thought into their codifications. However, the drafters of the Austrian Civil Code (*ABGB*) and the German Civil Code (*BGB*) were reluctant to codify extensive rules of interpretation. The codified provisions for (contract) interpretation[8] are thus limited to rather short legislative statements ('rules'). This means that the practical application of these rules has been and is continuously being developed by jurisprudence.[9] There are still many uncertainties and no definite answers as the boundaries between 'interpretation' and judicial 'correction' are not set in stone.

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[7] For the history of contract interpretation, see Vogenauer (2018: 743-746). It must be noted that there was no specific general concept (system) for contract interpretation in Roman law (see Vogenauer 2018: 743 at para [7]).

[8] The Austrian Civil Code (*ABGB*) also provides for various interpretation rules applying in very specific circumstances (e.g. relating to the interpretation of declarations of a last will (*letztwillige Verfügung*). However, the general provisions for interpretation specified in section 914 Austrian Civil Code (*ABGB*) take precedence (a result that is based on the general application of the so-called reliance theory (*Vertrauenstheorie*)), see Vonkilch in Fenyves / Kerschner / Vonkilch (2011: 357-358), § 914 at paras [19] and [20].

[9] The Austrian Supreme Court (*OGH*), for example, decided in the interest of protecting third parties that articles of association (*Satzungen*) of stock companies shall be interpreted by applying the stricter provisions for statutory interpretation (see sections 6 and 7 Austrian Civil Code (*ABGB*)).

The English legal system does not have a specific catalogue of 'fixed' interpretation rules but rather applies (non-binding) 'guidelines'[10] established by case law. By illustrating the most important conceptual background to allow a broad comparative assessment, we will consider whether the perceived 'strict' (objective) approach under English law[11] (focusing on the wording and limited evidence in connection with the exercise to identify the 'true' intention of the parties) will have a different result compared to the continental 'liberal' (more subjective) approach. The latter permits the courts to consider a broader scope of external circumstances (i.e. not apparent from the wording of a contract) to identify the underlying intention of the parties.

Ultimately, contractual interpretation is the challenging task of limiting judicial interference balancing the interests of contractual freedom (*Vertragsfreiheit*) and legal certainty (*Sicherheit des Rechtsverkehrs*).

III. Relevant legal framework under Austrian law

The essential freedom of contract (*Vertragsfreiheit*) as the right to freely decide when, with whom, and under which conditions to conclude a contract is one of the most important consequences arising from the concept of private autonomy (*Privatautonomie*). It is based on the ideas of liberalism developed in the 19th century according to which individuals should, in principle, be free to determine their legal relationship to each other.

In the context of contract interpretation under Austrian law, it is necessary to explain the concept of legal transaction (*Rechtsgeschäft*) and the legal meaning of declarations of intention (*Willenserklärungen*). A declaration of intention in the legal sense is the legally relevant (*rechtlich erheblich*)

[10] One of the leading cases refers to the five principles of contract interpretation (and not strict rules), see Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 W.L.R. 896. See Calnan (2017: 5) at para [26], noting that cases should be cited for their guidance on matter of principle and not for what they actually decided.

[11] See Vonkilch in Fenyves / Kerschner / Vonkilch (2011: 351), § 914 at para [6] referring to the "rather formal contract regimes (*eher formale Vertragsrechtsordnungen*)" of the Common law and at para [11].

expression of a party's intention (*Wille*) to achieve a certain legal result (i.e. it is aimed to change the legal circumstances). Neither the Austrian Civil Code (*ABGB*)[12] nor the German Civil Code (*BGB*) provide for a definition of declaration of intention. However, the provisions explained below are based on the legal recognition of declarations of intention as having a binding legal effect, because they are based on the (free)[13] formation of an individual's intention within the limitation set out by mandatory law (*zwingendes Recht*).[14]

According to the 'theoretical' concept of legal transaction (*Rechtsgeschäft*) (see Welser / Kletečka 2018, at para [318]), a legal transaction consists of one or several declarations of intention. Austrian doctrine differentiates between several types of legal transactions. It qualifies a contract as a bilateral (or multilateral) legal transaction creating legal obligations for one or both parties.[15] There are uncountable manifestations of possible contracts in practice (e.g. purchase contracts, consumer contracts, general terms and conditions, etc.).

The parties may dispute the content of a contract, even if it has been validly (effectively) entered into. In this regard, the Austrian Civil Code (*ABGB*) provides for a solution that, from a doctrinal perspective, constitutes a compromise between two extreme positions.[16] According to the so-called reliance theory (*Vertrauenstheorie*),[17] the 'legal consequences' (i.e. the legal

[12] Section 863 Austrian Civil Code (*ABGB*) determines the conditions under which human conduct (actions and omissions) can generally be interpreted as a legally binding declaration of intention but does not provide for a definition.

[13] The Austrian Civil Code (*ABGB*) contains provisions in connection with any defects in the formation of such declaration of intentions, most notably the right to unilaterally challenge a declaration of intention due to a material mistake (see section 871 para 1 Austrian Civil Code (*ABGB*)).

[14] See, for example, section 879 para 1 Austrian Civil Code (*ABGB*).

[15] See Hinteregger (2015: 62) at [§4.02 D]. The existence of a contract without 'consideration' would be inconceivable under English law.

[16] Trying to resolve one of the most controversial (dogmatic) disputes in European legal history. See Vonkilch in Fenyves / Kerschner / Vonkilch (2011: 408), § 914 at para [129].

[17] This is the prevailing theory in Austria and deemed an 'inherent' feature of the Austrian Civil Code (*ABGB*). See Vonkilch in Fenyves / Kerschner / Vonkilch (2011: 408), § 914 at para [131] with further references, in particular the legislative materials (*Gesetzesmaterialien*) relating to the drafting history of section 914 Austrian Civil Code (*ABGB*).

effect of an expression – in Austrian legal doctrine referred to as the "normative meaning" (*normative Bedeutung*),[18] are neither interpreted in accordance with the (subjective) interpretation[19] of the party making an expression of intention (in commercial practice, mostly documented in writing[20]) nor according to the (objective) interpretation of such expression of the party making a declaration of intention (by an objective third party).[21]

Pursuant to the reliance theory, a mixed standard applies (as in many other European legal systems). A recipient of a declaration of intention (subjective element) can only rely on the normative meaning (of such expression) on which he or she could, or rather, has honestly (*redlicherweise*) relied (objective element). The relevant question under Austrian law is whether the recipient of an expression (*Erklärungsempfänger*) did (or could) honestly trust that an expression (conduct) has a certain legal meaning.

In other words, Austrian law protects the honest interpretation of the recipient of an expression of intention, unless he or she did not actually (or could not 'honestly') rely on the specific meaning of an expression (declaration of intention) and his or her reliance deserves protection (*schutzwürdig*) under the circumstances. Thus, the standard for interpretation of contracts (and unilateral declarations of intentions) is the objective understanding

[18] See Vonkilch in Fenyves / Kerschner / Vonkilch (2011 : 409), §914 at para [130]).

[19] This is the position of the so-called will theory or theory of intention (*Willenstheorie*). The will theory is the conceptual basis of section of 133 German Civil Code (*BGB*) (see Dörner in Schulze 2019, § 133 at para [3]. However, even for German law it is now recognised that the (undisclosed; internal) intention of the party (*innerer Wille*) is the only relevant factor. Depending on the nature of the individual declaration of a party, taking into account the interest of the parties, the interpretation shall either consider the true intention of the parties (*wirklicher Wille*) (in German legal terminology 'natural interpretation') or the objective meaning of a party's conduct (in German legal terminology 'normative interpretation') (see Ellenberger in Bassenge / Brudermüller / Ellenberger / Götz / Grüneberg / Sprau / Thorn / Weidenkaff / Weidlich 2013, section 133 at para [7]).

[20] Due to the general freedom of form (*Formfreiheit*), contracts – apart from legal form requirements – must not necessarily be documented in writing. The interpretation rules of Austrian law apply to oral and written contracts.

[21] This is the position of the theory of expression or theory of declaration (*Erklärungstheorie*).

(*objektiver Erklärungswert*) of an honest recipient of a declaration of intention considering all (relevant) circumstances.[22]

Given this theoretical background, we can now turn to the central provision of section 914 Austrian Civil Code (*ABGB*).[23] It only applies if a contract has been validly entered into[24] and provides that the interpreter of a contract "must not adhere to the mere literal meaning of an expression" (i.e. strictly stick to the wording) but must rather "identify the intention (*Absicht*)[25] of the parties" (subjective element) in "accordance with honest commercial practice *(Übung des redlichen Verkehrs*)" (objective element).

In legal theory, the broadest possible interpretation of an expression, which (from a linguistic perspective) falls within the scope of the definition of the disputed expression (*äußerst möglicher Wortsinn*), delineates the so-called

[22] See Bollenberger in Koziol / Bydlinski / Bollenberger (2017), § 914 at para [1] for further references.

[23] Section 914 of the Civil Code (*ABGB*) as enacted was amended in the course of one of the 'great reforms' (*Teilnovellen*) in 1916. It is not surprising that this rather short provision is constantly shaped and clarified by scholars and jurisprudence alike. According to the prevailing view and location in the text of the law, it also applies to declarations of intention. Compare sections 133, 157 German Civil Code (*BGB*), which according to the predominant view in Germany apply to the interpretation of contracts and declarations of intention.

[24] Austrian courts, thus, cannot 'repair' any essential requirements for the formation of contracts (for example if the parties have not agreed on the essential performance obligations (in Austrian legal terminology the main obligations (*Hauptleistungspflichten*) (*essentialia negotii*)). See also footnote 12. If the parties' expression cannot be interpreted as constituting a legally binding expression of intention by means of interpretation, no contract is entered into. The court is not allowed to correct the wording of the parties in order to 'achieve' the result of a binding agreement. However, in commercial practice it is rather content of a contract which is disputed and not the fact whether the conduct has been concluded.

[25] Compare section 133 German Civil Code (*BGB*), which primarily instructs the court to identify the true intention (*wirklicher Wille*). The drafters of the Austrian Civil Code (*ABGB*) intentionally did not copy any reference to the 'true' intention, but also the German law (section 133 German Civil Code (*BGB*)) states that one shall not adhere to the literal meaning of an expression. Section 157 German Civil Code (*BGB*) – in practice sections 133 and 157 are read together – includes a general reference to good faith (*Treu und Glauben*) as well as to commercial practices (*Verkerhssitte*) as the reference point for any interpretation of a contract under German law.

simple interpretation (*einfache Auslegung*) from supplementary contract interpretation (*ergänzende Auslegung*).[26]

According to various court decisions, supplementary interpretation shall only be used if a simple interpretation, as the 'less severe' means of interpretation, does not lead to any result.[27] However, this is not a strict rule, as the Austrian Supreme Court (*OGH*) also stated that even an "unambiguous and clear expression (*deutlicher und klarer Ausdruck*)" in a written contract may not correctly reflect the intention of the parties and thus must be "corrected" (i.e. by the court)[28] by way of supplementary interpretation (see the explanation below). Thus, there is no exact boundary in practice.

Scholars have further divided these practices to be considered in the course of interpretation into the following three basic categories. These categories of honest practices are often referred to by the courts in decisions relating to interpretation (see Bollenberger in Koziol / Bydlinski / Bollenberger 2017, § 914 at para [3]):

- Customary practices in connection with the use of a certain expression (*Erklärungssitte*) relate to the use of language (e.g. technical legal terms, see Bollenberger in Koziol / Bydlinski / Bollenberger 2017, § 914 at para [3]);
- Genuine commercial practices (*echte Verkehrssitten*) are a label for industry practices (e.g. trade customs) which are applied in certain industries or commercial transactions; and
- Contractual practices (*Vertragssitten*) as a specific category reflect the observation that it is customary practice to agree on specific terms in a contract (e.g. retention of ownership is deemed regularly agreed on in certain industries).

[26] See Vonkilch in Fenyves / Kerschner / Vonkilch (2011: 393), § 914 at paras [94] and [95], who notes that the law by no means (*gänzlich fremd*) provides for such 'classification'. The delimitation goes back to the opinion of a famous legal scholar (Prof. Rummel).

[27] Binder / Kolmasch in Schwimann / Kodek (2014), § 914 at para [61].

[28] Austrian Supreme Court (*OGH*), decision of 27 May 1959 2Ob 159/59.

The aim of simple contract interpretation is – in line with the wording of section 914 Civil Code (*ABGB*) – to determine the parties' intention (*Absicht*) (as the subjective criterion for interpretation).[29] In accordance with the instruction "not to [strictly] adhere to the plain meaning of an expression", the wording of a contract does not limit the interpretation. According to Austrian jurisprudence, a contract is subject to interpretation even if the meaning of a specific expression (wording) is clear.[30] Intention in the context of simple contract interpretation refers to the purpose of a transaction (*Geschäftszweck*) rather than the (inner) subjective formation of an idea about the 'true' purpose of a transaction.

The ordinary meaning of an expression (*gewöhnlicher Wortsinn*) is the sole basis for interpretation if no other intention (as the purpose of a transaction) can be identified considering all circumstances at the time of the entering into of the contract. As the interpreter (ultimately, the court) shall not adhere to the literal meaning, it does not necessarily mean that the parties have not entered into a contract if they use an (objectively) incorrect expression (e.g. a product name in a foreign language or a title of a contract which does not correspond to its content) as long as it can be determined that they had the same understanding of the actual purpose of the transaction (*tatsächliche Willensübereinstimmung*). In this situation, it is said that the parties have reached a natural consensus (*natürlicher Konsens*), a concept based on the application of the Roman law principle *falsa demonstration non nocet.* If neither the consideration of the ordinary meaning of an expression (*Wortsinn*) nor the intention of the parties (as the purpose of a transaction) leads to a clear result, the court must then consider the above explained practices.

Supplementary interpretation applies if the parties did not provide for contractual arrangements in relation to certain issues which become relevant at a later stage. If the parties dispute circumstances or situations which they have not initially considered and which are not covered by the scope of

[29] Heiss in Kletečka / Schauer (2020), § 914 at para [31].
[30] Heiss in Kletečka / Schauer (2020), § 914 at para [32] with further references.

their contractual arrangements, the contract contains an (unintentional) gap and thus must be supplemented.

However, prior to filling a contractual gap, it must be assessed whether non-mandatory law (also referred to as dispositive law (*dispositives Recht*)) provides for a remedy to fill the contractual gap.[31] Non-mandatory law provides for 'default positions' that apply in absence of an agreement by the parties (e.g. the law contains default warranty provisions which can be amended by commercial parties and to a certain extent in commercial contracts with consumers).

According to jurisprudence, it is not permitted to refer to the default position provided by non-mandatory law if an interpretation of the contract shows that the parties did not intend to apply the solution under non-mandatory law or that its application would be unreasonable (*unangemessen*), unfair (*unbillig*), or inappropriate (*nicht sachgerecht*) and would thus lead to an unsatisfactory result (considering the interests of the parties).[32]

In connection with the identification of the parties' intention by way of supplementary interpretation, the courts' role is to identify the so-called hypothetical intention of the parties (*hypotetischer Parteiwille*). The court tries to answer what the parties would have agreed if they had been aware of the situation requiring the contractual solution (the 'gap') at a time of the entering into of the contract. This requires an overall assessment of the parties' interests. If it is not possible to identify this hypothetical intention of the parties, the contract must be supplemented by provision which reasonable and honest parties (*vernünftige und redliche Parteien*) would have agreed considering the purposes of the transaction and the other existing

[31] See Binder / Kolmasch in Schwimann / Kodek (2014), § 914 at para [178]: According to the prevailing view (*herrschende Meinung*), the gap filling by non-mandatory law and by means of interpretation in accordance with an actually existing commercial practice (*tatsächliche Verkehrssitte*) take precedence over the completion of an 'incomplete' contract by means of supplementary interpretation.

[32] See Austrian Supreme Court (*OGH*), decision of 20 July 1989 6 Ob 617/88 and many others.

provisions of the contract.[33] In practice, the main application of supplementary interpretation are ancillary obligations (*Nebenpflichten*) (e.g. the requirement to transfer the source code in the course of a software development contract, if the contract has been silent on this matter).

If neither the application of section 914 Austrian Civil Code (*ABGB*) nor of non-mandatory law can solve the ambiguities, the ambiguous expression (*undeutliche Erklärung*) will be interpreted to the detriment of the party having used (*sich bedient hat*) such provision. *To use* in this connection usually means that a party has either drafted the relevant wording himself or herself, or suggested it (see section 915 Austrian Civil Code, second alternative (*Tatbestand*) – interpretatio contra proferentem).

IV. Practical application and burden of proof under Austrian law

Apart from the (written)[34] contract as such, Austrian courts also refer to a wide range of other declarations made by the parties to identify their intention. In comparison to English law, the reference to such external facts is very extensive and also includes documentation in preparation of the contract (for example catalogues), advertising (in particular in connection with warranty obligations), the conduct in the course of an existing business relationship of the parties, the performance of similar contracts in the past and even the parties' conduct after they have entered into the respective contract.[35] Furthermore, the honesty requirement of the considered practices allows the court a certain correction of the contract by disregarding dishonest practices.

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[33] See Bollenberger in Koziol / Bydlinski / Bollenberger (2017), § 914 at para [9] with reference to jurisprudence.

[34] It must be noted that sections 914 and 915 also apply to oral agreements. Austrian law does generally not differentiate between contracts in writing or oral agreement due to the principal freedom of form (*Formfreiheit*). However, the law imposes many form requirements in order to protect the parties (e.g. articles of association of a limited liability company in Austria must be prepared as notarial deed (*Notariatsaktsform*)).

[35] See Heiss in Kletečka / Schauer (2020), § 914 at para [71].

Legal commentaries often state that any interpretation is limited by the actual consensus achieved by the parties in the respective transactions (*tatsächlich erzielter rechtsgeschäftlicher Konsens*) (see Vonkilch in Fenyves / Kerschner / Vonkilch 2011: 305, § 914 at para [125]). In practice, the limitations of interpretation and thus of judicial interference with the principle of freedom of contract depend on the individual case. Such a theoretical limitation is also a circular argument, as the 'boundaries' of interpretation are in practice determined by the court, which ultimately has the final say. The court must decide based on a number of factual circumstances considering the interests of the parties and must come to a solution that is reasonable (in the sense of a fair balance of interests).

The distinction between questions of fact and questions of law is of fundamental importance to challenge the court's decision because the former are generally not considered by the Supreme Court (*OGH*),[36] which only deals with (material) questions of law.

'Factual circumstances' (including the identification of applicable practices) are a question of fact, the identification of the parties' intention is a question of law.

In the context of burden of proof, it must be noted that a party alleging any deviation from the ordinary or the specific meaning of an expression or as customary used in certain industries or (commercial) transactions (*Erklärungssitte*) bears the corresponding burden of proof in line with applicable rules of civil procedure.[37]

When drafting a contract, parties often try to mitigate any risks by providing a detailed catalogue of definitions, preambles (describing the purpose of the transaction), or limiting the scope of any facts to be considered by

[36] According to the Austrian Supreme Court (OGH) matters of interpretation regularly do not constitute a material question law. 'Material' in this regard means that the legal issue in dispute relates to a question of law which involves a deviation of the jurisprudence of the Supreme Court or that the Supreme Court has not decided such legal questions to date or that there exists conflicting jurisprudence regarding the relevant legal issue (see reference to jurisprudence in Heiss in Kletečka / Schauer 2020, § 914 at para [105]).

[37] See Heiss in Kletečka / Schauer (2020), § 914 at para [106] with references to relevant jurisprudence.

the court (e.g. by means of 'entire agreement clauses', etc.). However, not even the most excellent legal drafting can prevent all (potential) disputes, in particular if events occur after the parties have entered into a particular contract. Despite these limitations of human language, lawyers and legal practitioners should try to draft the contract as precisely as possible. The allegation that legal professionals intentionally use obscure language must be rejected. On the contrary, (successful) lawyers try their best to avoid obscure or antiquated language, which is in the interest of the parties.

V. Contract interpretation under English law

1. The guiding principle

Under English law, the purpose of contractual interpretation is to establish the objective common intention of the parties. Like the Austrian and German system, English law is concerned to establish what the parties intended, but it does this in an objective way. It is not concerned with what the parties actually intended, but with how a reasonable person would understand their common intention based on what they have written, said and done.[38]

English judges frequently refer to the need to establish the parties' intention, and they do so for the same reasons as a civil law judge. The law of contract is concerned with obligations voluntarily entered into. It follows that whether a contract has been entered into and what it requires the parties to do ultimately depends on the common intention of the parties. However, where English law differs from the civil law systems is the importance which it places on objectivity. Where the civil law systems tend to use both subjective and objective approaches in order to establish the intention of the parties, English law (as is the case with the other common law systems) adopts a much more objective approach. The subjective intention of the parties is hardly ever relevant. What matters is how a reasonable person

[38] Deutsche Genossenschaftsbank v Burnhope [1995] 1 WLR 1580, 1587 (Lord Steyn).

would understand what the common intention of the parties was, based on what they have written, said and done.

There are a number of reasons why English law takes this approach, both pragmatic and conceptual. The pragmatic reason is that it is considered that disputes will be resolved more quickly and cheaply if the tribunal deciding the matter is restricted to establishing the objective effect of the terms of the agreement, rather than delving into the subjective intentions of the parties. The conceptual reason is that contractual liability depends on the common intention of two or more parties. Their subjective intentions are irrelevant. What is important is their common intention; and that can only be established objectively – from what has passed between them.

That is not to say that outcomes are necessarily widely divergent between civil law and common law jurisdictions. In practice, the same result may be achieved in a large number of cases, but the approach is different.

2. What information is available under English law?

English law also takes a different approach to the civil law jurisdictions in relation to the amount of information which is available for the purpose of deciding what the parties have agreed. Many civil law jurisdictions (such as under the Austrian legal system) take a very broad approach to this question – taking account of all information which is considered to be relevant to the question in order to decide what the parties actually intended. English law takes a more restrictive approach to the available information.

The starting point in both civil law and common law systems is the same – that contracts must be read as a whole.[39] This principle derives from Roman law and is frequently used in contractual disputes under English law. However clear words may appear to be in isolation, they take their colour from the surrounding words and also from the structure of the contract as a whole – and indeed from the totality of the transaction documents. In practice, the effect of this principle is often to limit the meaning of words.

[39] Chamber Colliery Co v Twyerould [1915], 1 Ch 268 (note) at 272 (1893) (Lord Watson).

Words which, on their face, appear to be very general, are limited by the terms of the rest of the document.[40]

Where the contract is in writing, it is the writing which is the primary source of the parties' objective intention, although that writing is read in the context of its background facts.[41] It is here that English law can differ from civil law jurisdictions. Where the contract is in writing, English law tends to place greater emphasis on the writing rather than on the surrounding facts.

English law recognises that the writing has to be understood in the context of the facts known to the parties at the time the contract was entered into,[42] but it excludes much other evidence. If there is a dispute about the meaning of the contract, an English court will exclude much of the evidence which would be available in civil law jurisdictions. Many commercial contracts start with a term sheet and then proceed through many drafts of the contract until the final version of the contract is signed. And, once it has been signed, the parties may do various things subsequently which might cast light on their intentions. English law excludes most of this evidence. The pre-contractual interpretations are not admissible in evidence,[43] and nor is the subsequent conduct of the parties.[44] The only background information which is available is that which occurred at about the time the contract was entered into.

Again, the reasons for this approach are partly pragmatic and partly conceptual. The pragmatic reason is to cut down the amount of information which is available to the tribunal and thereby to speed up the process of resolution. The conceptual reason for excluding pre-contractual negotiations is that the parties' intentions change over time and only coalesce when the contract is actually entered into. What they might have agreed in

[40] Re Sigma Finance [2010] 1 All ER 571.
[41] River Wear Commissioners v Adamson (1877) 2 App Cas 743 at 763 (Lord Blackburn).
[42] Investors Compensation Scheme v West Bromwich Building Society [1998] 1 WLR 896 at 995-996 (Lord Hoffmann).
[43] Chartbrook v Persimmon Homes [2009] 1 AC 1101.
[44] Schuler v Wickman Machine Tool Sales [1974] AC 235 at 265-270 (Lord Simon).

the past is therefore irrelevant to the question as to what they finally agreed. Evidence of subsequent conduct is excluded because the meaning of a contract must be established at the time it is entered into. Subsequent conduct is relevant to the question of whether the contract has been amended, but not to the meaning of the contract when it was entered into.

The effect of all this is that, where the contract is in writing, the focus is very much on the words used in the contract in the light of the contract as a whole and in the context of the immediately surrounding facts.

VI. What do words mean?

There has been a great deal of discussion over the last twenty-five years by lawyers and judges about the way in which contracts should be interpreted under English law. In the past, the basic approach was that the words in a contract should be given their natural and ordinary meaning. Under the influence of Lord Hoffmann, who was a judge in the House of Lords (now known as the Supreme Court), the approach to interpretation changed in the 1990s, and the courts took a more interventionist approach. They became much more willing to say that the parties could not have intended the words to mean what they said, and therefore that they really meant something else.[45] This approach prevailed for about twenty years, but, more recently, the Supreme Court has re-emphasised the importance of giving effect to the natural meaning of the words.[46]

The essential point is that the interpretation of words is ultimately a matter of judgment. Some people take a very strict view of interpretation and will want to give effect of the grammatical meaning of the words even if that produces a very odd result. Others take a more liberal approach and are prepared to twist the meaning of the words in order to give effect to what they consider to be the real intention of the parties. There has always been

[45] Investors Compensation Scheme v West Bromwich Building Society [1998] 1 WLR 896; Chartbrook v Persimmon Homes [2009] 1 AC 1101.

[46] Arnold v Britton [2015] AC 1619.

a divergence of approach of this kind, and it is hard to see it ever changing. Some people interpret words more strictly and grammatically than others.

The starting point in English law remains that the words of a contract are nearly always given their ordinary meaning in their context. The important word here is *context*. It is not the literal meaning of the words in isolation which is important, but their natural meaning in the context of the agreement as a whole and of the background facts at the time the contract was entered into.[47]

Inevitably, words can be ambiguous, even in a professionally drafted contract. Where this is the case, the courts will give the ambiguous words the meaning which the parties are objectively most likely to have intended. Frequently, it is possible to establish which is the most likely meaning from the rest of the contract. If that is not possible, the courts will then favour the interpretation which makes the most commercial sense.[48]

It is sometimes the case that the words are not ambiguous, but they produce a result which the court believes the parties cannot have intended. The more unreasonable a result, the more unlikely it is that the parties could have intended it. In these circumstances, the words are given the meaning which the parties must objectively have intended.[49]

It is here that there is scope for different judges to take different approaches. Some are inclined to insist on the ordinary meaning of the words, however odd the result may be. Others are more likely to twist the meaning of the words in order to reflect what they believe must have been objectively intended. The process of interpretation is essentially a judgmental exercise. The starting point is the natural meaning of the words in context. But, if the court considers that something has clearly gone so wrong with the language used in the document that the parties cannot objectively have intended it to have its natural meaning and that it is also clear to a

[47] Segovia Campagna Naviera v R Pagnan & Fratelli (the Aragon) [1977], 1 Lloyd's Rep 343.

[48] Rainy Sky v Kookmin Bank [2011] 1 WLR 2900.

[49] Schuler v Wickman Machine Tool Sales [1974] AC 235, 251 (Lord Reid); Chartbrook v Persimmon Homes [2009] 1 AC 1101.

reasonable person what the parties did objectively intend, then the court does have the ability to interpret the words in the way in which they believe the parties must have used them.

The courts also have the power to rectify a contract.[50] What this means is that, if a written contract does not record the parties' common intention at the time it was entered into, it will be amended to reflect that intention. So, for instance, if the contract is signed and a clause was omitted by mistake, then the court will rectify the contract by inserting that clause because it is what the parties had intended. Where there appears to be a mistake in a contract, rectification is a possible solution. However, the courts are also able, as a matter of interpretation, to read the words in the way in which they think the parties did intend if there is a clear mistake and it is clear what was intended. It is important to stress the limits of this power to twist the meaning of the words in a contract. In commercial contracts, it is very rarely used. In most cases, the court will interpret the words by reference to their ordinary meaning in context.[51]

VII. Conclusion

With regard to contract interpretation, English courts apply a much narrower scope of interpretation for pragmatic as well as doctrinal reasons when trying to establish the objective intention of the parties. Although there are comparative mechanisms, a supplementary interpretation is not available under English law. In commercial contracts, English courts hardly use their 'power' to correct the wording of a contract by means of interpretation. Despite of the various doctrinal and legal differences, the outcome under Austrian (German) or English law might even be the same.

[50] Chartbrook v Persimmon Homes [2009] 1 AC 1101.
[51] Enviroco v Farstad Supply [2011] 1 WLR 921.

VIII. References

Bassenge, Peter / Gerd Brudermüller / Jürgen Ellenberger / Isabell Götz / Christian Grüneberg / Hartwig Sprau / Karsten Thorn / Walter Weidenkaff / Dietmar Weidlich (eds.). 2013. *Palandt – Bürgerliches Gesetzbuch*. 72nd edition. Munich: C.H. Beck.

Calnan, Richard. 2017. *Principles of contractual interpretation*. 2nd edition. Oxford: Oxford University Press.

Fenyves, Attila / Ferdinand Kerschner / Andreas Vonkilch (eds.). 2011. *Klang Kommentar zum Allgemeinen Bürgerlichen Gesetzbuch*. 3rd edition. Vienna: Verlag Österreich.

Hinteregger, Monika. 2015. Contracts. In: Christoph Grabenwarter / Martin Schauer (eds.). *Introduction to the law of Austria*. Austin, TX: Wolters Kluwer Law & Business, 59-83.

Kletečka, Andreas / Martin Schauer (eds.). 2020. *ABGB-ON*$^{1.02}$. Vienna: Manz. www.rdb.at. Last access 26.10.2020.

Koziol, Helmut / Peter Bydlinski / Raimund Bollenberger (eds.). 2017. *ABGB Kurzkommentar*. 5th edition. Vienna: Verlag Österreich.

Peel, Edwin. 2020. *The law of contract*. 15th edition. Oxford: Oxford University Press.

Schlechtriem, Peter / Ingeborg Schwenzer / Ulrich Schroeter. 2019. *Kommentar zum UN-Kaufrecht (CISG)*. 7th edition. Munich: Beck.

Schulze, Reiner (ed.). 2019. *Bürgerliches Gesetzbuch Handkommentar*. 10th edition. Baden-Baden: Nomos.

Schwimann, Michael / Georg Kodek (eds.). 2014. *ABGB Praxiskommentar*. 4th edition. Vienna: LexisNexis.

Vogenauer, Stefan. 2018. Introduction before Art 5:101. In: Nils Jansen / Reinhard Zimmerman (eds.), *Commentaries on European contract laws*. Oxford: Oxford University Press, 740-753.

Welser, Rudolf / Andreas Kletečka (eds.) 2018. *Bürgerliches Recht I*. 15th edition. Vienna: Manz.

List of cases

Arnold v Britton [2015] AC 1619
Chamber Colliery Co v Twyerould [1915], 1 Ch 268
Chartbrook v Persimmon Homes [2009] 1 AC 1101
Deutsche Genossenschaftsbank v Burnhope [1995] 1 WLR 1580
Enviroco v Farstad Supply [2011] 1 WLR 921
Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896
Rainy Sky v Kookmin Bank [2011] 1 WLR 2900
Re Sigma Finance [2010] 1 All ER 571
River Wear Commissioners v Adamson (1877) 2 App Cas 743
Schuler v Wickman Machine Tool Sales [1974] AC 235
Segovia Campagna Naviera v R Pagnan & Fratelli (the Aragon) [1977], 1 Lloyd's Rep 343

List of abbreviations

ABGB	Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*)
BGB	German Civil Code (*Bürgerliches Gesetzbuch*)
CISG	United Nations Convention on Contracts for the International Sale of Goods
OGH	Austrian Supreme Court (*Oberster Gerichtshof*)
para	paragraph
UK	United Kingdom
US	United States

Irina Gvelesiani

Canadian Bijuralism and Linguistic Incompatibility

Abstract

Nowadays, Canada is a unique country which presents the unity of two distinct juridical traditions with the organically merged common and civil legal regimes permanently functioning as an inseparable entity. On the one hand, such coexistence reflects the historical development of the country. On the other hand, after the adoption of the Civil Code of Quebec the greatest effort has been made to improve the terminological situation. A harmonized bijuralism does not mean a simple merge of the common and civil legal systems. Specificities of each system should be accompanied by harmonized linguistic tendencies because a language plays a crucial and pivotal role in the development of law. The Canadian bijuralism is associated with bilingualism, i.e. the ability of functioning in two languages. However, there are certain difficulties in meeting this challenge. The major problems are caused by practicing common law in French or practicing civil law in English because certain terms are hardly translated.

The paper presents the analysis of Quebec's contemporary juridical reality and discusses some ambiguities which exist in the spheres of legal linguistics and legal translation. The parallel is drawn between Quebec's and Switzerland's *fiducie*-s. Certain propositions are made regarding the renaming of some legal concepts related to the *fiduciary relationships.* The given renaming will 'ease' the process of translation and will improve the conceptual incompatibility. The methodology of the research encompasses the onomasiological approach elaborated by the Vienna School of Terminology.

I. The common law *trust*

> A trust is an equitable obligation, binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called the beneficiaries or cestui que trust), of whom he may himself be one, and any one of whom may enforce the obligation. (Sánchez 2015: 98)

The *trust* originated in English common law of the Middle Ages. It is hallmarked by a unique twofold nature, more precisely, the *trust* "entails a three-party relationship, in which the donor (settlor) arranges with the trustee to divide the donee's interest between trustee and beneficiary" (Langbein 1995: 632). As a result of the bifurcation of rights, a trustee is obligated to manage and control a transferred property, while a beneficiary enjoys all benefits and profit. The assignment of property to a beneficiary may be performed by a transaction during a settlor's lifetime or by his/her testamentary disposition. It is also noteworthy that the legal rights on the trust assets belong to a trustee, while the equitable rights belong to a beneficiary. The origin of such duality of ownership has historical roots and is connected to the

> link between the English trust and Equity, the system of law developed by the Chancellor in reaction to the more rigorous common law. The interest of the beneficiary under the use (the forerunner of the trust) could not be enforced under the common law. However, in Equity the Chancellor acknowledged the beneficiary's interest in the property. In due course it was recognized as a proprietary interest (ie equitable ownership). (Waal 2006: 756)

Accordingly, an equitable ownership was recognized and enforced by the courts of equity, while a legal ownership was enforced by the courts of common law. Nowadays, these ownerships remain conceptually distinct. However, they are enforced by the same courts.

It is noteworthy that the

> divisions between legal and beneficial ownership are normally created by an express instrument of trust. The maker (settlor) of the trust will convey property to the trustee (who may be an individual or a corporation, such as a bank or trust company) and instruct the trustee to hold and manage the property for

> the benefit of one or more beneficiaries of the trust. (*Encyclopædia Britannica* n.d.)

Accordingly, the ordinary Anglo-American *trust* consists of three main elements:

- A *trustor*: a person who creates the *trust.* He or she may also be called a *creator*, a *grantor*, a *donor,* a *settlor* or a *settler*;
- A *trustee*: a physical person or a legal entity that holds a legal title to a *trust property*. Trustees have many rights and responsibilities. They vary from *trust* to *trust* depending on their types;
- A *beneficiary*: a beneficial or an equitable owner of a trust property. A *grantor* or a *trustor* can also be a *beneficiary*. In this case, the *trust* involves a simple delegation of responsibilities.

In order to be valid, each *trust* has to meet three major certainties:

> First, the intention of the settlor to create the trust must be certain. Second, the identity of the trust property must be certain. Finally, the identity of the beneficiaries must be defined with some precision. (Tang 2015: 2)

Moreover, the *trust* has to have the following characteristics:

> (a) the assets constitute a separate fund and are not part of the Trustee's estate; (b) title to the Trust assets stands in the name of the Trustee or in the name of another person on behalf of the Trustee; (c) the Trustee has the power and the duty, in respect of which he is accountable, to manage, to employ or dispose of the assets in accordance with the terms of the Trust and the special duties imposed upon him by law. (Widjaja 2017: 151)

It is difficult to find a direct conceptual equivalent of the *trust* in civil law because the cultural environments of civil and common laws differ. This fact is stipulated by several reasons. On the one hand, the system of common law is characterized with a self-contained evolvement. It developed separately from the rest of Europe. On the other hand, the English law is primarily case law or judge-made law in which statutes are only of secondary importance (Bugg / Simon 2009: 174). Despite these facts, some juridical institutions similar to the *trust* – the so-called *trust-like devices* – can be found in the laws of the countries of continental Europe.

This paper presents the analysis of Quebec's and Switzerland's *trust-like devices* (the so-called *fiducie*-s) and discusses some ambiguities which exist in the spheres of legal linguistics and legal translation. Certain propositions are made regarding the renaming of some legal concepts related to the *fiduciary relationships.* The given renaming 'eases' the process of translation and improves the conceptual incompatibility.

It is worth mentioning that the process of a legal translation should rely on the principle of an exact equivalency. Moreover, it should be concept-specific because a term can be regarded as a label of a concept; more precisely, terminology begins with a concept and aims to clearly delineate each concept (Temmerman 2000: 4). These words of famous terminologist Eugen Wüster correspond to the basic principles of the Vienna School of Terminology founded by him in the 20th century. It is noteworthy that Wüster has often been referred to as a father of terminology. His doctoral dissertation was considered as a pillar of terminological studies, which established the principles of systematizing working with lexical units. Those principles were oriented to concepts and their standardization leading to *General Terminology Theory (GTT),* which focused on the specialized knowledge concepts for the description and organization of the terminological information. Within this framework, concepts were viewed as being separate from their linguistic designation (terms). Concepts were conceived as abstract cognitive entities that referred to objects in the real world and terms were merely their linguistic labels (Faber Benítez 2009: 111). The major purpose of the traditional terminology

> was to assign a new term to a new concept that appeared in a language. In the naming process, terminologists started from the concept, which they placed into a concept system, on the basis of which it had been defined before being named as a term (the onomasiological approach). Their main focus was on exploring the ways in which to make terminology as efficient and unambiguous as possible. They were adherents of monosymy (the precision of concepts) and univocity of term (absence of synonymy). Their objective was to achieve a standardization of terminology – a tool for reaching unambiguous and clear communication, independent of cultural differences. (Sageder 2010: 125)

Accordingly, during the study of the Quebecoise and Swiss terminological realities, we adhere to the principles of the Vienna School of Terminology, the *General Terminology Theory (GTT)* and the onomasiological approach. We pay the greatest attention to the correlation of the terms related to the Swiss and Quebecoise *trust-like mechanisms*. The tables which are presented in this paper show the ways (proposed terminological units) oriented to the solution of the problem of the improper linguistic coincidences as well as naming.

II. The *fiducie* – the Canadian *trust-like device*

> The Civil Code of Quebec has a *fiducie* provision which is meticulously thought through, is broadly comprehensive of the trust elements in its provision, and while offering efficient operation to those among the public who employ it, has satisfied civilians that it has a ready reconciliation with the concepts of the civil law. (Waters 1995: 407)

Nowadays, Canada is a unique country which presents the unity of two distinct juridical traditions with the organically merged common and civil legal regimes permanently functioning as an inseparable entity. Civil law originated from the Roman legal system, while common law traces its roots to England of the 15th century. Therefore, Canada is a country of mixed juridical regimes. According to the generally accepted assumption, a mixed legal system "is originally a Roman-Civil law system which then absorbs aspects of English common law as part of its structure" (Ganado n.d.: 1); for instance, Quebec did not create the *trust* from a whole cloth, but rather imported it from common law in response to the demands from various constituencies within the province (Lubetsky 2012: 352). The process of 'importing' was rather complicated. The mechanism of the *trust* seemed alien to the civilian jurisprudence. According to Ganado (n.d.: 5),

> too many civil and common law lawyers – in an older generation – have been wasting their time with finding reasons why trusts are incompatible with civil law resulting in an equal amount of civil and common law lawyers – in a more recent generation – then wasting their time with trying to show that there is no such incompatibility.

The incompatibility exists, especially, if the fact is taken into account that

> the classical civilian property regime, with its notions of absolute ownership and the indivisible patrimony, arose in response to a profound distrust, following the French Revolution, of families and institutions that perpetuated their wealth and power through perpetual reserved landholdings. (Lubetsky 2012: 353)

A close look at the historical evolution may give further insights in this respect.

It is noteworthy that the formation of the Canadian bijurality, i.e. the 'double' juridical system, has been stipulated by the historical development of the country (the cohabitation of English and French Canadians in history) and by the influence of the colonization. The colony was first subjected to French law, which "was introduced in 1663 in Quebec, including the *coutumes* of Paris and the earlier *ordinances*" (Sandor 2015: 231, original emphasis). However,

> the battle for Quebec in 1759 and the Royal Proclamation 18 of 1763 marked the end of the French rule and the passage to the English rule in Canada… After little more than 10 years of British rule, the administration of justice in Canada was already moving towards bilingualism and bijuralism. (Cuerrier 2016)

In 1764, Governor Murray issued the order establishing civil courts.

> The Governor's new order effectively created a 'bijural' system by requiring that juries be composed of British born subjects in civil actions among British born subjects and that juries be composed of 'Canadians' in civil cases involving only 'Canadians'. Where cases involved British subjects and 'Canadians', upon request, juries could be comprised of equal numbers. (Lloyd / Pawley 2005: 151)

The official introduction of bijuralism in Canada began with the Quebec Act of 1774, which

> restored civil law 'in matters of property and civil rights'. Conversely, the Quebec Act provided that common law would govern in all but private law matters; this is the basis for the mixed civil and common law nature of Quebec law where common law and civil law apply respectively in public law

> matters such as administrative law, criminal law and other non-private law matters, and in private law matters. (Cuerrier 2016)

It is worth mentioning that an embryonic regime of the *trust* as a variant of a legacy or of a testamentary substitution was incorporated into 1866 Civil Code of Lower Canada (the 'old Code') at articles 869 and 964 (Roy 2010: 1). These articles discussed the transference of property that was controlled by a transferee for the benefit of a designated person or for indicated purposes. By 1867, two distinct legal systems were well entrenched. Quebec preserved its civil law, while other provinces retained their common law systems (Lloyd / Pawley 2005: 152). The introduction of the trust regime was followed by the creation of a special statute of 1879, subsequently integrated in 1888 into the Civil Code of Lower Canada, at articles 981 (a). This regime remained limited since the *trusts* were only permitted in liberalities, as appendages or modalities of a gift or a will (Roy 2010: 2). As a result, the *trust* was not fully established. The reconciliation of this legal institution with the concepts and juridical characteristics of civil law caused certain concerns. The biggest problem confronting the legal practice was that the civil code did not set out *expressis verbis* as to who held legal title to a settled property (Sandor 2015: 233). There was also no possibility of the endorsement of the distinction between the beneficial and legal ownerships. Accordingly,

> the commission revising the trust rules of the civil code of Lower Canada, headed by Professor Caron, applied theories relying on the ownership of the trustee and the independent ownership of the trust as a basis for the codification process beginning in 1973. (Sandor 2015: 236)

As a result, on 1 January 1994, the new Civil Code of Quebec was proclaimed in force. It was supplemented by the new legal regime of the administration of property of others (at articles 1299 to 1370 of the Civil Code of Quebec) that codified the standards of the governance for the conduct of administrators (Roy 2010: 3).

Nowadays, the Quebecoise *trust* can be defined in the following way: "*Le patrimoine fiduciaire* […] *constitue un patrimoine d'affectation autonome*

et distinct de celui du constituant, du fiduciaire ou du bénéficiaire, sur lequel aucun d'entre eux n'a de droit reel".[1]

This passage indicates that the Quebecoise *trust* has been established as a juridical device paralleling a tripartite relationship of the common law *trust* sitting quite comfortably within the major principles of civil law. This triangular relationship presents the following major elements: a settlor / constituant, a trustee / fiduciaire, a beneficiary / bénéficiaire.

These elements reflect the contemporary juridical-linguistic reality of Canada – "federal legislation based on property and civil rights concepts draws upon civil law when it applies in Quebec and upon common law when it applies elsewhere in Canada" (Cuerrier 2016). Common law is adopted in nine provinces and three territories greatly reflecting the linguistic and cultural dimensions of these areas:

> Although Quebec is the only province with a civil law system, the French version of federal legislation is meant to operate in all the provinces. This makes it impossible simply to reserve the English version of legislation for application in common law provinces and the French version for application in Quebec. (Ruth 2002: 94-95)

It is obvious that the *fiducie* is the French equivalent of the English *trust*. Article 1263 of the Civil Code of Quebec states that the *fiducie* is:

> Acte juridique par lequel une personne, le constituant, transfère, de son patrimoine à un autre patrimoine, des biens qu'il affecte à une fin particulière.[2]

Accordingly, each element of the entrusting relationship can be characterized in the following way:

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[1] Art. 1261. The trust patrimony, "consisting of the property transferred in trust, constitutes a patrimony by appropriation, autonomous and distinct from that of the settlor, trustee or beneficiary and in which none of them has any real right" (Roy 2010: 5).

[2] Juridical act by which a person, the settlor, transfers a part of his or her patrimony to another patrimony and appropriates the transferred property to a particular purpose (*Dictionnaires de droit privé*).

A **settlor** (*constituant*): a person who transfers the property and creates the *trust* which can be set up in his (her) lifetime (an *inter vivos trust*) or upon his (her) death (a *testamentary trust*). A settlor may be a trustee or one of the trustees. In this case, a settlor must act jointly with an independent trustee.

A **trustee** (*fiduciaire*) may be any natural or legal person authorized by the law. A trustee is an administrator of the property ensuring its maintenance and preservation, more precisely, he (she)

> has neither 'legal ownership' of the trust property, […] nor 'sui generis ownership' […]. Instead of a proprietary entitlement, the trustee has 'powers' (pouvoirs) of administration to be exercised on behalf of the beneficiaries, as opposed to 'legal rights' (droits subjectifs) to be exercised in his or her own interest. (Emerich 2013: 35)

A **beneficiary** (*bénéficiaire*) may be any natural or legal person (even another trust), determinate or determinable at the time of the creation of the *trust*. The term *beneficiary* must not be confined "to a person, but may be impersonal; for an impersonal benefit or *purpose*" (Claxton 2002: 292).

It has already been mentioned that Canada presents a unique example of a mixed legal system representing an almost idyllic coexistence of the civilian and common law jurisdictions. It is noteworthy that in contrast to common law, the civilian legal tradition is based on a written or a codified law and the major dissonance between these systems is caused by the representation of the concept of the *fiduciary ownership*.

According to Zenati-Castaing and Revet,

> ownership is fiduciary where a person becomes the owner in order to carry out a task, at the close of which the thing is transferred back to the legal actor who had made the initial alienation or to a third party designated by the latter. (Emerich 2013: 24)

This mode of the transference reflects the contemporary entrusting relationships. However, some scholars express their concerns regarding the notion of ownership associated with the *fiducie.* According to Ganado, a civilian ownership is selfish, exclusive, unconditional, absolute and perpetual, while in the *trusts* we see ownership for another person, which is

subject to many obligations and limitations vis-à-vis a beneficiary. In this argument there is an agenda not to merge ideas, but to contrast them. Civilians see this as impossible, aided by an evidently casual use of the terms "two ownerships" or "beneficial ownership" (Ganado n.d.: 9).

Accordingly, it can be stated that on the one hand, the *fiducie* as a civilian institution cannot present the division of ownership between a transferor (having ownership in law / legal ownership) and a beneficiary (having ownership in equity). On the other hand, the form of ownership associated with the *fiducie* can be deemed as a debased form. Despite these facts, Europe has already provided us with the examples of a successful 'invasion' of the common law *trust* into the civilian legal tradition. The following major types of the 'invasion' can be singled out:

1. The French *fiducie* and its irreplaceable *patrimoine d'affectation,* which appeared in the Code Napoléon in 2007.
2. The Quebecoise *trust/fiducie* and its *patrimony by appropriation/patrimoine d'affectation,* which appeared in 1994.

The French *fiducie* is oriented to the formation of the *patrimoine d'affectation* which is not a genuinely autonomous ownership. It is not completely separated from a personal ownership (patrimony) of a transferor or a transferee. The *patrimoine d'affectation* does not represent a source of wealth of a transferee, because he (she) does not act in his (her) own interest. The profit gained via the exploitation of the property belongs to the third person. Moreover, the second paragraph of article 2025 of the French Civil Code provides that where the *fiducie* patrimony is insufficient, the creditors of the *fiducie* can seek payment of their claim from a patrimony of a transferor (Emerich 2013: 24). In this case, the *patrimoine d'affectation* serves as a source of reduction of a transferee's own patrimony.

The Quebecoise *trust/fiducie* and its *patrimony by appropriation* significantly differ from the French *patrimoine.* In the Civil Code of Québec, the word combination *fiduciary ownership* is less used because a transferee does not have ownership of the property in trust (Art. 1261 C.C.Q.), but a power over it (*The Private Law Dictionary* n.d.). This power comprises

acceptance, holding and administration of transferred assets. Besides debasing a fiduciary ownership, the Quebecoise entrusted property departs from an original civilian *patrimony* because the traditional theoretical patrimony is identified only with a person, is composed of all his (her) property (and obligations) in which his (her) ownership is singular and indivisible (*dominium*) to the exclusion of all other persons (Claxton 2002: 277). Moreover, due to a classical conception, a patrimony represents the "aggregate composed of a person's property, considered as making up a legal universality" (Emerich 2013: 31). A patrimony may contain both the assets and the liabilities. It is strongly connected with the concept of personhood – each person may hold only one patrimony, inalienable and indivisible. The Quebecoise law deviates from this rule. It recognizes a patrimony without a person as its head (an impersonal patrimony) and presents a new method of holding/entrusting property – the assets are removed from a patrimony of a transferor, but do not constitute a part of a transferee's or a beneficiary's ownership. This method of entrustment results in the creation of an autonomous patrimony that is named the *patrimony by appropriation (patrimoine d'affectation).*

In contrast to a classical conception of a patrimony, the *patrimoine d'affectation* comprises

> two masses of property: a set of assets impressed with a purpose, and a set of liabilities that arise in the pursuit of this purpose. Within this type of patrimony, the link between the property and obligations is no longer forged by their relation to a person, but rather by their common purpose. (Emerich 2013: 24)

Some scholars present their special skeptical attitudes to this phenomenon. For instance, Claxton (2002: 291-292) believes that

> the concept of patrimony is itself a legal fiction invented by classical scholars of legal theory to explain the relationships between persons and property […]. Prior to reform it was hardly a part of the lexicon of the Quebec practitioner […], the concept of the patrimony was mentioned in the former law (the CCLC) only incidentally in the French version to identify the mass of property of a succession.

Despite having the prerequisite of such a scarce usage of a patrimony, the Quebecoise law adopted the concept of the *patrimoine d'affectation* and by means of this concept the English-inspired *trust* was "civilianized" in the sense that it is now expressed within a framework of the legal thought with which civilians are familiar (Roy 2010: 3).

Generally, the Quebecoise *patrimoine* comprises a non-segregated property because it does not belong to a person who has the power of its administration and disposition. Non-segregated assets may comprise any kind of a present or a future property: movable, immovable, real, personal, etc. However, "a trust created to hold future property only, even if accepted by the trustee, will not be constituted and exist until some property is acquired by the settlor or the trustee" (Claxton 2002: 286), because the transference of assets is the major essence of the entrusting relationships.

This statement is reinforced by an outstanding ability of the *trusts* to provide the formation of *a foundation/la foundation*. Generally, a foundation created by the *trust* is established by a gift or a will in accordance with the rules governing those acts (*Civil Code of Quebec 1991)*. Similarly to the trust property, the property of a foundation constitutes *an autonomous patrimony/un patrimoine autonome*, which is distinct from a patrimony of its creator or any other individual. *La fondation* can be oriented to: making profit, operation of an enterprise, fulfilment of a socially beneficial purpose, etc.

The last statement seems to be in tune with the opinion of well-known French jurist Pierre Lepaulle, whose arguments have been influential in some civilian receptions of the Anglo-American *trust*. Pierre Lepaulle argued that the common law *trust* could be best understood, in civilian terms, as a patrimony affected to a destination or purpose (Smith 2008: 382). Moreover, he believed that

> none of the settlor, the trustee or the beneficiary was essential to common law trust […]. He argued that the only things that were essential were that there was a patrimony, and that it be affected or appropriated to a purpose. (Smith 2008: 383)

Accordingly, the appropriation to purpose can be considered as the major essence of the Quebecoise *patrimoine*. However, the negation of a settlor's and a trustee's merits is impossible in both the Quebecoise and in the Anglo-American entrusting relationships. A settlor establishes the *trust*, while a trustee administers a transferred property. Without these parties, the *trust* is almost void.

III. The *fiducie* – the Swiss *trust-like device*

It is worth mentioning that the Swiss law is familiar with the concept of the *fiducie* (the *Treuhand* – in German), which can be regarded as the combination of legal transactions related both to the law of obligations (it is a contract) and to the law of property (it is the disposition of property). A creator undertakes, by agreeing to a contract (the *convention de fiducie*), to transfer a full legal title to certain choses or rights (the fiduciary property), while a fiduciary undertakes to keep and manage and to restore a fiduciary property (either the original property or the property acquired through reinvestment of the proceeds from sale of the original property) on expiry of an agreement (Thévenoz / Dunand 1999: 319). The major elements of the Swiss *fiducie* can be presented in the following way:

- *Le fiduciant*: a natural or a legal person that transfers property;
- *Le fiduciaire*: a transferee, a manager of a transferred property. In the majority of cases, the *fiduciaire* works for the *fiduciant*. However, in certain cases, the *fiduciaire* performs the managerial tasks for the benefit of a beneficiary (*bénéficiaire*).

It is worth mentioning that a fiduciary relationship is usually established under the umbrella of the 'unity of patrimony':

> Swiss case law has explicitly rejected the notion of a division of ownership between an external title for the trustee and an internal title for the settler or third-party beneficiaries. The property belongs indivisibly to the trustee […]. […] [T]he principle of 'unity of patrimony' prevents the formation of a separated fund within the estate of the trustee. (Peyrot 2013: 42)

Moreover, the Swiss law recognizes the following types of the *fiducie*:

- The so-called *fiducie-gestion (*or *fiducia cum amigo)*: the *fiducie* that is set up for the purposes of management;
- *Fiducie-sûreté (or fiducia cum creditore)*: the *fiducie* that is used to create a security interest over assets for the benefit of a beneficiary. However, the latter acquires a full legal title only after a creditor's debt is paid in full (Thévenoz / Dunand 1999: 311);
- *Fiducie-libéralité*: the *fiducie* that is usually considered as a special form of the *fiducie-gestion,* because it may be used to organize the devolution of property over time. However, the *fiducie-libéralité* "has not really established itself in practice, chiefly owing to limitations" (Thévenoz / Dunand 1999: 311). Some of them are juridical (e.g. the regulations governing a reserved portion of a patrimony) and others are dogmatic (e.g. the notion of *patrimoine*).

IV. The Swiss *fiducie* vis-à-vis the Canadian *fiducie*

It is noteworthy that the Swiss *trust-like mechanism* seems similar to the Canadian *fiducie*. However, the following major aspects must be singled out in this respect:

- The study of the Quebecoise and Swiss *trust-like devices* reveals that the Quebecoise entrusting relationships comprise three major elements: a transferor *(constituant),* a transferee *(fiduciaire)* and beneficiaries *(bénéficiaires*), while the Swiss law presents only the *fiduciant* and the *fiduciaire*.
- The Quebecoise *fiducie* and the Swiss *fiducie/Treuhand* should be considered as the obligational models of the *trust.* They represent "largely bilateral relationships between the settler and the trustee and trustees here typically do not have as much discretion as their English counterparts" (Lau 2011: 58).
- A prominent difference between the Quebecoise and Swiss laws can be seen during the process of the transference of property. In Canada,

> the core of the concept of entrustment is an ownerless patrimony. The Swiss case law explicitly rejects the notion of the division of ownership between an external title for a trustee and an internal title for a settler or third-party beneficiaries. Accordingly, a transferred property belongs indivisibly to a trustee.

The above mentioned directly indicates to the following prominent fact: the Swiss *fiducie* cannot be equalized with the Quebecoise *fiducie*. Significant changes should be made in the terminological sphere in order to reflect the existed differences between these institutions.

The following table depicts the correlation of the terms related to Quebec's *fiducie* and the Swiss *trust-like mechanism*:

Definition	**Quebec's Law**	**The Swiss Law (The French Version)**
A legal institution	Fiducie	Fiducie
A transferor of the property	Constituant	Fiduciant
A transferee	Fiduciaire	Fiduciaire
A person who benefits from the exploitation of the trust property	Bénéficiaire	Bénéficiaire
An object of the entrusting relationships	Patrimoine d'affectation	Patrimoine d'affectation

Tab. 1: Contemporary French terms of Quebec's and Switzerland's legal systems

Table 1 reveals that the French terms related to the Swiss *trust-like mechanism* almost coincide with the lexical units related to Quebec's entrusting relationships. This correlation seems impossible because Quebec's *fiducie* and the Swiss *trust-like device* have different essences. The Quebecoise fiduciary relationships are based on an ownerless patrimony, which is unacceptable to Switzerland's law. It merely presents an *indivisible patrimony*. Accordingly, for avoiding the terminological ambiguity, we propose the following renaming of the concepts related to Switzerland's law:

Definition	The existing terms (Switzerland's law)	The proposed terms
A legal institution	Fiducie	Fiducie suisse
A transferor of the property	Fiduciant	Fiduciant suisse
A transferee	Fiduciaire	Fiduciaire suisse
A person who benefits from the exploitation of the property	Bénéficiaire	Bénéficiaire suisse
An object of the entrusting relationships	Patrimoine d'affectation	Patrimoine d'affectation suisse

Tab. 2: The contemporary and proposed French terms of the Swiss legal system

The concepts related to Quebec's fiduciary relationships can be renamed in the same way:

Definition	The current terms of the Quebecoise law (the French version)	The proposed French terms
A legal institution	Fiducie	Fiducie québécoise
A transferor of the property	Constituant	Constituant québécois
A transferee	Fiduciaire	Fiduciaire québécois
A person who benefits from the exploitation of the property	Bénéficiaire	Bénéficiaire québécois
An object of the entrusting relationships	Patrimoine d'affectation	Patrimoine d'affectation québécois

Tab. 3: The existing and proposed French terms of Quebec's legal system

V. Conclusion

Today's legal and linguistic worlds face a lot of challenges. As a result, some rules change, while some legal institutions become transplants of new, even unsuitable, soils. The common law *trust* is an example of such transplantation – the process that results in the emergence of certain *trust-like devices* not only in Europe, but throughout the world.

Generally, it is noteworthy that *despite* the existence of the significant differences between the common and civil legal traditions, there is an evident tendency of the convergence between these juridical regimes. This tendency is caused by the ongoing globalizing processes, a global competitive atmosphere, a growing influence of the Anglo-American legal institutions, an increased role of a foreign investment, etc. One of the vivid examples of the convergence is the existence of the 'counterparts' of the common law *trust* in Quebec's and Switzerland's juridical systems.

This paper presented the in-depth analysis of the peculiarities of the Quebecoise and Swiss *trust-like devices* and discussed some ambiguities which existed in the sphere of the legal terminology. Certain propositions were made regarding the translation of some terminological units as well as the renaming of several concepts related to the Quebecoise and Swiss *Fiducie*-s. These processes and concept-specific delineation of the notions relied on the principles of Vienna School of Terminology and its *General Terminology Theory (GTT),* which evolved in the 20th century and since its inception has gained the greatest popularity in Europe. Accordingly, we believe that the given renaming will 'ease' the process of translation and will improve the existing conceptual incompatibility as well as ambiguity.

VI. References

Bugg, Stuart G. / Heike Simon. 2009. *Langenscheidt Alpmann Fachwörterbuch Kompakt Recht Englisch*. 2nd edition. München: Langenscheidt.

Civil Code of Quebec. 1991. http://ccq.lexum.com/w/ccq/en#!fragment//KGhhc2g6KGNodW5rxIVhbsSHb3JUZXh0OicnKSxub3Rlc1F1ZXJ5xJYnLHNjcm9sbEPEiMSKOiFuxKdlYXLEh8SgxKLEpMSXxLTEtsSHU8SQdELEpFJFTEVWQU5DRSx0YWI6dG9jKSk=. Last access 1.10.2020.

Claxton, John. 2002. Langage du Droit de la Fiducie. In: *Revue du Barreau* 62, 273-317.

Cuerrier, Marc. 2016. *Drafting against a background of differing legal systems. Canadian bijuralism*. https://essaydocs.org/drafting-against-a-background-of-differing-legal-systems-canad.html. Last access 3.10. 2020.

Dictionnaires de droit privé. n.d. Trust. https://nimbus.mcgill.ca/pld-ddp/dictionary/show/46135?source=NEWPROPEN. Last access 4.10.2020.

Emerich, Yaëll. 2013. The civil law trust. A modality of ownership or an interlude to ownership? In: Lionel Smith (ed.), *The worlds of the trust*. Cambridge: Cambridge University Press, 21-40.

Encyclopædia Britannica. n.d. Trusts. https://www.britannica.com/topic/property-law/Objects-subjects-and-types-of-possessory-interests-in-property#ref927936. Last access 1.10.2020.

Faber Benítez, Pamela. 2009. The cognitive shift in terminology and specialized translation. In: *MonTI. Monografías de Traducción e Interpretación* 1, 107-134.

Ganado, Max. n.d. *How civil law systems absorb trust*. http://www.ganadoadvocates.com/wp-content/uploads/2015/07/How-Civil-law-Systems-Absorb-Trusts.pdf. Last access 1.10.2020.

Langbein, John. 1995. *The contractarian basis of the law of trusts.* https://www.thefreelibrary.com/The+contractarian+basis+of+the+law+of+trusts.-a017859771. Last access 2.10.2020.

Lau, Ming Wai. 2011. *The economic structure of trusts. Towards a property-based approach.* Oxford: Oxford University Press.

Lloyd, Brown-John C. / Howard Pawley. 2005. When legal systems meet. Bijuralism in the Canadian federal system. In: *BCN Political Science Debates* 4, 147-170.

Lubetsky, Michael. 2012. Categorically different. Unintended consequences of trust taxonomy. In: Lionel Smith (ed.), *Re-imagining the trust. Trusts in civil law*. Cambridge: Cambridge University Press, 340-354.

Peyrot, Aude. 2013. How to square the circle? The challenge met by Swiss insolvency law in dealing with common law trusts. In: Lionel Smith (ed.), *The worlds of the trust*. Cambridge: Cambridge University Press, 41-66.

Roy, Marilyn Piccini. 2010. Quebec. In: Alon Kaplan (ed.), *Trusts in prime jurisdictions*. London: Globe Business, 143-165.

Ruth, Sullivan. 2002. *Sullivan and Driedger on the construction of statutes*. Vancouver: Butterworths.

Sageder, Dagmar. 2010. Terminology today. A science, an art or a practice? Some aspects on terminology and its development. In: *Brno Studies in English* 36 (1), 123-134.

Sánchez, Raúl Lafuente. 2015. Testamentary trusts in English law. An introductory approach. In: *Cuadernos de Derecho Transnacional* 7 (1), 96-111.

Sandor, Istvan. 2015. *Fiduciary property management and the trust. Historical and comparative law analysis*. Bucharest: Hvgorac.

Smith, Lionel D. 2008. Trust and patrimony. In: *Revue Générale de Droit* 38 (2), 379-403.

Tang, Hang Wu. 2015. *An introduction to trust law in Singapore.* http://shintakuhogakkai.jp/journal/pdf/vol40_en_03.pdf. Last access 3.10.2020.

Temmerman, Rita. 2000. *Towards new ways of terminology description. The sociocognitive approach*. Amsterdam: John Benjamins.

The Private Law Dictionary. n.d. Citation. https://nimbus.mcgill.ca/pld-ddp/dictionary/search. Last access 2.10.2020.

Thévenoz, Luc / Jean-Philippe Dunand. 1999. The Swiss fiducie. A subtle conceptual blend of contract and property. In: Madeleine Cantin Cumyn (ed.), *Fiducie Face au Trust dans les Rapports D'affaires*. Bruxelles: E. Bruylant, 309-339.

Waal, Marius J. 2006. Trust law. In: Jan M. Smits (ed.), *Elgar encyclopedia of comparative law*. Cheltenham: Edward Elgar, 755-766.

Waters, Donovan W.M. 1995. Institution of the trust in civil and common law. In: *Recueil des Cours de l'Académie de droit international de La Haye / Collected courses of the Hague Academy of International Law* 252, 113-454.

Widjaja, Gunawan. 2017. The importance of comprehensive trusts law in Indonesia. In: *International Journal of Applied Business and Economic Research* 15 (19), 149-155.

List of abbreviations

CCQ Civil Code of Quebec
GTT General Terminology Theory

Claus Luttermann

Das Europäische Referenzsprachensystem für die Europäische Union: Über Wohlstand, Rechtslinguistik und europäische Identität

Abstract

Europarecht etabliert die Europäische Union als Rechtsgemeinschaft (Binnenmarkt). Es hängt an Sprache und Übersetzung in 24 als authentisch geltenden Amtssprachen. Sie befördern Rechtsgefälle zwischen Mitgliedstaaten und decken die rechtsgrundlose Dominanz des Englischen (Monolingualismus). Das Europäische Referenzsprachensystem, das hier – für die nötige Sprachenrechtsreform der Union – vorgestellt wird, schafft rechtsstaatliche Ordnung: Ohne hegemoniale Verengung auf eine Sprache (Rechtswelt) oder Ausschließlichkeit weniger Sprachen bildet es mit allen Vertragssprachen eine rechtslinguistische Kommunikationsbasis für ein klares Europarecht und Wohlstand. So wahren die Amtssprachen der Mitgliedstaaten demokratisch die muttersprachliche Lebenswirklichkeit der Bürger im Sinn des Subsidiaritätsprinzips. Damit gewinnen die Bürger und ihre Union eine rechtskräftige Stimme und Identität in der Neuordnung der Welt. Grundlegend ist die Rechtslinguistik. Sie ist interdisziplinär und interkulturell als Disziplin zu entwickeln.

I. Rechtsgemeinschaft

Wie gestalten wir[1] die europäische Einheit in Vielfalt? Die Europäische Union ist eine Rechtsgemeinschaft. Menschen bilden sie frei für einen

[1] Der Vortrag, gehalten auf der Tagung der ÖGRL in Wien am 9. November 2019, ist die Überarbeitung einer früheren Fassung und aktualisiert worden nach dem am 31. Januar 2020 erfolgten Austritt Großbritanniens aus der Europäischen Union (Brexit). Insgesamt: C. Luttermann / K. Luttermann (2020), *Sprachenrecht für die Europäische Union* (mit zahlreichen weiteren Nachweisen).

Binnenmarkt[2] mit gut 450 Millionen Bürgern (*post* Brexit). Ihr Recht gründet in der christlich-humanistischen Idee der Gerechtigkeit, deren Frucht der Frieden ist: „die Quelle alles menschlichen Glücks", schreibt Erasmus von Rotterdam in Querela Pacis (1517) und beklagt, diese Idee sei verstopft durch mangelnde Vernunft und leere Worte.

Das klingt vertraut im vielsprachigen Europa. Wir kommunizieren und konstruieren in einer englisch geprägten Sprachenpraxis, die Rechtstexte mit intransparenten Verfahren und Übersetzungen (auch nach dem Brexit noch) in 24 sogenannten Vertragssprachen (Amtssprachen) als authentisch setzt (Artikel 55 EUV, Verordnung Nr. 1/1958 des Rates). Das ist einzigartig in der Welt, wo epochale Umbrüche wie der Brexit und die digitale Umformung von Wirtschaft, Staaten und Gesellschaft die Sprachenfrage schärfen (vgl. C. Luttermann / K. Luttermann 2007; Stickel 2014). An einem sinnvollen Sprachenrecht hängen, zumal unter der nun grassierenden Pandemie, die europäische Integration und Entwicklung für unser aller Wohlstand in Frieden.

Dieses große Feld ist die zukunftsträchtige Aufgabe für Juristen und Linguisten, für die Rechtslinguistik, wie ich zeigen werde (siehe unter VII), praktisch sprach- und rechtsvergleichend mit juristischen Kernpunkten (unter III, IV). Das führt zum Europäischen Referenzsprachensystem als Basis für realpolitisches Umdenken und für die nötige Reform (unter V, VI), um uns und künftigen Generationen eine friedliche, lebenswerte Zukunft zu sichern.

II. Sprache und Recht: Zur neuen Weltordnung

1. Im Narrenschiff von Piräus?

Umdenken beginnt mit Sprechen über Lebenswirklichkeit. Der Hafen von Piräus ist der erste Tiefseehafen für die riesigen Containerschiffe, die aus Asien durch den Suezkanal nach Europa kommen, also ein strategisches Juwel. Die China Ocean Shipping Company (COSCO) hat ihn gekauft, ein

[2] Vertrag über die Europäische Union (EUV), besonders Artikel 1, 2 und 3 EUV.

chinesisches Staatsunternehmen. Den europäischen Bürgern wird das als „Privatisierung" zur Rettung der Währungsunion erklärt: Griechenland erfüllt damit Auflagen für Rettungspakete der europäischen Partner und des Internationalen Währungsfonds (IWF).

Doch während Staatsführer Billionen Euros[3] in dunklen Löchern versenken,[4] sammelt China systematisch Vermögenswerte. Dabei sind auch die Häfen von Genua und Triest mit Piräus Brückenköpfe der chinesischen Kommunisten für ihr gigantisches Seidenstraßenprojekt (*One Belt, One Road* – OBOR). Präsident Xi Jinping baut damit durch Infrastruktur – allerdings weithin systematisch unter Ausschluss europäischer Wettbewerber[5] – über vier Kontinente für 5 Milliarden Menschen eine neue Weltordnung, die er ab 2025 führen will. Dafür kontrolliert er durch Investitionen Staaten in Afrika, Zentralasien, Osteuropa und kauft bei uns Hightech-Unternehmen (wie Kuka, Kion, Daimler) und sogar ganze Wälder auf: strategisch geplant und durchgeführt seit Jahren.[6] Womit wirtschaften wir, wenn das Tafelsilber weg ist?

Die Corona-Pandemie antwortet. Jetzt soll der Ausverkauf strategischer Unternehmen verhindert werden. Nach Kommissionspräsidentin Ursula von der Leyen „müssen wir unsere Sicherheit und unsere wirtschaftliche Souveränität schützen, wenn unsere industriellen Aktiva und die Vermögenswerte unserer Unternehmen unter Druck geraten könnten. Wir verfügen über die Instrumente, mit denen wir diese Situation im Rahmen der europäischen und nationalen Rechtsvorschriften meistern können, und ich appelliere dringend an die Mitgliedstaaten, diese Instrumente auch in

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[3] EU und IWF zahlten Griechenland offiziell 290 Mrd. Euro (Handelsblatt 20.8.2018, S. 8-9). Insg. Artikel 125 AEUV (Nichtbeistands-Klausel), Artikel 136 Abs. 3 AEUV (Europäischer Stabilitätsmechanismus – ESM). BVerfG, Urteil vom 2.5.2020, 2 BvR 987/10, BVerfGE 129, 124-186. Vgl. EuGH, C-62/14, NJW 2015, 2013.

[4] EU, Europäischer Wirtschafts- und Sozialausschuss, 2013/C 11/08, No. 1.3 (ABl. EU vom 15.1.2013, C 11/34), spricht von „bislang für die Bankenrettung in der EU eingesetzten 4,5 Billionen EUR Steuergeldern".

[5] Dazu neulich European Chamber of Commerce (2020).

[6] Siehe z.B. Deuber / Fischer (2016) und https://www.faz.net/aktuell/wirtschaft/wirtschaftspolitik/forstwirtschaft-china-hat-interesse-am-deutschen-wald-437912.html. Letzter Zugriff 15.5.2021.

vollem Umfang einzusetzen. Die EU ist ein offener Markt für ausländische Direktinvestitionen und wird dies bleiben. Diese Offenheit ist jedoch an Bedingungen geknüpft."[7]

2. Rechtsstaatlichkeit und Realpolitik

Die Frage also drängt: Nach welchen Regeln ist zu wirtschaften? Das ist der entscheidende Kernpunkt bei der Neuordnung der Welt, die eben zugleich auch eine neue Rechtsordnung bringt. Eine internationale Vermögensordnung für die Teilhabe am Wohlstand (vgl. C. Luttermann 2015: 31-48). Dabei wirkt Sprache prägend. Maßgebend ist, wer die Standards setzt, technologisch und ideologisch. Der auf Lebenszeit inthronisierte Präsident Xi spricht von Rechtsstaatlichkeit (*rule of law*), meint allerdings – faktisch als Maß für die Welt – seinen Sozialismus chinesischer Prägung: „socialist rule of law" (with Chinese characteristics; siehe BBC 2017).

China agiert damit bereits seit 2012 auch in der Europäischen Union durch seine *Cooperation between China and Central and Eastern European Countries* (China-CEEC – sog. „16+1"-Initiative). Sie umfasst mit Estland, Lettland, Litauen, Polen, Tschechien, Slowakei, Ungarn, Slowenien, Kroatien, Bulgarien und Rumänien elf Mitgliedstaaten der Europäischen Union: Das sind allesamt eifrige Nettoempfänger aus den Unionstöpfen. Sie erhalten für Infrastrukturprojekte von China Kredite und blockierten in der Union bereits Kritik an Menschenrechtsverletzungen in China. Die Süddeutsche Zeitung titelt: „China macht sich Osteuropa gefügig" (Brössler 2017).[8] Eigene Märkte schottet China gegenüber ausländischen Investoren ab und etabliert global seine Währung (Yuan) sowie Finanz- und Technikstandards (z.B. Gold Trade Notes; siehe C. Luttermann, 2017c: 255-263; European Chamber of Commerce 2020).

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[7] EU-Kommission (2020). Siehe bereits EU-Kommission, Verordnung über einen Rahmen zur Prüfung ausländischer Direktinvestitionen in der EU, Entwurf vom 13.9.2017 COM (2017) 487 final – 2017/0224 (COD) und daraus Verordnung (EU) 2019/452 vom 19.3.2019, Amtsblatt EU vom 21.3.2019, L 79 I/1.

[8] Offizielle Informationen unter: http://www.china-ceec.org/eng. Letzter Zugriff 15.5. 2021.

Dass es um eine neue Weltordnung geht, wird in den USA verstanden. „America first" gilt für jeden Präsidenten, nicht nur für Donald Trump. Amerika, so schrieb Henry Kissinger (2016: 1236) schon früher über Realpolitik, habe keine permanenten Freunde oder Feinde, nur Interessen. Ein buntes Spektrum von Akteuren agiert zum Beispiel mit Meinungsmanipulation und Wahlbeeinflussungen via Internet auch in Europa, wie im Cambridge Analytica/Facebook-Skandal (Confessore 2018). Medial wird das betrieben durch Sprache. Begriffe und Inhalte werden okkupiert, verzerrt, umgedeutet und Zustimmung wird hergestellt. Das sehen wir weithin als politisches Programm mit „alternative facts" und „fake news" (Mackinnon / Gramer 2020): Wir erleben die Sprache der Macht und die Macht der Sprache.

III. Rechtsvergleichung: Sprachen, Werte und Wohlstand

1. Europäische Einheit und Vielfalt

Wo bleibt Europa? Die Europäische Union verbraucht sich mit andauernder Schuldenkrise, ungeordneter Armutsmigration, ungelösten Umweltfragen, Massenarbeitslosigkeit gerade unter Jugendlichen (Griechenland, Spanien, Italien, Kroatien, Zypern, Frankreich, Portugal),[9] den Wirkungen des Austritts von Großbritannien (Brexit; vgl. Frau 2020). Auch hier ist Sprache maßgebend. In der Europäischen Union herrscht, ungeachtet von Rechtsvorgaben, weithin Monolingualismus: In den Organen und Institutionen der Union (z.B. Kommission, Rat, EZB) prägt englische Sprachpraxis das Kommunikationsfeld überwältigend; allein der Europäische Gerichtshof in Luxemburg ist traditionell französischsprachig geprägt (vgl. C. Luttermann / K. Luttermann 2020: 34-68; Pingel 2017).

Andere Sprachen spielen am Rand – selbst Deutsch, die mit Abstand meistgesprochene Muttersprache in der Union. Besonders wirkt das Phänomen der Anglophonisierung, der angloamerikanisch seit Generationen

[9] Nach Daten für Juli 2018 (15-24 Jährige), abgerufen am 15.9.2018, unter: https://de.statista.com/statistik/daten/studie/74795/umfrage/jugendarbeitslosigkeit-in-europa. Letzter Zugriff 15.5.2021. Siehe dort auch aktuelle Daten.

geprägten Globalisierung (*Pax Americana*). Damit hat die Ökonomisierung aller Lebensverhältnisse rund um den Erdball gewaltig Raum gegriffen; strukturell über die Finanz- und Kapitalmärkte, auch mit der Geld- und Währungspraxis der Notenbanken (Fed, EZB). Seit Jahrzehnten ist die angloamerikanische Geschäftspolitik der (De-)Regulierung *à la* Wall Street und City of London im europäischen Binnenmarkt etabliert worden: eine Katastrophenwirtschaft privater Interessen, der Manipulation und Gier (vgl. C. Luttermann 2017a: 431-475 und 2015: 31-48; Stiglitz 2010; historisch Roberts / Keynaston 2002).

Die Auswirkungen erleben wir seit dem Fall der Investmentbank Lehman Brothers (2008) mit riesigen Rettungspaketen, Null- und Negativzinsen (sog. *quantitative easing*) zu Lasten der Steuerzahler und Sparer:[10] Private Spekulationsverluste werden sozialisiert. Sprache ist weltweit ein gewaltiges Lenkinstrument für Kapitalströme und Wohlergehen. Unsere Werte (Artikel 2, 3 EUV) und Gemeinschaft wanken zwischen „Einheit und Vielfalt" (Le Goff 1994: 58-59). Sprache wirkt dabei elementar, politisch instrumentalisiert und weithin unerkannt: Rechtsetzung und Praxis sind Quelle von Ungerechtigkeit und Niedergang unserer Rechtsgemeinschaft.

2. Rechtsmaßstab für Unternehmenspublizität

Ich zeige den Konnex anhand der Unternehmenspublizität (Rechnungslegung, Prüfung – sog. *disclosure*). Sie ist rechtlich und sprachlich das Instrument der Information im Umgang mit dem Geld anderer Leute (*other people's money*), d.h. elementar für Finanzierung, Bewertung und Existenz jeder Gesellschaft (vgl. C. Luttermann 2000). Ihr Mangel liegt im Kern unserer andauernden Schuldenkrise. Das betrifft jeden und jede der Millionen Kapitalgesellschaften (Artikel 49, 54 AEUV) sowie den Kern für europäische Wirtschaftskraft und Wohlstand.

Deutsches, europäisch reguliertes Bilanzrecht verlangt: Die gesetzlichen Vertreter der Kapitalgesellschaft (Vorstand, Geschäftsführer) müssen im

[10] Das deutsche Bundesverfassungsgericht hat – erstmals gegen den EuGH – entschieden am 5.5.2020, 2 BvR 859/15, NJW 2020, 1647, wegen mangelnder Kompetenz der Europäischen Zentralbank (EZB) bei deren Public Sector Purchase Programme (PSPP).

Jahresabschluss über die Vermögens-, Finanz- und Ertragslage „ein den tatsächlichen Verhältnissen entsprechendes Bild“ vermitteln (§ 264 Abs. 2 Satz 1 HGB, ständige Rechtsprechung seit EuGH, C-234/94, *Tomberger* – DE, ECLI:EU:C:1996:252*)*.[11] Diese Generalnorm entstammt wörtlich der deutschen Fassung der europäischen Bilanzrichtlinie.[12] Sie soll zum Schutz von Gesellschaftern und Dritten vergleichbare und gleichwertige Informationen in der Unternehmenspublizität im gesamten Binnenmarkt gewährleisten, da Kapitalgesellschaften in mehr als einem Mitgliedstaat tätig sind und über ihr Nettovermögen hinaus Dritten keinerlei Sicherheiten bieten.[13]

3. Variationen in Mitgliedsstaaten

Die Information wird sprachlich vermittelt (vgl. C. Luttermann 1999b, 2003: 276, 442-446). In der Union sind die Anforderungen authentisch in 24 Amtssprachen gesetzt (Vertragssprachen; Artikel 55 EUV, Artikel 342 AEUV). Allerdings variiert die Transformation der europarechtlichen Vorgabe: Im ebenfalls deutschsprachigen Österreich hat der Jahresabschluss „ein möglichst *getreues Bild* der Vermögens-, Finanz- und Ertragslage des Unternehmens zu vermitteln“ (§ 222 Abs. 2 Satz 1 UG). Das ist offenbar nicht bedeutungsgleich mit „ein den tatsächlichen Verhältnissen entsprechendes Bild“. Die Formulierung soll nach der österreichischen Regierungsbegründung den „international üblichen Begriff des ‚true and fair view‘“ übersetzen (vgl. C. Luttermann 2000: 177-181).

Das ist auch der Wortlaut der englischen Fassung der Bilanzrichtlinie („a true and fair view“), während niederländisch „een getrouw beeld“ gefordert wird. Das niederländische Transformationsgesetz bezieht maßgeblich den Leser ein: Er soll anhand des im Jahresabschluss vermittelten Einblicks eine verantwortliche Beurteilung vornehmen können (Artikel 2:362 I 1 Burgerlijk Wetboek; vgl. C. Luttermann 2003: 775-776). Das ver-

[11] Bestätigt jüngst in EuGH, Urteil vom 23.4.2020, C-640/18 (*Wagram Invest* – FR) ECLI:EU:C:2020:293.

[12] Artikel 4 Abs. 3 Satz 1 Richtlinie 2013/34/EU vom 26.6.2013 über den Jahresabschluss et al. – wie zuvor Artikel 2 Abs. 3 Jahresabschlussrichtlinie (78/660/EWG) vom 25.7.1978.

[13] Richtlinie 2013/34/EU (vorstehende Fn.), 3. und 16. Erwägung.

schiebt rechtswirksam erheblich die Gewichte: In den Niederlanden (bzw. Österreich) ist nur das „getreue Bild" der – weichere – Haftungsmaßstab.

4. Ratio legis und Rechtspraxis

In Deutschland wird für „ein den tatsächlichen Verhältnissen entsprechendes Bild" gehaftet (§ 322 Abs.1 Satz 3 HGB). Das ist – ähnlich wie im Italienischen („verietta e corretta") – eine juristisch scharfe Formulierung für die Gerichtsprüfung: Tatsachen sind dem Beweis zugängliche Vorgänge der Gegenwart und Vergangenheit. Verlangt wird also volle Nachprüfbarkeit der Information. Zukünftige Ereignisse, die bei Unternehmensbewertungen durch Prognosen werterhöhend einbezogen werden, sind so stark begrenzt (sog. Vorsichtsprinzip; vgl. C. Luttermann 2017b: 618-624). Der Europäische Gerichtshof spricht in deutscher Verfahrenssprache vom „Grundsatz der Bilanzwahrheit" (C. Luttermann 2003: 787-795).[14]

Dagegen nutzt angelsächsische Bilanzpraxis unter der Bezeichnung „true and fair view" mit beigelegten Zeitwerten (sog. ‚fair value/shareholder value') gewaltige Bewertungsspielräume. Sie stellen das Unternehmen durch willkürliche Erwartungen, in mathematischen Modellen „exakt" verpackt und viel „wertvoller" als tatsächlich nachprüfbar dar (grundsätzlich C. Luttermann 1999a). Die angelsächsische Bewertungstheorie mit ihren neoklassischen Bewertungsmodellen wird als Irrweg und Krisenverstärker erkannt (vgl. Hering / Olbrich / Rollberg 2010: 31-40). Derart massenhaft manipulierte Zahlenwerke befeuern die Schuldenkrise, die wir mit der Null- und Negativzinspolitik der Europäischen Zentralbank erleben (insg. C. Luttermann 2017a: 431-475).

[14] Bestätigt u.a. in EuGH, C-322/12 Urteil vom 3.10.2013 (*Gimle SA* – FR), ECLI:EU:C:2013:632, EuGH, Urteil vom 15.6.2017, C-444/16 (*Immo Chiaradia* – FR), ECLI:EU:C:2017:465 und EuGH, Urteil vom 23.4.2020, C-640/18 (*Wagram Invest* – FR) ECLI:EU:C:2020:293. Beachte § 41 VerfO EuGH.

IV. Rechtsgefälle: Hängen wir an Worten und Übersetzungen?

1. Ausgangsbefund

Halten wir für das Sprachenregime der Europäischen Union – und dessen Reform – fest, was die Beispiele zeigen: Die Regelung (Bewertung) von Lebenssachverhalten (hier: Vermögensgegenstände, ganze Unternehmen) kann an einzelnen Worten und Wendungen in den Rechtstexten hängen, gerade an deren Übersetzungen (vgl. C. Luttermann 1999b; Pescatore 1998: 1). Derart bieten die Rechtsgrundlagen kein rechtsstaatliches Maß, sondern verkommen zu Steinbrüchen der Beliebigkeit. Damit können Bewertungen und ganze Rechtskonzepte gemeinhin gebogen werden. Rechtspolitik ändert so Europarecht stillschweigend in der Umsetzung.

Es geht hier – wie in praktisch allen Lebensbereichen – um beachtliche Werte im Einzelfall, um Milliardenmärkte (Geschäftsmodelle) und um Rechtsstaatlichkeit insgesamt. Denn Marktakteure nutzen solches Rechtsgefälle zwischen Mitgliedstaaten im Binnenmarkt. Spezialisten fahnden in den 24 als *authentisch* geltenden Sprachfassungen einer europäischen Regulierung (Rechtsnorm) nach der günstigsten Fassung für die Rechtswahl (sog. *forum shopping*). Damit wirkt eine der Sprachfassungen faktisch maßgebend (sog. *language shopping*).

2. EuGH, Rechtssprachenvergleich und Rechtseinheit

Der Europäische Gerichtshof hat für die Rechtseinheit (Artikel 19 Absatz 1 Satz 2 EUV) wegweisend den Rechtssprachenvergleich fixiert (vgl. C. Luttermann 1998: 264). Dabei sind theoretisch alle Sprachfassungen systematisch nicht nur an der Textoberfläche (Wortlaut), sondern in ihrem Gehalt (Konzept) ganzheitlich interkulturell zu vergleichen. Doch das geschieht tatsächlich nicht, allenfalls werden wenige Sprachfassungen verglichen (insg. C. Luttermann / K. Luttermann 2020: 47-68; vgl. Azoulai 2009).

Jedenfalls ist der Aufwand bis zu einer Entscheidung groß (im Bilanzrecht sind es rund zehn seit der Jahresabschlussrichtlinie 78/660/EWG). Beim Gerichtshof, wo rechtsgrundlos Französisch herrscht, gilt verbindlich nur

die Urteilsfassung in der – vom Kläger gewillkürten – Verfahrenssprache (Artikel 37, 41 VerfO EuGH; vgl. K. Luttermann 2007 und 2017). Damit mangeln einheitliche Rechtsregeln für fairen Leistungswettbewerb im Binnenmarkt. Der Bürger trägt das Sprachenrisiko.

3. Zwischenfazit

Die Herrschaft des Rechts (*rule of law*) gründet auf klaren Regeln (Bestimmtheit): Rechtsbegriffe scheiden die Willkür vom Recht. Und wo das Recht endet, beginnt – wie beschrieben – die Tyrannei (vgl. Locke 1689: Kap. XVIII, Abschnitt 202). Bedenken wir: Sprache und Übersetzung sind kräftige Lenkinstrumente. Die gezeigte Darstellung von Kapitalgesellschaften ist maßgebend für Entscheidungen über Investitionen von Milliardenbeträgen. Sprache lenkt mithin Kapitalströme weltweit: Wo das Kapital hinfließt, blühen Innovation, Arbeitsplätze und Wohlstand. Das zeigt: Das bisherige Sprachenregime mit 24 authentisch gesetzten, tatsächlich aber verschiedenen Vertrags- und Amtssprachen (= 552 Sprachkombinationen; vgl. C. Luttermann / K. Luttermann 2020: 18-20) ist rechtsstaatlich längst schon überfordert.

V. Das Referenzsprachensystem für Europa

1. Rechtsgleichheit durch Sprachenrecht

Nötig ist ein sinnvolles Sprachenrecht. Es muss die Rechtseinheit, die Gleichheit der Menschen im Europarecht und kulturelle Vielfalt wahren. Das Europäische Referenzsprachensystem bietet die Basis (vgl. C. Luttermann / K. Luttermann 2020): als ein interkulturell rechtslinguistisches Kommunikationssystem für den vielsprachigen Staatenbund, das im Europarecht einheitliche Rechtsetzung, Übersetzung und Vollzugskontrolle sichert.

Es verkürzt nicht – wie sonstige Reformvorschläge – auf eine oder mehrere der Vertragssprachen (vgl. Artikel 55 EUV). Es bildet aus allen Vertragssprachen ein kommunizierendes System mit europäischen Referenzsprachen und mitgliedstaatlichen Amtssprachen. Indem es diese respektiert,

können die Unionsbürger ihre Rechte und Pflichten weithin muttersprachlich verstehen und wahrnehmen. Die Mitgliedstaaten werden gestärkt (Artikel 5 EUV; siehe 3.).

2. Europäische Referenzsprachen

Der Ausgangspunkt sind zwei Referenzsprachen auf Unionsebene. Ein Rechtsakt ist in den beiden Referenzsprachen von Juristen, Linguisten und Übersetzern auszuarbeiten. Dabei sind die Rechts- und Sprachfragen verbindlich und rechtssicher für die Union zwischen den Referenzsprachen vergleichend im Ganzen zu beantworten. Das ermöglicht und erzwingt schon im Ansatz die *Über*-setzung (lat. *translatio*), bildlich das Hinübertragen des Sinngehaltes zwischen den Sprachen. Gefordert wird mehrdimensionales Denken, in dem wir eigene Sprachmuster (Schablonen) prüfen, um im Ergebnis die zu regelnde Sachfrage klar zu (er-)fassen. Das ist methodisch der Rechtssprachenvergleich als Mittel für interkulturelles Verständnis und Verständigung.

Die Referenzsprachen haben die gleiche Maßgeblichkeit: Sie sind authentisch und rechtsverbindlich und drücken das gemeinsame Recht einheitlich aus. Sie treten supranational aus dem Kreis der bisherigen Vertrags- und Amtssprachen hervor, *ohne* zugleich *eine* Sprache hegemonial auszuprägen. Rechts- und Sprachfragen bei der Auslegung des *Europarechts* sind verbindlich für die gesamte Union zwischen den beiden Referenzsprachen vergleichend zu lösen.

3. Subsidiarität: Rückbindung und Bürgernähe

Damit werden die Amtssprachen der Mitgliedstaaten, die keine Referenzsprachen sind, nicht überflüssig oder einfach – wie in anderen Reformmodellen (z.B. Ein- oder Drei-Sprachen-Modelle) – ausgegrenzt. Vielmehr erweitern sie systematisch die referenzielle Zweisprachigkeit: Jeder Mitgliedstaat der Union verantwortet, die europäischen, referenzsprachlich verfassten Rechtstexte jeweils für seine Bürger in die landessprachliche, also nationale Amtssprache (Muttersprache), rechtssicher und verständlich zu übersetzen (vgl. K. Luttermann 2017: 503). Das stärkt die Nähe Europas

zu seinen Bürgern sowie die Eigenverantwortung der Mitgliedstaaten im Sinn der Subsidiarität, die europarechtlich vorgeschrieben ist (Artikel 5 EUV).

Das bedeutet für den Sprachengebrauch im Bereich der Regulierung: Nur von den Referenzsprachen darf in die Muttersprachen übersetzt werden, nicht umgekehrt. So können auch die nicht-referenzsprachlichen Fassungen in ihrer Übereinstimmung mit den Referenzsprachen als authentisch gelten. Das gewährt eine zweite, bürgernahe Prüfebene, systematisch mit Rückmeldung und Prüfung für gebotene Korrekturen auf der europäischen Ebene. Wechselseitig ergänzen sich die Referenzsprachen (auf supranationaler Ebene) und die Referenz- und Muttersprachen (im Verhältnis zu den Mitgliedstaaten) für Rechtssicherheit und Transparenz.

Das löst die komplexe Sprachsituation der Union: Alle ihre Sprachen sind eingebunden, was die Gefahr von Divergenzen erheblich verringert (vgl. Engberg 2009: 190; Schübel-Pfister 2007: 169). Dabei kann der Übersetzungsdienst der Europäischen Union als Kompetenzzentrum entwickelt werden, nutzbar für Organe der Union und Mitgliedstaaten in Fragen der Übersetzung und Auslegung bis hin zum Europäischen Gerichtshof; ihm obliegt in verbleibenden Zweifelsfragen die Letztentscheidung (Artikel 19 Absatz 1 Satz 2 EUV).

4. Mehrperspektivität statt Monokultur

Dieses System aus Referenz- und Muttersprachen meidet eine Monokultur im Denken und Handeln, wie sie längst durch die erdrückende, rechtsgrundlose Dominanz des Englischen in der Union herrscht. Zu bedenken ist: Textproduktion und Textrezeption brauchen in der Union Mehrperspektivität (Übersetzung; siehe Cosmai 2014; Simonnæs 2019). Die Vielfalt struktureller und semantisch-konzeptueller Einflüsse von Sprachen und Rechtskulturen bereichert die Lebensverhältnisse. Das ist für die nötige Rechtseinheit (Rechtsschutz) methodisch maßgebend im Ganzen und zügelt einseitige Rechtspolitik. Das Europarecht kann so für den Binnenmarkt in der jeweiligen Muttersprache wirken. Nicht allein, sondern eben

– rechtsstaatlich (siehe VI.2) – sinnvoll gesichert durch die gleichermaßen verbindlichen Referenzsprachen.

VI. Die Referenzsprachen, Rechtsstaatlichkeit und Bildung

1. Demokratieprinzip

Das Europäische Referenzsprachensystem bestimmt die Referenzsprachen mit dem demokratischen Prinzip der Mehrheit. Der Europäische Gerichtshof hält den Ansatz, die Sprachenwahl auf die „bekanntesten" Unionssprachen zu begrenzen, gemeinhin für „sachgerecht und angemessen" (EuGH, C-361/01 P, *Kik* – NL, Rn. 94, ECLI:EU:C:2003:434). Die meisten Mutter- und Fremdsprachler zählen (vor dem Brexit) für Englisch und Deutsch, welches eindeutig die meisten Muttersprachler hat. Damit liegt Deutsch nach dem Brexit auch in Summe mit den Fremdsprachlern vorne; muttersprachlich folgen dann – untereinander fast gleichauf – Italienisch und Französisch, das jedoch mehr Fremdsprachler hat.[15] Die Referenzsprachen sind mithin Deutsch und wohl insgesamt auch Französisch.

2. Rechtsstaatsprinzip

Das Europäische Referenzsprachensystem stärkt – wie schon gezeigt – die Mitgliedstaaten und ihre Bürger. Besondere Beachtung gehört dabei den europarechtlichen Geboten der Rechtsstaatlichkeit (Artikel 2 EUV) und der Subsidiarität (Artikel 5 EUV). Beide sind wesentlich miteinander verknüpft – gerade auch durch die Sprache: Die Mitgliedstaaten übertragen im Prinzip der Subsidiarität politisch nur begrenzt einen Ausschnitt ihrer nationalen Souveränität in die Kompetenz der supranationalen Union (vgl. Artikel 4 Absatz 1 EUV, Artikel 2 bis 6 AEUV).[16]

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[15] Eurobarometer Spezial 243 (2006) und Eurobarometer Spezial 386 (2012). Daten bleiben für die Bestimmung der Referenzsprachen zu aktualisieren, siehe C. Luttermann / K. Luttermann (2020: 124, dort Fn. 8).

[16] Das deutsche Bundesverfassungsgericht hat – erstmals gegen den EuGH – entschieden am 5.5.2020, 2 BvR 859/15 et al., NJW 2020, 1647, wegen mangelnder Kompetenz der Europäischen Zentralbank (EZB) bei deren Public Sector Purchase Programme (PSPP).

Folglich darf die Europäische Union (im Volksmund: „Brüssel“) keine weitergehende Macht (sog. Kompetenz-Kompetenz, Artikel 5 EUV) für sich ergreifen – wozu Zentralismus leider neigt. Praktisch hängt die Abgrenzung, d.h. die Bestimmung des Umfangs der Kompetenzübertragung, im Grunde wie im konkreten Fall an Sprache und Übersetzung (Normenklarheit). Das ist die rechtsstaatliche Basis unserer – föderal geordneten – Europäischen Union. Zeitlos mahnt uns erneut John Locke: Wo immer das Recht ende, beginne die Tyrannei (Locke 1689: Kap. XVIII, Abschnitt 202). Das betrifft den Mythos einer *Lingua franca*, denn in europäischen Institutionen entsteht ein Vokabular, „that differs from that of any recognised form of English“, teils bei englischen Muttersprachlern unbekannt (Europäischer Rechnungshof 2016).

Dazu gehört auch: Englisch, seit dem Beitritt Großbritanniens 1973 eine Vertragssprache der Europäischen Union gemäß Artikel 55 EUV (*actus primus*), hat konsequent mit dem Austritt des Mitgliedstaates aus der Union diesen Status verloren (*actus contrarius*). Kein anderer Mitgliedstaat repräsentiert die englische Sprache *post* Brexit – weder im juristischen noch im mehrheitlichen Sinn: Irland mit etwa 5 Millionen Muttersprachlern brachte Irisch (Gälisch) in die Union, Malta mit rund 500.000 Muttersprachlern wählte Maltesisch als Vertragssprache. Englisch wirkt wie ein Irrlicht (Eurospeak, Pidgin English), die Sprache auswärtiger Macht.

3. Bildung und Integration durch Sprachkultur

Im föderalen Gefüge der Union treten Regeln zum Schutz der eigenen Kultur und Sprache hervor, wie in Frankreich (z.B. *Loi Toubon*), das traditionell der Anglophonisierung trotzt. Diese wirkt befremdlich, besonders nach dem Brexit, da Englisch in der Union nur noch eine Minderheit muttersprachlich repräsentiert und eben sein Vertragssprachenstatus entfällt (siehe oben VI.2). Dies ist weithin noch nicht realisiert worden. Vernünftig praktiziert kann das unser Gemeinwesen fördern. Kernelement ist der Bildungsbereich.

Italiens Verfassungsgericht stärkt Hochschullehrer gegen englisches Übermaß. Einige hatten gegen eine Verpflichtung geklagt, ihre Kurse in Englisch zu halten. Die obersten Richter Italiens gaben ihnen Recht: Andere Sprachen als die „unica lingua ufficiale" dürfen nicht alternativ zur italienischen Sprache gesetzt werden; die Verpflichtung, in einer anderen Sprache als der Muttersprache (*lingua materna*) zu unterrichten, hindere die Freiheit, die Inhalte des Denkens bestmöglich zu verbreiten (Corte Costituzionale, Sentenza 42/2017, 21.2.2017, Gazzetta Ufficiale 01/03/2017 n. 9, ECLI:IT:*COST*:2017:42). Das bezeichnet keinen engstirnigen Nationalismus, vielmehr sinnvolle Praxis. Das niederländische Parlament stoppt ebenso englisches Übermaß an den Hochschulen zugunsten der niederländischen Sprache und ihrer Kultur (Wet taal en toegankelijkheid, 35.282; vgl. dazu Jansen 2020).[17]

Europa lebt – institutionell wie ökonomisch – von dieser Vielfalt. Das deutsche Bundesverfassungsgericht bekräftigt die deutsche Identität (Budgethoheit des Bundestages etc.) und fixiert zur Mitwirkung an der europäischen Integration zum Vertrag von Lissabon: In Deutschland müsse ausreichend Raum zur politischen Lebensgestaltung bleiben, die besonders auf „kulturelle, historische und sprachliche Vorverständnisse angewiesen" sei, mit der Verfügung über die Sprache und die Bildungsverhältnisse; demokratische Selbstbestimmung baue darauf, sich im eigenen Kulturraum verwirklichen zu können. Die Verfassungsrichter sehen die deutsche Sprache generell als unabdingbar für die demokratische Teilhabe am europäischen Integrationsprozess (zum Vertrag von Lissabon: BVerfG, 2 BvE 2/08, BVerfGE 123, 267, Rdnr. 249).

VII. Rechtslinguistik für Europa

Diese souveräne Basis der Mitgliedstaaten begrenzt und kontrolliert rechtsstaatlich die Integration im Sinn der Subsidiarität (Artikel 5 EUV). Sie kennzeichnet die europäische Einheit in Vielfalt für die Europäische

[17] Kamerstuk (1.9.2020), unter: https://zoek.officielebekendmakingen.nl/kst-35282-F.html. Letzter Zugriff 15.5.2021.

Union als Leitidee der Rechtsgemeinschaft. Erforderlich für die Umsetzung sind ein sinnvolles, klares Recht und getreue Übersetzung (Europarecht). Im Grunde geht es für die Union – wie für jedes Gemeinwesen in Freiheit – um den „wahren Zweck des Menschen“: die ganzheitliche Bildung seiner Kräfte (Humboldt 1792: Kap. II; vgl. Mill 1859: Kap. I). Sie wird sprachlich vermittelt. Das Gebot demokratischer Teilhabe und Kontrolle ist Verständlichkeit (Transparenz).

Der Rechtsstaat beginnt mit klarer Rechtsetzung und endet, wo diese nicht gewährt ist. Es geht um Gerechtigkeit, Bürgerkommunikation und Integration, um klare Sprache für Wohlergehen insgesamt (vgl. K. Luttermann: in diesem Buch). Das ist das Gebiet der Rechtslinguistik als Disziplin. Sie muss umfassend gestaltet und entwickelt werden. Dazu gehört im mehrsprachigen wie einsprachigen Handlungskontext, dass Linguisten und Juristen sowie jeweils weitere Fachvertreter gemeinsam den Rahmen für Rechtsklarheit mehrperspektivisch ausloten: also Recht korrekt und spezifisch formulieren, sodass Kommunikation gelingt und Rechtsstaatlichkeit gewahrt wird. Die Rechtslinguistik arbeitet humanistisch, interdisziplinär, interkulturell, kontrastiv und offen für diese Klarheit (Rechtssicherheit). Mit Karin Luttermann habe ich dafür konzeptionell Grundlagen und Perspektiven formuliert (vgl. C. Luttermann / K. Luttermann 2020: 201-233).

Das Europäische Referenzsprachensystem kann damit für die Menschen und Institutionen unseres vielsprachigen Staatenbundes – digital gestützt – einen rechtslinguistischen Kommunikationsmodus etablieren: ein System, das – mit dem nötigen Sinn in den bezeichneten Grenzen – einheitlich Europarecht in Rechtsetzung, Übersetzung und Vollzugskontrolle gewährt. Einher gehen vielfältige Aufgaben, Forschungsfragen und Chancen. Jedoch gibt es – ein Armutszeugnis – in Deutschland noch immer keinen Lehrstuhl für Rechtslinguistik. Die friedliche Gemeinschaft und das Wohlergehen der sprechenden Menschen sind mehr Anstrengung wert.

VIII. Europäische Identität: Zur Sprachenrechtsreform

Die Lebensverhältnisse drängen zur Lösung der Sprachenfrage. Wir erleben epochale Umbrüche und autokratischer Zentralismus greift Raum. Dagegen gehören zur Europäischen Union als Rechts- und Wertegemeinschaft der Bürger Mehrsprachigkeit und Übersetzung (vgl. Cosmai 2014 und 2019). Das Europäische Referenzsprachensystem bietet dafür die Basis. Es schafft – ohne hegemoniale Verengung auf eine Sprache (Rechtswelt) oder die Ausschließlichkeit weniger Sprachen – mit allen Vertragssprachen der Union ein klares Europarecht: ganzheitlich im Wege der vergleichenden Wissenschaft mit der Disziplin der Rechtslinguistik.

Der einheitliche Standard wird dabei rechtssprachenvergleichend durch zwei Referenzsprachen gebildet und demgemäß in die Amtssprachen der Mitgliedstaaten übersetzt. Das wahrt den muttersprachlichen Zugriff auf das Europarecht, steuert gegen eine Monokultur im Denken und stärkt Rechtssicherheit und Effizienz. Damit wird Rechtsstaatlichkeit gelebt, werden Gemeinschaft und individuelle Vielfalt in Einklang gebracht (Subsidiarität, Artikel 5 EUV) für ein friedliches Wohlergehen der Menschen. Dazu wurde schon im Jahre 2004 zur Osterweiterung der Europäischen Union das Referenzsprachenmodell vorgelegt (vgl. C. Luttermann / K. Luttermann 2004; dazu Engberg 2009: 190). Dieses ist mit der Rechtslinguistik ausgebaut worden im Referenzsprachensystem als Sprachenrecht für die Europäische Union (vgl. C. Luttermann / K. Luttermann 2020).

Eine Sprachenrechtsreform für die Union tut Not. Sprache wirkt als die „Urwissenschaft“ (Ortega y Gasset 1983: 50-51), womit – statt grassierender Vereinzelung – die Universalität der Wissenschaft zu fördern ist. Es geht um die Zukunft des Gemeinwesens. Bedenken wir diese Aufgabe für die Menschen und Bürger Europas: In den Rechtstexten ist der Rechtsgehalt (*ratio legis*) einheitlich auszudrücken. Nur wenn alle Sprachversionen im täglichen Leben die gleiche Rechtswirkung in den Mitgliedstaaten entfalten, kann „europäische Verständlichkeit“ (K. Luttermann 2002: 110) gedeihen. Mehrsprachigkeit, sinnvoll geordnet, ist das Schlüsselkonzept für

die Identität und Zukunft einer Europäischen Union: für unsere starke Einheit in Vielfalt.

IX. Literatur

Azoulai, Loïc. 2009. La jurisprudence de la Cour de justice des Communautés européennes et le paradigme de la traduction. In: Antoine Bailleux / Yves Cartuyvels / Hugues Dumont / François Ost (Hrsg.), *Traduction et droits européens. Enjeux d'une rencontre*. Brüssel: Open Edition Books, 181-199.

BBC (British Broadcasting Corporation). 2017. *Bericht über den 19. Kongress der KP China*, vom 18.10.2017. https://www.bbc.com/news/world-asia-china-41647872. Letzter Zugriff 15.5.2021.

Brössler, Daniel. 2017. China macht sich Osteuropa gefügig. In: *Süddeutsche Zeitung*, vom 28.11.2017. https://www.sueddeutsche.de/politik/china-osteuropa-gipfel-china-macht-sich-osteuropa-gefuegig-1.3767521. Letzter Zugriff 15.5.2021.

Confessore, Nicholas. 2018. Cambridge Analytica and Facebook. The scandal and the fallout so far. In: *The New York Times*, vom 4.4.2018. https://www.nytimes.com/2018/04/04/us/politics/cambridge-analytica-scandal-fallout.html. Letzter Zugriff 15.5.2021.

Cosmai, Domenico. 2014. *The language of Europe. Multilingualism and translation in the EU institutions. Practice, problems and perspectives*. Brüssel: Editions de l'Université de Bruxelles.

Cosmai, Domenico. 2019. The quest for a common rhetoric. Creating EU discourse through translation. In: Karin Luttermann / Kerstin Kazzazi / Claus Luttermann (Hrsg.), *Institutionelle und individuelle Mehrsprachigkeit*. Münster: Lit, 65-89.

Deuber, Lea / Konrad Fischer. 2016. Was chinesische Investoren in Deutschland wollen. In: *Wirtschaftswoche*, vom 12.7.2016. https://www.wiwo.de/politik/ausland/globalisierung-was-chinesische-investoren-in-deutschland-wollen/13841770.html. Letzter Zugriff 15.5.2021.

Engberg, Jan. 2009. Durchschaubarkeit durch Vielfalt. Vorteile eines mehrsprachigen Rechtssystems und ihre linguistische Beschreibung. In: *Muttersprache* 119 (3), 181-191.

EU-Kommission. 2020. *Kommission will Ausverkauf strategischer Unternehmen in der Coronakrise verhindern*. Pressemitteilung vom 26.3.2020. https://ec.europa.eu/germany/news/20200326-strategische-unternehmen-coronakrise_de. Letzter Zugriff 15.5.2021.

Eurobarometer Spezial 243. 2006. *Die Europäer und ihre Sprachen*, von Februar 2006. http://docplayer.org/17572714-Die-europaeer-und-ihre-sprachen.html. Letzter Zugriff 15.5.2021.

Eurobarometer Spezial 386. 2012. *Die europäischen Bürger und ihre Sprachen*, von Juni 2012. https://docplayer.org/13808216-Die-europaeischen-buerger-und-ihre-sprachen. Letzter Zugriff 15.5.2021.

Europäischer Rechnungshof (European Court of Auditors). 2016. *Misused English words and expressions in EU publications*, vom 25.5.2016. https://www.eca.europa.eu/Other%20publications/EN_TERMINOLOGY_PUBLICATION/EN_TERMINOLOGY_PUBLICATION.pdf. Letzter Zugriff 15.5.2021.

European Chamber of Commerce. 2020. *The road less travelled. European involvement in China's belt and road initiative*, vom 16.1.2020. https://europeanchamber.com.cn/en/publications-archive/762/The_Road_Less_Travelled_European_Involvement_in_China_s_Belt_and_Road_Initiative. Letzter Zugriff 15.5.2021.

Frau, Robert. 2020. *Das Brexit-Abkommen und Europarecht*. Baden-Baden: Nomos.

Hering, Thomas / Michael Olbrich / Roland Rollberg. 2010. Zur angelsächsischen Bewertungstheorie als Mitursache der Finanzkrise. In: Frank Keuper / Fritz Neumann (Hrsg.), *Corporate governance, risk management und compliance*. Wiesbaden: Gabler, 31-40.

Humboldt, Wilhelm von. 1967 [1792]. *Ideen zu einem Versuch, die Grenzen der Wirksamkeit des Staats zu bestimmen*. Stuttgart: Reclam.

Jansen, Carel. 2020. Taal en toegankelijkheid. Over de consequenties van een nieuwe wet voor Nederlands in het hoger onderwijs. In: *Internationale Neerlandistiek* 58, 1-4.

Kissinger, Henry. 2016. Realpolitik. In: Chris J. Magoc / David Bernstein (Hrsg.), *Imperialism and expansionism in American history. A social, political, and cultural encyclopedia and document collection*. Santa Barbara: ABC-CLIO, 1234-1237.

Le Goff, Jacques. 1994. *Das alte Europa und die Welt der Moderne*. München: Beck.

Locke, John. 1689. *Second treatise of civil government*. London: Awnsham Churchill.

Luttermann, Claus. 1998. Die "mangelhafte" Umsetzung europäischer Richtlinien. Zugleich Besprechung des EuGH in der Rechtssache Daihatsu. In: *Europäische Zeitschrift für Wirtschaftsrecht* 1, 264-268.

Luttermann, Claus. 1999a. *Bilanzrecht in den USA und internationale Konzernrechnungslegung*. Tübingen: Mohr Siebeck.

Luttermann, Claus. 1999b. Die bilanzrechtliche Generalnorm im europäischen Sprachenspiel. Eine Verlaufsstudie zur Rechtspolitik. In: Gerard-René de Groot / Reiner Schulze (Hrsg.), *Recht und Übersetzen*. Baden-Baden: Nomos, 115-123.

Luttermann, Claus. 2000. Perspektiven der Rechnungslegung und Unternehmenskontrolle. Jurisprudenz auf nationalen und internationalen Märkten. In: *Österreichische Zeitschrift für Rechtsvergleichung (ZfRV – Zeitschrift für Europarecht, Internationales Privatrecht und Rechtsvergleichung)* 41 (5), 177-181.

Luttermann, Claus. 2003. Bilanzrecht der Aktiengesellschaft. In: *Münchener Kommentar zum Aktiengesetz*. 2. Auflage. Band 5/1. München: Beck.

Luttermann, Claus. 2015. Corporate law and the Vermoegensordnung (order of assets). In: *European Business Law Review* 26, 31-48.

Luttermann, Claus. 2017a. Banking on trust as individual responsibility. Corporate finance, speculation and global capital markets. In: Jean Du-Plessis / Bernhard Großfeld / Claus Luttermann / Ingo Saenger / Otto Sandrock / Matthias Casper (Hrsg.), *German corporate governance in international and European context*. 3. Auflage. Berlin: Springer, 431-475.

Luttermann, Claus. 2017b. Juristische Anforderungen an eine ordnungsmäßige Unternehmensbewertung und an ein Bewertungsgutachten. In: Karl Petersen / Christian Zwirner (Hrsg.), *Handbuch Unternehmensbewertung*. 2. Auflage. Köln: Bundesanzeiger, 609-637.

Luttermann, Claus. 2017c. VR China. Neues Foreign Investment Law and Gold Trade Notes. In: *Recht der Internationalen Wirtschaft* 63, 255-263.

Luttermann, Claus / Karin Luttermann. 2004. Ein Sprachenrecht für die Europäische Union. In: *Juristenzeitung* 59, 1002-1010.

Luttermann, Claus / Karin Luttermann. 2007. IFRS, Kultur und Internet. Eine ‚Weltsprache' der Rechnungslegung? In: *Recht der Internationalen Wirtschaft* 53, 434-440.

Luttermann, Claus / Karin Luttermann. 2020. *Sprachenrecht für die Europäische Union. Wohlstand, Referenzsprachensystem und Rechtslinguistik*. Tübingen: Mohr Siebeck.

Luttermann, Karin. 2002. Der Diebstahlstatbestand im Verständlichkeitstest. Deutsches Strafrecht und europäischer Kontext. In: Lars Eriksen / Karin Luttermann (Hrsg.), *Juristische Fachsprache, Kongressberichte des 12th European Symposium on Language for Special Purposes*. Münster: Lit, 95-114.

Luttermann, Karin. 2007. Mehrsprachigkeit am Europäischen Gerichtshof. Das Referenzsprachenmodell für ein EU-Sprachenrecht. In: Dorothee Heller / Konrad Ehlich (Hrsg.), *Studien zur Rechtskommunikation*. Bern: Lang, 47-80.

Luttermann, Karin. 2017. Multilingualität im europäischen Rechtsdiskurs. In: Ekkehard Felder / Friedemann Vogel (Hrsg.), *Handbuch Sprache im Recht*. Berlin: de Gruyter, 486-505.

Mackinnon, Amy / Robbie Gramer. 2020. The Russian election hack that wasn't (this time). Viral Russian report shows it's still too easy to fall for misinformation online. In: *Foreign Policy*, vom 2.9.2020. https://foreignpolicy.com/2020/09/02/russia-election-hack-false-misinformation-voter-information/. Letzter Zugriff 15.5.2021.

Mill, John Stuart. 2009 [1859]. *On liberty*. Stuttgart: Reclam.

Ortega y Gasset, José. 1983. *Miseria y Esplendor de la Traducción – Elend und Glanz der Übersetzung*. München: Dt. Taschenbuch Verlag.

Pescatore, Pierre. 1998. Recht in einem mehrsprachigen Raum. In: *Zeitschrift für Europäisches Privatrecht* 6, 1-12.

Pingel, Isabelle. 2017. Le Brexit et le régime linguistique des institutions de l'Union européenne. In: *Revue trimestrielle de droit européen* 53, 657-663.

Roberts, Richard / David Keynaston. 2002. *City state. A contemporary history of the City of London and how money triumphed*. London: Profile Books London.

Schübel-Pfister, Isabel. 2007. Chancen und Risiken einer multilingualen Rechtsgemeinschaft. Resümee. In: Roswitha Fischer (Hrsg.), *Herausforderungen der Sprachenvielfalt in der Europäischen Union*. Baden-Baden: Nomos, 165-172.

Simonnæs, Ingrid. 2019. Das Übersetzen von Rechtstexten unter dem Aspekt der individuellen Mehrsprachigkeit des Übersetzers. Eine Fallstudie im Sprachenpaar Norwegisch-Deutsch. In: Karin Luttermann / Kerstin Kazzazi / Claus Luttermann (Hrsg.), *Institutionelle und individuelle Mehrsprachigkeit*. Münster: Lit, 111-142.

Stickel, Gerhard (Hrsg.). 2014. *Translation and interpretation in Europe. Contributions to the Annual Conference 2013 of EFNIL in Vilnius*. Frankfurt am Main: Peter Lang.

Stiglitz, Joseph E. 2010. *Freefall. America, free markets, and the sinking of the world economy*. New York, NY: Norton & Company.

Gesetzesquellen

[AEUV] 2009, Vertrag über die Arbeitsweise der Europäischen Union, Fassung aufgrund des am 1.12.2009 in Kraft getretenen Vertrages von Lissabon.

[Burgerlijk Wetboek] 2020, Zivilgesetzbuch der Niederlande, Fassung vom 01.01.2020.

[EuGH VerfO] 2012, Satzung und Verfahrensordnung EuGH/EuG, Ausfertigungsdatum 25.09.2012, zuletzt geändert: 26.11.2019.

[EUV] 2012, EU-Vertrag. Vertrag über die Europäische Union. Fassung aufgrund des am 1.12.2009 in Kraft getretenen Vertrages von Lissabon, zuletzt geändert: 24.4.2012.

[HGB] 2020, Handelsgesetzbuch (HGB), Ausfertigungsdatum 10.05.1897, zuletzt geändert: 19.6.2020.

[UG] 2020, Bundesgesetz über besondere zivilrechtliche Vorschriften für Unternehmen (Unternehmensgesetzbuch – UGB), Republik Österreich, Fassung vom 22.10.2020.

Abkürzungsverzeichnis

BVerfG	Bundesverfassungsgericht
BVerfGE	Amtliche Sammlung der Entscheidungen des BVerfG
CEEC	Cooperation between China and Central and Eastern European Countries
COSCO	China Ocean Shipping Company
ESM	Europäischer Stabilitätsmechanismus
EU	Europäische Union
EuGH	Europäische Gerichtshof
EWG	Europäische Wirtschaftsgemeinschaft
EZB	Europäische Zentralbank
Fed	Federal Reserve System (Zentralbank-System der Vereinigten Staaten)
FR	Französisch
IWF	Internationaler Währungsfond
NJW	Neue Juristische Wochenschrift
OBOR	One Belt, One Road
PSPP	Public Sector Purchase Programme
Rdnr.	Randnummer

Karin Luttermann

Clear Language: Legal Linguistics as a Discipline for Comprehensible Communication in Law

Abstract

Legal communication is often regarded as incomprehensible and is subject to public criticism. It is in the nature of the idea of democracy that citizens have access to laws and know their rights and obligations, in order to be able to take part in social life. However, there is a lack of studies empirically determining what intended addressees are actually able to understand. The present contribution can fill this gap, dealing with the question of how legal linguistics may contribute to comprehensible communication in law. With the Legal-Linguistic Comprehensibility Model, language use that is adequate regarding topic and addressees is explored methodologically and illustrated with the help of examples (penal law, civil law). In a perspectival comparison between experts and lay persons, the task for legal linguists becomes clear: to strive for Clear Language, comprehensibility and legal security.

I. Introduction

How do we want to communicate successfully without *Clear Language*?[1] – In linguistic pragmatics the term *communication* serves to describe the use of language and the functions of the ways humans act in order to understand each other. The noun comes from L. *communicatio*, meaning 'message' and 'doing something together'. Communication is broader than language, comprising not only linguistic signs, but also paralinguistic and non-verbal signs as well as interaction (cf. K. Luttermann 2017: 217-218). The level of interaction concerns understanding between text producer and

[1] This paper was presented at the ÖGRL conference in German. It is published here in English as a sign of fellowship with the people of Great Britain after Brexit.

recipient, in specialist communication knowledge transfer between experts and lay persons.[2]

The linguistic concept of understanding in pragmatics is not a technical-mathematical transfer process of input and output (cf. Shannon / Weaver 1949). Rather, human communication is characterized by information being expressed through signs (linguistic signs, pictogrammes, images) and the communicants negotiating semantic meaning. Thus, understanding is to be seen in the sense of comprehensibility (text) and comprehension (recipient). Not only the text producer, but also the recipient takes on an active role by making an effort to understand what is being conveyed. On the basis of their knowledge, the text recipient can start the process of interpreting. The goal is a consensual way of understanding the text (producer and recipient).

The article deals with legal language use. It centers around the question of how applied linguistics may contribute to comprehensible legal communication. Proceeding from specifics of specialist and legal language (sections II to IV), the concept of *Clear Language* is developed within the framework of pragmatics (section VI). With the Legal-Linguistic Comprehensibility Model[3] (section V) adequate language use between the interactants is explored with the help of examples (section VII). Finally, legal linguistics is delineated as a discipline (section VIII).

II. Expert-lay-communication

Since the 1970s, comprehensibility has been part of the "genuine research area of linguistics" (Heringer 1979: 261).[4] Comprehensibility research moved into the linguistic field of research within the framework of first text-grammatical and, since the 1980s, also communicative-pragmatic

[2] The term *experts* is used in the sense of professionals (e.g. judges, lawyers) who have studied law, whereas the term *lay person* concerns the average citizen, i.e. the averagely intelligent person informed about law; see section IV.2.

[3] In earlier publications, the Gm. term *Rechtslinguistisches Verständlichkeitsmodell* was translated as *Comprehensibility Model of Legal Language*.

[4] All quotations have been translated by the author.

orientation and has led to various comprehensibility models (e.g. Hamburg Model, Karlsruhe Model, Krems Model, Legal-Linguistic Comprehensibility Model). Two models with special relevance for the conception of *Clear Language* (section VI) will be treated below in more detail in sections IV.3 and V.

The question of the comprehensibility of texts is closely connected to research on language for specific purposes (for an overview see K. Luttermann / Schäble 2016: 401-403; Roelcke 2020: 11-31). The first phase to be mentioned is the system-linguistic phase (1950s to 1970s), which sees specialist language as a system of linguistic signs and focuses on the lexical inventory and the syntactic rules that specialist utterances follow. The pragmalinguistic phase (1980s to 1990s) treats specialist language as textual utterances conducted in a specialist context and under certain conditions. In the cognition-linguistic phase (since the 1990s), intellectual competences and the motivation of producers and addressees themselves have moved to the foreground of investigation. Within this model they are of equal significance.

As specialist communication serves to achieve certain goals, such as giving instructions for a follow-up action, recipients first and foremost need to understand the texts. It should be emphasised that specialist communication may or may not entail a difference in the level of knowledge. Between experts of the same field (internal), the constellation of communication is symmetrical; between experts and lay persons (external), it is asymmetrical. Expert-lay-communication (ELC) can only work if text producers produce their texts in such a way that the intended recipients may perceive, understand, process and apply the information provided. Adequate language use is crucial. Figure 1 therefore explicitly includes the aspect of adequacy.

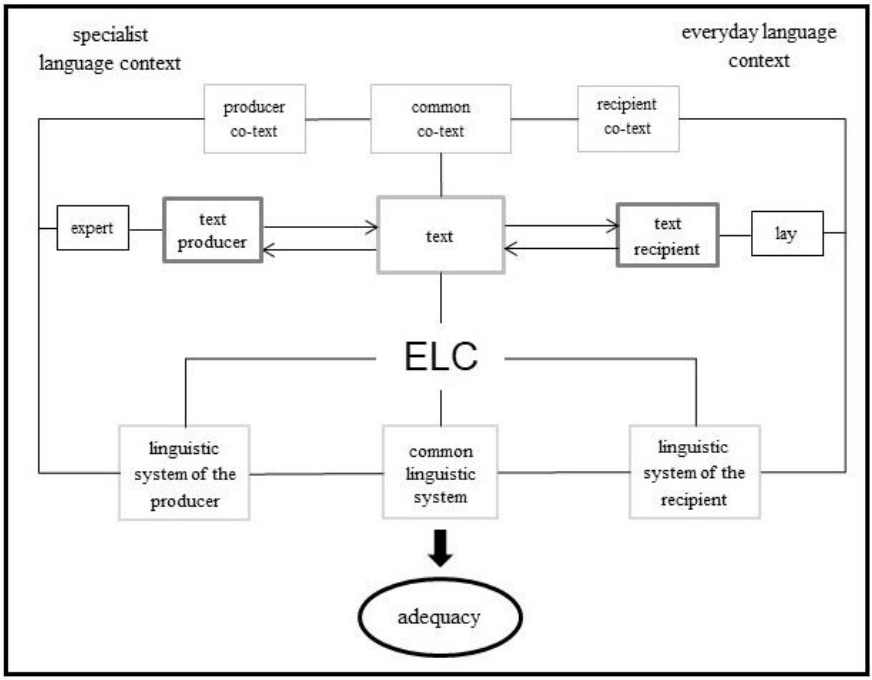


Fig. 1: Expert-lay-communication (own figure; based on Roelcke 2020: 12)

III. Legal communication

1. Everyday meaning vs. specialist meaning

What is constitutive for legal communication is the fact that legal language draws on common language for regulating life domains. Laws regulate nearly all social domains. They determine rights and obligations for people living together. From a pragmatic perspective, legal language is a functional language, depending on speaker intention and context. The relation of legal and common language touches on comprehensibility. Legal language to a large extent uses common language for making binding rules. However, its language is characterized by specialist content and institutional structures and therefore cannot be equated with the everyday

meaning. This creates deficits in understanding between the legislator and the addressees in lexical interpretation.

The legal and the everyday semantics of the same lexeme may greatly differ in specialist and non-specialist usage if the transfer from common language to legal language entails a semantic shift. Lay persons predominantly connect an expression with conventional patterns of behaviour they are familiar with from everyday life. Experts, in contrast, think in legal-language system relations when interpreting legal concepts. They have the institutional knowledge necessary for decoding what is meant by an expression. In interaction, there may be – sometimes considerable – communication problems if the language use is unclear to lay persons. The following examples may serve as illustrations of such problems.

2. Conceptual level

For instance, the German word *Leihe* is used differently depending on the context. In everyday meaning it can be used in the sense of English *rental,* e.g. renting a car from a car dealer, but also in the sense of English *borrowing*, e.g. borrowing a pencil from a colleague or eggs from a neighbour. It also covers the reciprocal perspective, in English expressed by *lending*. Thus, *Leihe* may be used in daily life for different ways of using something. However, this is not the case in law. With the term *Leihe*, German legal experts only refer to letting someone use an object free of charge and returning it afterwards (§ 598 BGB)[5]. This only covers the example of the pencil. It does not apply to the eggs, as you cannot return them in equal size and quality after use. Legally, we are dealing here with what in German is called *Darlehen* (Eng. *loan*) (§ 607 section 1 sentence 2 BGB).

A barrier to understanding is also posed by the expression *Gezeugter*. The German Civil Code says in its law on inheritance that only a person who is alive at the time of the accrual of the inheritance may inherit (§ 1923 section 1 BGB). By implication this means that no person who has already died or has not been born yet is entitled to inherit. Differing from this, the

[5] Bürgerliches Gesetzbuch: The German Civil Code.

regulation (§ 1923 section 2 BGB) determines that a human being who in the case of inheritance is not yet alive but has already been conceived is regarded as having been born before the time of the accrual of the inheritance. Legal experts treat the conceived human fictitiously as one born alive, although in reality she/he is in the womb and has not yet come into the world. Lay persons cannot follow this lexical interpretation. The law here seems out of touch, as the high degree of abstraction stands in a nearly irresolvable contrast to everyday understanding.

3. Grammatical-stylistic level

The problems in understanding codified law are not merely founded in an asymmetry of knowledge – conceptual level – between experts and lay persons. On the grammatical-stylistic level, it is constructions such as nominalizations, compounding, derivations, genitive attributes, long sentences, sentences without agents or intertextuality that constitute communication barriers and make access to legal texts difficult for lay persons. In particular, non-explicit references presuppose implicit knowledge (presuppositions). For instance, the section of German criminal law dealing with murder (§ 211 StGB)[6] is a cross-linked text and requires knowledge from the general and the special part of the criminal law in order to be able to create text coherence (cf. K. Luttermann 2016: 177-184). The present paper focuses on the lexical level (section V). The question is thus to what degree legal experts use language that is difficult to understand for the average citizen.

IV. Comprehensibility, miscomprehension, incomprehensibility

1. Results from surveys

The legal domain has developed specialist languages of different types serving predominantly for internal communication among experts of the same field (cf. Eriksen 2002: 2, 10-17). Our modern law is divided into the

[6] Strafgesetzbuch: The German Criminal Code.

legislative, executive and judicative areas, it is highly abstract and written in a linguistically economical way. However, citizens want access to legal language. In the representative survey of the Federal Office of Statistics (Germany) from 2019, administrative and legal language as well as information in brochures and on the internet are classed as being of below-average comprehensibility.[7] On a five-point scale, laws only receive 0.5 points. The result roughly corresponds to a survey carried out ten years ago by the *Gesellschaft für deutsche Sprache*. According to this survey, 84 percent of the respondents demanded that administrative and legal authorities use less legal jargon and express themselves in an easier, clearer, more generally comprehensible way in their written communication (cf. Eichhoff / Antos / Schulz 2009: 12).

It should be noted that respondents judge the problems in comprehensibility of legal language without demonstrating sufficient textual knowledge of their own. It is possible to dismiss such survey results as a stereotype about incomprehensible laws, as Warnke (2004: 446, 452) does. He discusses "habitualisation" and evidence for the stereotypical tradition of the assumption that laws are incomprehensible. However, it is also possible to think about problems in a factual and reflected way. From a legal-linguistic perspective, the issue is language use analysis, i.e. the regard of the actual understanding of the content and the application of laws by lay persons (section VII). Here, it may be worthwhile dealing with legal specialist language from a scientific point of view.

2. Comprehensibility requirement

Citizens want comprehensible legal texts and are able to take recourse to legislation. In the Joint Agenda of the Federal Ministries, it is demanded that "drafts [must] be phrased linguistically correctly and if possible

[7] See https://www.amtlich-einfach.de/DE/Home/home_node.html. Last access 10.6.2020. Scale from -2 (very dissatisfied) to +2 (very satisfied).

comprehensibly for everyone" (§ 42 section 5 sentence 1 GGO).[8] This refers to the average citizen, i.e. a reasonable and informed person. The indefinite pronoun Gm. *jedermann* (Eng. 'everyone') indicates which circle of addressees (limited / unlimited) is to be entitled or committed by the law (cf. K. Luttermann 2010a: 149). What is not meant is that addressees should have profound special knowledge, extraordinary methodological skills or a liking for solving brain-twisters (cf. HdR[9] 2008: 33).

Criminal law requires that an offence has to be defined as such in a comprehensible way (§ 17 StGB). The norm addressee must be able to understand the scope of the criminal offence from the law itself. For civil law issues, the transparency requirement states that the general terms and conditions must be phrased clearly and comprehensibly (§ 307 BGB). It is in the nature of democracy that citizens have access to legal documents and can identify with the law in order to accept and follow it. For the law, democracy means a comprehensibility requirement. Comprehensible legal communication is a basic condition of democratic control and its fulfillment is seen as a yardstick of political culture in a society (cf. Pfeiffer / Strouhal / Wodak 1987: 12). Understanding what is allowed and what is forbidden means legal security. However, in real life there are discrepancies between what the law states and what addressees are able to understand (sections III and VII). What are the conditions of legal drafting?

3. Manual for drafting legislation

Let us consider the manual for drafting legislation of the Federal Ministry of Justice (Berlin), the purpose of which is to guide the special ministries in writing and reviewing laws (§ 42 section 4 GGO). The manual says: "Linguistics judges the comprehensibility of texts according to simplicity, brevity and precision as well as regarding structure and order" (HdR 2008:

[8] Also, according to the Federal Government, the law is to be set out simply and comprehensibly, see https://www.bundesregierung.de/resource/blob/997532/1560386/a5004f6046edb6a8ce916b411c8c3e43/2018-12-12-arbeitsprogramm-bessere-rechtsetzungdata.pdf?download=1. Last access 10.6.2020.

[9] Handbuch der Rechtsförmlichkeit (HdR), see the following section.

33).[10] These characteristics form the yardstick for the comprehensibility of legal texts. In order to phrase laws and regulations comprehensibly or to improve them, three levels have to be considered: choice of words, sentence structure and text structure. The general notes on choice of words pertain mainly to the rules of German orthography, to the relation of words to one another, to a uniform and up-to-date language and to avoiding foreign words (cf. HdR 2008: 37-39).

A critical note is needed here: it is from the so-called Hamburg Model developed at the beginning of the 1970s by Inghard Langer, Friedemann Schulz von Thun and Reinhard Tausch (2019: 28-32), who judge comprehensibility according to the aforementioned characteristics. Incomprehensibility, according to this model, is not due to aspects of the specialist meaning of expressions, but rather to a way of expression that is difficult to understand. What the model lacks is the reference to the addressee. The characteristics imply that comprehensibility is a purely text-immanent feature rather than an interaction of text and reader factors, as is state-of-the-art today (section II): a text is comprehensible if its addressees can grasp the intended meaning without legal advice. For this to work, what is meant must be expressed clearly in the law.

4. Language use

The pivotal point for successful understanding in legal communication is language use: the word or phrase chosen must represent the legal content, i.e. what is actually meant in the text or in the sentence, as exactly as possible for the addressees. Here, the importance of linguistics for the law becomes tangible. The comprehensibility test necessarily also includes linguistic pragmatics with expert and lay knowledge as well as the extralinguistic context (cf. K. Luttermann 2001: 154-157). Pre-knowledge of the lay persons plays an important role in how firmly a legal regulation is to be phrased. Accordingly, the manual for drafting legislation has to be

[10] In the original, the characteristics are in bold type.

revised and complemented by the level of pragmatics – in addition to the levels of the lexicon, syntax and the text (section V.3).

Jurisdiction also requires gaining insights from the practice of understanding between experts and lay persons.[11] Until now, in a case of dispute, judges would resort to dictionaries and in particular to their own language competence (representing the knowledge of lay persons) in order to deduce semantic knowledge. Nowadays, communication platforms on the internet (panels, blogs, wikis) have become important, where within a very short time a "bottom-up authoritative culture" (Alby 2007: 21) regarding linguistic comprehension has developed.[12] The issue is not only how an expert interprets a specific lexeme, but also what the lay person understands. This development is in line with *Clear Language* (section VI) and the Legal-Linguistic Comprehensibility Model.

V. Suggested solution: Legal-Linguistic Comprehensibility Model

1. Theory of language use

Linguistics has already developed several comprehensibility models (sections II and V.3). A glance into the literature reveals a disillusioning picture: comprehensibility in law is treated predominantly as a stylistic issue or dealt with as a philosophical question[13] (cf. K. Luttermann 2010a: 142-143). Since the 1990s, the field of language for special purposes sees text comprehensibility as a relation between text and addressee, with addressee factors predominating. However, there is a lack of studies on ascertainable foundations of comprehension and on the activities of recipients. It urgently needs to be investigated where lay people do in fact see problems. While there has been the demand to relate problems in understanding laws

[11] Cf. Federal Court of Justice (BGH, NJW 2007: 526).

[12] In internet chat communication, mushrooms, to lay persons, have an apparent proximity to plants, although biology has moved away from regarding them as plants. Jurisdiction differentiates even further in the context of medicaments and narcotics (intoxicating mushrooms).

[13] Is comprehensibility possible? Is it necessary?

to the complexity of the according frameworks of legal knowledge, this has not been followed up. Such procedures require a lot of time and entail a great deal of effort.

In the Legal-Linguistic Comprehensibility Model, the investigation of lay knowledge is integrated (section V.2). The model stands in the language-as-use tradition, which identifies the linguistic sign with its application. Speaking is acting. Wittgenstein (2006: § 43) states: "The meaning of a word is its use in the language." He focuses on speaker meaning, treating comprehension exclusively from his angle, thus ignoring the hearer. This falls short for an analysis of communication referring to interaction. The Legal-Linguistic Comprehensibility Model also takes hearer meaning into account and grants the comprehension of average lay people a prominent place within specialist communication. The specialized text is an integral part of a whole communication process that needs to be optimized.

2. Aim and method

The Legal-Linguistic Comprehensibility Model by K. Luttermann (1996, 2002) aims at analyzing laws as to their comprehensibility for lay persons. For lexemes occurring in both legal and everyday language, semantic interfaces are to be discovered and described. In particular, divergences resulting from specialist and non-specialist language use are to be identified. What is of interest is to what degree lexical meaning explication by legal lay persons corresponds to the semantic determination of the legislator. In addition, the question is where norms are misinterpreted or not understood at all. It is not about stereotypical tradition as for Warnke (section IV.1). The model does not generalize a lack of comprehensibility, but rather aims at determining barriers to comprehension.

The goal is to relate expert and lay perspectives and to find transdisciplinary solutions for optimization and knowledge transfer. The *theory pattern* shows the specialist meaning from the expert perspective (legislation, textbooks etc.). At the same time, it forms the framework within which comprehensibility may be judged. The *empirical pattern* uncovers what a lay person understands, the *result pattern* shows what many legal lay persons

understand. It is only within the scope of its usages that the meanings of an expression become tangible. The *comparative pattern* finally relates the specialist and the general semantic readings to each other, checking them for commonalities and differences.

In this way, the Legal-Linguistic Comprehensibility Model creates a link between expert and lay knowledge, something which is lacking in other comprehensibility models (cf. Engberg 2011: 1). In particular, the inclusion of the pre-knowledge of the lay persons is an essential factor for achieving text comprehensibility. Including an active recipient position is precisely the part that traditional models do not consider, but which is fundamental for sounding out solutions for the communicative problems of lay persons and for taking an interdisciplinary approach to more comprehensible language use (sections IV.4 and VIII). Working on texts for laws in *Clear Language* should be practiced on a scientific basis (section VI).

3. Reception

The Legal-Linguistic Comprehensibility Model is established in the scientific community, granting the lay perspective a comparatively strong position. The later working group Language of the Law of the Berlin-Brandenburg Academy of Sciences (cf. Dietrich / Klein 2000; Dietrich / Kühn 2000) draws on it.[14] In a process-oriented study, Becker and Klein (2008) investigated whether the mental representation of the facts generated by the recipient corresponded to the facts intended by the author (the so-called Riester-Renten-Model). In her Karlsruhe Model, Göpferich (2001) takes into consideration the frame of reference of correctness (lack of error / contradiction). The idea is that pre-knowledge that is not assessed correctly may lead to errors in the text. Lutz (2015) also includes pre-knowledge and cognition in the Krems Model, as a starting point for text production. While this does mean that recipients are afforded a far more significant role than

[14] But without explicit reference. See overall Vogel (2017).

in the Hamburg Comprehension Model, there is still a lack of surveys with lay persons.[15]

With the Legal Language Team at the Federal Ministry of Justice and Consumer Protection, politics about ten years ago created an instrument for treating language questions with the method of multiperspectivity (perspectives of jurists and linguists) in an interdisciplinary way, in order to launch comprehensible laws. The language team represents the "view from outside" (Thieme / Raff / Tacke 2010: 166; cf. also Thieme / Parádi 2021). The questions the team asks are regarded as questions of the general public. However, regarding linguists trained in dealing with legal texts as being the same as lay persons, for whom legal language is something rather distant and creates specialist barriers, is not sufficient. Lay knowledge also needs to be incorporated into the norm-setting process (section VII). This still requires a great deal of research, a field for the discipline of legal linguistics and therefore of legal linguists.

VI. Pragmatics for the law in *Clear Language*

1. Text function

In addition, the text function is of basic importance for *Clear Language.* Communication-oriented text linguistics looks at the sentence from the level of the text, addressing specific phenomena of language use. It treats texts as utterances-in-function, driven by specific rules (cf. Adamzik 2016: 31). According to this view, the sentence is merely an instrument for text formation. Superordinate levels are text function and the context, which is characterized by the intention of the emittent and by extralinguistic factors such as the nature of the partner relationship (role, degree of familiarity) or assumptions about pre-knowledge and norms and values of the recipients. The text function determines the way the addressee is to interpret the text.

[15] Busse (1992) and Felder (2003) – as well as Göpferich (2001) and Lutz (2015) – also work with texts rather than with empirical surveys with communication participants.

Text types are conventionally valid patterns for complex linguistic actions and may be described as typical combinations of contextual-situative, communicative-functional, structural-grammatical and content-related features. They have developed historically, forming part of the general knowledge of a linguistic community and may aid text production and reception. Brinker (2005: 145) distinguishes five basic functions (information, appeal, obligation, contact, declaration). A law functions primarily in a directive way, demanding that the norm be followed. The character of appeal directs the choice of utterances and thematic development (descriptive, prescriptive), which become manifest at the text surface.

2. Adequacy and maxims

Text comprehensibility is a question of adequacy. As a means of specialist interaction between experts and lay persons, *Clear Language* is oriented towards the recipient horizon, including both expert and lay knowledge (cf. K. Luttermann 2010a: 150). This is a functional category representing a conscious decision regarding the use of adequate content-related, linguistic and communicative means for a certain intention of the text producer and a special purpose of the text type. In other words, the recipient horizon defines adequacy in presenting the topic and in addressing the reader. The issue is adequate language use (cf. K. Luttermann 2019: 13-14). The special content should be explained comprehensibly, i.e. clearly as well as correctly and adequately with regard to the intended addressees. Clarity is the superordinate dimension for text comprehensibility, deriving essentially from the specifics of the complete communicative situation (section V.1). Topic adequacy is a matter of correctness with regard to the special content, addressee adequacy is a matter of suitability for certain target groups.

The force of the law must not be undermined. Where this boundary is not respected, a lack of legal security may be the result. The recipient horizon needs to be implemented with the method of multiperspectivity (section V.2). From this perspective, the producer of the legal text is expected to act co-operatively and rationally and to implement the Gricean maxims of

quantity, quality, relation and modality. Quantity applies to the amount of information, quality to the truth and correctness of what is said and relation to thematic relevance. Modality demands clarity. The content has to be phrased in such a way that it is comprehensible and makes sense (Grice 1979). The maxim "Be clear" shows the way for the production and optimization of laws in *Clear Language*.

VII. Language use analyses

1. Source texts

Clear Language aims at an adequate, comprehensible communication between experts and lay persons. *Clear* is derived from L. *clarus*, meaning 'bright' and 'unambiguous'. Clarity with regard to the linguistic phrasing of laws involves unambiguousness and structuredness. In legal reality, however, of the above-mentioned maxims, it is in particular a lack of comprehensibility – the disregard of the maxim of modality, so to speak – that is problematic (sections III and VI.2). This is demonstrated by language use analyses with the Legal-Linguistic Comprehensibility Model (e.g. K. Luttermann 1999, 2010b, 2015; K. Luttermann / Engberg 2018). Here the focus is on the way in which legal experts and lay persons use lexemes occurring in both specialized and non-specialized contexts. In the following, the conceptual-semantic level of the German words *Sache*, *finden* and *vom Hundert* ('thing', 'to find', 'out of a hundred') are analyzed. 75 test persons aged 17 to 81 (including trainees, students, workers, academics) answered nine questions in semi-standardized interviews of thirty minutes length. First, the steps of the analysis are explained (sections VII.2 and 3), followed by suggestions on how to bring the perspectives closer together by re-formulation (section VII.4).

2. *Sache* ('thing') as the object of theft

> Wer eine fremde bewegliche Sache einem anderen in der Absicht wegnimmt, die Sache sich oder einem Dritten rechtswidrig zuzueignen, wird mit Freiheitsstrafe bis zu fünf Jahren oder mit Geldstrafe bestraft. [Whoever takes away a mobile thing (*Sache*) from someone else with the intention of illegally

> appropriating the thing (*Sache*) to himself or a third party, will be punished with a prison sentence of up to five years or with a financial penalty.] (§ 242 section 1 StGB)

In the case of theft (§ 242 StGB) it is in particular the lexeme *Sache* 'thing' (object of the theft) that creates communicative problems. In the framework of criminal law, *Sachen* are corporeal objects (§ 90 BGB), regardless of whether they are solid (watch), liquid (water in a bottle) or gaseous (air in a room, gas in a pressure cylinder). What is crucial is the delimitability. Furthermore, animals are also included. What are not *Sachen* in the legal sense are electricity,[16] the living human body and medical appliances connected to it, such as cardiac pacemakers or dental bridges. The test persons do not know, however, that e.g. artificial implants in humans are protected body parts and do not have the quality of a thing (*Sache*). While they do regard animals as stealable, they do not count the killing of a dog as damage to property. Rather, the dog is seen as a 'good friend'. Legal experts interpret animals as things in criminal law (§ 303 StGB). This interpretation stands in contradiction to the explicit purpose of § 90a BGB, which emphasizes that animals are fellow creatures. This is supported by the lay persons in the study, who do not regard animals as things (*Sachen*).

3. *Finden* ('to find') and *vom Hundert* ('out of a hundred') with regard to finder's reward

> Der Finder kann von dem Empfangsberechtigten einen Finderlohn verlangen. Der Finderlohn beträgt von dem Werte der Sache bis zu 500 Euro fünf vom Hundert, von dem Mehrwert drei vom Hundert, bei Tieren drei vom Hundert. [The finder may demand a finder's reward from the authorized recipient. The finder's reward amounts to five out of a hundred of the value of a thing, to three out of a hundred of the additional value, to three out of a hundred for animals.] (§ 971 section 1 sentences 1 and 2 BGB)

While a finder's reward (§ 971 BGB) is relevant relatively often in everyday life and may have considerable consequences, it still constitutes a communication barrier, as the test persons do not know what the word *finden* 'find' means in a legal context, or what *vom Hundert* 'out of a hundred'

[16] Separately determined in § 2 Product Liability Act.

means at all. With *finden* legal experts refer to an activity that the finder carries out for the person who has lost something (obligation of notification by the finder § 965 BGB). The thing is found when the finder takes it into their possession. Lay persons, however, disregard the appropriation, associating *finden* in a procedural way with 'perceiving' and 'discovering'. For them, the visual sense determines the meaning. Legally, on the other hand, the mere seeing or inspecting of the found item is not finding.[17]

Legal experts interpret the phrase *vom Hundert* 'out of a hundred' to mean that for a thing worth up to 500 euros, the finder's reward is five percent of the asset's value and for a value transcending 500 euros it is three percent of the asset's value. For animals, it is always three percent of the asset's value. The test persons show a high degree of creativity ('at most 500 euros for things and 300 euros for animals', 'things 5 and animals 3 divided by a hundred'), not being able to apply the law correctly in calculating the finder's reward for a watch worth 1400 euros.[18] Instead of 52 euros, they answered '36 euros' or '70 euros' up to '900 euros with a question mark'. A check showed that most of the test persons were quite capable of doing percentages.

4. Text optimization

The examples show that legal language creates barriers to comprehension in external communication with citizens. Thus, in laws using everyday lexemes, there is no explication of anything that does not require explication for the expert, even if it might for the lay person. In the context of what is said, legal experts also have in mind what is not said but also meant. They create word and text meaning by making inferences. The concepts and conceptual features must be clear or be made clear to the average citizen by linguistic signs at the text surface for communication to be more successful. Lay addressees are not always capable of understanding even the basics of specialist meaning, due to a lack of specialized, i.e. content know-

[17] The finder of a thing is entitled to a finder's reward from the owner (§ 971 BGB). The owner is entitled to being given the thing back by the finder (§ 968 BGB).

[18] €500 x 0.05 (5%) = €25 and €900 x 0.03 (3%) = €27.

ledge. The specialist barrier may become greater the less pre-knowledge they bring along or the more restricted their cognitive abilities are. This means that language use is particularly important.

It would be conceivable, for instance, to reformulate the finder's reward paragraph (§ 971 BGB) in order to achieve greater clarity: "Der Finderlohn beträgt fünf Prozent für eine Sache, die bis zu 500 Euro wert ist, und drei Prozent für ihren Mehrwert. Tiere werden immer mit drei Prozent vergütet." (The finder's reward amounts to five percent for a thing worth up to 500 euros and three percent for its additional value. Three percent is always refunded in the case of animals). *Finden* ('to find') can also be grasped more clearly, e.g.: "Finder ist, wer die Sache sieht und nimmt und bis zur Anzeige beim Verlierer oder Eigentümer oder bei einem sonstigen Empfangsberechtigten behält." (A finder is someone who sees the thing and takes it and keeps it until notification of the loser or owner or some other authorized person). *Finden* is a word from everyday language. The characteristics mentioned in the manual for drafting legislation, i.e. to use simple choice of wording and simple sentence structure as well as placing main statements at the beginning, are met here (cf. HdR 2008: 35). The language check would therefore probably not have registered the legal meaning concept as difficult to comprehend for lay persons. In contrast, *vom Hundert* 'out of a hundred' is archaic and should be substituted by the modern expression *Prozent* 'percent' (cf. HdR 2008: 38).

In order to avoid misunderstandings, the theft paragraph (§ 242 StGB) could be extended by the mention of *Tier* ('animal'). In clear terms: "Wer eine fremde bewegliche Sache oder ein Tier einem anderen in der Absicht wegnimmt, die Sache oder das Tier sich oder einem Dritten rechtswidrig zuzueignen, wird mit Freiheitsstrafe bis zu fünf Jahren oder mit Geldstrafe bestraft." (Whoever takes away a mobile thing or an animal from someone else with the intention of illegally appropriating the thing or the animal to himself or a third party, will be punished with a prison sentence of up to five years or with a financial penalty). Here we find a structural analogy to the paragraph 2 of the Product Liability Act, which, in addition to *Sache* ('thing'), also explicitly defines 'electricity' as a product. *Sache* is an

everyday lexeme and therefore conforms to the requirements of the manual, as did *finden* ('to find'). It would probably not have been recognized as a difficult word either. Thus, the empirical analysis has highlighted conceptual differences existing at the lexical level between legislator and addressee.

VIII. Outlook

What can empirical research on lexical meaning offer that is superior to the traditional confidence legal experts have in dictionaries? In the legal domain, laws and legal language form the institutional and specialized core. The issue is discourse sensitivity of language in use (cf. Kuße 2012: 16). Lexemes have meaning in the light of existing comprehension of their usage. It is in language use that it becomes clear what and how much addressees understand in a given case. In order to grasp the real situation, more research is needed on knowledge about the special concepts of experts and lay persons for approximating levels of comprehension. The legal situation must become clearly recognizable in the language. Methodologically, the Legal-Linguistic Comprehensibility Model offers a scientifically-based and practicable approach for analyzing the state of knowledge of lay persons and for comparing it with expert knowledge, in order to be able to find out where information flow works and where concrete problems occur. On this basis, optimization and knowledge transfer may be practised. The gauge for optimization processes is pragmatic adequacy. Only when it is empirically proven how legal experts and lay persons understand the same lexeme and where the semantic differences lie may interdisciplinary solutions for adequate communication be sounded out.

A change in perspective could lead the way, namely linguists and legal scientists together negotiating new ways and methods for the analysis of the field language and law. The idea is that it is only in the combination of the two that legal linguistics may come to a fruitful dialogue rather than through an exclusively linguistic or an exclusively legal approach. For multilingual legal communication in the European Union, where a single treaty takes effect in and is implemented through many languages,

interdisciplinarity is also of elementary significance (cf. C. Luttermann in this volume; C. Luttermann / K. Luttermann 2020). Overall, it can be said that legal linguistics opens up a variety of methods for necessary research. Considering its relevance, it is surprising that there are no departments for this discipline in the German-speaking area (as of) yet.

IX. References

Adamzik, Kirsten. 2016. *Textlinguistik. Grundlagen, Kontroversen, Perspektiven.* 2nd edition. Berlin: Walter de Gruyter.

Alby, Tom. 2007. *Web 2.0. Konzepte, Anwendungen, Technologien.* 3rd edition. München: Hanser.

Becker, Angelika / Wolfgang Klein. 2008. *Recht verstehen. Wie Laien, Juristen und Versicherungsagenten die 'Riester-Rente' interpretieren.* Berlin: Akademie Verlag.

Brinker, Klaus. 2005. *Linguistische Textanalyse. Eine Einführung in Grundbegriffe und Methoden*. 6th edition. Berlin: Erich Schmidt.

Busse, Dietrich. 1992. *Recht als Text. Linguistische Untersuchungen zur Arbeit mit Sprache in einer gesellschaftlichen Institution.* Tübingen: Max Niemeyer.

Dietrich, Rainer / Wolfgang Klein (eds.). 2000. Themenheft. Sprache des Rechts. In: *Zeitschrift für Literaturwissenschaft und Linguistik* 30 (118). Stuttgart: Metzler.

Dietrich, Rainer / Katja Kühn. 2000. Transparent oder verständlich oder wie was verstanden wird. Eine empirische Untersuchung zum Verstehen eines juristischen Textes. In: *Zeitschrift für Literaturwissenschaft und Linguistik* 30 (118), 67-95.

Eichhoff-Cyrus, Karin / Gerd Antos / Rüdiger Schulz. 2009. *Wie denken die Deutschen über die Rechts- und Verwaltungssprache? Eine repräsentative Umfrage der Gesellschaft für deutsche Sprache*. Wiesbaden: Gesellschaft für deutsche Sprache.

Engberg, Jan. 2011. Rezension zu "Recht verstehen. Wie Laien, Juristen und Versicherungsagenten die 'Riester-Rente' interpretieren." In: *Zeitschrift für Europäische Rechtslinguistik* 2, 1-7.

Eriksen, Lars. 2002. Einführung in die Systematik der juristischen Fachsprache. In: Lars Eriksen / Karin Luttermann (eds.), *Juristische Fachsprache. Kongressberichte des 12th European Symposium on Language for Special Purposes, Brixen/Bressanone 1999*. Münster: Lit, 1-19.

Felder, Ekkehard. 2003. *Juristische Textarbeit im Spiegel der Öffentlichkeit*. Berlin: Walter de Gruyter.

Göpferich, Susanne. 2001. Von Hamburg nach Karlsruhe. Ein kommunikationsorientierter Bezugsrahmen zur Bewertung der Verständlichkeit von Texten. *Fachsprache* 23 (1-2), 117-138.

Grice, Herbert. 1979. Logik und Konversation. In: Georg Meggle (ed.), *Handlung, Kommunikation, Bedeutung*. Frankfurt am Main: Suhrkamp, 243-265.

HdR / Bundesministerium der Justiz. 2008. *Handbuch der Rechtsförmlichkeit. Empfehlungen des Bundesministeriums der Justiz für die rechtsförmliche Gestaltung von Gesetzen und Rechtsverordnungen nach § 42 Absatz 4 und § 62 Absatz 2 der Gemeinsamen Geschäftsordnung der Bundesministerien*. 3rd edition. Köln: Bundesanzeiger.

Heringer, Hans Jürgen. 1979. Verständlichkeit. Ein genuiner Forschungsbereich der Linguistik? In: *Zeitschrift für germanistische Linguistik* 7 (3), 255-278.

Kuße, Holger. 2012. *Kulturwissenschaftliche Linguistik. Eine Einführung*. Göttingen: Vandenhoeck & Ruprecht.

Langer, Inghard / Friedemann Schulz von Thun / Reinhard Tausch. 2019. *Sich verständlich ausdrücken.* 11th edition. München: Ernst Reinhardt.

Luttermann, Claus / Karin Luttermann. 2020. *Sprachenrecht für die Europäische Union. Wohlstand, Referenzsprachensystem und Rechtslinguistik.* Tübingen: Mohr Siebeck.

Luttermann, Karin. 1996. *Gesprächsanalytisches Integrationsmodell am Beispiel der Strafgerichtsbarkeit.* Münster: Lit.

Luttermann, Karin. 1999. Wie lang ist lebenslang? Juristische Definitionssemantik und allgemeiner Srpachgebrauch. In: *Deutsche Sprache* 27 (3), 236-248.

Luttermann, Karin. 2001. Empfängerhorizont in der juristischen Experten-Laien-Kommunikation. In: *Fachsprache* 23 (3-4), 153-159.

Luttermann, Karin. 2002. Der Diebstahlstatbestand im Verständlichkeitstest. Deutsches Strafrecht und europäischer Kontext. In: Lars Eriksen / Karin Luttermann (eds.), *Juristische Fachsprache. Kongressberichte des 12th European Symposium on Language for Special Purposes, Brixen/Bressanone 1999*. Münster: Lit, 95-114.

Luttermann, Karin. 2010a. Verständliche Semantik in schriftlichen Kommunikationsformen. In: *Fachsprache* 32 (3-4), 145-162.

Luttermann, Karin. 2010b. Heutige Wechselwirkungen zwischen Allgemein- und Rechtssprache. Deutsch. In: Roswitha Fischer (ed.), *Sprache und Recht in großen europäischen Sprachen. Juristische Begriffsbildung im Spannungsfeld zwischen Fachsprachlichkeit und allgemeiner Verständlichkeit*. Regensburg: Universitätsverlag, 139-154.

Luttermann, Karin. 2015. Linguistisch-pragmatische Zugänge zur Rechtssemantik. Was gesagt, was gemeint und was verstanden wird. In: Friedemann Vogel (ed.), *Zugänge zur Rechtssemantik. Interdisziplinäre Ansätze im Zeitalter der Mediatisierung*. Berlin: Walter de Gruyter, 275-292.

Luttermann, Karin. 2016. Indeterminismus und Performanz in der Sprache am Beispiel der Bedeutung von lebenslanger Freiheitsstrafe. In: Lars Bülow / Jochen Bung / Rüdiger Harnisch / Rainer Wernsmann (eds.), *Performativität in Sprache und Recht*. Berlin: Walter de Gruyter, 163-188.

Luttermann, Karin. 2017. Klare Sprache als Mittel für Fachkommunikation und Wissenstransfer. In: *Information. Wissenschaft & Praxis* 68 (4), 217-226.

Luttermann, Karin. 2019. Klare Sprache für Fachkommunikation und gesellschaftliche Teilhabe. In: *Zielsprache Deutsch* 46 (2), 3-21.

Luttermann, Karin / Jan Engberg. 2018. Vermittlung rechtlichen Wissens an Kinder und Jugendliche im Internet und in Broschüren. In: Jan Engberg / Karin Luttermann / Silvia Cacchiani / Chiara Preite (eds.), *Popularization and knowledge mediation in the law / Popularisierung und Wissensvermittlung im Recht*. Wien: Lit, 85-115.

Luttermann, Karin / Pia Schäble. 2016. Wissenstransfer in der Wirtschaftskommunikation. Zum Sprachverständnis der europäischen Finanzkrise aus Experten- und Laiensicht. In: Inga Kastens / Albert Busch (eds.), *Handbuch Wirtschaftskommunikation. Interdisziplinäre Zugänge zur Unternehmenskommunikation*. Tübingen: Francke, 389-433.

Lutz, Benedikt. 2015. *Verständlichkeitsforschung transdisziplinär. Plädoyer für eine anwenderfreundliche Wissensgesellschaft.* Wien: V & R unipress.

Pfeiffer, Oskar / Ernst Strouhal / Ruth Wodak. 1987. *Recht auf Sprache. Verstehen und Verständlichkeit von Gesetzen.* Wien: Orac.

Roelcke, Thorsten. 2020. *Fachsprachen.* 4th edition. Berlin: Erich Schmidt.

Shannon, Claude / Warren Weaver. 1949. *The mathematical theory of communication.* Urbana: University of Illinois Press.

Thieme, Stephanie / Zsuzsa Parádi. 2021. Die Sprache, mit der Recht gemacht wird. In: Karin Luttermann / Albert Busch (eds.), *Sprache und Recht. Konstitutions- und Transferprozesse in nationaler und europäischer Dimension*. Berlin: Lit, 275-300.

Thieme, Stephanie / Gudrun Raff / Konstantin Tacke. 2010. Möglichkeiten und Grenzen der sprachlichen Optimierung von Rechtstexten. In: Roswitha Fischer (ed.), *Sprache und Recht in großen europäischen Sprachen. Juristische Begriffsbildung im Spannungsfeld zwischen Fachsprachlichkeit und allgemeiner Verständlichkeit*. Regensburg: Universitätsverlag, 155-167.

Vogel, Friedemann. 2017. Rechtslinguistik. Bestimmung einer Fachrichtung. In: Ekkehard Felder / Friedemann Vogel (eds.), *Handbuch Sprache im Recht.* Berlin: Walter de Gruyter, 209-232.

Warnke, Ingo. 2004. Schwerverständlichkeitsannahme als Stereotyp. Die Differenz von Kenntnis und Beurteilung der deutschen Gesetzessprache. In: Kent D. Lerch (ed.), *Recht verstehen. Verständlichkeit, Missverständlichkeit und Unverständlichkeit von Recht*. Volume 1. Berlin: Walter de Gruyter, 441-454.

Wittgenstein, Ludwig. 2006. *Philosophische Untersuchungen*. Frankfurt am Main: Suhrkamp.

List of abbreviations

BGB German Civil Code (*Bürgerliches Gesetzbuch*)
BGH Federal Court of Justice (*Bundesgerichtshof*)
ELC Expert-lay-communication
Eng. English
GGO Joint Agenda of the Federal Ministries (*Gemeinsame Geschäftsordnung der Bundesministerien*)
Gm. German
HdR Handbuch der Rechtsförmlichkeit
L Latin
NJW Neue Juristische Wochenschrift
StGB German Criminal Code (*Strafgesetzbuch*)

Ayşe Yurdakul

Erfassung und morphologische Klärung semantischer Probleme in der juristischen Terminologie des Deutschen und des Türkischen

Abstract

In der Verwendung einer (Fach-)Sprache liegen sprachsystemrelevante Quellen für Vagheit und mithin für potenzielle Missverständnisse in der Kommunikation von Benutzern der entsprechenden Fachsprache vor. Diese Quellen betreffen unterschiedliche Aspekte von Missverständnissen. In semantischer Hinsicht zählen zu sprachsystembedingten Quellen Polysemie und verschiedene Äquivalenzprobleme, welche die Übersetzung eines ausgangssprachlichen Terminus in die jeweilige Zielsprache erschweren.

Ein Beispiel für eine inkonsistent verwendete Fachsprache stellt die juristische Fachsprache (des Deutschen) dar. Daher ist es das Ziel der vorliegenden Arbeit, am Beispiel des mehrdeutigen juristischen Terminus *Schuld* Polysemie innerhalb der deutschen Rechtssprache zu bestimmen und anschließend durch die Übersetzung dieses Terminus in die türkische Rechtssprache diverse partielle Äquivalenzarten zu konstatieren. Innerhalb der deutschen Rechtssprache trägt das Polysem *Schuld* zwei ähnliche Bedeutungen (jeweils eine im Strafrecht und im Zivilrecht). Es wird jedoch durch eine Benennung repräsentiert, sodass zwischen der Benennung und den Bedeutungsvarianten ein disproportionales Verhältnis besteht.

Da das Polysem im Türkischen mit zwei unterschiedlichen Äquivalenten wiedergegeben wird, kommen partielle Äquivalenztypen zwischen der deutschen Ausgangssprache und der türkischen Zielsprache zustande. Hierbei verfolge ich die Hypothese, dass das Polysem ein solches interlinguales Problem verursacht. Ein weiteres Ziel bildet die Behebung von Polysemie durch eine morphologische Methode. Mithilfe von Komposition benenne ich das Polysem in zwei spezifische und morphosemantisch

transparente Benennungen um und ordne jeder Bedeutungsnuance des Polysems eine Benennung zu. Als Letztes kläre ich die Äquivalenzprobleme, die potenziell durch das entsprechende Polysem verursacht werden. Meine zweite Hypothese ist, dass die Lösung intralingualer Probleme zugleich interlingual problembereinigend wirkt, sodass Äquivalenzprobleme keine separate Lösungsmethode erfordern.

I. Einleitung

Im Gebrauch einer Fachsprache existieren sprachsystembedingte Quellen[1] für potenzielle Vagheit und Missverständnisse zwischen Fachsprachenbenutzern. Diese Quellen tangieren unterschiedliche linguistische Ebenen und Aspekte von Missverständnissen. Auf semantischer Ebene nennen Arntz / Picht / Schmitz (2014: 135, 139-140) zum Beispiel lexikalische Ambiguität, welche in Polysemie und Homonymie unterteilt wird, als Problem innerhalb einer Sprache. Bei Polysemie und Homonymie besteht keine Eineindeutigkeit zwischen der Benennung und der Bedeutung eines Terminus. Dies ist dem Umstand zu schulden, dass bei lexikalischer Ambiguität die Anzahl der Bedeutungen überwiegt. Eine solche Relation bezeichne ich als intralinguales semantisches Problem. Auf zwischensprachlicher Ebene bereiten partielle Äquivalenzarten (vgl. Koller 2011: 232-238), die die Eins-zu-eins-Übersetzung von Termini verschiedener Sprachen beeinträchtigen, ebenfalls semantische Probleme. In Analogie zu intralingualen semantischen Problemen bezeichne ich solche Problemquellen als interlinguale semantische Probleme. In Kollers Terminologie werden diese Äquivalenzarten als Eins-zu-viele-Entsprechung, Viele-zu-eins-Entsprechung und Eins-zu-Teil-Entsprechung bezeichnet. Da ich Kollers Terminus *Entsprechung* im Rahmen einer linguistischen Äquivalenztheorie als vage erachte, substituiere ich ihn durch den Terminus *Äquivalenz*. Demzufolge benenne ich die oben erwähnten Äquivalenztypen in Eins-zu-

[1] Mein Fokus liegt auf Inkonsistenzen im Sprachsystem, die Sprachbenutzer zu Missverständnissen verleiten können. Deshalb klammere ich in dieser Arbeit Quellen von Missverständnissen aus, die durch den Sprachgebrauch oder die Sprachkompetenz von Sprachbenutzern bedingt sind.

viele-Äquivalenz, Viele-zu-eins-Äquivalenz und Eins-zu-Teil-Äquivalenz um.

Eine polysemiebedingte oder äquivalenzbedingte Vagheit tritt in einer Fachsprache nicht selten auf. Daher ist es das Ziel der vorliegenden Arbeit, am Beispiel des deutschen Polysems *Schuld*[2] und dessen Übersetzung in die türkische Rechtssprache, einen linguistischen Ansatz zur Erfassung und Klärung intralingualer und interlingualer semantischer Probleme vorzustellen. Hierbei rekurriere ich auf die Annahme von Eckardt (2000: 32) und Eriksen (2002: 219), dass die juristische Terminologie Inkonsistenzen wie zum Beispiel Mehrdeutigkeit (insbesondere Polysemie) und Vagheit aufweist. Dem Terminus *Schuld* werden in der deutschen Rechtssprache eine Benennung und zwei ähnliche Bedeutungsvarianten (jeweils eine Bedeutungsvariante im Strafrecht und im Zivilrecht) zugeordnet, was Polysemie indiziert. Durch einen Definitionsvergleich (z.B. mithilfe eines Wörterbuches oder Sachbuches) kann die Ähnlichkeit der Bedeutungsvarianten aufgezeigt werden. Sofern die Bedeutungsvarianten nahezu identische Definitionsmerkmale aufweisen, liegt Polysemie vor.

Zur Behebung des Polysems eignet sich zum Beispiel eine morphologische Methode. Diese beinhaltet die Umbenennung des Polysems in spezifische und morphosemantisch transparente Benennungen. In konkreter Weise präferiere ich nicht-lexikalisierte bzw. nicht-lemmatisierte Komposita, die ich aus den wesentlichen Merkmalen der Definitionsvarianten ableite. Somit intendiere ich die Schaffung von zwei monosemen und sprachlich verständlichen Termini in der juristischen Fachsprache des Deutschen und dadurch die Vermeidung von Vagheit. Überdies nehme ich an, dass ein Polysem auf zwischensprachlicher Ebene zu Äquivalenzproblemen führt. Sofern dem deutschen Terminus *Schuld* in der korrespondierenden Sprache zwei oder mehrere monoseme Termini entsprechen, gehe ich von

[2] Homonymie bespreche ich nur im theoretischen Teil meiner Arbeit (siehe Kapitel III.2), um dieses Phänomen von Polysemie abgrenzen zu können. Jedoch fließt Homonymie nicht in meine Analyse ein. Die Begründung dafür liefere ich in Kapitel IV.2.

diversen partiellen Äquivalenzrelationen zwischen dem Deutschen und der jeweiligen Zielsprache aus. Diese Annahme überprüfe ich durch die Übersetzung des Polysems mithilfe eines Wörterbuches oder Glossares in die entsprechende Zielsprache. Als Vergleichssprache zum Deutschen präferiere ich das Türkische, weil die juristische Terminologie zwischen dem Deutschen und dem Türkischen einen zentralen Gegenstand der lexikographischen Forschung, jedoch selten der systemlinguistischen Forschung darstellt. Öncü (2012) und Eruz (2012) befassen sich zwar mit der Rechtsübersetzung zwischen dem Deutschen dem Türkischen, jedoch nicht im Hinblick auf lexikalisch-semantische Übersetzungsprobleme. Daher sehe ich in dieser Hinsicht einen linguistischen Untersuchungsbedarf. Eine detaillierte Auseinandersetzung mit dem Forschungsstand der juristischen Terminologie und der Rechtsübersetzung folgt erst in Kapitel IV.1.

Partielle Äquivalenzarten erachte ich als disproportionale interlinguale Relationen, die den Übersetzungsprozess zwischen zwei Sprachen beeinträchtigen. Demzufolge intendiere ich auch die Bereinigung von solchen Äquivalenzproblemen und die Schaffung von Eins-zu-eins-Beziehungen bei der Übersetzung zwischen der deutschen und der türkischen Rechtssprache. In Anknüpfung an meine Hypothese, dass partielle Äquivalenzrelationen mit Polysemie einhergehen, müsste die zur Lösung von Polysemie verwendete morphologische Methode auch eine äquivalenzbereinigende Funktion erfüllen.

Meine Analyse ist lediglich theoretisch fundiert und beinhaltet keine Korpusanalyse. Im Fokus meiner Betrachtung steht die Methode zur Erfassung und Lösung intralingualer und interlingualer semantischer Probleme, die auch flächendeckend auf die juristische Terminologie sowie auf verschiedene fachsprachliche Terminologien anwendbar sein soll. Im zweiten Kapitel bespreche ich auf der Grundlage verschiedener Zeichenmodelle, was ein Terminus ist und aus welchen Komponenten (z.B. Benennung, Definition) dieser besteht, um im dritten Kapitel auf semantische Relationen von Termini eingehen zu können. Unter diesen Relationen nehmen auf intralingualer Ebene Polysemie und Homonymie und auf interlingualer Ebene partielle Äquivalenzarten eine besondere Stellung ein. Da zur Definition

dieser Relationen kein Konsens in der Forschung herrscht, diskutiere ich verschiedene Ansichten und setze für die vorliegende Arbeit adäquate Definitionen an. Nach der theoretischen Grundlegung solcher semantischer Relationen demonstriere ich im vierten Kapitel meinen linguistischen Ansatz zur Erfassung und Behebung intralingualer und interlingualer semantischer Probleme am Beispiel des Polysems *Schuld* und dessen Übersetzung in die türkische Rechtssprache.

II. Der Terminus und seine Komponenten

Ein Terminus ist die lexikalische Einheit einer Fachsprache (vgl. Mayer 1998: 38). Kontrovers diskutiert wird in der linguistischen und terminologiewissenschaftlichen Forschung der semiotische Aufbau des Terminus, sodass divergierende Ansichten bezüglich der Anzahl und der Art der Terminuskomponenten existieren. In der linguistischen Forschung haben sich verschiedene Modelle zur Beschreibung eines sprachlichen Zeichens etabliert, unter denen das bilaterale Zeichenmodell von Saussure (2001: 78) vorzufinden ist. Angesichts eines systemlinguistischen Schwerpunktes rekurriere ich auf dieses Modell. Saussure zufolge wird ein sprachliches Zeichen über zwei Seiten, nämlich über eine Ausdrucksseite (Lautbild) und eine Inhaltsseite (Vorstellung), beschrieben. Allerdings erachte ich den Terminus *sprachliches Zeichen* in Anlehnung an Schippan (2002: 79) als übergeordneten Terminus für spezifischere Einheiten wie zum Beispiel lexikalisches Wort und syntaktisches Wort in der Gemeinsprache. Beispielsweise wird das lexikalische Wort *Flasche* über eine perzipierte Lautfolge /ˈflaʃə/ und die Vorstellung über Flasche beschrieben.

Im Hinblick auf Fachsprache müsste meines Erachtens unter einem sprachlichen Zeichen noch der Terminus subsumiert werden. Darüber hinaus bewerte ich die von Saussure angesetzten Komponenten (*Ausdruck* und *Inhalt*) als subjektive Größen und mithin aus linguistischer Perspektive als inadäquat, weil sie gemäß Linke / Nussbaumer / Portmann (2004: 31-32) auf kognitive Aspekte bzw. auf den singulären Sprachgebrauch referieren. Aus diesem Grund substituiere ich die Termini *Ausdruck* und *Inhalt* in Anlehnung an Arntz / Picht / Schmitz (2014: 63, 115) durch die systemlinguis-

tischen Termini *Benennung* und *Definition*. Die Terminologienormung wie zum Beispiel DIN 2342-1 (2011) sieht die Benennung nicht als Ausdrucksseite des Terminus an, sondern erachtet beide Einheiten als Ausdrucksseiten eines Begriffes und somit als Synonyme. Gemäß DIN 2342-1 ist ein Begriff die lexikalische Grundeinheit einer Fachsprache. Dieser Auffassung widerspreche ich in Anlehnung an Vater (2000: 11-12), der den Begriff (ähnlich wie die Komponente *Vorstellung* bei Saussure) als kognitive und nicht als linguistische Einheit einschätzt.

Im Falle eines interdisziplinären Terminus wie zum Beispiel *Virus*, der sowohl in der medizinischen als auch in der informatischen Fachsprache erscheint, ist die Eingrenzung des sprachlichen Kontextes unentbehrlich. Demzufolge wurde im Rahmen der Terminologiearbeit des Instituts für Automatisierungstechnik und Verkehrssicherheit der Technischen Universität Braunschweig (vgl. Schnieder / Stein / Schielke / Pfundmayr 2011: 64) Saussures Zeichenmodell durch die Erweiterung um eine dritte Komponente, nämlich um die *Varietät* zu einem trilateralen Modell weiterentwickelt. Jedoch ergibt sich im Kontext der multilingualen Fachsprachenforschung die Frage, in welcher Einzelsprache ein Terminus benannt und definiert wird. In Yurdakul (2016: 129) wird das trilaterale Modell um eine vierte Komponente erweitert, sodass ein tetralaterales Terminusmodell mit der zusätzlichen Komponente *Gesamtsprache* entsteht, siehe Abbildung 1.

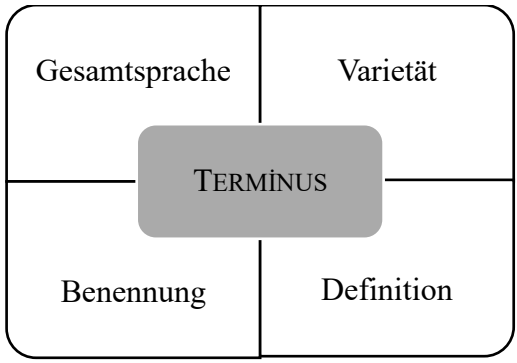


Abb. 1: Das tetralaterale Terminusmodell von Yurdakul (2016: 129)

In den folgenden Kapiteln erläutere ich die einzelnen Terminuskomponenten anhand illustrativer Beispiele aus der juristischen Fachsprache. Zusammenfassend halte ich fest, dass zu den im vierseitigen Beschreibungsmodell vereinten Komponenten eines Terminus letztendlich die Benennung, Definition, Varietät und Gesamtsprache zählen.

1. Benennung als erste Komponente

Die erste Komponente eines Terminus bildet die Benennung, welche Arntz / Picht / Schmitz (2014: 115) als sprachliche Bezeichnung begreifen. Differenziert wird zwischen Einwortbenennungen und Mehrwortbenennungen. Ausgehend von dieser Klassifikation ist die sprachliche Bezeichnung als Bezeichnung mithilfe eines lexikalischen Wortes oder mehrerer lexikalischer Wörter zu konkretisieren. Eine Einwortbenennung (z.B. **Recht** oder **Bürgschaft**) besteht aus einem lexikalischen Wort, wobei sich Einwortbenennungen in ihrer morphologischen Komplexität unterscheiden können. Während zum Beispiel die Benennung **Recht** nur ein Morphem, nämlich {Recht}, enthält und mithin eine einfache Benennung darstellt, erweist sich zum Beispiel die aus den zwei Morphemen {-bürg-} und {-schaft} gebildete Benennung **Bürgschaft** als komplexe Benennung. Im Unterschied dazu rekrutiert sich eine Mehrwortbenennung (z.B. **juristische Person**) aus einem Wortgruppenlexem, welches aus mindestens zwei (getrennt geschriebenen) syntaktisch verknüpften Wörtern gebildet wird (vgl. Arntz / Picht / Schmitz 2014: 115).

2. Definition als zweite Komponente

Als zweite Terminuskomponente erscheint die Definition, die einen Terminus durch sprachliche Mittel beschreibt. Hierbei spezifiziere ich das sprachliche Mittel als Definitionstext, der den Inhalt eines Terminus in Form einer Wortgruppe oder eines Satzes wiedergibt. Arntz / Picht / Schmitz (2014: 66) bezeichnen eine solche Definitionsart als Inhaltsdefinition, welche einen Terminus ausgehend von einem übergeordneten Terminus unter Einschluss zweckdienlicher distinktiver Merkmale intensional determiniert. In der lexikalischen Semantik (z.B. bei Löbner 2015: 279)

werden solche Merkmale als Seme bezeichnet. Für den Terminus *Bürgschaft* kann zum Beispiel die Inhaltsdefinition „Vertrag, durch den sich ein Bürge verpflichtet, für die Verbindlichkeiten eines Dritten gegenüber dessen Gläubiger einzustehen“ (Duden 2015: 363) formuliert werden. In dieser Definition fungiert *Vertrag* als übergeordneter Terminus. Die Einheiten [durch den sich ein Bürge verpflichtet], [für die Verbindlichkeiten eines Dritten gegenüber] und [dessen Gläubiger einzustehen] bilden die Seme dieser Definition, die in der lexikalischen Semantik (z.B. bei Löbner 2015: 279) in einer eckigen Klammer dargestellt werden.

In der Terminologielehre werden neben der Inhaltsdefinition noch extensionale Definitionstypen wie zum Beispiel die Umfangsdefinition und die Bestandsdefinition (vgl. Arntz / Picht / Schmitz: 2014: 67) diskutiert, welche ich in der vorliegenden Arbeit nicht in Erwägung ziehe, weil sie nur bei bestimmten semantischen Relationen wie zum Beispiel bei Hyponymie-Hyperonymie und Meronymie-Holonymie, die ich in der vorliegenden Arbeit nicht thematisiere, konstruiert werden können.

3. Varietät als dritte Komponente

Die dritte Komponente eines Terminus ist die Varietät, die den sprachlichen Kontext darstellt, in dem ein Terminus beschrieben wird. Zur Einteilung der Varietäten (des Deutschen) haben sich in der Soziolinguistik verschiedene Klassifikationsversuche etabliert. Unter Varietät subsumiert Coşeriu (1980: 111) diatopische, diastratische und diaphasische Varietäten. Zu diatopischen Varietäten gehören Dialekte (z.B. Bairisch, Sächsisch), die eine regionale Ausprägung von Sprache sind. Diastratische Varietäten weisen einen soziokulturellen Kontext auf, sodass u.a. Soziolekte (z.B. die Jugendsprache, Jägersprache) zu dieser Varietätenklasse gehören. Unter diaphasischen Varietäten versteht Coşeriu Funktiolekte (insbesondere Fachsprachen wie zum Beispiel die medizinische Fachsprache und die juristische Fachsprache), die sich auf bestimmte Tätigkeits- und Kommunikationsbereiche beziehen. Den Varietätenklassen von Coşeriu füge ich noch die Gemeinsprache als allgemein zugängliche Grund- oder Standardvarietät (vgl. Glück / Rödel 2016: 227) hinzu.

Neben Coşerius Theorie erscheinen zum Beispiel noch die Ansätze von Dittmar (1997) und Löffler (2016). Diese bieten ein weitaus breiteres Spektrum an Subvarietäten, sodass zu den von Coşeriu genannten Varietäten beispielsweise noch *Idiolekte*, *Urbanolekte*, *Regiolekte*, *Xenolekte*, *Slang*, *Register*, *Stil*, *Situolekte*, *Sexlekte*, *Gerontolekte* und *Mediolekte* hinzukommen. Insbesondere geht diese Vielfalt mit der Verschränkung der diatopischen und diastratischen Ausprägungsform und mit der Spezifizierung bzw. Erweiterung der diaphasischen Ausprägungsform um (weitere) Subvarietäten einher. Da der Fokus der vorliegenden Analyse nicht auf einer varietätenlinguistischen Analyse liegt, rekurriere ich auf Coşerius Grundmodell.

Im Falle des Terminus *Bürgschaft* liegt ein Funktiolekt vor, da dieser Terminus der juristischen Fachsprache angehört. Eckardt (2000: 49-60) ordnet die juristische Fachsprache im Hinblick auf pragma- und soziolinguistische Aspekte auch anderen Varietäten wie zum Beispiel dem Mediolekt, Situolekt und Soziolekt zu. Ich klammere eine solche Klassifikation aus, da ich mich ausschließlich auf systemlinguistische Aspekte der juristischen Fachsprache fokussiere.

4. Gesamtsprache als vierte Komponente

Die Gesamtsprache bildet die vierte Konstituente eines Terminus. In Anlehnung an Ammon (2004: 274) definiere ich diese Komponente als Gesamtmenge aus der Gemeinsprache und weiteren Varietäten, die ich in Kapitel II.3 insbesondere auf der theoretischen Grundlage von Coşeriu (1980: 111), jedoch auch unter Berücksichtigung der Typologien von Dittmar (1997) und Löffler (2016), aufgeführt habe. Beispielsweise setzt sich das Deutsche aus der deutschen Gemeinsprache und weiteren deutschen Varietäten zusammen. In expliziter Weise können diese Varietätenräume als deutsche Dialekte, deutsche Soziolekte, deutsche Funktiolekte etc. benannt werden.

Die Gesamtsprache, in der der juristische Terminus *Bürgschaft* als **Bürgschaft** benannt und als „Vertrag, durch den sich ein Bürge verpflichtet, für

die Verbindlichkeiten eines Dritten gegenüber dessen Gläubiger einzustehen“ (Duden 2015: 363) definiert wird, ist das Deutsche.

III. Semantische Probleme zwischen Termini innerhalb einer Sprache und zwischen verschiedenen Sprachen

Ein Terminus kommt nie isoliert vor, sondern stets in Relation mit sogenannten Nachbartermini (vgl. Yurdakul 2016: 53, in ähnlicher Formulierung auch bei Arntz / Picht / Schmitz 2014: 75). Differenziert wird zwischen einer intralingualen Relation, bei der zwischen Benennung und Definition eine Eineindeutigkeit besteht, und einer intralingualen Relation, bei der zwischen Benennung und Definition keine Eineindeutigkeit besteht. Zur ersten Relationsart zählen zum Beispiel Hyponymie-Hyperonymie und Meronymie-Holonymie und zur zweiten Relationsart etwa Polysemie und Homonymie (vgl. Arntz / Picht / Schmitz 2014: 80-140). Im Fokus der vorliegenden Arbeit stehen Relationen der zweiten Klasse. Auf interlingualer Ebene gehören zu solchen nicht-eineindeutigen Relationen zum Beispiel sogenannte partielle Äquivalenzarten wie zum Beispiel Eins-zu-viele-Äquivalenz, Viele-zu-eins-Äquivalenz und Eins-zu-Teil-Äquivalenz (vgl. Koller 2011: 232-238). In den folgenden Kapiteln bespreche ich solche Problemarten auf der Grundlage verschiedener linguistischer Theorien, um in der vorliegenden Arbeit ein Kategoriensystem erarbeiten zu können, das zur Analyse semantischer Probleme in der juristischen Fachsprache herangezogen werden kann (siehe Kapitel IV).

1. Polysemie

Hinsichtlich der Definition von Polysemie herrscht weder zwischen der terminologiewissenschaftlichen und linguistischen Forschung noch innerhalb der linguistischen Forschung Konsens. Laut Arntz / Picht / Schmitz (2014: 139) liegt Polysemie vor, sofern eine Benennung in einer Sprache zwei oder mehrere unterschiedliche Bedeutungen trägt, deren Zusammenhang noch ersichtlich ist. Diese terminologiewissenschaftliche Definition halte ich für fragwürdig, weil erstens Benennungen keine Bedeutung tragen können, und zweitens bei dieser Definition die synchrone und

diachrone Betrachtungsweise miteinander fusioniert werden. Um jeweils eine explizite Definition für beide Sprachbetrachtungsebenen gewährleisten zu können, bedarf es einer Differenzierung zwischen synchroner und diachroner Definition von Polysemie. Eine solche Unterscheidung findet sich in der lexikalischen Semantik (z.B. bei Linke / Nussbaumer / Portmann 2004: 159-160 und bei Löbner 2015: 52). Aus synchroner Perspektive ist ein Polysem ein lexikalisches Wort mit ähnlichen Bedeutungsnuancen. In diachroner Hinsicht wird das Polysem als lexikalisches Wort mit Bedeutungsvarianten, die einen gemeinsamen etymologischen Ursprung haben, aufgefasst. Da ich in der vorliegenden Arbeit zwei Sprachen (das Deutsche und Türkische) in demselben Sprachstadium (in dem aktuellen Sprachstadium) untersuchen möchte, ist für meinen Schwerpunkt eine synchrone Definition relevant.

Innerhalb der synchronen Sprachbetrachtung weichen die Auffassungen über Polysemie auch ab. Während beispielsweise Löbner (2015: 54) unter einem Polysem ein lexikalisches Wort mit mehreren zusammenhängenden Bedeutungsvarianten versteht, definiert zum Beispiel Levickij (2005: 458) ein Polysem als Wort mit mehreren Bedeutungen. In Levickijs Beschreibung manifestiert sich ein Widerspruch, da das Wort *mehrere* in der Wortgruppe „[…] Fähigkeit des Wortes, mehrere Bedeutungen zu besitzen, […]“ (Levickij 2005: 458) das Vorliegen unterschiedlicher Bedeutungen impliziert. Freilich grenzt sich Polysemie von Homonymie durch ähnliche Definitionen ab (siehe Kapitel III.2), weshalb ich diese auch als Definitionsvarianten bzw. Definitionsnuancen präzisiere. Demzufolge schließe ich mich Löbners Definition an. Als Beispiel für ein Polysem nenne ich das lexikalische Wort *Virus*, dem zwei Definitionsnuancen zukommen:

(1) „[K]leinstes [krankheitserregendes] Partikel, das nur auf lebendem Gewebe gedeiht.“ (Duden 2015: 1940)

(2) „Computerprogramm, das jemand unbemerkt in einen Rechner einschleust in der Absicht, die vorhandene Software zu manipulieren oder zu zerstören.“ (Duden 2015: 381)

Laut terminologiewissenschaftlicher Auffassung erfolgt Polysemie durch Bedeutungsübertragung (Metaphorisierung). Daher wird der medizinische Terminus *Virus* aufgrund der funktionalen Ähnlichkeit des Krankheitserregers mit dem Computerprogramm auf die informatische Fachsprache semantisch übertragen. Beide Bedeutungen stimmen in der Verbreitungsfunktion und der destruktiven Funktion überein.

In Bezug auf meinen fachsprachlichen Fokus revidiere ich Löbners Polysemiedefinition auf der Grundlage des vierseitigen Terminusmodells als Terminus in derselben oder in verschiedenen Fachsprachen einer Gesamtsprache. Dem Terminus kommen eine Benennung und mehrere zusammenhängende Definitionsvarianten zu. So stellt zum Beispiel der Terminus *Sicherheit* aus der deutschen Verkehrsfachsprache ein Polysem dar. Gemäß Schnieder / Schnieder (2013: 69-71) sind diesem Polysem die folgenden Definitionsvarianten zuzuordnen:

(1) „Schutz der Umwelt vor Systemauswirkungen“ (Schnieder / Schnieder 2013: 69)

(2) „Schutz eines Systems vor Fremdeinwirkungen“ (Schnieder / Schnieder 2013: 71)

2. Homonymie

Strikt abzugrenzen ist Polysemie von Homonymie. Gemeinhin wird die Ansicht vertreten, dass Polysemie eine Relation innerhalb einer Einheit und Homonymie eine Relation zwischen verschiedenen Einheiten darstellt (vgl. Neef 2018: 56; Löbner 2015: 55; Arntz / Picht / Schmitz 2014: 139-140). Jedoch divergieren wie bei Polysemie auch bei Homonymie die Ansichten zwischen der Terminologiewissenschaft und der Linguistik zur Art der linguistischen Einheiten, die als Homonyme zu klassifizieren sind. Arntz / Picht / Schmitz (2014: 140) begreifen Homonyme als zwei oder mehrere Benennungen, die unterschiedliche Begriffe repräsentieren. Auch hier liegt eine Unschärfe vor, weil eine Benennung keine Bedeutung trägt und demzufolge auch keinen Begriff repräsentieren kann (siehe Begründung zu Polysemie in Kapitel III.1).

In Analogie zu Polysemie ist auch bei Homonymie zwischen einer diachronen und synchronen Definition zu differenzieren. Aus diachroner Perspektive beschreibt Blank (1997: 407) Homonyme als „Ergebnis eines lautlichen Zusammenfalls zweier etymologisch unterschiedlicher Wörter [...]." Löbner (2015: 53, 55) fasst (in seiner synchronen Theorie) unter Homonymie die Relation zwischen zwei oder mehreren unterschiedlichen lexikalischen Wörtern in derselben Sprache, ohne einen Bezug zum etymologischen Ursprung dieser Wörter herzustellen. Ein Beispiel für eine solche Relation besteht zum Beispiel zwischen den lexikalischen Wörtern *Ball* (im Sinne von kugelförmiges Spielgerät) und *Ball* (im Sinne von Tanzveranstaltung) (vgl. Duden 2015: 251). In der vorliegenden Arbeit setze ich eine synchrone Definition für Homonymie an, da ich zwei Sprachen in demselben Sprachstadium vergleiche (siehe Begründung zu Polysemie in Kapitel III.1).

Für mein fachsprachliches Anliegen definiere ich Homonyme ausgehend von dem vierseitigen Terminusmodell vorzugsweise als Termini zwischen unterschiedlichen Fachsprachen einer Gesamtsprache (vgl. Welke 2019: 37). Realisiert werden Homonyme durch dieselbe Benennung, jedoch durch unterschiedliche Definitionen.

3. Partielle Äquivalenzarten

Die Auffassungen über partielle Äquivalenzarten divergieren zwischen der lexikographischen, terminologiewissenschaftlichen und übersetzungswissenschaftlichen Forschung. Es existieren diverse Theorien wie zum Beispiel die Theorie von Hausmann (1977: 53-55), Felber (1984: 153), Kade (1968) und Koller (2011: 232-238). In der vorliegenden Arbeit rekurriere ich auf die Theorie von Koller, wobei anzumerken ist, dass Kollers Theorie eine Erweiterung von Kades Ansatz darstellt. Denn Koller fügt den partiellen Äquivalenzarten Eins-zu-viele-Äquivalenz und Eins-zu-Teil-Äquivalenz noch die Viele-zu-eins-Äquivalenz (als Umkehrrelation der Eins-zu-viele-Äquivalenz) hinzu.

Anders als bei den Theorien von Hausmann und Felber wird bei den Ansätzen von Kade und Koller der quantitative Anteil der Ausgangssprache

und der Zielsprache (in der vorliegenden Arbeit: des Deutschen und des Türkischen) an dem Äquivalenzverhältnis transparenter bezeichnet. Im Unterschied dazu benennt Felber (1984: 153) die partiellen Relationen als *Inklusion* und *Überschneidung* und Hausmann (1977: 55) als *Divergenz*, *Konvergenz* und *Kombination von Divergenz und Konvergenz*. Um die konkrete Relation zwischen Ausgangssprache und Zielsprache konstatieren zu können, halte ich Felbers und Hausmanns Äquivalenzklassen für vage, wiewohl sie Ähnlichkeiten zu Kollers Subklassen aufweisen. Folglich eignet sich Kollers Ansatz für mein Forschungsanliegen, sodass ich in den anschließenden Kapiteln Kollers Äquivalenztheorie präsentiere.

3.1. Eins-zu-viele-Äquivalenz

Eins-zu-viele-Äquivalenz definiert Koller (2011: 232) als Relation zwischen einem ausgangssprachlichen Ausdruck (in meiner Theorie: Benennung), dem in der Zielsprache zwei oder mehrere Ausdrücke (in meiner Theorie: Benennungen) entsprechen. Dieser Definition stimme ich nur partiell zu. Denn semantische Relationen treten nicht zwischen Ausdrücken bzw. Benennungen auf, sondern zwischen Termini, sofern eine Fachsprache als Varietät festgelegt wird. Im Falle der Gemeinsprache sind die zu relationierenden sprachlichen Zeichen lexikalische Wörter. Im Hinblick auf meinen fachsprachlichen Fokus stellt Eins-zu-viele-Äquivalenz eine Relation zwischen einem ausgangssprachlichen Terminus und zwei oder mehreren zielsprachlichen Termini innerhalb einer Fachsprache dar. Als Beispiel für eine solche Relation nenne ich den verkehrswissenschaftlichen Terminus *Sicherheit*, dem in der türkischen Zielsprache die Termini *emniyet* und *güvenlik* zuzuordnen sind (vgl. Yurdakul 2016: 156). Im Unterschied zu den türkischen Termini hat der deutsche Terminus zwei Lesarten, die die folgenden Definitionsvarianten illustrieren:

(1) „Schutz der Umwelt vor Systemauswirkungen“ (Schnieder / Schnieder 2013: 69)

(2) „Schutz eines Systems vor Fremdeinwirkungen“ (Schnieder / Schnieder 2013: 71)

Der türkische Terminus *emniyet* trägt die Definitionsvariante (1) und der türkische Terminus *güvenlik* die Definitionvariante (2) (Yurdakul 2016: 156). Hieraus lässt sich schlussfolgern, dass der ausgangssprachliche Terminus *Sicherheit* den zielsprachlichen Termini *emniyet* und *güvenlik* übergeordnet ist.

3.2. Viele-zu-eins-Äquivalenz

Die zweite partielle Äquivalenzart bezeichnet Koller (2011: 233) als Viele-zu-eins-Äquivalenz, welche er als Umkehrrelation von Eins-zu-viele-Äquivalenz konstruiert. Diese besteht laut Koller zwischen zwei oder mehreren Ausdrücken bzw. zwei oder mehreren Benennungen in der Ausgangssprache und einem Ausdruck bzw. einer Benennung in der Zielsprache. In Anknüpfung an meine obige fachsprachenspezifische Definition von Eins-zu-viele-Äquivalenz beschreibe ich Viele-zu-eins-Äquivalenz als Relation zwischen zwei oder mehreren ausgangssprachlichen Termini und einem zielsprachlichen Terminus innerhalb einer Fachsprache. Beispielsweise besteht eine Viele-zu-eins-Äquivalenz zwischen den türkischen Termini *emniyet* und *güvenlik* und dem deutschen Terminus *Sicherheit*. Folglich zeigt sich zwischen Eins-zu-viele-Äquivalenz und Viele-zu-eins-Äquivalenz ein einziger Unterschied, welcher die Vertauschung von Ausgangssprache und Zielsprache anbelangt.

3.3. Eins-zu-Teil-Äquivalenz

Als dritte Teiläquivalenzrelation erwähnt Koller (2011: 238) Eins-zu-Teil-Äquivalenz, bei der ein ausgangssprachlicher Ausdruck in der Zielsprache nur mit einem untergeordneten Ausdruck korrespondiert. In Analogie zu den Definitionen der vorausgehenden partiellen Äquivalenzarten, die ich bereits revidiert habe, präzisiere ich Eins-zu-Teil-Äquivalenz als Beziehung zwischen einem ausgangssprachlichen Terminus (z.B. dem deutschen Terminus *Sicherheit*) und einem zielsprachlichen untergeordneten Terminus (z.B. dem türkischen Terminus *emniyet* bzw. dem türkischen Terminus *güvenlik*) in derselben Fachsprache. Wie bereits in Kapitel III.3.1 erläutert, ist die Definition des türkischen Terminus *emniyet* bzw.

des türkischen Terminus *güvenlik* nur eine Teildefinition des deutschen Terminus *Sicherheit*.

IV. Intralinguale und interlinguale semantische Probleme in der juristischen Terminologie des Deutschen und des Türkischen

In diesem Kapitel demonstriere ich am Beispiel des Polysems *Schuld* und dessen Übersetzung ins Türkische meine linguistische Methode zur Bestimmung und Lösung intralingualer und interlingualer semantischer Probleme in der juristischen Fachsprache des Deutschen. Meine Hypothese ist, dass Polysemie verschiedene partielle Äquivalenzarten verursacht und auch die Behebung von Polysemie äquivalenzbereinigend wirkt.

Zuerst gebe ich einen Forschungsüberblick über die juristische Terminologie des Deutschen und die Rechtsübersetzung zwischen dem Deutschen und dem Türkischen, um bisherige Forschungsergebnisse sowie Forschungslücken aufzeigen zu können.

1. Forschungsüberblick über die juristische Terminologie des Deutschen und über die Rechtsübersetzung zwischen dem Deutschen und dem Türkischen

Bislang gibt es in der linguistischen Forschung verschiedene Untersuchungen, die die sprachliche Verständlichkeit der juristischen Fachsprache des Deutschen thematisieren und problematisieren. Diese erstrecken sich von der lexikologischen bzw. lexikographischen Ebene bis auf die syntaktische bzw. textuelle Ebene. Ein Beispiel für eine lexikologische Auseinandersetzung ist zum Beispiel die Arbeit von Eriksen (2002: 215-221), in der am Beispiel des Terminus *Sache* Polysemie innerhalb der deutschen Rechtssprache analysiert wird. Mit textuellen Aspekten der deutschen Rechtssprache beschäftigen sich zum Beispiel Neu (2011) und Wolfer (2017). Eine heterogene Betrachtung liefert beispielsweise die Arbeit von Eckardt (2000), welche sowohl lexikologische als auch syntaktische Charakteristika der deutschen Rechtssprache analysiert. Den Ursprung zahlreicher

sprachlicher Barrieren in einer Fachkommunikation sehe ich in der fachsprachlichen Lexik (Terminologie), weshalb ich mich in der vorliegenden Arbeit auf den lexikologischen Aspekt der juristischen Fachsprache beziehe. Zu solchen sprachlichen Problemquellen zählen u.a. lexikalische Ambiguität und Vagheit. Ein mehrdeutiger oder vager Terminus kann auch zu potenzieller Unschärfe auf syntaktischer und textueller Ebene führen.

In den oben genannten und in weiteren Untersuchungen zur deutschen Rechtsterminologie kristallisiert sich lexikalische Ambiguität (insbesondere Polysemie) als zentrales Thema heraus. Eckardt (2000: 31) verweist auf ambige Termini wie zum Beispiel *einverständliche Scheidung* und *Getrenntleben*, deren Bedeutungen in der juristischen Fachsprache und der juristischen Gemeinsprache verschieden ausgelegt sind. Zudem existieren auch innerhalb der juristischen Fachsprache mehrdeutige Termini. Als Beispiel hierfür nennt Eckardt den Terminus *Versorgungsausgleich*. Verschiedene Lesarten von Termini sowohl zwischen zwei Varietäten als auch innerhalb einer Varietät erhöhen die Auftrittswahrscheinlichkeit kommunikativer Missverständnisse.

Wiesmann (2004: 33), Eriksen (2002: 219) und Mushchinina (2009: 144-147) vertreten auch die Ansicht, dass Polysemie nicht nur zwischen der Fachsprache und der Gemeinsprache, sondern auch innerhalb der Rechtssprache bzw. zwischen verschiedenen Rechtsfeldern erscheint. Das Vorkommen von Polysemie innerhalb einer Fachsprache bezeichnet Eriksen (2002: 219) in spezifischer Weise als Fachpolysemie. Freilich werden in den Arbeiten von Eckardt, Wiesmann, Eriksen und Mushchinina Polyseme in der juristischen Terminologie lediglich konstatiert. Schließlich fehlt ein (linguistischer) Ansatz zur Behebung dieses Problems.

Die deutsch-türkische Rechtsübersetzung ist in lexikographischer Hinsicht gut erforscht. Einige Beispiele für Rechtswörterbücher sind die folgenden: „Rechtswörterbuch Deutsch-Türkisch“ von Güzel / İncesu / Demir (2001), „Wörterbuch Recht. Türkisch-Deutsch. Deutsch-Türkisch“ von Kıygı (2010) und „Rechtstürkisch: deutsch-türkisches und türkisch-deutsches Rechtswörterbuch für jedermann“ von Köbler / Baltacı (2011). Allerdings wird der deutsch-türkischen Rechtsübersetzung in linguistischer Hinsicht

wenig Aufmerksamkeit gewidmet. Es existieren wenige Studien wie zum Beispiel die Arbeit von Eruz (2012: 27-48) und die Arbeit von Öncü (2012: 97- 121). Da sich die Untersuchung von Eruz auf textlinguistische Aspekte von Übersetzungsproblemen bezieht, klammere ich sie an dieser Stelle gänzlich aus. Allerdings tangiert die Arbeit von Öncü, welche sich auf die Rechtsübersetzung zwischen dem Deutschen und dem Türkischen fokussiert, auch nur lexikalische Merkmale der juristischen Fachsprache. Um lexikalisch-semantische Barrieren in der deutsch-türkischen Rechtsübersetzung eruieren zu können, bedarf es der Analyse von Übersetzungsproblemen, welche zum Beispiel mit disproportionalen Äquivalenzrelationen einhergehen. Auch auf zwischensprachlicher Ebene fehlt eine linguistische Methode zur Bestimmung und Behebung von Äquivalenzproblemen in der juristischen Terminologie des Deutschen und des Türkischen, weshalb diese Thematik meines Erachtens ein großes Forschungsdesiderat darstellt.

2. Bestimmung und morphologische Methode zur Klärung von Polysemie und von Äquivalenzproblemen in der deutschen und der türkischen Rechtsterminologie

Die zu präsentierende linguistische Methode umfasst die folgenden vier Teilansätze:

1. Die Bestimmung von Polysemie durch den Vergleich der Definitionsvarianten des Polysems.
2. Die Bestimmung verschiedener partieller Äquivalenzarten gemäß Koller (2011: 232-238), welche (potenziell) durch Polysemie erzeugt werden.
3. Klärung von Polysemie durch eine morphologische Methode.
4. Klärung der partiellen Äquivalenzarten (potenziell) durch die Behebung von Polysemie.

Im Unterschied zu Polysemie kommt Homonymie selten vor (vgl. Welke 2019: 37), bzw. stellt sie kein innerfachsprachliches, sondern vielmehr ein zwischenfachsprachliches Problem dar (vgl. Yurdakul 2016: 95). Hingegen erscheint Polysemie sowohl in einer Fachsprache als auch in verschiedenen Fachsprachen häufig (siehe Kapitel III.1). Zudem kann Homonymie meines Erachtens keine partielle Äquivalenz, sondern ausschließlich eine Viele-zu-viele-Äquivalenz herbeiführen (vgl. Yurdakul 2016: 189), weil Homonyme in der jeweiligen Vergleichssprache gewöhnlich mit zwei oder mehreren Termini korrespondieren. Im Unterschied zu den erwähnten partiellen Äquivalenzarten schätze ich Viele-zu-viele-Äquivalenz folglich nicht als disproportionales Verhältnis ein, weshalb ich Homonymie in dieser Untersuchung ausklammere.

2.1. Bestimmung semantischer Probleme in der juristischen Fachsprache des Deutschen

Ein Beispiel für ein Polysem in der juristischen Fachsprache des Deutschen stellt der Terminus *Schuld* dar, da er über eine Benennung (über die Benennung **Schuld**), freilich über zwei zusammenhängende Definitionsvarianten beschrieben wird. Unter Schuld wird zum einen im Strafrecht „Voraussetzung der Strafbarkeit einer Handlung“ (Griebel 2013: 183) und zum anderen im Zivilrecht „Gegenstand der Beziehung zwischen einem Schuldner und einem Gläubiger“ (Griebel 2013: 184) verstanden. Beide Definitionsvarianten hängen zusammen, weil sie [Verantwortung für einen Sachverhalt gegenüber einer Person, einer Institution etc.] als (implizites) Definitionsmerkmal teilen. Die Verantwortung wird im Sinne der strafrechtlichen Definition für die Handlung und im Sinne der zivilrechtlichen Definition für den Gegenstand (z.B. für Geld) getragen.

Hieraus folgt, dass sich die Benennung und die Definitionsvarianten des Polysems disproportional zueinander verhalten. Das Polysemieproblem ist auf die Benennung zurückzuführen, die nicht nur auf einen zweideutigen Terminus referiert, sondern auch arbiträr ist. Denn die beiden Definitionsvarianten lassen sich nicht aus der Benennung ableiten. Zur Schaffung eines proportionalen Verhältnisses ist die Umbenennung des Polysems in

zwei spezifische und morphosemantisch transparente Benennungen erforderlich. Hierfür erarbeite ich in Kapitel IV.2.3 eine morphologische Methode.

2.2. Bestimmung von Äquivalenzproblemen zwischen dem Deutschen und dem Türkischen

Um überprüfen zu können, zu welchen partiellen Äquivalenzproblemen das Polysem *Schuld* führt, übersetze ich es mithilfe eines deutsch-türkischen Rechtsglossares ins Türkische. Kulaber (2016: 8, 39) führt für den deutschen Terminus *Schuld* die Äquivalente *suç* und *borç* an. Bei einer Übersetzung ändert sich nicht der Definitionsinhalt, sondern höchstens die Sprache des Definitionstextes. Daher erfolgt der Definitionsvergleich auf einer gemeinsamen abstrakteren Sprachebene (Yurdakul 2018: 137). Um diese Ebene zu konkretisieren, formuliere ich auch die türkischen Terminusdefinitionen beispielhaft auf Deutsch. In Anlehnung an Kulaber ist dem türkischen Terminus *suç* Griebels Definition „Voraussetzung der Strafbarkeit einer Handlung“ (siehe Kapitel IV.2.1) und dem türkischen Terminus *borç* Griebels Definition „Gegenstand der Beziehung zwischen einem Schuldner und einem Gläubiger“ (siehe Kapitel IV.2.1) zuzuordnen. Insofern tragen die türkischen Termini jeweils eine Bedeutung des deutschen Polysems und verhalten sich demzufolge als untergeordnete Termini dieses Polysems. Daraus resultiert eine disproportionale Relation, bei der dem ausgangssprachlichen Polysem *Schuld* die zielsprachlichen Termini *suç* und *borç* entsprechen. Hier liegt Eins-zu-viele-Äquivalenz vor.

Neben dieser partiellen Relationsart verursacht das Polysem *Schuld* noch eine Viele-zu-eins-Äquivalenz, bei der das Polysem in der Zielsprache vorliegt und mit den zwei ausgangssprachlichen Termini *suç* und *borç* korrespondiert.

Die dritte partielle Äquivalenzart, die durch das ausgangssprachliche Polysem *Schuld* herbeigeführt wird, ist eine Eins-zu-Teil-Äquivalenz. Im Unterschied zu den vorangehenden Äquivalenzarten handelt es sich bei diesem Äquivalenzproblem um eine Beziehung zwischen einem übergeordneten Terminus in der (deutschen) Ausgangssprache und einem unterge-

ordneten Terminus in der (türkischen) Zielsprache. Beispielsweise würde zwischen dem ausgangssprachlichen Polysem *Schuld* und dem zielsprachlichen Terminus *suç* oder dem zielsprachlichen Terminus *borç* eine Eins-zu-Teil-Äquivalenz entstehen.

Alle drei Äquivalenzarten weisen eine nicht-eineindeutige Relation zwischen der Ausgangssprache und der Zielsprache auf, sodass dadurch keine eineindeutige Übersetzung zwischen beiden Vergleichssprachen möglich ist. Die Ursache für diese disproportionalen semantischen Relationen ist das Polysemieproblem im Deutschen. Folglich wird meine erste Hypothese, dass Polysemie verschiedene partielle Äquivalenzprobleme verursacht, bestätigt.

2.3. Behebung des Polysemieproblems im Deutschen durch die Bildung spezifischer und morphosemantisch motivierter Benennungen

Das deutsche Polysem *Schuld*, welches in einer partiellen Äquivalenzrelation sowohl in der Ausgangssprache als auch in der Zielsprache erscheinen kann, behebe ich durch eine morphologische Methode. Wie in Kapitel IV.2.1 erwähnt, referiert die Einwortbenennung **Schuld** auf ein Polysem und ist zugleich auch arbiträr, da sie nur aus dem Morphem {Schuld} besteht und die Definitionsvarianten nicht aus der Benennung ableitbar sind. Naumann (2000: 36) begründet die Arbitrarität eines monomorphemischen lexikalischen Wortes mit dem folgenden Zitat:

> Monomorphematische Wörter, […] sind nicht motiviert […], weil zwischen der Lautfolge der Morpheme und der damit bezeichneten bzw. der damit gemeinten Sache kein explizierbares Verhältnis besteht.

Folglich muss die Benennung **Schuld** durch zwei spezifische und morphosemantisch transparente Benennungen, welche in einer eineindeutigen Relation zu den beiden Definitionsvarianten stehen müssen, substituiert werden.

2.3.1. Beschreibung der morphologischen Methode

Ausgehend von Eichinger (2000: 144) bieten sich zur Bildung spezifischer und motivierter Benennungen komplexe Benennungen an, die sich zum Beispiel aus Komposita zusammensetzen. Komposita bestehen aus zwei oder mehreren lexikalischen Wörtern (vgl. Vater 2002: 76). Ein Beispiel für ein Kompositum im Deutschen ist das lexikalische Wort *Lederhose*, welches aus den Konstituenten *Leder* und *Hose* besteht. Wenn die Bedeutung eines Kompositums aus seinen Konstituenten erschließbar ist, liegt ein morphosemantisch motiviertes Kompositum vor (vgl. Fleischer / Barz 2012: 44; Elsen 2014: 28). Das Kompositum *Lederhose* ist morphosemantisch motiviert, weil die Bedeutung des Kompositums „Hose aus Leder" (Duden 2015: 1111) aus den Konstituenten *Leder* und *Hose* abzuleiten ist.

Allerdings erweist sich Motiviertheit als graduierbare Größe, sodass zwischen voll motivierter, teilmotivierter und unmotivierter Benennung zu unterscheiden ist (vgl. Eichinger 2000: 144; Schippan 2002: 101). Die Benennung **Lederhose** stellt aufgrund der vollständigen Wiedergabe der Bedeutung durch die Konstituenten **Leder** und **Hose** eine vollmotivierte Benennung dar, während zum Beispiel die Benennung **Brustbein** morphosemantisch teilmotiviert ist. Dies liegt daran, dass sich ausschließlich die Konstituente **Brust** als motiviert herausstellt. Aus den Konstituenten würde die Bedeutung *Bein der Brust* abgeleitet werden, sofern auch die Konstituente **Bein** in der komplexen Benennung **Brustbein** morphosemantisch motiviert wäre. Jedoch steht die Benennung **Brustbein** für den Terminus mit der Intension „länglicher, flacher Knochen in der vorderen Mitte des Brustkorbs, […]" (Duden 2015: 354). Morphosemantisch unmotiviert ist eine Benennung, wenn keine ihrer Komponenten die Bedeutung des zu repräsentierenden lexikalischen Wortes aufzeigt. Nicht nur einfache Benennungen, sondern auch komplexe Benennungen können daher morphosemantisch unmotiviert sein. Als Beispiel für eine morphosemantisch unmotivierte komplexe Benennung nenne ich die Benennung **Augenblick**, die mit der Definition „Zeitraum von sehr kurzer Dauer, Moment" (Duden 2015: 212) in Verbindung steht. Hieraus lässt sich konkludieren, dass keine

der Benennungskonstituenten an der Bedeutung des zu repräsentierenden lexikalischen Wortes beteiligt ist.

Für die beiden Definitionsvarianten des Polysems *Schuld* intendiere ich die Bildung einer morphosemantisch vollmotivierten Benennung, welche aus den Merkmalen der Definitionsvariante ableitbar sein sollte. Denn nur auf diese Art und Weise kann sichergestellt werden, dass eine transparente Benennung entsteht. Ob die zu bildende Benennung auch spezifisch ist, kann mithilfe eines Wörterbuches (z.B. mithilfe von Duden 2015) überprüft werden. Wenn die Benennung nicht als Lemma ins Wörterbuch aufgenommen wurde, liegt die Annahme nahe, dass diese keinen bereits existierenden Terminus repräsentiert. Da die Definitionsnuancen des Polysems *Schuld* miteinander zusammenhängen und dem Polysem untergeordnet sind, ist die Integration der Konstituente **Schuld** in die zu bildenden spezifischen Benennungen, die die Benennung **Schuld** ersetzen sollen, sinnvoll.

2.3.2. Anwendung der morphologischen Methode auf das deutsche Polysem *Schuld*

Für die Definitionsvariante „Voraussetzung der Strafbarkeit einer Handlung" schlage ich mit der Bedingung, dass **Schuld** als (rechte) Konstituente beibehalten wird, zum Beispiel die Benennung **Strafhandlungsschuld** vor. Diese Benennung leite ich aus den Merkmalen [Strafbarkeit] und [Handlung] der oben genannten Definitionsvariante ab. Der Definitionsvariante „Gegenstand der Beziehung zwischen einem Schuldner und einem Gläubiger" ordne ich auch unter Beibehaltung der (rechten) Konstituente **Schuld** die Benennung **Sachzahlungsschuld** zu, welche ich aus den Merkmalen [Gegenstand] und [Beziehung zwischen einem Schuldner und einem Gläubiger] der aufgeführten Definitionsvariante herleite.

Mit der Behebung dieses Polysemieproblems entstehen in der juristischen Fachsprache des Deutschen zwei monoseme und sprachlich verständliche Termini, nämlich *Strafhandlungsschuld* und *Sachzahlungsschuld*, deren Benennungen und Definitionen in einer eineindeutigen Relation zueinander stehen. Die Eineindeutigkeit zeigt sich darin, dass die vorgeschlagenen

Benennungen (z.B. in Duden 2015) nicht lemmatisiert sind und daher keine bereits existierenden Termini repräsentieren.

2.4. Behebung von Äquivalenzproblemen zwischen dem Deutschen und dem Türkischen durch die Klärung des deutschen Polysems

Die Eins-zu-viele-Äquivalenz zwischen dem Polysem *Schuld* und den monosemen Termini *suç* und *borç* wird durch die Behebung des ausgangssprachlichen Polysems in zwei Eins-zu-eins-Äquivalenzen aufgeteilt und mithin geklärt. Die Disambiguierung führt dazu, dass in der Ausgangssprache die zwei monosemen Termini *Strafhandlungsschuld* und *Sachzahlungsschuld* das Polysem *Schuld* ersetzen. Dem deutschen Terminus *Strafhandlungsschuld* entspricht der türkische Terminus *suç* und dem deutschen Terminus *Sachzahlungsschuld* der türkische Terminus *borç.*

Mit demselben Ansatz lässt sich auch die Viele-zu-eins-Äquivalenz in zwei Eins-zu-eins-Äquivalenzen umwandeln. Allerdings lag das Polysem *Schuld* bei dieser Relation in der Zielsprache. Infolge der Disambiguierung korrespondiert mit dem türkischen Terminus *suç* der deutsche Terminus *Strafhandlungsschuld* und mit dem türkischen Terminus *borç* der deutsche Terminus *Sachzahlungsschuld*. Im Gegensatz zu diesen beiden partiellen Äquivalenztypen resultiert aus der Behebung von Eins-zu-Teil-Äquivalenz lediglich eine Eins-zu-eins-Äquivalenz, weil in der Zielsprache von Anfang an ein untergeordneter Terminus existierte. Die Disambiguierung in der Ausgangssprache erzeugt einen eindeutigen Terminus, der mit dem bereits existierenden zielsprachlichen Terminus korrespondieren würde. Beispielsweise stimmt der deutsche Terminus *Strafhandlungsschuld*, welcher durch die Disambiguierung des Terminus *Schuld* entstanden ist, mit dem in der türkischen Zielsprache bereits existierenden Terminus *suç* eins-zu-eins überein.

Schließlich wirkt die Behebung des Polysemieproblems auf intralingualer Ebene äquivalenzbereinigend. Daher wird auch meine zweite Teilhypothese, die ich eingangs formuliert habe, verifiziert.

V. Fazit

Als Fazit aus der präsentierten Untersuchung zur Erfassung und Behebung semantischer Probleme in der zweisprachigen juristischen Terminologie ergibt sich, dass mit der Klärung solcher Probleme eine Eineindeutigkeit zwischen Benennung und Definition eines Terminus und eine Eineindeutigkeit zwischen Termini verschiedener Sprachen erzielt werden kann. Durch die Eineindeutigkeit auf intralingualer und interlingualer Ebene lässt sich sprachliche Vagheit vermeiden und sprachliche Präzision herstellen. Sprachliche Präzision gilt auch als Voraussetzung für fachliche Korrektheit. Zudem werden meine beiden Hypothesen verifiziert:

(1) Polysemie verursacht verschiedene partielle Äquivalenzprobleme wie zum Beispiel Eins-zu-viele-Äquivalenz, Viele-zu-eins-Äquivalenz und Eins-zu-Teil-Äquivalenz.
(2) Durch die Klärung des Polysemieproblems innerhalb einer Sprache werden auch solche partiellen Äquivalenzprobleme in Eins-zu-eins-Äquivalenzen umgewandelt und mithin behoben.

In weiteren Forschungsarbeiten könnte die präsentierte morphologische Methode zur flächendeckenden Analyse der juristischen Terminologie genutzt werden, sodass mittels Korpusanalyse die juristische Fachsprache konsistenter gestaltet werden könnte. Darüber hinaus könnten in einer anderen Studie neben Polysemen zum Beispiel auch noch Synonyme (als intralinguale semantische Probleme) in der juristischen Fachsprache erforscht werden.

VI. Literatur

Ammon, Ulrich. 2004. Standard variety. In: Ulrich Ammon (Hrsg.), *Handbook of linguistics and communication science. Sociolinguistics*. HSK 3.1. 2. Auflage. Berlin: Walter de Gruyter: 273-282.

Arntz, Reiner / Heribert Picht / Klaus-Dirk Schmitz. 2014. *Einführung in die Terminologiearbeit*. 7. Auflage. Hildesheim: Olms.

Blank, Andreas. 1997. *Prinzipien des lexikalischen Bedeutungswandels am Beispiel der romanischen Sprachen.* Niemeyer: Tübingen.

Coşeriu, Eugenio. 1980. Historische Sprache und Dialekt. In: Joachim Göschel / Pavle Ivic / Kurt Kehr (Hrsg.), *Dialekt und Dialektologie. Ergebnisse des Internationalen Symposions „Zur Theorie des Dialekts“.* Marburg/Lahn, 5.-10. Sept. 1977. Wiesbaden: Steiner, 106-122.

DIN 2342-1. 2011-08. *Begriffe der Terminologielehre.* Berlin: Beuth.

Dittmar, Norbert. 1997. *Grundlagen der Soziolinguistik. Ein Arbeitsbuch mit Aufgaben*. Tübingen: Niemeyer.

Duden. 2015. *Deutsches Universalwörterbuch. Das umfassende Bedeutungswörterbuch der deutschen Gegenwartssprache*. 8. Auflage. Berlin: Dudenverlag.

Eckardt, Birgit. 2000. *Fachsprache als Kommunikationsbarriere? Verständigungsprobleme zwischen Juristen und Laien*. Wiesbaden: Deutscher Universitätsverlag.

Eichinger, Ludwig M. 2000. *Deutsche Wortbildung. Eine Einführung.* Tübingen: Gunter Narr.

Elsen, Hilke. 2014. *Grundzüge der Morphologie des Deutschen.* 2. Auflage. Berlin: Walter de Gruyter.

Eriksen, Lars H. 2002. Die Polysemie in der Allgemeinsprache und in der juristischen Fachsprache. Oder Zur Terminologie der „Sache“ im Deutschen. In: *Hermes, Journal of Linguistics* 28, 211-222.

Eruz, Sakine. 2012. Rechtstexte aus der textlinguistischen Perspektive am Beispiel der Ehescheidungsurteile in dem Sprachpaar Türkisch-Deutsch. In: *Alman Dili ve Edebiyatı Dergisi* 0 (19), 27-48.

Felber, Helmut. 1984. *Terminology manual*. Paris: Unesco: Infoterm.

Fleischer, Wolfgang / Irmhild Barz. 2012. *Wortbildung der deutschen Gegenwartssprache.* 4. Auflage. Berlin: Niemeyer.

Glück, Helmut / Michael Rödel (Hrsg.). 2016. *Metzler Lexikon Sprache*. 5. Auflage. Stuttgart: Metzler.

Griebel, Cornelia. 2013. *Rechtsübersetzung und Rechtswissen. Kognitionstranslatologische Überlegungen und empirische Untersuchung des Übersetzungsprozesses*. Berlin: Frank & Timme.

Güzel, Abdulkadir / Fatma İncesu / Mehmet Demir. 2001. *Rechtswörterbuch Deutsch-Türkisch*. Baden-Baden: Nomos-Verl.-Ges.

Hausmann, Franz Josef. 1977. *Einführung in die Benutzung der neufranzösischen Wörterbücher*. Tübingen: Niemeyer.

Kade, Otto. 1968. *Zufall und Gesetzmässigkeit in der Übersetzung.* Leipzig: Enzyklopädie.

Kıygı, Osman Nazım. 2010. *Wörterbuch Recht. Türkisch-Deutsch*. Deutsch-Türkisch. München: Beck.

Köbler, Gerhard / Köksal Baltacı. 2011. *Rechtstürkisch. Deutsch-türkisches und türkisch-deutsches Rechtswörterbuch für jedermann*. 2. Auflage. München: Vahlen.

Koller, Werner. 2011. *Einführung in die Übersetzungswissenschaft*. 8. Auflage. Tübingen: Francke.

Kulaber, Sibel. 2016. *Terminoloji Nedir ve Terminoloji Çalışmasının Önemi* (‚Was ist Terminologie und die Relevanz von Terminologiearbeit'). Abschlussarbeit. Sakarya Üniversitesi [auf Türkisch].

Levickij, Victor. 2005. Polysemie. In: Reinhard Köhler / Gabriel Altmann / Rajmund G. Piotrowski (Hrsg.), *Quantitative Linguistik. Ein internationales Handbuch*. Berlin: Walter de Gruyter, 458-464.

Linke, Angelika / Markus Nussbaumer / Paul R. Portmann. 2004. *Studienbuch Linguistik*. 5. Auflage. Tübingen: Niemeyer.

Löbner, Sebastian. 2015. *Semantik. Eine Einführung*. 2. Auflage. Berlin: Walter de Gruyter.

Löffler, Heinrich. 2016. *Germanistische Soziolinguistik*. 5. Auflage. Berlin: Erich Schmidt.

Mayer, Felix. 1998. *Eintragsmodelle für terminologische Datenbanken. Ein Beitrag zur übersetzungsorientierten Terminographie.* Tübingen: Gunter Narr.

Mushchinina, Maria. 2009. *Rechtsterminologie – ein Beschreibungsmodell. Das russische Recht des geistigen Eigentums*. Berlin: Frank & Timme.

Naumann, Bernd. 2000. *Einführung in die Wortbildungslehre des Deutschen*. 3. Auflage. Tübingen: Niemeyer.

Neef, Martin. 2018. Das Konzept des sogenannten ‚Geschlechtergerechten Sprachgebrauchs' aus sprachwissenschaftlicher Sicht. In: Imke Lang-Groth / Martin Neef (Hrsg.), *Facetten der deutschen Sprache*. Berlin: Peter Lang, 41-66.

Neu, Julia. 2011. *Mündliche Fachtexte der französischen Rechtssprache.* Berlin: Frank & Timme.

Öncü, Mehmet Tahir. 2012. *Die Rechtsübersetzung im Spannungsfeld von Rechtsvergleich und Rechtssprachvergleich. Zur deutschen und türkischen Strafgesetzgebung.* Berlin: Frank & Timme.

Saussure, Ferdinand. 2001. *Grundfragen der allgemeinen Sprachwissenschaft*. 3. Auflage. Berlin: Walter de Gruyter.

Schippan, Thea. 2002. *Lexikologie der deutschen Gegenwartssprache*. 2. Auflage. Berlin: Walter de Gruyter.

Schnieder, Eckehard / Lars Schnieder. 2013. *Verkehrssicherheit. Maße und Modelle, Methoden und Maßnahmen für den Straßen- und Schienenverkehr.* Berlin: Springer.

Schnieder, Lars / Christian Stein / Arno G. Schielke / Mike Pfundmayr. 2011. Effektives Terminologiemanagement als Grundlage methodischer Entwicklung automatisierungstechnischer Systeme. In: *at- Automatisierungstechnik* 59 (1): 62-70.

Vater, Heinz. 2000. BEGRIFF statt WORT – ein terminologischer Wirrwarr. In: *Sprachreport. Informationen und Meinungen zur deutschen Sprache* 4: 10-13.

Vater, Heinz. 2002. *Einführung in die Sprachwissenschaft.* 4. Auflage. München: Fink.

Welke, Klaus. 2019. *Konstruktionsgrammatik des Deutschen. Ein sprachgebrauchsbezogener Ansatz*. Berlin: Walter de Gruyter.

Wiesmann, Eva. 2004. *Rechtsübersetzung und Hilfsmittel zur Translation. Wissenschaftliche Grundlagen und computergestützte Umsetzung eines lexikographischen Konzepts*. Tübingen: Gunter Narr.

Wolfer, Sascha. 2017. *Verstehen und Verständlichkeit juristisch-fachsprachlicher Texte*. Tübingen: Gunter Narr.

Yurdakul, Ayşe. 2016. *Morphologisch-semantische Modellierung internationaler Terminologie. Die sicherheitsrelevante Ortungsterminologie der Landverkehrsfachsprache in Deutsch, Englisch und Türkisch.* Frankfurt am Main: Peter Lang.

Yurdakul, Ayşe. 2018. Morphologisch-semantische Standardisierung einer dreisprachigen Schienenverkehrsfachsprache. In: Imke Lang-Groth / Martin Neef (Hrsg.), *Facetten der deutschen Sprache*. Berlin: Peter Lang, 131-151.

Section II

Applied Legal Linguistics

Paolo Canavese

Plain Legal Language Through Translation: A Comparison of Swiss, EU and Italian Legislative Texts

Abstract

Drafting clear and accessible legislation has become a major concern in different monolingual and multilingual institutional settings. In multilingual contexts, where different language versions of official publications are developed through translation, legislation tends to be more accessible, as noticed by linguists, as well as translation and legal scholars. This study builds upon this hypothesis and aims at verifying whether legislative acts translated into Italian in two multilingual contexts (Switzerland and the EU) are in reality more accessible than their counterparts originally drafted in Italian (Italy). To this end, four legislative corpora were compared, representing the following varieties of legal Italian and text genres respectively: (1) Swiss federal legislative acts, (2) EU directives, (3) transposition measures of EU directives into Italian legislation and (4) Italian domestic legislation. The mostly quantitative analyses presented in this paper focus on one aspect of plain language, i.e. lexical readability, more specifically the use of basic and common vocabulary and the occurrence of archaic and complex connectives typically used in legal and administrative language. The results confirm that translated legislation features an overall more accessible vocabulary and resorts more sparingly to higher-register variants of common functional words, thus corroborating the hypothesis of translation as a catalyst for clear legislation.

I. Background

Over the last three decades, writing clear and accessible legislation has become a priority in institutional communication in several countries and supranational organisations. This is the case in the three main institutional contexts where Italian is an official language: Italy, the European Union

(EU), and Switzerland. In these three contexts, different steps have been taken to promote plain legislation beginning in the 1990s. Three main categories of measures can be identified: legislative acts that oblige authorities to use clear language; guidelines that provide rules, suggestions and support to drafters; and academic studies that are aimed at identifying linguistic problems to be improved upon.

Switzerland can be considered a model of clear legislation. Not only does it have a long tradition of citizen-centred legislation (see Huber 1914; Flückiger / Delley 2006: 136-138), but also it recently integrated the concept of "clarity" into its law. In 2007, the Languages Act was adopted, which imposes the use of "appropriate, clear and comprehensible" language on federal authorities (see Art. 7, CC *441.1*). Additionally, different guidelines in the three official languages were produced to support the drafting process, such as the *Gesetzgebungsleitfaden*, the *Gesetzestechnische Richtlinien*, *OMNIA* and the *Istruzioni 2003* (see Egger 2019: 125-149). Moreover, two drafting committees ensure that new acts are evaluated for clarity before adoption (Höfler 2015), at the executive and legislative stages of the legislative process. Last but not least, the status of Italian as an official language has significantly improved in recent decades and, consequently, the quality of institutional texts in Italian has increased (Pini 2017; Egger 2015).

Also in Italy, a number of initiatives have been put in place to ensure a transition towards plainer institutional language.[1] Different acts, ministerial directives and legislative decrees have been passed in recent years, requiring authorities to strive for clear state-to-citizen communication. Moreover, the number of guidelines on clear legislative and administrative

[1] See http://www.maldura.unipd.it/buro/ (last access 28.4.2020) for a summary of the main normative initiatives (sections "normativa") and guidelines ("manuali") introduced in Italy. On the same page, many other resources can be found. For instance, a summary of the 30 main rules for writing clear administrative texts (explained in greater detail in Cortelazzo / Pellegrino 2003), a corpus of administrative texts and some useful bibliographical references. Another important guideline is the *Guida alla redazione degli atti amministrativi* (http://www.ittig.cnr.it/Ricerca/Testi/GuidaAttiAmministrativi.pdf. Last access 22.9.2020).

language and of academic studies (Mori 2019a; Piemontese 2000; Venturi 2013) testifies both to the interest in plain institutional language and to the strong need to simplify the language adopted by Italian authorities. Despite many efforts, the results of these measures appear not to be fully satisfactory (Cortelazzo 2015).

As far as the EU is concerned, an Interinstitutional Agreement on Better Law-Making[2] was adopted in 2016. Also in the EU, rules on clear writing were introduced in a guide, the *Joint Practical Guide* (European Union 2015). The Commission's Directorate General for Translation plays an important role in the promotion of transparent institutional communication. Among the different measures it put in place (see Sosoni 2011: 96-98), the Fight the Fog campaign (Wagner 2010) is one of the most relevant and well-known.

One crucial variable that distinguishes these three institutional contexts is 'translation'. Translation is sometimes seen as a burden because it is costly and can entail potential divergences between versions in different languages. Even so, the hypothesis that translation is a catalyst for clear legislation has been expressed several times in the linguistic and legal literature.[3] The necessary "pre-interpretation" (Flückiger 2005) that happens at the translation stage introduces a first, crucial quality test that helps improve both the source and the target texts. The results of initial corpus studies (Felici / Mori 2019) seem to confirm this.

This study was designed to provide further empirical evidence to that hypothesis. To that end, focusing on the three italophone contexts described above is an adequate choice, in that two of them rely on translation to produce their legislation in Italian and one drafts it directly in Italian. Before describing the objective and the methodology of this study in greater detail, it is key to define the main concepts this paper will refer to. In the literature,

[2] See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016Q0512%2801%29. Last access 29.4.2020.

[3] This was, for instance, one of the conclusions of an interdisciplinary study on Swiss multilingual legislation (see Schweizer / Borghi / Baumann / Berther / Janczak / Lötscher / Raveglia / Rossa Gisimundo / Scheffler 2011).

different terms can be found that gravitate around 'plain language', sometimes used with slightly different acceptations. This paper will often refer to 'accessibility' and 'clarity', which are used as pseudo-synonyms. The first one is employed as a general label to define a text that opts for plain linguistic choices and refrains from unnecessary linguistic complexities, thus resulting in being more 'accessible' to the general public. By the second one, 'linguistic clarity' is meant (in contrast to 'normative clarity'), i.e. "la propriété d'un texte de loi d'être formulé de manière compréhensible pour ses destinataires" (Flückiger / Grodecki 2017: 33). Drawing from Piemontese (1996: 79-122), linguistic clarity can be seen as the sum of two complementary aspects: 'readability' and 'comprehensibility'. A text is readable when it features short sentences, common vocabulary and simple syntax, whereas it is comprehensible when it is coherent, cohesive, and organised in an appropriate way for its receiver. All these facets of plain legal language can hardly be tackled in a single study. For this reason, to check the 'translation' variable against the 'plain legal language' variable, the latter had to be narrowed down. Just as in Canavese (2020), it was operationalised by a few aspects of lexical readability, since – as mentioned above – a precondition of lexical readability is the use of common vocabulary and the avoidance of archaic and complex words and expressions. Rephrasing this in a more systematic way, this study intends to address two research questions:

- RQ1: Are multilingual contexts more prone to plain legal language?
- RQ2: Is there any difference in terms of the level of plainness between the two translation contexts, Switzerland and the EU?

II. Methodology

This study adopts a quantitative perspective to highlight readability-relevant differences in Swiss, EU and Italian legislation. To this end, four existing corpora from the legal contexts under investigation were used. For the Swiss context, LEX.CH.IT (Canavese 2019), a corpus of Swiss federal legislation in Italian, was chosen. For the other two contexts, three corpora compiled for the Eurolect Observatory Project (Mori 2018, 2019a, 2019b)

were employed. Corpus A is a collection of EU directives and corpus B contains the implementing measures of these directives into Italian legislation, whereas corpus C is a corpus of Italian legislation without any link to European legislation. More details on the number of texts, time period and size of the four corpora are displayed in Table 1:

Corpus	**Genre/variety**		**Texts**	**Period**	**Tokens**[4]
LEX.CH.IT_P2[5]	Swiss federal acts	it_CH	160	1993-2006	471,035
EOMC-it A	EU directives	it_EU	660	1999-2008	1,342,863
EOMC-it B	Transposition measures of EU directives in the Italian legislation	it_EU>IT	277	1996-2013	1,971,800
EOMC-it C	Italian domestic legislation	it_IT	298	1999-2013	1,445,770

Tab. 1: Features of the corpora under comparison

As far as the methodology is concerned, I drew on a previous study (Canavese 2020) which investigated the evolution of lexical readability of Swiss legal Italian from the 1970s to today. By comparing P1, P2 and P3 of LEX.CH.IT, it was found that Swiss legislation has always had a high level of lexical accessibility and that some archaic words and expressions have decreased in frequency or even disappeared throughout the last five decades. The aim of this paper is to expand on the results of the previous study and put them into perspective by including other italophone legal

[4] Calculated with AntConc 3.5.7. The EOP corpora have been treated automatically with the function "regular expressions" of Notepad++ to exclude preambles, dates, signatures, footnotes and annexes. This ensures a higher comparability with LEX.CH.IT, which does not contain those elements.

[5] LEX.CH.IT is a collection of all federal legislative acts produced between 1974 and 2018 in their Italian version and is divided in three periods, P1 (1974-1992), P2 (1993-2006) and P3 (2007-2018). In this study, only used P2 was used. The aim being to run a comparison with the Italian corpora of the Eurolect Observatory Multilingual Corpus (EOMC-it), the subcorpus of LEX.CH.IT was chosen that covers the most similar timespan. However, as no *ad hoc* corpora were compiled for this study, the period covered by each corpus is slightly different, yet comparable.

contexts. That is why I adopted the same two-step approach and refined and adapted it to suit the purpose of this study.

In the first step, the use of basic vocabulary in the four corpora was examined. The analysis started with a comparison of the vocabulary of the four corpora with Basic Italian Vocabulary (BIV, *Vocabolario di base della lingua italiana*, De Mauro 2016). This lexicon, which was first developed in the 1970s and has been recently updated, comprises approximately 7,000 "basic words" that any Italian speaker should be able to use, or at least understand. Since its inception, BIV has become a reference in readability research and has been used in a number of studies on legal language (see e.g. Venturi 2013; Ondelli 2014). For each corpus, not only was the percentage of BIV lemmas calculated,[6] but also the list of non-BIV words was manually browsed to gain further qualitative insight into the type of vocabulary that is classified as difficult according to this tool.

While the first step focused on the vocabulary of the four corpora in its entirety, in the second step a smaller selection of lexical items was considered. In particular, the aim was to assess the level of lexical complexity by analysing the occurrence of a range of archaic and complex words and expressions across the corpora. This analysis was based on a collection of approximately 180 archaic and complex lexical items (from now on referred to as "difficult items") drawn from the main guidelines on plain legal and administrative Italian and previous academic studies in this field (such as Cortelazzo / Pellegrino 2003; Mortara Garavelli 2001; Raso 2005). Here, a subset of functional words that are used as connectives was taken into account: single-word and multi-word prepositions, conjunctions and adverbs. No other grammatical categories were included, such as nouns, verbs and adjectives, because they are often part of terminological units. It is widely acknowledged that terminology is the most difficult area of legal language to simplify, because it is used to define concepts and responds to the need for precision, coherence within a legal system and thus legal

[6] The lemmatisation was carried out with TagAnt 1.2.0 and the wordlists were created with AntConc 3.5.7. The latter, in particular its concordance function, was also used in the second step of the study.

certainty. The use of complex connectives, on the other hand, is often motivated by stylistic reasons and in an attempt to elevate the register of a text. This is why connectives are more suitable for a quantitative analysis that involves different legal drafting traditions. Setting a threshold of 10 occurrences, expressed as normalised frequencies per one-million words, a final subset of 52 items was obtained. Comparing the frequency of these elements across the four corpora provides a clue as to which contexts adopt more modern and commonly used language. To boost the robustness of the quantitative data extracted, this study also relied on the log likelihood ratio significance test (Rayson / Garside 2000). Moreover, for each difficult item, a manual analysis of some random occurrences made it possible to grasp their use in context.

In line with the hypothesis of translation as a catalyst for clear legislation, a higher level of lexical complexity was expected in the two non-translation contexts. It was hypothesized that they would contain a lower percentage of BIV words and higher frequencies of archaic and complex words, following this trend:

$$\text{it\_CH} \rightarrow \text{it\_EU} \rightarrow \text{it\_EU>IT} \rightarrow \text{it\_IT}$$

So far, no studies have compared the Swiss and EU varieties of legal Italian. For this reason, it was not possible to formulate a starting hypothesis on whether one of these two translation contexts had a higher level of lexical readability.

III. Results and discussion

1. Basic Italian Vocabulary

The first step of this study was devoted to analysing the use of common and modern vocabulary in the four corpora by running an automatic comparison with BIV. I obtained the following figures:

	it_CH	**it_EU**	**it_EU>IT**	**it_IT**
Lemmas	6,886	10,507	13,416	10,830
BIV lemmas	3,024	3,631	3,956	3,496
non-BIV lemmas	3,862	6,876	9,460	7,334
% BIV	**43.92**[7]	**34.56**	**29.49**	**32.28**

Tab. 2: Lemmas belonging to the BIV

The lemmas in the corpus of Swiss legislation scored the highest, with almost 44% of its vocabulary appearing in BIV, followed by the corpus of EU directives, whereas Italian legislation lags behind. These findings suggest that, in translation contexts, more accessible lexical choices are made. This also provides a first indication that Swiss legislation could be lexically more accessible than EU legislation. As regards the corpora of Italian legislation, the figures show that transposition measures result in more complex vocabulary, surprisingly even more difficult than that used by Italian legislators when drafting domestic law. This could be interpreted as a case of 'intralinguistic normalisation'; transposition measures are adapted to the standards of Italian legal language and some of its distinctive lexical complexities are even exaggerated. A possible explanation of this might be the fact that directives are often implemented at the ministerial level by civil servants whose main task is not legal drafting. This could be why transposition measures seem to be more adherent to the typical traits of bureaucratic Italian used in Italian public administration.[8]

Further manual scanning of the non-BIV lemmas detected in the four corpora, along with some random context checks, helped to refine the interpretation of the results above and get a first impression of the type of difficult vocabulary used in Italian legal language. In example (1), drawn

[7] This figure slightly differs from that reported in Canavese (2020), because in that study a further manual clean-up of the lemma list was done before the automatic comparison.

[8] An aspect that needs further investigation is the influence of corpus size on the percentage of BIV lemmas. To address this, the same analysis was carried out after selecting a 450,000-token random sample for each corpus. Even if the results are less dispersed, it_CH and it_EU still outperform it_EU>IT and it_IT.

from LEX.CH.IT, non-BIV words are marked in bold so as to better illustrate the quantitative data reported in Table 1:

(1) Art. 43 Autorizzazione d'esercitare un'attività lucrativa

[1] Durante i primi tre mesi dopo l'**inoltro** della domanda d'asilo i **richiedenti** non hanno il diritto di esercitare un'attività **lucrativa**. Se prima della scadenza del termine è presa una decisione negativa in prima istanza, il **Cantone** può negare per altri tre mesi l'**autorizzazione** d'esercitare un'attività **lucrativa**.

[2] L'**autorizzazione** d'esercitare un'attività **lucrativa** si **estingue** con lo **spirare** del termine di partenza fissato **allorquando** la procedura d'asilo termina con una decisione negativa passata in **giudicato**, anche se il **richiedente** si è **avvalso** di un mezzo d'**impugnazione** straordinario o di un rimedio di diritto e se l'esecuzione dell'**allontanamento** è stata sospesa. Se l'Ufficio federale **prolunga** il termine di partenza nell'ambito della procedura ordinaria, può continuare a essere autorizzata un'attività **lucrativa**. […] (LEX.CH.IT, Asylum Act of 26 June 1998)[9]

As expected, a number of legal terms were found (*impugnazione*, *passato in giudicato*) that are unavoidable in legislative acts. In legal texts, however, terminology is not exclusively linked to the legal sphere, but also to the diverse range of specialised areas and subject matters under regulation. In example (1), this is the case of *attività lucrativa*, an economic term. In the four corpora, terms from the most diverse fields such as IT, health and healthcare and even zoology were found. While terms fulfil a denotative purpose and are an essential element in ensuring precision in legal language, in many cases bureaucratic and archaic expressions are used to elevate the register and create a more serious tone. I found some of these

[9] Translation into English by the Federal Chancellery, with few modifications by the author to adapt it to the version contained in the corpus (same for example (5)): "Art. 43 Authorisation for gainful employment / [1] During the first three months after submitting the asylum application, applicants shall not be entitled to engage in gainful employment. If a negative decision is taken at first instance before the expiration date, the canton may deny the permission to take up gainful employment for a further three months. / [2] If an application for asylum is rejected in a legally binding decision, authorisation for gainful employment expires on expiry of the period specified for departure, even if an extraordinary means of appeal or a legal remedy has been applied for and the enforcement of removal has been suspended. If the Federal Office extends the departure period as part of the ordinary procedure, gainful employment may continue to be authorised. […]"

lexical items across the corpora (such as *inoltro*, *estinguere*, *spirare*, *allorquando*, *avvalersi* in the above example). The risk of resorting to hyperformal lexical choices is that they create obscurity in legal language, thus increasing the distance between the legislator and the general public. Considering the importance of avoiding these lexical elements in a view of readability and clarity, they will be further explored in the next step of this study.

Some words in the list of non-BIV lemmas were unexpected. This is the case, for instance, for the nouns *autorizzazione*, *richiedenti*, and *allontanamento*, whose corresponding verbs (*autorizzare*, *richiedere*, *allontanare*) are part of BIV. With some inferential effort, a potential reader who understands the verb *autorizzare* might also understand the noun describing the outcome of this action. This also shows the difficulty of defining an absolute level of readability and the necessity of taking into account the level of comprehensibility as well, which would be possible, for instance, by carrying out a participant-based reception study with a sample of potential readers.

Among the non-BIV lemmas in the LEX.CH.IT corpus, I also found some common vocabulary related to Switzerland. In the above example, only *Cantone* falls into this category, but many more were found, such as *Confederazione*, *franco*, and *Berna*. The reason behind this is that BIV does not attempt to include the Swiss variety of Italian. In this light, it is even more surprising that the Swiss legislation obtained the highest score for clarity in this step.

Similarly, I found some noise in the EU corpus as well. It contains a range of words, mostly hapaxes, in other official languages of the EU, such as foreign-language references to national authorities or legislative acts. These lemmas only have a referential purpose and are arguably irrelevant in terms of readability; the reader can skip them and still fully understand the act. Of course, the automatic analysis classifies them as difficult lexical items, thus lowering the percentage of BIV-words.

Some further disadvantages should be mentioned, which are inevitable when embarking on quantitative research. First, working at the single-word level might hide some potential difficulties related to multi-word units. In the example above, *rimedio di diritto* is classified as easy because each of the words that make up this legal expression is a basic word. However, it is highly unlikely that a person without any legal knowledge would understand the term. A similar limitation is related to the impossibility of disambiguating polysemic lemmas. In the same example, *istanza* and *asilo* are coded as basic words. This assessment might be correct when these words are used in their general acceptation, i.e. *request* and *kindergarten* respectively, but not when they are used in a specialised sense. This is no trivial issue when investigating legal language, which often draws from common language to create new terms. Last but not least, in many legislative acts there is an article devoted to definitions. It is not possible to automatically exclude difficult lemmas that are explained in a definition from the list of non-BIV words. Despite these drawbacks, this quantitative analysis helped to approximate the distance between common, accessible Italian and the different varieties of legal Italian under investigation. This initial result will be further explored in step 2 by way of an analysis of selected difficult items.

2. Use of complex and archaic words and expressions

One of the findings of step 1 was the use of complex and archaic lexis in the four corpora. Step 2 was designed to provide a finer-grained picture of this phenomenon. For each functional word in the list described in section II, its occurrences were calculated in the four corpora and context checks were run. This analysis revealed three different categories of difficult lexis: words occurring with a higher frequency in legislative acts produced in a monolingual drafting context (transposition measures and Italian domestic legislation), those occurring with a higher frequency in contexts where the Italian text is the result of translation (EU and Swiss law) and words that are equally used in all contexts.

In this section, I often suggest more accessible variants of the difficult items discussed. The aim is not to propose a direct replacement of such items using the find-and-replace feature. In fact, it might not always be possible or desirable to simplify some difficult items, and this should be done only after a careful analysis from both a linguistic and a legal perspective. Instead, the aim is to determine to what extent the different legal contexts under investigation rely on difficult items to convey their norms.

2.1. Category 1: Words with a higher frequency in non-translation contexts

This category comprises complex words that are overused[10] in the two corpora of Italian legislation without any direct link to an interlingual translation process: Italian domestic legislation (it_IT) and transposition measures (it_EU>IT). This category supports the outcome of step 1, i.e. that legislation tends to be more lexically accessible when it is the result of a translation process.

For taxonomy's sake, this category can be further split into two trends. Trend 1.1 includes items with their peak in it_IT, meaning that they appear most frequently in Italian domestic legislation. This trend is in line with my initial expectation. The items in trend 1.2, on the other hand, have their peak in it_EU>IT, thus corroborating the hypothesis of a potential intralinguistic normalisation; instead of benefitting from the more accessible language used in the directives, texts developed by way of transposition measures tend to conform to the standard of domestic Italian, characterised by more bureaucratic and archaic lexis. By trying to reproduce this style, they sometimes reach an even higher level of lexical complexity.

[10] Meaning that, in the pairs it_CH/it_IT and it_EU/it_IT, the LL test indicates a statistically significant overrepresentation in it_IT, with few exceptions especially concerning low-frequency words (e.g. *ancorché*). For these exceptions, the differences between the normalised frequencies were taken into account.

TREND 1.1: *it_CH → it_EU → it_EU>IT → it_IT*

Difficult item	**it_CH**	**it_EU**	**it_EU>IT**	**it_IT**
ovvero (*or/i.e.*)[11]	19	267	985	1096
altresì (*also*)	28	145	355	397
di concerto con (*in agreement with*)	4	14	362	386
a seguito d* (*following, as a result of*)	11	101	196	198
con riferimento a* (*with reference to*)	4	48	157	192
in sede di (*on the occasion of*)	8	32	141	165
in ordine a* (*with regard to, as concerns*)	17	23	65	82
a pena di (*under penalty of*)	0	0	25	72
a mezzo d* (*by means of*)	4	6	43	68
in tema di (*on the subject of*)	0	9	38	68
avverso (*against*)	0	0	45	64
all'uopo (*for this purpose*)	2	10	11	18
in danno d * (*to the detriment of*)	0	0	2	12

Tab. 3: Difficult items overrepresented in non-translation contexts, with peak of occurrence in Italian domestic legislation

[11] The equivalents in English provided in brackets in Tables 3-7 have an informative function: they only convey the meaning of the Italian words, but are not necessarily characterised by the same level of lexical complexity.

TREND 1.2: *it_CH → it_EU → it_IT → it_EU>IT*

Difficult item	it_CH	it_EU	it_EU>IT	it_IT
di cui a* (*referred to*)	1369	6853	9151	7592
ai sensi d* (*pursuant to*)	947	1279	2140	1871
ai fini d* (*for the purposes of*)	183	895	949	910
al fine d* (*for the purpose of*)	115	400	612	507
ove (*if*)	96	347	574	448
sulla base d* (*based on*)	176	262	530	475
nel rispetto d* (*in compliance with*)	21	101	498	347
ivi (*therein*)	19	129	381	270
a carico d* (*at the expense of*)	113	63	377	356
nel caso in cui (*in the event that*)	45	104	274	132
tenuto conto d* (*having regard to*)	23	116	142	98
nelle more (*pending, during*)	0	2	41	35
ancorché (*even though*)	0	0	16	0

Tab. 4: Difficult items overrepresented in non-translation contexts, with peak of occurrence in transposition measures

Most of the items in this category consist of complex prepositions that have simple equivalents, as is the case of *in ordine a*/*in tema di* vs. *circa*/*su*, *a mezzo (di)* vs. *con/mediante*, *di concerto con* vs. *insieme a/d'accordo con*, *ai sensi di* vs. *secondo* or *al fine di/ai fini di* vs. *per*. One could object that these items do not necessarily constitute a major difficulty. *Ai fini di*, for instance, is a very transparent expression that most Italian speakers are likely to understand. However, as shown in example (2), sometimes these lexical items are associated with further difficulties on other linguistic levels, such as syntax, and therefore require a higher cognitive effort to decode:

(2) Art. 8 Pause

> 1. Qualora l'orario di lavoro giornaliero ecceda il limite di sei ore il lavoratore deve beneficiare di un intervallo per pausa, le cui modalità e la cui durata sono stabilite dai contratti collettivi di lavoro, **ai fini del recupero** delle energie psico-fisiche e della eventuale consumazione del pasto anche **al fine di** attenuare il lavoro monotono e ripetitivo. (Corpus B, D.lgs. 08.04.2003, n. 66)[12]

Sometimes, instead of using *ai fini di + V*, the verb is nominalised. *Ai fini del recupero* followed by a prepositional phrase is a heavier syntactic structure than *per recuperare* followed by a direct object. As put forward by Serianni (2012: 132), the use of multi-word, more complex connectives, could be seen as a way of reinforcing the logical structure of a legal text and making cause-effect relationships more clear. In line with this explanation, the use of *ai fini di* and *al fine di* in example (2) could be interpreted as a way of stressing the purposes of granting breaks to workers, the main topic of the article.

Another class of difficult items in category 1 is that of archaic single-word conjunctions that could be replaced with common-language equivalents, such as *altresì* vs. *anche*/*inoltre*, *avverso* vs. *contro*, *all'uopo* vs. *perciò*, and *ancorché* vs. *anche se*. In a view of simplifying legal language, some of them should also be avoided because they might be ambiguous. This is the case with *ovvero*, which is used as a disjunctive conjunction in legal language (*or*) and as an explanatory conjunction in common language (*that is*). Reading example (3), one could wonder whether it is possible to physically go to the bank or post office to submit a statement, or whether "submitting the statement" is just a hypernym that includes the three means introduced after *ovvero* (telegram, letter or another agreed means). In other cases, some archaic items are to be used sparingly because they require the

[12] My translation into English: "Art. 8 Pauses / 1. If the daily working time exceeds the six hours limit, workers must be granted a break. Its modalities and duration are established by collective labour agreements. The aim is to ensure the recovery of psychophysical energy, give the possibility to have a meal and make monotonous and repetitive work more bearable." These translations have an informative function only. This is why, for the sake of readability, long sentences are split into shorter ones and the lexical difficulties of the Italian text are not reproduced in English.

subjunctive mood instead of the indicative, resulting in a more complex syntactic structure. This is illustrated in example (4), where replacing *ove ne ravvisi* with *se ne ravvisa* would enhance the readability of the sentence as a whole:

(3) Art. 34 Revoca delle autorizzazioni

> […] Eventuali variazioni del domicilio eletto debbono essere comunicate con dichiarazione presentata direttamente alla banca o all'ufficio postale, **ovvero** mediante telegramma o lettera raccomandata con avviso di ricevimento, o con altro mezzo concordato dalle parti, di cui sia certa la data di ricevimento. […] (Corpus C, D.lgs. 30.12.1999, n. 507)[13]

(4) Art. 28 Fissazione dell'udienza per l'audizione della parte

> 1. Il Presidente del Tribunale designa, senza indugio, il magistrato incaricato della decisione; questi, **ove ne ravvisi** l'opportunità, fissa udienza per l'audizione dell'istante. […] (Corpus B, D.lgs. 17.01.2003, n. 5)[14]

2.2. Category 2: Words with a higher frequency in translation contexts

Some of the difficult items under analysis turned out to be overrepresented in translation contexts. In particular, some of them are typical of EU directives (trend 2.1) or of Swiss federal acts (trend 2.2).[15] In contrast to category 1, the boundaries between the trends that make up category 2 are more clear-cut. While in category 1 the difficult items in trends 1.1 and 1.2 had a higher frequency in both non-translation contexts, category 2 comprises items that have their peak in one translation context only and that are not

[13] My translation into English: "Art. 34 Withdrawal of authorisations / [...] Any change of the address for service must be notified via a statement submitted directly to the bank or post office, by telegram or registered letter with acknowledgement of receipt, or by any other means agreed by the parties which has a certain date of receipt. […]"

[14] My translation into English: "Art. 28 Fixing the hearing of the party / 1. The President of the Court of First Instance shall designate, without delay, the magistrate responsible for the decision; the latter shall, if he considers it appropriate, arrange a hearing of the applicant."

[15] The LL test shows a statistically significant overrepresentation in it_EU compared to it_CH, it_EU>IT and it_IT for the difficult items of trend 2.1 and in it_CH compared to it_EU, it_EU>IT and it_IT for the difficult items of trend 2.2, also here with a couple of exceptions related to low-frequency items.

necessarily overrepresented in the other translation context. Two selected items demonstrate this: *in deroga a* has its peak in it_EU, but its fewest occurrences in it_CH. *In caso di* follows the exact opposite trend. Overall, not only are fewer items classified in category 2 compared to category 1, but their total frequencies are also lower.[16]

TREND 2.1: it_CH/it_EU>IT /it_IT → it_EU

Complex item	**it_CH**	**it_EU**	**it_EU>IT**	**it_IT**
qualora (*if*)	550	1162	818	424
in base a* (*based on*)	299	518	328	238
a condizione che (*provided that*)	113	247	154	50
in deroga a* (*notwithstanding*)	40	238	141	158
allorché (*as soon as*)	15	108	19	13
ogniqualvolta (*whenever*)	0	39	10	1
onde (*so as*)	2	37	8	2
senza pregiudizio d* (*without prejudice to*)	2	33	7	6
a motivo d* (*on the grounds of*)	8	25	6	1
pertanto (*therefore*)	17	22	9	6

Tab. 5: Difficult items overrepresented in EU directives

[16] To account for this, see the adjustment proposed in Figure 1.

TREND 2.2: it_EU / it_EU>IT /it_IT → it_CH

Complex item	it_CH (P2)	it_CH (P3)	it_EU	it_EU> IT	it_IT
in caso di (*in case of*)	1108	804	515	744	589
in materia di (*on the subject of*)	923	779	594	766	676
in merito a* (*in regards to*)	399	400	260	86	29
giusta (*pursuant to*)	380	18	0	0	1
pure (*also*)	352	129	22	10	8
sempreché (*provided that*)	212	71	40	15	12
allo scopo di (*for the purpose of*)	130	41	103	70	60
parimenti (*likewise*)	102	40	48	16	11
in seguito a* (*following*)	100	74	61	19	30
a concorrenza d* (*until [the amount…] is reached*)	55	17	13	12	16

Tab. 6: Difficult items overrepresented in Swiss legislation

The items in this category display similar difficulties to those in the previous category. Different complex prepositions and conjunctions were found, as well as archaic or complex connectives that also have an impact on syntactic complexity. Among the difficult items in category 2, more conditional connectives were found (*qualora*, *a condizione che*, *sempreché*, overrepresented in both translation corpora; *in caso di*, overrepresented in it_CH), as illustrated in the following example:

(5) Art. 36 Procedura di autorizzazione eccezionale

1 **Qualora** la Commissione della concorrenza abbia vietato la concentrazione, le imprese partecipanti possono chiedere entro 30 giorni per il tramite del Dipartimento un'autorizzazione eccezionale del Consiglio federale per motivi preponderanti di interesse pubblico. **In caso di** presentazione di una simile richiesta, il termine per interporre ricorso alla Commissione di ricorso in

materia di concorrenza decorre soltanto dalla notificazione della decisione del Consiglio federale. (LEX.CH.IT: Cartel Act of 6 October 1995)[17]

As is often suggested by guidelines on clear legal and administrative language,[18] *qualora* (+ subjunctive mood) should be replaced with *se* (+ indicative mood) to simplify the syntactic structure of the sentence. Similarly, *in caso di* should be avoided because it requires the use of a nominal structure. Replacing it, whenever possible, with *se* can enhance the readability of an article. In example (5), *in caso di presentazione di una simile richiesta* could be reformulated as *se le imprese partecipanti presentano una simile richiesta*. Resolving the nominalised structure has two further advantages: the agent is made explicit (*le imprese partecipanti*) and the prepositional phrase modifier (*di una simile richiesta*) becomes a direct object (*una simile richiesta*). Of course, before replacing a conditional connective, broader reflections should be made, including at the textual level. In fact, using *in caso di + N* is sometimes the best option. This might be the case when the agent can be omitted without compromising the comprehensibility of the text. Moreover, opting for a nominalisation can enhance the information structure, in that a previously mentioned referent becomes the topic in a compact and efficient way.

As already discussed with respect to category 1, opting for complex connectives can be a way to make the logical structure of a text clearer. The overuse of some conditional complex connectives in translation contexts could be seen as a form of explicitation. Conditional connectives are the most frequent connectives in legal texts (Nussbaumer 2000: 203) and choosing a complex variant of them might be a way of marking the relationship between conditions and legal consequences. The same holds true

[17] Translation by the Federal Chancellery with few modifications by the author: "Art. 36 Exceptional authorisation procedure / 1 If the Competition Commission has prohibited a concentration, the undertakings concerned may, within 30 days, submit to the Department an application for exceptional authorisation by the Federal Council for compelling public interest reasons. If such an application is submitted, the period in which an appeal may be filed with the Appeals Commission for Competition Matters begins to run only after the parties have been notified of the Federal Council's decision."

[18] See e.g. *Regole e suggerimenti per la redazione dei testi normativi* (2007: 25), https://www.consiglio.regione.fvg.it/iterleggi/drafting/drafting.pdf. Last access 30.4.2020.

for other complex connectives, such as *in materia di*/*in merito a* vs. *su*/*circa* or *allo scopo di* vs. *per*.

Continuing with the concept of normalisation – introduced above to explain the overuse of some archaic expressions in transposition measures compared to Italian domestic legislation – one could state that the words in this category are examples of interlinguistic normalisation. The overuse of archaic words in the European context, such as *allorché* and *ogniqualvolta* vs. *quando* or *onde* vs. *per*, could be interpreted as an attempt to make the translated text more like the Italian legal language used in Italy.

In some cases, the overrepresentation of these words could be also translation-induced. The case of *pure* in the Swiss context, often used in the expression *come pure*, could be related to the language contact with German and interpreted as a direct translation of the conjunction *sowie*. Similarly, *a concorrenza di* could be a loan translation from French (*à concurrence de*). This hypothesis should be tested on a parallel bilingual corpus.

Clear legal drafting is a real concern in the contexts analysed in this study and, as explained in the introduction, several initiatives have recently been adopted to make the law more transparent. It is therefore crucial to explore the evolution of legal language over time, and to identify the aspects that need more simplification efforts and develop suggestions. The corpus of Swiss legislation offers the possibility to observe evolutions in more recent legislation. As already explained in section II, it is divided into three periods and only P2 was used for this study. Period 3 covers the time span of 2007-2018. Observing how the items in trend 2.2 have evolved during P3 (see column 3 in Table 6) shows their remissive nature, especially with regard to single-word archaisms. This encourages the development of further, more updated resources to identify readability-relevant evolutions in the other italophone contexts as well.

2.3. Category 3: Words occurring in all legal contexts (it_CH/it_EU/it_EU>IT/it_IT)

A final, minor category includes complex items that cannot be classified into any of the above categories or trends. Hence, they can be considered a feature of legal Italian regardless of the legal context.

Complex item	it_CH	it_EU	it_EU>IT	it_IT
nonché (*as well as*)	1391	970	1344	1568
a titolo d* (*as*)	53	33	53	94
per il tramite d* (*by way of*)	30	4	49	36
per mezzo d* (*by means of*)	30	18	18	7
per quanto attiene a* (*as regards*)	4	16	14	17
allorquando (*as soon as*)	11	2	6	5

Tab. 7: Difficult items represented in all legal contexts

Not only is this category much smaller than the other two, but it also contains items with very low frequencies, with the exception of *nonché*. This connective can be used to put emphasis on the last element in a series. In the vast majority of cases, however, *nonché* is used in legal language as a higher-register variant of the coordinative conjunction *e*, as shown in example (6).

(6) Art. 8. Relazione al Parlamento

> 1. Il Ministro della sanità presenta annualmente al Parlamento una relazione sullo stato di attuazione della presente legge, **nonché** sull'attività svolta dalla Commissione. (Corpus C, legge 14.12.2000, n. 376)[19]

When a focalisation marker is needed, common language, for instance *anche*, can be used instead. The high frequency of *nonché* in it_EU>IT and it_IT might be explained by the preference for a bureaucratic style in Italian

[19] My translation: "Art. 8. Report to Parliament / 1. The Minister for Health shall submit an annual report to Parliament on the state of implementation of this act and on the work carried out by the Commission."

legislation. The lower, but still high frequency in it_CH could be related, once again, to the interference of German (*sowie*). The statistically significant underrepresentation in it_EU, on the contrary, might be seen as a positive effect of translation on lexical clarity.

To wrap up the findings of step 2, Table 8 provides an alternative and more synthesized way of visualising the quantitative data discussed in this section and highlighting the differences between the four corpora. To do so, the results of the log likelihood ratio test were used. More specifically, the corpora are put into pairs (column 1) and, for each pair, it is indicated how many items are overrepresented in the first corpus and in the second corpus of the pair (columns 2 and 3 respectively), and how many of them occur in both without any statistically significant differences (column 4). This visualisation has the advantage of going beyond the three categories identified in this step. Furthermore, it enables us to understand the differences between translation and non-translation contexts (section I), Swiss and EU legislation (section II) and transposition and domestic legislation (section III) based on all 52 items taken into account.

Contexts in pair	**N. of items underused in the first context**	**N. of items overused in the first context**	**No difference between the contexts**
I. Translation vs non-translation contexts			
CH vs. EU>IT	27	10	15
CH vs. IT	28	14	10
EU vs. EU>IT	27	15	10
EU vs. IT	26	16	10
mean	27 (51.92%)	13.75 (26.44%)	11.25 (21.63%)
II. Swiss vs. EU legislation			
CH vs. EU	*24 (46.15%)*	*12 (23.08%)*	*16 (30.77%)*
III. Transposition vs. domestic legislation			
EU>IT vs. IT	*16 (30.77%)*	*7 (13.46%)*	*29 (55.77%)*

Tab. 8: Statistically significant overuse of difficult items in the four contexts, displayed in pairs

The interpretation of these results comes as no surprise. A comparison of translation vs. non-translation contexts shows that over half of the complex items (51.94%) occur with a statistically significant higher frequency in the latter, whereas only one third (26.44%) occur more frequently in the former. If one focuses on the differences between the two translation contexts, one finds that almost half (46.15%) of the items occur with a statistically significant higher frequency in the EU context and only 23.08% in the Swiss context. Finally, comparing the two non-translation contexts reveals a small difference: over half of the complex items (55.77%) occur equally in the two corpora and, among the remaining items, a higher percentage of them is overused in transposition measures (30.77%) than in domestic legislation (13.46%).

Another efficient way of summarising the quantitative data consists of calculating the total amount of difficult items per context. A weighted consideration also makes it possible to account for the high dispersion of the various observations.[20]

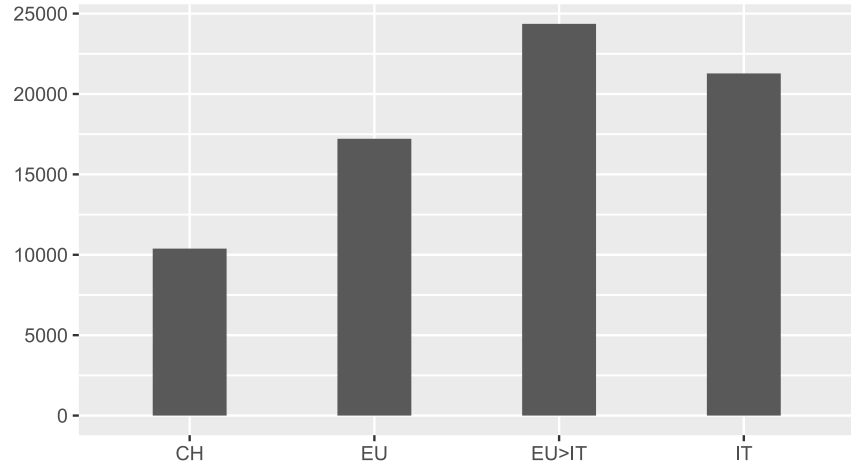


Fig. 1: Total difficult items across the four corpora (normalised frequencies)

[20] The mean occurrence of each difficult item in the four corpora displays a range of 3-6241 occurrences.

Interestingly, the results presented in Figure 1 display the same overall trend defined in step 1. Also using a completely different methodology, we are once again able to conclude that translation contexts tend to include more accessible vocabulary. Swiss legislation has the lowest number of difficult items, and transposition measures have the highest.

IV. Concluding remarks

This study aimed to empirically verify the hypothesis of translation as a catalyst for clear legislation. To do so, I focused on a single language, Italian, comparing three varieties. Switzerland and the EU represented contexts in which legislation in Italian is the result of a translation process, and Italy represented a monolingual legislative drafting context. For this corpus study, I operationalised the concept of clarity by narrowing it down to one of its fundamental components: lexical readability. More specifically, I examined the use of basic vocabulary (step 1) and of archaic and complex lexical items (step 2). The findings of these analyses can be summarised in three main takeaways.

Takeaway 1: *Translation as a means of lexical clarity*

The main result of this study is that there is a correlation between the variables "translation" and "plain legal language": legal Italian tends to feature more accessible lexis in translation contexts. Indeed, step 1 showed that a higher percentage of basic words is used in the corpora of translated legislation. Step 2 showed that complex and archaic words and expressions are used more in the Italian non-translation context, both in terms of total frequency and of number of difficult items occurring with a statistically significant higher frequency in Italian legislation. This does not mean that translated legislation is without fault. Sometimes, lexical choices are made that introduce difficulties in the translation contexts as well; I was able to identify a subset of difficult items that are overrepresented in Swiss or EU contexts. A possible interpretation of this minor phenomenon could be the existence of an interlingual normalisation process, source-language interferences or an intent to increase explicitness. Of course, the types of analy-

sis that I carried out do not allow me to establish a cause-effect relationship, but only to highlight a correlation between the variables "translation" and "plain legal language". In other words, I am not able to make broader generalisations as to whether translation is *the*, *one of the* or *not the* cause that determines a higher level of lexical readability in the Swiss and EU context compared to the Italian context. Other latent variables, such as the fact that Switzerland has a long tradition of plain legal drafting, could play a role. This opens up avenues for interesting interdisciplinary research at the intersection of legal, linguistic and translation studies.

Takeaway 2: *Switzerland as a model of clear legislation*

The second takeaway is in line with the idea of Switzerland's tradition of plain legal drafting. Between the two translation contexts, the Swiss context shows a higher level of accessibility, concerning both the use of basic vocabulary and of complex lexis. Investigating Swiss legislation and its multilingual drafting processes might therefore provide fruitful results that could inspire other institutional contexts.

Takeaway 3: *Transposition measures tend to adopt more difficult vocabulary than domestic legislation*

This last takeaway, which is situated outside my initial research questions and hypothesis, provides an interesting insight into the transposition process of EU directives into Italian legislation. The data presented here shows that the beneficial effects of translation are restricted to the cases of interlinguistic translation. In the case of transposition measures, which are a form of intralingustic translation, no contribution to a higher level of clarity can be identified. On the contrary, they seem to adopt highly bureaucratic language. These results deserve more research, with the goal of improving the integration process of supranational law into Italian domestic legislation.

The analyses presented in this paper also show the need to focus on further dimensions. First of all, a diachronic perspective is needed in order to better understand the impact of recent measures on plain legal language. To

this end, a longer time period should be taken into account, before and after the period considered in this study. Analysing more recent legislation would help identify the areas in which more work is required. Similarly, including other levels of linguistic analysis, especially syntax and textuality, would also be crucial. Finally, to validate the text-based analyses, a mixed-method approach could be adopted that would include comprehensibility tests with potential readers. Even if much work still remains to be done, I am convinced that research on plain legal language can provide a significant contribution to legal drafting practices in both monolingual and multilingual countries. Furthermore, comparing the language adopted in different legal contexts, as I have attempted to do in this study, can promote the discussion of best practices. It is therefore an interesting trajectory to be explored further.

V. References

Canavese, Paolo. 2019. LEX.CH.IT. A corpus for micro-diachronic linguistic investigations of Swiss normative acts in Italian. In: *Comparative Legilinguistics* 40, 44-65.

Canavese, Paolo. 2020. Lexical readability as an indicator of quality in translation. Best practices from Swiss legislation. In: Fernando Prieto Ramos (ed.), *Institutional translation and interpreting. Assessing practices and managing for quality*. New York: Routledge, 26-43.

Cortelazzo, Michele A. 2015. Il cantiere del linguaggio istituzionale. A che punto siamo? In: *LeGes* 26 (1), 135-150.

Cortelazzo, Michele A. / Federica Pellegrino. 2003. *Guida alla scrittura istituzionale*. Rome: Laterza.

De Mauro, Tullio. 2016. Il Nuovo vocabolario di base della lingua italiana. *Internazionale*, 23 Dec. https://www.internazionale.it/opinione/tullio-de-mauro/2016/12/23/il-nuovo-vocabolario-di-base-della-lingua-italiana. Last access 21.9.2020.

Egger, Jean-Luc. 2015. 25 anni di legislazione federale in lingua italiana. Alcuni spunti di riflessione. In: *LeGes* 26 (1), 151-171.

Egger, Jean-Luc. 2019. *A norma di (chi) legge. Peculiarità dell'italiano federale*. Milan: Giuffrè.

European Union. 2015. *Joint Practical Guide of the European Parliament, the Council and the Commission for Persons Involved in the Drafting of European Union Legislation*. 2nd edition. Luxembourg: Publications Office of the European Union. https://eur-lex.europa.eu/content/techleg/EN-legislative-drafting-guide.pdf. Last access 21.9.2020.

Felici, Annarita / Laura Mori. 2019. Corpora di italiano legislativo a confronto: Dall'Unione europea alla Cancelleria svizzera. In: Bruno Moretti / Aline Kunz / Silvia Natale / Etna Krakenberger (eds.), *Le tendenze dell'italiano contemporaneo rivisitate. Atti del LII Congresso Internazionale di Studi della Società di Linguistica Italiana (Berna, 6-8 settembre 2018)*. Milan: Officinaventuno, 287-304.

Flückiger, Alexandre. 2005. Le multilinguisme de l'Union européenne. Un défi pour la qualité de la législation. In: Jean-Claude Gémar / Nicholas Kasirer (eds.), *Jurilinguistique. Entre langues et droits = Jurilinguistics. Between Law and Language*. Brussels: Bruylant, 340-360.

Flückiger, Alexandre / Jean-Daniel Delley. 2006. L'élaboration rationnelle du droit privé. De la codification à la légistique. In: Christine Chappuis / Bénédict Foëx / Luc Thevenoz (eds.), *Le législateur et le droit privé, Mélanges en l'honneur de Gilles Petitpierre*. Geneva: Schulthess, 123-143.

Flückiger, Alexandre / Stéphane Grodecki. 2017. La clarté. Un nouveau principe constitutionnel ? In: *Revue de droit suisse* 136 (1), 31-62.

Höfler, Stefan. 2015. *Die verwaltungsinterne Verständlichkeitskontrolle im Rechtsetzungsverfahren des Bundes*. Diploma thesis, University of Bern, Faculty of Law.

Huber, Eugen. 1914. *Erläuterungen zum Vorentwurf des Eidgenössischen Justiz- und Polizeidepartements, Zweite, durch Verweisungen auf das Zivilgesetzbuch und etliche Beilagen ergänzte Ausgabe*. Berne. https://eugenhuber.weblaw.ch/ (Texte>Erläuterungen). Last access 21.9.2020.

Mori, Laura (ed.). 2018. *Observing Eurolects. Corpus analysis of linguistic variation*. Amsterdam: Benjamins.

Mori, Laura. 2019a. Complessità sintattica e leggibilità. Un monitoraggio linguistico per la valutazione dell'accessibilità dei testi legislativi europei e italiani. In: *Studi Italiani di Linguistica Teorica e Applicata* 48, 627-657.

Mori, Laura. 2019b. La sociolinguistica dei corpora per lo studio della lingua inclusiva di genere nelle varietà legislative dell'Eurolect Observatory Multilingual Corpus (francese, inglese, italiano, spagnolo, tedesco). In: Stefania Cavagnoli / Laura Mori (eds.), *Gender in Legislative Languages. From EU to National Law in English, French, German, Italian and Spanish*. Berlin: Frank & Timme, 39-65.

Mortara Garavelli, Bice. 2001. *Le parole e la giustizia. Divagazioni grammaticali e retoriche su testi giuridici italiani*. Turin: Einaudi.

Nussbaumer, Markus. 2000. Textlinguistik für die Gesetzgebung. In: Daniela Veronesi (ed.), *Linguistica giuridica italiana e tedesca = Rechtslinguistik des Deutschen und Italienischen*. Padua: Unipress, 196-208.

Ondelli, Stefano. 2014. Drafting court judgment in Italy. History, complexity and simplification. In: Vijay K. Bhatia / Giuliana Garzone / Rita Salvi / Girolamo Tessuto / Christopher Williams (eds.), *Language and law in professional discourse issues and perspectives*. Newcastle upon Tyne: Cambridge Scholars Publishing, 29-45.

Piemontese, Maria Emanuela. 1996. *Capire e farsi capire. Teorie e tecniche della scrittura controllata*. Naples: Tecnodid.

Piemontese, Maria Emanuela. 2000. Leggibilità e comprensibilità delle leggi italiane. Alcune osservazioni quantitative e qualitative. In: Daniela Veronesi (ed.), *Linguistica giuridica italiana e tedesca / Rechtslinguistik des Deutschen und Italienischen*. Padua: Unipress, 103-118.

Pini, Verio. 2017. *Anche in italiano! 100 anni di lingua italiana nella cultura politica svizzera*. Bellinzona: Casagrande.

Raso, Tommaso. 2005. *La scrittura burocratica. La lingua e l'organizzazione del testo*. Rome: Carocci.

Rayson, Paul / Roger Garside. 2000. Comparing corpora using frequency profiling. In: Adam Kilgarriff / Tony Berber Sardinha (eds.), *Proceedings of the workshop on comparing corpora held in conjunction with the 38th annual meeting of the Association for Computational Linguistics*. USA: Association for Computational Linguistics, 1-6.

Schweizer, Rainer J. / Marco Borghi / Jérôme Baumann / Arno Berther / Pia Janczak / Andreas Lötscher / Gianpiero Raveglia / Federica De Rossa Gisimundo / Jan Scheffler. 2011. Legislazione plurilingue in Svizzera. Tesi e raccomandazioni. In: Rainer J. Schweizer / Marco Borghi (eds.), *Mehrsprachige Gesetzgebung in der Schweiz. Juristisch-linguistische Untersuchungen von mehrsprachigen Rechtstexten des Bundes und der Kantone*. Zurich: Dike, 425-440.

Serianni, Luca. 2012. *Italiani scritti*. 3rd edition. Bologna: Il Mulino.

Sosoni, Vilelmini. 2011. Training translators to work for the EU institutions. Luxury or necessity? In: *The Journal of Specialised Translation* 16, 77-108.

Venturi, Giulia. 2013. Investigating legal language peculiarities across different types of Italian legal texts. An NLP-based approach. In: Rui Sousa-Silva / Rita Faria / Núria Gavaldà / Belinda Maia (eds.), *Bridging the gap(s) between language and the law. Proceedings of the 3rd European conference of the International Association of Forensic Linguistics, Porto, 15-18 October 2012*. Porto: Faculdade de Letras da Universidade do Porto, 139-156.

Wagner, Emma. 2010. Why does the Commission need a clear writing campaign? In: Directorate General for Translation (ed.), *Clear writing. Languages and translation*, September 2020, 4-5.

List of abbreviations

BIV	Basic Italian Vocabulary
CH	Swiss
EOMC	Eurolect Observatory Multilingual Corpus
EOP	Eurolect Observatory Project
EU	European Union
IT	Italian

Paulina Dwużnik

Teaching Written Mediation to Students of English for Legal Purposes with Different Educational Backgrounds

Abstract

The aim of the paper is to answer the question as to how to choose content and tasks in a course of English for Legal Purposes (ELP) for practising lawyers, with special focus on the development of written mediation skills. The author will present the interpretation of results of a questionnaire and an interview-based study, which was conducted in an ELP course for lawyers at the Open University of the University of Warsaw. The objective of the study was to identify the linguistic needs of 35 participants of the course, taking into consideration their different professional backgrounds, e.g. banking, finance, public administration, insurance, labour law, corporate law, etc. The study focused on different types of texts which lawyers encounter, read, interpret and produce, as well as written mediation tasks which lawyers conduct in their daily professional practice. The author will present key conclusions of the study relevant to the choice of texts and language mediation tasks in teaching English for Legal Purposes.

I. Introduction

The aim of this paper is to present the challenges encountered by teachers and students of English for Legal Purposes (ELP). The main challenges result from the interdisciplinary character of such groups, as students come from many different backgrounds. The aim of the author is to indicate different kinds of texts that legal practitioners process in their daily professional routine and what kind of language tasks they mostly perform. Moreover, the paper focuses on the skill of mediation in which the language user acts as "an intermediary between interlocutors who are unable to understand each other directly – normally (but not exclusively) speakers of different languages" (CEFR 2001: 88). The author aims at answering the

question as to how to choose the content for an ELP course to develop the skill of written mediation.

The first part includes definitions of the main terms included in the paper, such as ELP and written mediation. The second part presents the results of a study conducted among students of a university course of ELP for legal practitioners from different professional backgrounds.

II. English for Legal Purposes (ELP)

ELP is a type of English for Specific Purposes that may be broadly summarised as "[a]n approach to language teaching in which all decisions as to content and method are based on the learner's reason for learning" (Hutchinson / Waters 1987: 19). This definition is in line with contemporary researchers' postulate to focus on the learners' needs analysis, which is often neglected and replaced by "ready-made curricula (e.g. corresponding to the content of the course books used or syllabi of the examinations taken at the end of the course" (Łuczak 2018: 177). ELP in courses may vary from English for legal studies, English for law practitioners to English for Academic Legal Purposes to Legal English for translators and interpreters.

Additionally, in the Polish language there is a distinction between Legislative English, which is the language of legal acts (cf. F. Grucza 2017: 403), and Legal English, which is a metalanguage that lawyers use to talk and write about law, to draft texts such as contracts or other legal documents and to discuss legal issues (cf. Wróblewski 1948: 54). The study presented in this paper focused on both kinds of ELP. Some research on needs analysis conducted among participants of such courses between 2005 and 2010 at the University of Edinburgh showed that legal practitioners' responses tended to focus on some particular skills, such as understanding better English, writing letters about legal matters, making a presentation in English, understanding legal documents, writing a claim, conducting a consultation with a client in English, negotiating on legal issues, or drafting contracts in English (cf. Northcott 2009: 168). A special focus of this study is, however,

on teaching written mediation in ELP with respect to its interdisciplinary character of ELP courses which are attended by legal practitioners of different legal specialisations.

III. Mediation

Linguistic mediation is defined as a process of serving as a "social agent who creates bridges, who helps to construct or convey meaning, sometimes within the same language, sometimes from one language to another" (CEFR Companion Volume 2018: 103). Thus, mediation may be both an intralinguistic and an interlinguistic process. This study focuses on interlinguistic mediation, which is a particular challenge in teaching English for Specific Purposes as it requires the ability to understand differences between terminology and syntax in different languages as well as the awareness of untranslatability of some notions resulting from different legal systems and cultures. Moreover, there is an extra challenge of mediating legal texts produced in English to speakers of the lawyer's mother tongue, who may not have professional knowledge and understanding of the legal system and terminology of their own country. It requires from a language mediator not only linguistic proficiency but also the ability to explain sometimes very complex legal texts to laypersons. The process may also be reversed when an English-speaking client encounters legal problems in another country and there is a need to acquaint him or her with provisions of the foreign legal system and specific regulations. All these situations may lead to numerous misunderstandings and serious legal consequences. Thus, there is a great demand to educate legal professionals, who confirm that need in the conducted analysis. Teaching mediation in many cases equals teaching mediation strategies. The main two of them are strategies to explain a new concept, such as:

- "Linking to previous knowledge",
- "Breaking down complicated information", and
- "Adapting language",

and strategies to simplify a text, which are:

- "Amplifying a dense text", and
- "Streamlining a text" (CEFR Companion Volume 2018: 104).

Students must also be aware of which skills are necessary to mediate a text. According to the latest CEFR Companion Volume, mediating a text covers:

- "Relaying specific information in speech / in writing",
- "Explaining data […] in speech / in writing",
- "Processing text in speech / in writing",
- "Translating a written text in speech / in writing",
- "Note taking (lectures, seminars, meetings, etc.)",
- "Expressing a personal response to creative texts (including literature)",
- "Analysis and criticism of creative texts (including literature)" (CEFR Companion Volume 2018: 104).

IV. Methodology

The study was based on an anonymous, structured, multiple-choice questionnaire filled in by participants of an open ELP course conducted at the Open University of the University of Warsaw. The study was conducted in April and September 2019 among participants of two iterations of the same course. The anonymous questionnaire was filled in by a total of 35 respondents (between the ages of 24 and 63). The study was supplemented by interviews with participants at the start of each course.

Firstly, as the courses were open to the general public, the study indicates the representatives of which professions participated in the course and what their educational background was, as it was crucial for the course content preparation. Secondly, the study focuses on the skill of written mediation. Thirdly, the most important research questions referred to legal

and legislative texts, which students read and process in their professional routine as well as specific tasks concerning mediation, which covers not only translation but also summarizing, explaining, simplifying and paraphrasing texts drafted both in Legislative English and Legal English. This diversification helped to identify the specific needs of students of interdisciplinary ELP in a more detailed way.

The questionnaire included 27 open and closed questions and was aimed at collecting data concerning the frequency of the respondents' contact with Legislative and Legal English texts in general and at work. The questions focused on different types of texts such as documents, contracts, professional articles, international regulations, European resolutions and any other types which students come in touch with. Moreover, the respondents were encouraged to name any kind of legal texts which they draft in English. Additionally, two questions concerned the students' self-assessment of the skill of written communication, ranging from very poor to very good, as well as subjective opinions concerning the most difficult elements of written communication in ELP.

The last, most detailed part of the questionnaire referred to the frequency of different language tasks performed by the respondents both in Legislative and Legal English as well as the frequency of specialist interdisciplinary texts which the respondents encounter, read, process and draft in their professional routine.

Students of both courses were also asked to give information concerning the frequency of the written mediation tasks which they perform at work, such as literal translation, explaining a content of an English legislative or legal text to a speaker of their native language or the other way round.

At the beginning of each course, students were clearly informed about the aim of the research conducted, which was adopting the content of the course to their individual needs as well as collecting data for future development of curricula for similar courses.

V. Results and interpretation

At the beginning of the questionnaire, students were asked to give information concerning their educational background and profession they currently held at the time. Since the course name was *Legal English not only for Lawyers,* representatives of many different occupations may have participated in the classes. However, only 3 among 35 respondents turned out to have different educational backgrounds than law, these being graduates of philology studies, public health and finance. All other participants were law graduates. As the respondents were encouraged to list all faculties they had studied, some of them additionally listed journalism, science, business, administration, pedagogy and political science. Nevertheless, the great majority (over 90%) named law as their main discipline and graduation degree. Most of the respondents also named law-related professions as their main occupation, with the greatest number of people simply naming their profession as *lawyer* (23%), followed by *legal counsel/solicitor* (14%), *public administration officer* (17%), *barrister/attorney at law* (11%), *corporate lawyer* (8%), *judge*, *insurance expert*, *lawyer in a bank* (6% each), as well as *professional negotiator*, *tax advisor* and *translator* (3% each) (Figure 1).

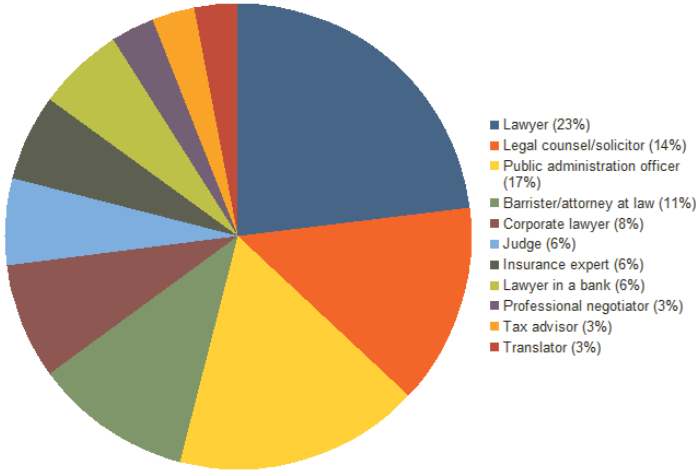


Fig. 1: Professions of the participants of the course

The first question about written communication concerned the most frequently processed texts both in Legislative and Legal English. It was a very important point to define the main fields of interest of the respondents. Not surprisingly, about 21% of the answers were *documents*, followed by *contracts* (19%), *specialist articles* (17%), *European resolutions* (15%), *international regulations* (7%), and *special provisions* (4%). The remaining 5% of the answers said *does not apply,* but interestingly about 12% of the answers specified *other texts*, such as: *judgements of the European Court of Justice*, *insurance policies*, *legal acts*, *legal opinions*, *reports*, *information on professional associations websites and specialist European organisations (IT, telecommunication)*, *agreements on double taxation*, *VAT directives*, *laws and responsibilities of the aggrieved parties and professional emails* (Figure 2).

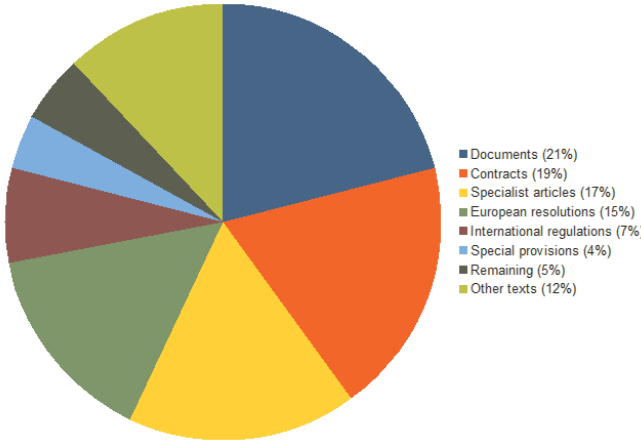


Fig. 2: The most frequently processed texts

Such a list of very specific texts gives a teacher on an ELP course many valuable clues on how to plan an interdisciplinary curriculum. Moreover, by this stage of the study it had become apparent that professional lawyers working as solicitors, corporate experts or barristers tend to work more with Legal English texts such as documents or contracts, while public administration officers much more often need to study Legislative English texts such as European resolutions or international regulations. Interest-

ingly, over 17% of the students named professional articles as texts that they often study. This fact also seems to be a valuable indicator when planning an interdisciplinary ELP course.

The next question was: *What kind of specialist texts do you most often draft in English?* The possible answers were: *documents*, *contracts*, *articles*, *none* or *others (specify which)*. Surprisingly, most of the respondents answered that they do not need to draft any specialist texts in English (39%). Again, many respondents of this group included public administration officers, as they do not need to draft agreements or any other documents for clients as solicitors, tax advisors or insurance experts do. The remaining answers, however, were *documents* (24% of all answers), *contracts* (another 24%), *articles* (7.5%) and *others* (5.5%). The last answer covered, among others, mostly pleadings and emails. Many respondents also mentioned professional correspondence as a difficult aspect of their work in additional commentary, which constituted part of the questionnaire.

The next area of the study's focus was on subjective feedback of the respondents on their general effectiveness of written communication with the use of Legal English. This question made it possible to decide how much time and focus should be given to practising writing skills in general. Approximately one third of the respondents defined their professional writing communication skills as *satisfactory* (34%), another third defined it as *poor* (also about 34%). Similarly, around 14% of the answers were *very poor* and exactly the same were *good.* 3% of the respondents indicated the possible answer *does not apply* as they do not communicate in English at all. In such cases, they often provided the information that they currently do not practice any legal profession or that they are between jobs in the open commentary part. None of the respondents marked the answer *very good.* Thus, no one denied the need to improve their writing skills as such.

This was an incentive to ask a further, more detailed question on the elements of the language that, according to students, pose the greatest difficulties to them. The possible answers covered general vocabulary, specialist terminology, cultural elements/untranslatability, syntax/sentence structure or others, with a request to name which specifically. In this case,

exactly half of the respondents indicated *specialist terminology* as the greatest difficulty in ELP, another group named *syntax* (27%) and *cultural elements/untranslatability* (12.5%) as a big challenge in interlinguistic communication. 7% of the answers indicated general vocabulary and 3.5% other problems which included: *grammatical tenses*, *conditional sentences*, *syntax in contracts*, *poor vocabulary*, *request for liquidation* and *bankruptcy specialist terminology* (Figure 3).

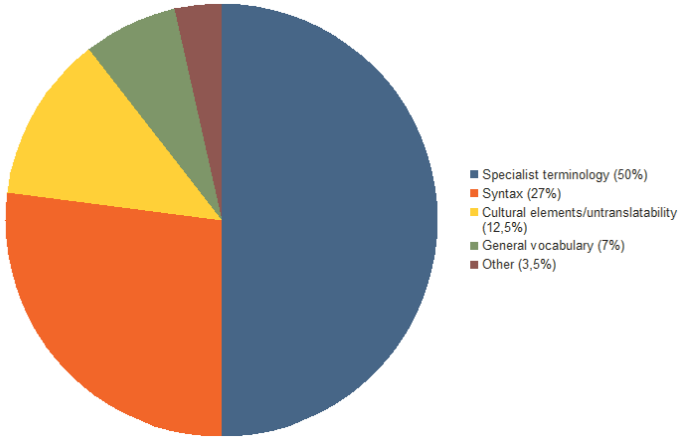


Fig. 3: Greatest difficulties in language learning according to students

The last part of the questionnaire consisted of closed questions and referred to the frequency of reading, processing, mediation and literal translation tasks which students perform in their professional routine. The first question in this part concerned the frequency of coming in touch with Legal English texts at work. Again, many students (23%) who worked as public administration officers or judges answered that they never needed to read such texts for professional use, while another large group (23%) chose the answer *with different frequency* and said that they need to read Legal English texts *every day*, *almost every day*, *three times a week*, *at least once a week* or *few times a month.* These answers were again given mostly by legal advisors, solicitors or negotiators.

However, according to the answers to the next question, Legislative English texts are *never read* (20%) or *read once a quarter* (26%) by the representatives of open market legal professions, while public administration officers read such texts *once a month* (26%) or *with different frequency* (14%), which is once a week, at least once a week or even every day. The last answer was given by respondents working with tax regulations, who need to be regularly updated with the latest regulations. The remaining respondents marked *once in six months* (8%) or *once a year* (6%) as the answer to this question. The answers to the two questions above clearly show that two main groups of lawyers, which can be clearly distinguished in an open ELP course, are public administration officers and solicitors/barristers. These two groups work with two different types of texts, which are legislative or legal ones.

The next important question in view of written mediation concerned professional correspondence that students exchange in their professional work in English. Answers to this question proved that students perceive this need as important because many (26%) answered that they exchange professional mails in English *once a month*. Moreover, 17% marked the answer *with different frequency* and added that they exchange mails in English *every day*, *few times a week*, *at least once a week*, *once in two weeks* or *once in three weeks*. On the other hand, a large group (31%) answered that they never exchange mails in English at work, and again this was a group of respondents being employed in public administration. Of the remaining respondents, 11% answered that they draft professional mails in English *once a quarter*, 9% *once in six months* and 6% *once a year*. It is worth mentioning at this point that students willingly perform written tasks that require them to draft a professional email or letter as they often mention at the beginning of the course that they do not feel confident enough as far as their writing skills are concerned. Some respondents also added such remarks in the questionnaire.

The following two questions also concerned written mediation tasks. The first was: *How often, in writing, do you need to explain in Polish a content of a text drafted in Legal English?* The second was exactly the same but

concerned texts drafted in Legislative English. The answers to both questions were very similar. Most students (37%) marked *never* as an answer to both questions. Another large group answered *once in six months* (26% in the case of legislative texts and 21% in the case of legal texts). These answers show that more often students need to mediate Legislative English rather than Legal English texts, which is natural as lawyers must read and interpret international regulations and European legislation to adapt them to their native country and not the opposite. This fact must also be taken into consideration in the process of curriculum preparation for an interdisciplinary ELP course. The remaining answers indicated that students need to mediate written texts in writing once a month or once a quarter. The rate of answers was the same (14%) for each frequency both in the case of legal and legislative texts. 14% of respondents said that they need to explain a Legal English text in Polish in writing *once a year* and a Legislative English text *once a year*.

The next two questions were the same as the previous couple but concerned a reverse combination of languages and asked: *How often, in writing, do you need to explain in English a content of a text drafted in Legal Polish?* And: *How often, in writing, do you need to explain in English a content of a text drafted in Legislative Polish?* Most respondents answered that they *never* need to perform such tasks, 37% and 40% respectively. In the case of these two questions a slight discrepancy was visible between legal and legislative Polish texts being mediated in writing by the students. 17% answered that they need to explain a Polish legal text in English, while 14% mediate legislative texts drafted in Polish. It shows a difference in reference to the previous set of two questions as Legal Polish texts such as contracts and other documents must be sometimes mediated for foreign clients in English.

The last two questions relating to written mediation concerned the need for literal translation of legal and legislative texts. In reference to legislative texts, the respondents answered accordingly that they do not need to translate such texts (34%), 23% answered *once a year*, 26% *once in six months*, 6% *once a quarter* and 11% *once a month*. In the case of legal texts, the

results were slightly different: 31% of respondents said they also *never* need to translate such texts, 20% said they are required to do so *once a year*, 17% *once in six months*, 9% *once a quarter* but 23% said they need to perform such a task *once a month*, which shows a difference to legislative texts included in the previous question.

Moreover, again it was visible in the questionnaire that there is a discrepancy between the needs of lawyers employed in public administration and lawyers working as solicitors/barristers and independent experts. Again, one can see that legislative texts are much more commonly translated by public administration officers, who need to follow and interpret international regulations and European resolutions, while Legal English texts are more commonly mediated by the second group (Table 1).

Frequency	Explaining in writing a content of a **Legal English** text in Polish	Explaining in writing a content of a **Legislative English** text in Polish	Explaining in writing a content of a **Legal Polish** text in English	Explaining in writing a content of a **Legislative Polish** text in English	Literally **translating legislative texts**	Literally **translating legal texts**
Never	37%	37%	37%	40%	34%	31%
Once a year	14%	9%	14%	23%	23%	20%
Once in 6 months	21%	26%	23%	17%	26%	17%
Once a quarter	14%	14%	9%	6%	6%	9%
Once a month	14%	14%	17%	14%	11%	23%

Tab. 1: Frequency of performing different mediation tasks

VI. Discussion of the results

The research shows that open ELP courses are attended mostly by law graduates who work either as public administration officers or open market experts such as barristers, solicitors, tax advisors, negotiators, data protection specialists or insurance experts. There is a clear discrepancy between the language needs of two main groups of participants of interdisciplinary ELP courses, namely administrative workers and open market legal practitioners. Administrative workers are much more interested in Legislative English texts such as legal acts, European resolutions, international regulations and agreements, VAT directives, and data protection regulations, while representatives of open market legal professions focus on Legal English texts such as contracts, pleadings, insurance policies**,** legal opinions, reports, information on professional websites or laws and responsibilities of the aggrieved parties. Moreover, according to the study, most respondents read and use specialist articles, which may also be included in the curriculum.

The results of the study show that specialist texts such as contracts and other documents are most often drawn up in English by the respondents. Furthermore, notwithstanding their current occupation, most respondents stressed that their writing skills require improvement. Additionally, drafting professional correspondence, i.e. emails and letters, is part of lawyers' daily routine. Mediation tasks may be easily included in written exercises, which require interpretation of foreign legal provisions or regulations which concern different branches of law.

What is more, according to the study, the main challenges faced by students while mediating texts are terminology and complex syntax. If texts used in ELP courses are interdisciplinary, lawyers of different branches of law have the chance to share their knowledge and expertise with other students. ELP courses must be collaborative and based on open debate and brainstorming sessions. This enables the teacher to adopt the mediation strategy of linking to previous knowledge in classroom practice. It may often turn out that students lack such knowledge and need to refer to proper sources.

At this point, it is important to notice that often there are no satisfactory equivalents of some terms and students need to learn the difference between the term in the common law and codified law systems.

Another important conclusion of the research is that professional articles may be adopted in interdisciplinary ELP courses, as many respondents mentioned them as a point of interest. Such texts may also be easily incorporated in mediation tasks such as written summaries of specialist articles, defining terms, identifying key information, etc.

According to the study, some representatives of open market legal professions occasionally need to explain Polish legal texts to foreigners, and English legislative texts must be mediated to Polish recipients from time to time. Thus, such documents as international regulations, tax directives or data protection regulations may be of interest to students and may be included in mediation tasks. It may also be useful to ask students to give their interpretation of a Polish legal text in English to check understanding and at the same time to practice such mediation skills as paraphrasing, exemplifying, summarising, and so on.

As it turns out from the study, literal translation tasks may also occur in lawyers' professional routine. Students often stressed the need of translating the most elaborated parts of both legal and legislative texts to their clients or other law specialists. Thus, it is crucial to adapt the mediation strategy of breaking down complicated texts to explain new concepts as well as the strategy of amplifying texts to simplify them. Such texts as business contracts or the content of professional legal websites are the best source of authentic terms, which also evolve and merge on the edge of different branches of law.

VII. Implications for teaching

Students' expectations of the interdisciplinary ELP course turned out to be mainly specialist terminology and text analysis to understand specialist documents better. Thus, according to the performed needs' analysis, the course's curriculum should, among other aspects, cover specialist termi-

nology and syntax study as well as problems of untranslatability which some respondents stressed in the questionnaire and interviews. Written mediation tasks, which focus on simplifying, paraphrasing, summarising and changing the register to more formal, may be easily incorporated in writing tasks based on drafting letters to clients, preparing legal opinions or pleadings. Such tasks may be found in handbooks such as *International Legal English* (Krois-Lindner 2006) or may be self-prepared. They may cover reading and in-depth study of authentic English texts, translation of specialist terminology as well as register transfer in interlinguistic contexts by e.g. role play exercises (Chovancová 2018: 52-53). In the case of written mediation, such tasks may include writing an email to a client who needs to understand contract details, for example.

Moreover, literal translation tasks are more suitable in Legal English courses for lawyers. In the interviews and the questionnaire, the respondents mentioned mostly difficulties in terminology transfer and syntax structure while working with foreign texts. As "the skill of proper use of terms, the skill of matching a given scope of knowledge with specialist names as well as the skill of codifying given terminologies […] is a special skill of not only producing but also ordering specialist knowledge" (F. Grucza 1991: 17, own translation). This requires a teacher of an interdisciplinary ELP course to choose authentic contracts and other documents which students mostly process. They may be asked to provide texts which they work on themselves to be used in classes, or one may use numerous online resources such as lawdepot.com, eforms.com, jotform.com or ready collections of documents gathered in such publications as e.g. *The New Selection of English Documents* (cf. Rybińska / Kierzkowska 2011).

It is also useful to use parallel texts in English and students' native language to compare the use of specialist terminology and illustrate some problems of untranslatability resulting from systematic, historical and cultural differences. Students may be encouraged to use some solutions implemented by professional translators such as giving definitions of some terms and at the same time avoiding literal translation by quoting a foreign term. Moreover, tasks which consist in giving a short presentation or pre-

paring definitions and indicating differences in native and foreign terms are an additional motivation and challenge for ELP students.

A teacher of an interdisciplinary ELP course may use many different available sources and incorporate them into an eclectic language teaching method. Written mediation tasks such as didactic translation may be included in the curriculum but must be meticulously selected and adopted to particular needs. Such tasks may include: comparing original and translated texts, finding examples of homonymic and polysemic expressions, and using a series of sentences with the use of new words and expressions which pose a threat of linguistic interference (cf. Dunin-Dudkowska 2016: 107-108).

Students of ELP courses should also be encouraged to use reliable sources, e.g. monolingual dictionaries such as the *Oxford Dictionary of Law* (2003), created by academic and practising lawyers, or to study the common law system to broaden their specialist knowledge. Numerous websites such as proz.com, context.reverso.net or linguee.pl may also be used to illustrate examples of different contextualisation of specialist terms.

VIII. Conclusion

The interdisciplinary character of law implies the interdisciplinary character of language study. In the view of the anthropocentric theory, language is a demonstration of knowledge, so accordingly every specialist language is a demonstration of specialist knowledge (cf. S. Grucza 2013: 93). Such specialist knowledge, however, is naturally different in the case of every language user.

The tool of needs' analysis available to teachers of Language for Specific Purposes should be applied in the case of every open ELP course in order to identify students' interests and field of work. It is crucial to identify the common pool of knowledge of participants of every interdisciplinary specialist language course, so that it may be complemented, extended and improved. "The primary function of specialist languages consists in the fact

that they enable to use processes such as <adopting>, creating and ordering specialist knowledge" (S. Grucza 2013: 94, own translation).

Linguistic mediation consists of two main components, namely co-construction of meaning in interaction and the movement between the individual and social levels in language learning (cf. North / Piccardo 2016: 4). Thus, written mediation tasks must be incorporated in ELP curricula to ensure development of both linguistic and non-linguistic skills. "Legal professionals should be able to explain complex legal concepts in ways that are intelligible to clients, thereby enabling them to make relevant choices on the basis of such mediated knowledge" (Chovancová 2018: 50).

ELP courses are attended mostly by law graduates, who work either as public administration officers or open market experts. Public administration officers are much more interested in Legislative English texts, while open market lawyers' focus is on Legal English texts. Both groups read professional articles and occasionally need to write specialist correspondence. The main difficulties in processing specialist texts that were indicated by the respondents were terminology transfer, complex syntax structure and untranslatability. The most commonly performed mediation tasks turned out to be the translation of Legal English texts, and the written explanation of the content of English Legislative texts and Polish Legal texts. Authentic parallel legal and legislative texts may be applied to illustrate differences in original and mediated texts. Tasks such as defining untranslatable terms, simplifying and paraphrasing complex syntax, summarising specialist articles, writing emails including mediating legal texts and didactic translation of some expressions may be used in ELP courses, which need to be further specialized and cover e.g. business law, tax and insurance law or administrative law.

IX. References

Chovancová, Barbora. 2018. Practicing the skill of mediation in English for legal purposes. In: *Studies in Logic, Grammar and Rhetoric* 53 (66), 49-60.

Council of Europe. 2001. *Common European framework of reference for languages. Learning, teaching, assessment*. https://rm.coe.int/16802fc1bf. Last access 26.9.2020.

Council of Europe. 2018. *Common European framework of reference for languages. Learning, teaching, assessment. Companion volume with new descriptors.* https://rm.coe.int/cefr-companion-volume-with-new-descriptors-2018/1680787989. Last access 26.9.2020.

Dunin-Dudkowska, Anna. 2016. Tłumaczenie Profesjonalne i dydaktyczne a glottodydaktyka. In: Ewa Lipińska / Anna Serenty (eds.), *Tłumaczenie dydaktyczne w nowoczesnym kształceniu językowym*. Cracow: Księgarnia Akademicka, 95-112.

Grucza, Franciszek. 1991. Terminologia – jej przedmiot, status i znaczenie. In: Franciszek Grucza (ed.), *Teoretyczne podstawy terminologii*, Wrocław: Zakład Narodowy im. Ossolińskich, 11-43.

Grucza, Franciszek. 2017. O tekstach nazywanych „ustawami", językowych brakach ustawy „Prawo o szkolnictwie wyższym", lingwistyce legislatywnej. In: *O języku, językach i lingwistyce*. Warsaw: Wydawnictwo Naukowo Instytutu Komunikacji Specjalistycznej i Interkulturowej, Uniwersytet Warszawski, 403-434.

Grucza, Sambor. 2013. *Lingwistyka Języków Specjalistycznych*. Warsaw: Wydawnictwo Naukowe Instytutu Kulturologii i Lingwistyki Specjalistycznej, Uniwersytet Warszawski.

Hutchinson, Tom / Allan Waters. 1987. *English for specific purposes. A learner-centered approach*. Cambridge: Cambridge University Press.

Krois-Lindner, Amy. 2006. *International legal English*. Cambridge: Cambridge University Press.

Łuczak, Aleksandra. 2018. ELP teachers as researchers. On the benefits of conducting needs analysis. In: *Studies in Logic Grammar and Rhetoric* 53 (66), 177-193.

Martin, Elisabeth A. (ed.). 2003. *Oxford dictionary of law*. Oxford: Oxford University Press.

North, Brian / Enrica Piccardo. 2016. *Developing illustrative descriptors of aspects of mediation for the common European framework of reference (CEFR)*. https://rm.coe.int/developing-illustrative-descriptors-of-aspects-of-mediation-for-the-co/1680713e2c. Last access 27.9.2020.

Northcott, Jill. 2009. *Teaching legal English*. *Contexts and cases*. In: Diane Dewhurst Belcher (ed.), *English for specific purposes in theory and practice*. Michigan: University of Michigan Press, 165-185.

Rybińska, Zofia / Danuta Kierzkowska. 2011. *The new selection of English documents*. Warsaw: Translegis.

Wróblewski, Bronisław. 1948. *Język prawny i prawniczy*. Cracow: Polska Akademia Umiejętności.

List of abbreviations

CEFR	Common European Framework of Reference for Languages. Learning, Teaching, Assessment
ELP	English for Legal Purposes

Jens Fleischhauer / Dila Turus

Families of Light Verb Constructions in German Legal Language Contexts: A Case Study on the 'Passive'-Family of *stehen unter*-Light Verb Constructions

Abstract

There is widespread agreement that light verb constructions (LVCs) are a typical characteristic of German legal language. The use of LVCs is supposed to represent a significant difference between ordinary language and German legal language. Consequently, it is claimed that German legal language makes use of LVCs more frequently than ordinary language. The current paper aims at showing that there is neither a qualitative nor a quantitative difference between ordinary language and German legal language concerning the use of LVCs. Moreover, the paper argues that the LVCs found in legal contexts are not different from those found in non-legal contexts, but extend a systematic and productive pattern of periphrastic concept formation, which is specific neither to ordinary language nor to languages of a special purpose like legal language. This assertion is substantiated by presenting a corpus-based case study which demonstrates that LVCs used in legal contexts belong to families which are not restricted to special language contexts.

I. Introduction

It is a widely held assumption, especially by laypeople but also by experts, that German legal language is more abstract and complex than ordinary spoken and written language is (e.g. Eichhoff-Cyrus / Strobel 2009).[1] We

[1] The research presented in this paper was carried out as part of the research project 'Funktionsverbgefüge: Familien & Komposition' ('Light verb constructions: Families & composition'; HE 8721/1-1) funded by the Deutsche Forschungsgemeinschaft (DFG). We would like to thank Julia Buschmann and the two anonymous reviewers for their helpful suggestions.

follow Mattila (2018: 113) and assume that legal language is "a functional variant of natural language which has its own domain of usage. It is based on ordinary language but has certain particular characteristics, mainly due to its relationship with legal institutions […]" (see also Busse 1999). Legal language is often criticized for its use of light verb constructions (e.g. Reiners 1944; Eichhoff-Cyrus / Strobel 2009). This criticism is often embedded within a more general criticism of the so-called *Nominalstil* 'nominal style' (e.g. Hansen-Schirra / Neumann 2004; for a recent linguistic discussion of the German nominal style, see Hennig 2019). The criticism on the use of light verb constructions (LVCs) consists of several claims. First, German legal language uses LVCs more often than ordinary German. Second, the use of LVCs is unnecessary and could be avoided by the use of simplex verbs, i.e. monolexemic verbs. Third, LVCs are more complex than simplex verbs and are even judged as being artificial. As a consequence, LVCs should be banned from German legal language for reasons of comprehensibility and consistency (see, for example, the discussion in Stickel 1984 and Storrer 2013). Thus, more or less implicit is the claim that the use of LVCs represents a fundamental difference between ordinary language and German legal language.

In this paper, we argue that there is neither a qualitative nor a quantitative difference between ordinary language and German legal language that is manifested in the use of LVCs. Rather, we argue that the LVCs used in German legal language only extend a systematic and productive pattern of periphrastic concept formation existing in ordinary language. We substantiate this claim by showing that specific LVCs used in legal contexts belong to families which are not restricted to special contexts. An LVC-family is a set of morphosyntactically similarly formed complex expressions which exemplify the same interpretation pattern. Within this paper, we start by discussing one specific LVC, namely *unter Alkoholeinfluss stehen* 'to be under the influence of alcohol', which is used, for example, in the context of German traffic law. This LVC is a member of the 'passive'-family of *stehen unter*-LVCs. Whereas the LVC *unter Alkoholeinfluss stehen* is predominantly used in legal contexts, other LVCs of the family

(e.g. *unter der Leitung von jemandem stehen* 'to be under the direction of someone') are not. Based on these data, we argue that legal language and ordinary language share a common strategy in complex concept formation. As a consequence, LVCs in legal language cannot be analyzed in isolation, i.e. in legal language only, but need to be investigated from a more general perspective including ordinary language. In addition to this methodological claim, the current paper presents some first ideas on how to analyze LVCs from the perspective of corpus linguistics. A complicating factor in the (corpus-based) analysis of LVCs is the lack of a definition and a clear formulation of criteria which allow LVCs to be distinguished from other types of predicative constructions (e.g. predicative idioms). A further complicating factor is that LVCs lack coherent morphosyntactic properties which would allow automatic detection within a language corpus. This paper presents some suggestions as to how a corpus-based study of LVCs could be carried out, allowing for a comparison of LVCs across genres, jargons, and even languages.

The structure of the paper is as follows: section II presents the relevant background on light verb constructions and presents a brief discussion of the question as to whether LVCs are characteristic of (German) legal language or not. In section III, we present a case study on the 'passive'-family of German *stehen unter*-LVCs.

II. Light verb constructions

This section presents a brief discussion of the notion of 'light verb construction' (German *Funktionsverbgefüge*). We start by introducing this notion in section II.1 and turn to a more detailed investigation of some crucial semantic properties of LVCs in section II.2. In section II.3, we take up the question as to whether LVCs are characteristic of German legal language.

1. What is a light verb construction?

The German notions *Funktionsverb* 'light verb' (lit. 'function verb') and *Funktionsverbgefüge* 'light verb construction' (lit. 'function verb construction') were introduced in the 1960s in the work of von Polenz (1963) and Engelen (1968) respectively.[2] Although there is still no consensus on the definition of these terms (see, for example, Kamber 2008), most authors take examples like those in (1) as representative of light verb constructions.

(1) a. *einen Kuss geben* 'to give a kiss', *eine Frage stellen* 'to ask a question' (lit. 'a question put')

b. *zur Verfügung stehen* 'to be available' (lit. 'at.the disposal stand'), *in Erfahrung bringen* 'to find out' (lit. 'in experience bring/take')

LVCs consist of a semantically reduced verb – called a light verb – and a phrasal non-verbal element (NVE). The NVE can either be a nominal phrase (NP) as in (1a) or a prepositional phrase (PP) as in (1b). The light verb is semantically reduced compared to its heavy use, as the examples in (2) demonstrate. As a heavy verb in (2a), *geben* 'to give' denotes a transfer of possession. It is possible to say that the recipient (*Peter*) is still in possession of the book Maria gave to him. Light *geben* in (2b), on the other hand, does not add a transfer of possession meaning to the LVC *einen Kuss geben* 'to give a kiss'. It is not possible to say that the recipient is still in possession of the kiss since there is no transfer of such an object from Maria to Peter (e.g. Butt / Geuder 2001). Rather than denoting a *giving*-event, the LVC denotes an event of kissing. Thus, the predication – what type of situation the predicative expression refers to – is not determined by the light verb but by the non-verbal element.

[2] The English term 'light verb' goes back to Jespersen (1942).

(2) a. *Maria gab Peter ein Buch* (*und er besitzt es immer noch*).
'Maria gave Peter a book (and he is still in possession of it).'

b. *Maria gab Peter einen Kuss* (**und er besitzt ihn immer noch*).
'Maria gave Peter a kiss (*and he is still in possession of it).'

The NVE, but not the light verb, provides the main predicational content. This becomes evident by comparing the examples in (2) with those in (3). Substituting *ein Buch* 'a book' by *einen Schlüssel* 'a key' does not alter the predicational content: (3a) still reports on an event of giving. If, on the other hand, *einen Kuss* 'a kiss' is substituted by *eine Antwort* 'an answer', the resulting LVC denotes a different type of situation. Whereas, as mentioned above, *einen Kuss geben* 'to give a kiss' denotes an event of kissing, *eine Antwort geben* 'to give an answer' denotes a specific type of communication situation.

(3) a. *Maria gab Peter einen Schlüssel*.
'Maria gave Peter a key.'

b. *Maria gab Peter eine Antwort.*
'Maria gave Peter an answer.'

In the literature on light verb constructions, there is no consensus on the definition of this notion (e.g. Van Pottelberge 2001). As a working definition, we propose the one in (4).

(4) A light verb construction is a complex predicate consisting of a semantically light verb and a non-verbal element. The situation type denoted by the light verb construction is not a subtype of the situation type denoted by the heavy verb but is dependent on the NVE.

This definition builds on the idea that LVCs differ from heavy verb uses with respect to the element determining the denoted situation type. Whereas a heavy verb determines the denoted situation type based on its lexical meaning, a light verb does not (Butt / Geuder 2001 call it a defective verb which is unable to denote an event of its own). Rather, the denoted situation is determined by the NVE, while the light verb adds some (still to be determined) semantic features to the predication.

2. Semantic properties of LVCs

It is often assumed that LVCs are non-compositional since one component – the light verb – is used idiomatically. Despite the non-literal interpretation of the light verb, LVCs show evidence of being semantically compositional. In their discussion of idioms, Nunberg / Sag / Wasow (1994) propose a distinction between 'idiomatic expressions' on the one hand and 'idiomatically combining expressions' on the other. Idiomatically combining expressions (ICEs), such as English *to pull strings* or its German counterpart *Strippen ziehen*, license internal modification and come in families (see Nunberg / Sag / Wasow 1994 for further properties characteristic of ICEs). Idiomatic expressions like English *to come apart at the seams* or German *aus den Fugen geraten* (lit. 'out the joints get') lack these two properties.

Internal modification, a notion going back to Ernst (1981), is illustrated in (5a). A modifier, which is a non-obligatory component of the idiom, is realized inside the idiom and modifies one of its components. The adjective *immediate* modifies the noun *point*; Ernst (1981: 52) argues that *immediate* "adds the information that the point which someone is not addressing is the one immediately at hand." In the idiomatic expression in (5b), the adjective *political* does not modify the noun *seams*, rather it scopes over the whole idiomatic expression. Evidence is gained from its paraphrase which is: "as far as politics is concerned, he came apart at the seams" (Ernst 1981: 55).

(5) a. *That's beside the immediate point.*

b. *He came apart at the political seams.*
(Ernst 1981: 52, 51)

Regarding the internal modification of idioms, Nunberg / Sag / Wasow (1994: 500) state: "In order to modify part of the meaning of an idiom by modifying a part of the idiom, it is necessary that the part of the idiom have a meaning which is part of the meaning of the idiom."

Idiomatically combining expressions come in families – the second property mentioned above – such as the one listed in (6). The ICEs belonging

to the family shown in (6) show variance with respect to the nominal element. Irrespective of the variance, the interpretation is the same in all cases.

(6) *throw someone to the dogs/wolves/lions/etc.*
(Nunberg / Sag / Wasow 1994: 504)

Nunberg / Sag / Wasow (1994: 504) write with respect to idiom families that "the existence of ANY such family is quite surprising on the standard view of idioms as undergoing individual rules assigning idiosyncratic interpretations." The existence of such families shows that ICEs are not interpreted idiosyncratically but on the basis of systematic patterns.

LVCs show very much the same properties as ICEs: they license internal modification and come in families. Internal modification of the German LVC *einen Rat geben* 'to give advice' is shown in (7); the adjective *geheim* 'secret' modifies the noun *Rat* 'advice'. It is expressed that the content of the advice is secret.

(7) *jemandem einen geheimen Rat geben*
'give someone some secret advice'

An LVC-family headed by the light verb *geben* is represented in (8). The LVCs of this example denote similar types of speech acts. The respective type of speech act is dependent on the nominal element within the NVE.

(8) *einen Rat geben* 'to give advice', *einen Auftrag geben* 'to give an order', *eine Anweisung geben* 'to give an instruction'

Since the notion of an LVC-family is central to our analysis, we adopt the following definition of this term:

(9) Definition LVC-family: Light verb constructions form a family if
(i) they only show variance with respect to their NP element, and
(ii) they exemplify the same interpretational pattern.

Although LVCs show properties similar to idiomatically combining expressions, the two are not the same. A crucial difference between them is that in LVCs the NVE is interpreted literally, whereas the non-verbal component of an ICE requires a non-literal interpretation. In the ICE *to pull strings*, the noun *strings* is used metaphorically and does not refer to actual

physical strings. The noun *Kuss* in the LVC *einen Kuss geben* is interpreted literally; it is an eventive noun referring to a *kissing*-event.

3. Are LVCs characteristic of legal language?

Before being an object of linguistic investigation, LVCs were – especially in Germany – an object of language cultivation and their use has been heavily criticized by laypeople as being a sign of bureaucratic language use (e.g. Reiners 1944 and especially von Polenz 1963 for a reply from the perspective of linguistics). Still today, LVCs are conceived as being characteristic of special language use like legal language and administrative language (cf. Eckardt 2000: 33; Hansen-Schirra / Neumann 2004: 169-170; Kordić / Marušić 2017: 14; Fluck 2017: 430).[3] Such a view is not only expressed by laypeople but also by linguists, for example von Polenz (1963, 1987) and Zifonun / Hoffmann / Strecker (1997: 703). Contrary to this claim, Seifert (2004) demonstrates, based on a diachronic corpus study, that LVCs are no more frequent in German legal language than in ordinary language texts.

In their investigation of parts of the German *Strafprozessordnung* (code of criminal procedure), Kordić / Marušić (2017: 23) identified the following LVCs as particularly frequent and therefore, one might argue, characteristic of the language of criminal law: *Klage erheben* 'to bring an action' (lit. 'action raise'), *einen Antrag stellen* 'to submit an application' (lit. 'an application put'), *das/ein Verfahren einstellen* 'to close the proceedings/to stop proceedings' (lit. 'the/a proceeding set'), *Maßnahmen treffen* 'to take measures' (lit. 'measures strike'), *Anordnungen treffen* 'to make orders' (lit. 'orders strike'), and *Daten erheben* 'to collect data' (lit. 'data raise'). The authors argue that the LVCs used in legal language only partially overlap with those used in ordinary language. Most of the LVCs encountered in legal language, they argue, are specific to this particular language use and should therefore be absent from ordinary language use.

[3] Mattila (2012: 32) states that the use of complex expressions, e.g. compounds and phrasal expressions, is characteristic of legal language in general.

Based on an investigation of the German and Austrian criminal code, Crestani (2013: 195) argues that the occurring LVCs are not technical terms but are taken from ordinary language (see also Mattila 2012). Lindroos (2019: 340) subsumes LVCs under the notion of phraseologisms and argues that they consist solely of elements taken from ordinary language, the only special aspect being that in the context of legal language, these expressions have a juridical function which they lack in ordinary language.

Although it might be worth exploring whether the abovementioned LVCs are really restricted to legal language contexts, we take a different route. We argue that the LVCs found in legal language contexts belong to LVC-families which are not particularly restricted to such language contexts but are used similarly in ordinary language. This argumentation presents further support for Crestani's analysis.

III. Case study on German light *stehen* 'stand'

In the preceding section, we mentioned Crestani's claim that the LVCs occurring in the German and Austrian criminal code do not belong to technical language but are taken from ordinary language. We take up this claim and will demonstrate, based on a case study, that LVCs occurring in legal language contexts belong to LVC-families which are found in ordinary language as well. As a case study, we investigate LVCs of the type '*stehen unter* NP' (lit. 'stand under NP'); the data were collected from the German DeReKo corpus (DeReKo 2020). Before we turn to a discussion of the corpus data in section III.2, we start with a general overview of the German light verb *stehen* 'stand'.

1. German light *stehen*

The sentences in (10) show two examples of the German LVC *unter Alkoholeinfluss stehen* 'to be under the influence of alcohol' (lit. 'under alcohol.influence stand'). To be more precise, the examples illustrate the use of up to three different LVCs. Besides the one already mentioned, the

examples also represent the LVCs *unter Drogeneinfluss stehen* 'to be under the influence of drugs' and *unter Medikamenteneinfluss stehen* 'to be under the influence of medication'. The three LVCs are specific instances of a more general LVC *unter Einfluss durch* NP *stehen* 'to be under the influence of NP', the nouns *Alkohol* 'alcohol', *Drogen* 'drugs', and *Medikamente* 'medication' specifying the entity exerting an influence on the subject referent of the LVC. The sentences in (10) are taken from specific discussions of German traffic law and therefore illustrate the use of the LVCs in the context of legal language. We have chosen these particular LVCs because *stehen* is among the most frequent German light verbs (cf. Klein 1968; Kamber 2008: 47-48).

(10) a. *Von „Alkohol am Steuer" wird gesprochen, wenn der Führer eines Kraftfahrzeuges im Straßenverkehr unter Alkohol-, Drogen- oder Medikamenteneinfluss steht*.[4]

'One speaks of "drunk driving" when a driver of a motor vehicle is under the influence of alcohol, drugs, or medication in road traffic.'

b. *Oft überschätzen sich die Autofahrer hinsichtlich ihrer Fähigkeiten, wenn sie beispielsweise unter Alkohol- oder Drogeneinfluss stehen.*[5]

'Car drivers often overestimate their skills when they are under the influence of alcohol or drugs, for instance.'

Heavy *stehen* 'stand' is a posture verb and expresses the upright posture of its subject argument. In addition, it allows the specification of the subject argument's location by means of a spatial PP (11). The prepositional phrase (PP) is an obligatory argument of the verb, and heavy *stehen* may co-occur with a variety of spatial prepositions.

(11) *Der Hund steht unter dem Dach*.
'The dog is standing under the roof.'

[4] Source: https://www.juraforum.de/lexikon/alkohol-am-steuer. Last access 11.10.2019.
[5] Source: https://www.bussgeldkatalog.org/fahrlaessige-toetung/. Last access 11.10.2019.

Light *stehen* differs from heavy *stehen* in at least two respects. First, it does not express that its subject referent is in an upright posture. This results in a difference in the selectional restrictions on the subject argument. Whereas heavy *stehen* cannot take, for example, a country as its subject argument (**Die Schweiz steht unter dem Dach* 'Switzerland is standing under the roof'), light *stehen* can, as (12) shows. The sentence shows a use of the LVC *unter Beobachtung stehen* 'to be under observation' and reports that Switzerland is under observation by the United States.

(12) *Das US-Finanzministerium hat die Schweiz erneut auf die Liste jener Staaten gesetzt, die wegen grosser* [sic!] *Handelsüberschüsse mit den USA unter Beobachtung stehen.*[6]

'The U.S. Treasury Department put Switzerland on a list of those states which are again under observation due to a large trade surplus with the USA.'

The second difference concerns the interpretation of the PP. Whereas *unter dem Dach* 'under the roof' denotes a spatial region, *unter Beobachtung* 'under observation' does not. Thus, the sentence in (12) does not report on the spatial location of the referent of Switzerland. The preposition within the PP-complement of the light verb is not restricted to spatial prepositions. In its light use, *stehen* also combines with the preposition *zu* (13), which heavy *stehen* does not.

(13) *zur Debatte stehen*[7] 'to be up for debate', *zur Diskussion stehen* 'to be under discussion', *zur Entscheidung stehen* 'to be up for decision', *zur Verfügung stehen* 'to be available', *zur Auswahl stehen* 'to be available for selection', *zur Verhandlung stehen* 'to be on trial', *zum Verkauf stehen* 'to be for sale'

The choice of the preposition is not arbitrary, but the preposition contributes to the overall meaning of the LVC. This can be seen by comparing the

[6] Source: https://www.finanznachrichten.de/nachrichten-2020-01/48602144-schweiz-unter-beobachtung-der-usa-im-handelskonflikt-095.htm. Last access 7.5.2020.

[7] *Zur* is a contracted form of the preposition *zu* and the dative form of the feminine definite article *der*, while *zum* is the corresponding masculine form consisting of the preposition *zu* and the definite article *dem*.

two LVCs in (14). *Zur Debatte stehen* 'to be up for debate' expresses that some subject (the draft law in (14a)) is the topic of a (current) debate, whereas *vor der abschließenden Debatte stehen* 'to face the closing debate' means that someone is about to participate in a closing debate. The preposition *vor* locates the subject referent – in (14b) the members of parliament – in the prestate of a closing debate (see Fleischhauer / Gamerschlag 2019 and Fleischhauer / Gamerschlag / Kallmeyer / Petitjean 2019 for a more detailed discussion of *stehen vor*-LVCs).

(14) a. *Der Gesetzesentwurf steht zur Debatte.*
'The draft law is up for debate.'

b. *Die Abgeordneten stehen vor der abschließenden Debatte des neuen Gesetzes*.
'The members of parliament are facing the closing debate of the new law.'

A particular question that arises in the analysis of LVCs is: what is the specific semantic contribution of the light verb and the preposition? We propose that the regular semantic contribution of a light verb or a preposition is the meaning which it contributes to all members of a particular family of LVCs. Thus, the starting point for any compositional analysis of LVCs is the identification of LVC-families. The LVC *unter Alkoholeinfluss stehen* 'to be under the influence of alcohol' belongs to the 'passive'-family, which we discuss in detail in the next section.

2. Case study on the 'passive'-family

We start this section with a brief discussion of the 'passive'-family and then turn to the presentation of a corpus study on German *stehen unter*-LVCs.

2.1. Preliminary observations on the 'passive'-family

As already mentioned above, the LVC *unter Alkoholeinfluss stehen* belongs to the 'passive'-family of *stehen unter*-LVCs. Following Fleischhauer / Gamerschlag (forthcoming: 8), the LVCs of the 'passive'-family

are interpreted as 'the subject referent undergoes the eventuality denoted by the PP-internal noun', "which gives rise to a passive-like interpretation". *Unter Alkoholeinfluss stehen* is paraphrased as 'durch Alkohol beeinflusst sein/werden' ('being influenced by alcohol'). The noun *Einfluss* 'influence' denotes an eventuality of influencing, the manner of influencing is left unspecified. The underlying eventuality has two obligatory participants: an agent, who is exerting an influence, and a theme, who is being influenced. *Einfluss* is a relational noun which takes an agent and a theme argument. The agent is realized in a possessive-NP, whereas the theme is realized within an *auf*-PP (15).

(15) *der Einfluss des Alkohols/von Alkohol auf den Fahrer*
'the influence of alcohol on the driver'

Alkoholeinfluss is a nominal compound; the noun *Alkohol* 'alcohol' saturates the agent argument of the noun *Einfluss*. Thus, the two sentences in (16) are just two different ways of expressing the same meaning. In (16a), the theme argument forms a compound with the eventive noun *Einfluss*, whereas in (16b) it is realized within a PP. This is a relevant fact since it shows that *unter Alkoholeinfluss stehen* is just a subtype of the more general *unter Einfluss von* NP *stehen* LVC.

(16) a. *Der Fahrer steht unter Alkoholeinfluss.*
'The driver is under the influence of alcohol.' (lit. 'The driver stands under alcohol.influence.')

b. *Der Fahrer steht unter dem Einfluss von Alkohol.*
'The driver is under the influence of alcohol.'

Below we would like to report on the results of a corpus study on the 'passive'-family of *stehen unter*-LVCs. Before we discuss the results of the corpus study, we present the relevant background on the methodology of the research.

2.2. Corpus and methodology

For a corpus study on *stehen unter*-LVCs, we researched the German reference corpus *DeReKo*, which currently comprises more than 46.9 billion

words. The corpus study was carried out by the user interface COSMAS II. We restricted the analysis to the TAGGED-C2 sub-corpus, which consists of 17 different newspaper corpora comprising roughly 1378.83 million words.[8] Within the sub-corpus, we searched for the adjacent co-occurrence of *stehen* with the preposition *unter*. This resulted in 25,501 hits, of which we manually analyzed the first 10% (2,500 sentences).[9] Since the selected corpus does not contain legal texts, we were not able to investigate legal language in a narrow sense, but only in a broader sense, which is language use in law-specific situations (Stickel 1984: 31). Therefore, we speak of 'legal contexts' rather than 'legal language' in the remainder of the study.

In a first step, we had to decide whether *stehen* is used as a heavy verb or a light verb. A major difference between the heavy and light uses of *stehen* is that heavy *stehen* can be replaced by other posture verbs without affecting the acceptability of the sentence (17). While it is possible to replace *stehen* by *sitzen* 'to sit' or *liegen* 'to lie' in (17a), the substitution of *stehen* by one of the other posture verbs results in ungrammaticality in (17b).

(17) a. *Der Hund steht/sitzt/liegt unter dem Baum.*
'The dog is standing/sitting/lying under the tree.'

b. *Der Fahrer stand/*saß/*lag unter Alkoholeinfluss*.
'The driver was under the influence of alcohol.'

Further evidence for a heavy interpretation of *stehen* is the possibility to substitute the preposition with other spatial prepositions without affecting the sentence's acceptability (18).

(18) a. *Der Hund steht unter/vor/neben/hinter dem Baum.*
'The dog is standing under/in front of/next to/behind the tree.'

b. *Der Fahrer stand unter/*vor/*neben/*hinter Alkoholeinfluss.*
'The driver was under the influence of alcohol.'

[8] The collection contains German as well as Swiss and Austrian newspapers.
[9] The search was done on December 19, 2019; since the corpus is steadily expanding, the number of possible hits is continually increasing.

In a second step, LVCs were distinguished from idiomatic expressions. The literature on LVCs does not present any reliable criteria which allow these two types of predicative expressions to be distinguished. Building on our working definition, we distinguish LVCs from idiomatic expressions based on the question of whether the denoted situation type is dependent on the nominal element or not. We do not have a direct test criterion to check whether the denoted situation type is determined by the nominal element or not, but we take it as evidence in favor of the fact that the situation type is determined by the noun if the noun (or, if it is a deverbal noun, its verbal base) shows up in the paraphrase of the complex expression. The meaning of the LVC *unter Alkoholeinfluss stehen* can be paraphrased as 'von Alkohol beeinflusst sein' ('to be influenced by alcohol') and denotes a state of being under the influence of alcohol. The noun *Einfluss* does not show up in the paraphrase but the denominal verb *beeinflussen* 'to influence', which is derived from that noun, does. Thus, *unter Alkoholeinfluss stehen* qualifies as being an LVC.

Auf dem Schlauch stehen 'be at a loss' (lit. 'on the hose stand') is an idiomatic expression which looks superficially similar to the LVCs under discussion. The expression can be paraphrased as 'etwas nicht verstehen/ratlos sein' ('to not be able to understand/to be baffled'). The situation type denoted by the idiom is not determined by one of the idiom's components directly. There is no connection between being in a state of not knowing what to do or say and any of the components of the expression. In particular, there is no direct relation between this specific state and the meaning of the noun *Schlauch* 'hose'. Rather, it is the idiomatic meaning associated with the multi-word expression which determines the type of denoted situation. This is evidenced by the fact that the noun *Schlauch* 'hose' does not show up in the idiom's paraphrase. According to our criteria, *auf dem Schlauch stehen* is not an LVC but an idiom.

2.3. Results of the corpus study

For reasons of space, we only concentrate on *stehen unter*-LVCs belonging to the 'passive'-family here; other *stehen unter*-LVCs cannot be considered

within the current paper. We start with a discussion of the LVC *unter Einfluss von* NP *stehen* 'to be under the influence of NP', of which *unter Alkoholeinfluss stehen* 'to be under the influence of alcohol' is a specific subtype. Later, we turn to a more detailed discussion of our findings on the 'passive'-family in general.

The first question to answer is how the individual members of the family can be identified. We propose that the members of an LVC-family are identified by their paraphrases. A *stehen unter*-LVC belongs to the 'passive'-family if it shows the passive paraphrase represented in (19a). The crucial aspect is that the NVE-internal noun is translated into a passive participle; both the noun and the participle refer to the same type of eventuality.[10] We illustrate this paraphrase with the example of the LVC *unter Beobachtung stehen* 'to be under observation' (19b). The noun *Beobachtung* 'observation' is translated into the passive participle *beobachtet* 'observed'. The theme argument is realized as the subject both in the case of the LVC and in the paraphrase. The agent argument is realized within a *durch*-PP 'by-PP' in both cases; the passive paraphrase also allows the agent to be realized within a *von*-PP 'by-PP', as is more usual in the German passive construction.

(19) a. Paraphrase of the 'passive'-family:

NP_{THEME} *steht* [*unter* NP]$_{NVE}$ *durch* NP_{AGENT} is paraphrased as 'NP_{THEME} wird *durch/von* NP_{AGENT} $V_{PassiveParticiple}$'

b. NP_{THEME} *steht* [*unter Beobachtung*]$_{NVE}$ *durch* NP_{AGENT} is paraphrased as 'NP_{THEME} wird *durch/von* NP_{AGENT} *beobachtet*'

Based on the procedure described above, we identified the LVCs listed in Table 1 as belonging to the 'passive'-family of *stehen unter*-LVCs. For each LVC, the table also lists its number of occurrences within the analyzed part of the corpus.

[10] We leave unspecified whether and, if yes, how the noun and passive participle are morphologically related.

Member of the 'passive'-family	**Number of occurrences in corpus sample (abs. freq.)**	**Relative frequency (in percent)[11]**
unter Anklage stehen 'to be charged'	1	0.04
unter Aufsicht stehen 'to be under supervision'	17	0.68
unter Beobachtung stehen 'to be under observation'	10	0.4
unter Beschuss stehen 'to be under fire'	9	0.36
unter Betreuung stehen 'to be under care'	1	0.04
unter Bewachung stehen 'to be under surveillance'	1	0.04
unter Einfluss stehen 'to be under the influence'	30	1.2
unter Führung stehen 'to be under leadership'	10	0.4
unter Hypnose stehen 'to be under hypnosis'	1	0.04
unter Kontrolle stehen 'to be under control'	4	0.16
unter der Leitung stehen 'to be under the direction'	122	4.88
unter Schutz stehen 'to be under protection'	97	3.88
unter Strafe stehen 'to be punishable'	2	0.08
unter Verdacht stehen 'to be suspected'	100	4

Tab. 1: Members of the 'passive'-family and their number of occurrences within the analyzed corpus

Since *unter der Leitung von* NP *stehen* 'to be under the direction of NP' is the most frequently occurring LVC of this family, we will take it as the representative family member. The theme argument of this LVC is char-

[11] The relative frequencies are calculated for the analyzed sample of 2,500 sentences.

acteristically either an institution (*Chor* 'chorus', *Orchester* 'orchestra', *Altersheim* 'home for senior citizens') or an event (e.g. *Konzert* 'concert', *Gottesdienst* 'church service'); two examples are shown in (20). For this particular LVC, we did not find a single example reporting on a legal issue.

(20) a. *Der Chor steht unter der bewährten Leitung von Kurt Koller.*

'The chorus is under the proven direction of Kurt Koller.' (*St. Galler Tagblatt*, 08.01.2010: 34; Starke Stimmen am Vorabend)

b. *Das Konzert beginnt um 18 Uhr und steht unter der Leitung von Ronald Ehret.*

'The concert starts at 6 p.m. and is under the direction of Ronald Ehret.' (*Mannheimer Morgen*, 08.12.2010: 20)

Whereas *unter der Leitung stehen* does not report on law-specific situations (at least not in the part of the corpus we were looking at), the LVC *unter Einfluss stehen* does. We found 30 occurrences of the LVC *unter Einfluss stehen* within the corpus data. The agent argument formed a compound with the noun *Einfluss* in 22 cases, while it was realized within a PP in only eight cases. In two examples, two agent arguments were coordinated either by *und* 'and' (21a) or by *oder* 'or' (21b).

(21) a. *Ein 18 Jahre alter Mann aus dem Bördekreis stand unter dem Einfluss von Amphetamin und THC, dem Wirkstoff von Cannabisprodukten.*

'An 18-year-old man from the Börde district was under the influence of amphetamine and THC, which is the active substance in cannabis products.' (*Braunschweiger Zeitung*, 28.10.2010; Bei Kontrolle standen zwei Fahrer unter Drogeneinfluss)

b. *Vier von fünf Tätern standen unter Alkohol- oder Drogeneinfluss*.

'Four out of five offenders were under the influence of alcohol or drugs.' (*Mannheimer Morgen*, 29.05.2010: 21)

Overall, 32 different agent arguments (tokens) are attested. Table 2 summarizes the different types of nouns und their respective number of occurrences. Only two nouns formed a compound with *Einfluss*, namely, *Alkohol* 'alcohol' and *Drogen* 'drugs'. *Alkohol* is only used within a compound and does not occur within a PP, while *Drogen* is used two times within a PP and seven times as the non-head element of a compound.

Agent argument	**Number of occurrences**
Alkohol 'alcohol'	16
Amphetamin 'amphetamine'	1
Betäubungsmittel 'drug/narcotic'	1
Cannabis	1
Drogen 'drugs'	9
Medikamente 'medication'	1
THC[12]	2
Wettspiele 'games'	1

Tab. 2: Agent arguments of *unter Einfluss stehen*-LVCs and their respective number of occurrences

Almost all occurrences of the LVC *unter Einfluss stehen* (29 out of 30) report that the subject is doing something under the influence of some (at least in the respective context) illegal substance, like drugs or alcohol. A number of nouns express sub-concepts of the more general concept 'drugs', e.g. *cannabis*, *THC*, *amphetamine*, etc. Although the examples are not taken directly from law texts, they are taken from newspaper texts reporting on legal issues. This is clearly shown by the example in (22); the second sentence of the example indicates the legal context.

[12] Tetrahydrocannabinol (THC) is a psychoactive constituent of cannabis.

(22) *Die Fahrerin stand unter dem Einfluss von THC, dem Wirkstoff aus Cannabisprodukten. Die 25-Jährige muss sich strafrechtlich wegen Drogenbesitzes verantworten.*

'The female driver was under the influence of THC, which is the active substance in cannabis products. The 25-year-old has to face criminal charges for the possession of drugs.' (*Braunschweiger Zeitung*, 06.02.2010; Polofahrerin unter Drogeneinfluss)

The only example which does not report on a legal issue is shown in (23). The sentence reports on the influence of a sports event on a specific concert.

(23) *Das Jahreskonzert des Tambourenvereins Fürstenland vom Sonntag, 28. März, steht unter dem Einfluss der bevorstehenden Eidgenössischen Wettspiele in Interlaken.*

'The annual concert of the Tambourine Association Fürstenland on Sunday 28 March is under the influence of the upcoming Swiss competitions in Interlaken.' (*St. Galler Tagblatt*, 25.03.2010: 45; Jahreskonzert des Tambourenvereins)

Finally, we will briefly comment on the LVC *unter Verdacht stehen* 'to be suspected', which is the second most frequent one in our sample. In the majority of uses, the LVC reports on legal issues since the subject referent is suspected of having committed a crime. A representative example is shown in (24).

(24) *Der auf dem Fahndungsfoto abgebildete Mann steht unter dem dringenden Verdacht, mit der gefälschten Kreditkarte eines 26-Jährigen aus Göttingen für 540 Euro in Tankstellen in Wolfsburg und Gifhorn eingekauft zu haben* […].

'The man in the mug shot is strongly suspected of having made purchases at petrol stations in Wolfsburg and Gifthorn in the amount of 540 Euro with the forged credit card of a 26-year-old man from Göttingen.' (*Braunschweiger Zeitung*, 23.11.2010; Polizei sucht einen Kreditkartenbetrüger)

Nevertheless, the LVC is also used in non-legal contexts, as in the example in (25), which reports on the chemical testing of the components of children's toys. For reasons of space, we cannot present a more detailed analysis of this LVC within the current paper.

(25) *Viele dieser Stoffe stehen unter dem Verdacht, Krebs zu verursachen*.

'Many of these substances are suspected of causing cancer.' (*St. Galler Tagblatt*, 23.11.2010: 11; Gefährliche Spielsachen)

Although the LVC has a clear tendency to occur in legal contexts, probably due to the meaning of the noun *Verdacht* 'suspicion', it is not restricted to such contexts. This holds for the whole family, showing that LVCs are not specific to a certain language context.

IV. Conclusion

In this paper, we reported on a preliminary corpus study of German LVCs of the type *unter* NP *stehen* which belong to the 'passive'-family. The starting point of the discussion was the widely held view that LVCs are characteristic of German legal language. The current analysis is not intended to be a quantitative study on the use of LVCs within German legal language, rather we aim at a qualitative one. The essential claim defended in the paper is that the LVCs found in legal contexts are not different from those found in non-legal contexts. Rather, it is the case that LVCs form families and some members of a particular family are more likely to be used in legal contexts (e.g. *unter Einfluss stehen* 'to be under the influence of'), while others are not (e.g. *unter der Leitung stehen* 'to be under the direction of'). Thus, we are dealing with a general strategy of concept formation which is specific neither to ordinary language nor to languages of a special purpose like legal language. As a consequence, the LVCs used in legal language do not require a grammatically or semantically special treatment but can be analyzed on a par with those used in non-legal contexts.

The identification of LVC-families is just the first step in the semantic analysis of light verb constructions. On the basis of established LVC-fami-

lies, the individual contribution of the different components – especially the light verb and the preposition – can be identified. We see the current analysis as a solid empirical base for modeling the semantic composition of the different members of the 'passive'-family. For a first attempt at modeling its semantic composition, see Fleischhauer / Gamerschlag (forthcoming); Fleischhauer / Gamerschlag (2019) and Fleischhauer / Gamerschlag / Kallmeyer / Petitjean (2019) model the composition of the 'prospective'-family of *stehen vor*-LVCs.

In addition, we see the proposed methodology as a suitable starting point for an extended corpus analysis of German light verb constructions. The methodology and criteria proposed in section III.2.2 are under constant evaluation; in a next step, the heuristics will be applied to identify further LVC-families which are said to be characteristic of legal contexts (e.g. the family headed by light *geben* 'give' mentioned in section II.2). Such an extension will allow us to evaluate our claim that there is no particular restriction of LVCs to legal contexts but that LVCs belong to families which are restricted neither to ordinary language nor to language of special purposes such as legal language.

V. References

Busse, Dietrich. 1999. Die juristische Fachsprache als Institutionensprache am Beispiel von Gesetzen und ihrer Auslegung. In: Lothar Hoffmann / Hartwig Kalverkämper / Herbert Ernst Wiegand (eds.), *Fachsprachen – Ein internationales Handbuch zur Fachsprachenforschung und Terminologiewissenschaft*. Berlin: De Gruyter, 1382-1391.

Butt, Miriam / Wilhelm Geuder. 2001. On the (semi)lexical status of light verbs. In: Norbert Corver / Henk van Riemsdijk (eds.), *Semilexical categories. On the content of function words and the function of content words*. Berlin: Mouton, 323-370.

COSMAS II. 2020. *Corpus search, management and analysis system*. Leibniz-Institut für Deutsche Sprache, Mannheim. http://www.ids-mannheim.de/cosmas2/.

Crestani, Valentina. 2013. *Außer Geltung setzen*, *Verhandlungen führen* – Funktionsverbgefüge im deutschen und österreichischen Strafgesetzbuch. In: Marina Brambill / Joachim Gerdes / Chiara Messina (eds.), *Diatopische Variation in der deutschen Rechtssprache*. Berlin: Frank & Timme, 169-197.

DeReKo. 2020. *Das Deutsche Referenzkorpus DeReKo*. Leibniz-Institut für Deutsche Sprache, Mannheim. http://www.ids-mannheim.de/kl/projekte/korpora/.

Eckardt, Birgit. 2000. *Fachsprache als Kommunikationsbarriere? Verständigungsprobleme zwischen Juristen und Laien*. Wiesbaden: Deutscher Universitäts-Verlag.

Eichhoff-Cyrus, Karin / Thomas Strobel. 2009. Einstellungen der Justiz zur Rechts- und Verwaltungssprache. In: *Der Sprachdienst* 5 (9), 133-151.

Engelen, Bernhard. 1968. Zum System der Funktionsverbgefüge. In: *Wirkendes Wort* 18, 289-303.

Ernst, Thomas. 1981. Grist for the linguistics mill. Idioms and 'extra' adjectives. In: *Journal of Linguistic Research* 1, 51-68.

Fleischhauer, Jens / Thomas Gamerschlag. Forthcoming. Attributive and adverbial modification of German light verb constructions. In: Curt Anderson / Jens Fleischhauer (eds.), *Modification and complex predicates.* Berlin: Language Science Press.

Fleischhauer, Jens / Thomas Gamerschlag. 2019. Deriving the meaning of light verb constructions – A frame account of German *stehen* 'stand'. In: Constanze Juchem-Grundmann / Michael Pleyer / Monica Pleyer (eds.), *Yearbook of the German Cognitive Linguistics Association. Volume 7*. Berlin: Mouton de Gruyter, 137-156.

Fleischhauer, Jens / Thomas Gamerschlag / Laura Kallmeyer / Simon Petitjean. 2019. Towards a compositional analysis of German light verb constructions (LVCs) combining Lexicalized Tree Adjoining Grammar (LTAG) with frame semantics. In: *Proceedings of the 13th International Conference on Computational Semantics – Long Papers*. Gothenburg: Association for Computational Linguistics, 79-90.

Fluck, Hans-R. 2017. Verwaltungssprache und Staat-Bürger-Interaktion. In: Ekkehard Felder / Friedemann Vogel (eds.), *Handbuch Sprache im Recht*. Berlin: De Gruyter, 425-441.

Hansen-Schirra, Silvia / Stella Neumann. 2004. Linguistische Verständlichmachung in der juristischen Realität. In: Kent Lerch (ed.), *Die Sprache des Rechts. Band 1 Recht verstehen*. Berlin: De Gruyter, 167-184.

Hennig, Mathilde. 2019. *Nominalstil*. Tübingen: Narr.

Jespersen, Otto. 1942. *A modern English grammar on historical principles, part VI, morphology*. Copenhagen: Ejnar Munksgaard.

Kamber, Alain. 2008. *Funktionsverbgefüge – empirisch*. Tübingen: Niemeyer.

Klein, Wolfgang. 1968. Zur Kategorisierung der Funktionsverben. In: *Beiträge zur Linguistik und Informationsverarbeitung* 13, 7-37.

Kordić, Ljubica / Borislac Marušić. 2017. Funktionsverbgefüge (FVG) als Merkmale der deutschen Rechts- und Verwaltungssprache. In: *Comparative Legilinguistics* 29, 9-30.

Lindroos, Emilia. 2019. Formelhaftigkeit des Rechts. Zur Phraseologie in der Rechtssprache. In: Ingrid Simmonæs / Marita Kristiansen (eds.), *Legal translation. Current issues and challenges in research, methods and applications*. Berlin: Frank & Timme, 333-348.

Mattila, Heikki. 2012. Legal vocabulary. In: Peter Meijes Tiersma (ed.), *The Oxford handbook of language and law*. Oxford: Oxford University Press, 27-38.

Mattila, Heikki. 2018. Legal language. In: John Humbley / Gerhard Budin / Christer Laurén (eds.), *Language for special purposes. An international handbook*. Berlin: Mouton de Gruyter, 113-150.

Nunberg, Geoffrey / Ivan Sag / Thomas Wasow. 1994. Idioms. In: *Language* 70 (3), 491-538.

Reiners, Ludwig. 1944. *Deutsche Stilkunst. Ein Lehrbuch deutscher Prosa*. München: Schiewe.

Seifert, Jan. 2004. *Funktionsverbgefüge in der deutschen Gesetzessprache (18.–20. Jahrhundert).* Hildesheim: Olms.

Stickel, Gerhard. 1984. Zur Kultur der Rechtssprache. In: Wolfgang Teuber (ed.), *Aspekte der Sprachkultur*. Mannheim: Institut für Deutsche Sprache, 29-60.

Storrer, Angelika. 2013. Variation im deutschen Wortschatz am Beispiel der Streckverbgefüge. In: Deutsche Akademie für Sprache und Dichtung (ed.), *Reichtum und Armut der deutschen Sprache*. Berlin: Walter de Gruyter, 171-212.

Van Pottelberge, Jeroen. 2001. *Verbonominale Konstruktionen, Funktionsverbgefüge*. Heidelberg: Universitätsverlag C. Winter.

von Polenz, Peter. 1963. *Funktionsverben im heutigen Deutsch. Sprache in der rationalisierten Welt*. Düsseldorf: Schwann.

von Polenz, Peter. 1987. Funktionsverben, Funktionsverbgefüge und Verwandtes. Vorschläge zur satzsemantischen Lexikographie. In: *Zeitschrift für germanistische Linguistik* 15, 169-189.

Zifonun, Gisela / Ludger Hoffmann / Bruno Strecker. 1997. *Grammatik der deutschen Sprache. Band 1*. Berlin: Walter de Gruyter.

List of abbreviations

DeReKo	Deutsches Referenzkorpus
ICE	idiomatically combining expression
lit.	literally
LVC	light verb construction
NP	noun phrase
NVE	non-verbal element
PP	prepositional phrase
THC	tetrahydrocannabinol
US/USA	United States (of America)
V	verb

Daniel Green / Luke Green

Legal Language Teaching in Austrian Secondary Education: Introducing a Legal Literacy Class in Vienna

Abstract

Article 2 of the Austrian School Organisation Act (*Schulorganisationsgesetz*, SchOG 1962) provides that school should equip students with the knowledge and skills necessary for their life and future profession, and train them in the independent acquisition of education. However, legal literacy has been largely neglected in the Austrian education system. To counteract the status quo, an adult secondary school in Vienna offers a two-semester legal literacy course (German: "Sprache und Recht", English: "Language and Law") as an elective subject in its regular secondary school curriculum. Focus is placed on the development of critical thinking and problem solving, as well as analytical writing and basic research skills from the fields of law and linguistics. Based on the analysis of a legal literacy questionnaire, this article presents students' self-perceived legal literacy and attitudes towards legal competence in secondary education. It aims to make a case as to why standardised curricula for legal literacy classes in secondary schools may be highly beneficial to students in Austria and potentially throughout the European Union.

I. Introduction

Legal language teaching in schools is a contested field of practice. Undoubtedly, there seem to be several factors that render the teaching of law and legal language in secondary education a dubious cause. To begin with, it would seem as though legal language should remain the tool of legal experts, who may rightfully claim and use what is theirs (Shuy 2002). Legal language may thus not be the language of the ordinary person, as the appropriate use of this exclusive linguistic system is where experts and laypeople part ways. Secondly, legal language is rooted in a plethora of

historically grown socio-cultural settings, which makes it too complex to be captured by national school curricula and taught in secondary schools. Thirdly, secondary school simply could not succeed in the task of providing legal education at large, since students mainly attend secondary school to acquire general knowledge and not to solve legal problems, least of all be overwhelmed with the idiosyncrasies of legal jargon. With this typology of criticism in mind, it stands to reason that the rejection of legal literacy classes might be more the expression of a complex interplay of language ideologies and legal ideologies which, for the sake of convenience, we conceive of in accordance with Irvine (1989: 255) as "ideas about social and linguistic relationships" in legal education contexts.

This article adopts a critical view on both the potential and limitations of legal language teaching (German: *Rechtssprachendidaktik*) in secondary schools, drawing on a study conducted at an adult secondary school in Vienna, Austria. Taking account of and responding to the debatable positions previously stated, we seek to provide answers to the following two research questions:

(1) What is the institutional context of legal language teaching and learning in adult secondary education?
(2) Which self-perceived legal literacy levels and attitudes are evident in adult legal language learners?

We propose that in order to integrate legal language teaching into the Austrian education system, it is necessary to adopt an optimistic yet realistic view towards its aims, practical implementation and wider societal utility. In our discussion we first provide general information on the legal literacy course "Language and Law" and give a description of the rationale and objectives of the programme. We subsequently describe students' background with a view to illustrating the linguistic and cultural diversity of legal literacy classrooms. We conclude with several arguments and calls for action with regard to the implementation of legal language classes in Austria and across the European Union.

II. 'Language and Law' in adult secondary school

'Language and Law' has been offered as a legal literacy programme at the secondary school in question, since 2018. In accordance with the curriculum for *allgemeinbildende höhere Schulen* ('secondary schools for general education'), the process of education should take into account the rapid social changes seen in various areas of life, including – expressly – law (cf. BMBWF 2019: 2). This course intends to make a contribution to this end. In the programme, which was established as an elective subject (German: *Wahlpflichtfach*), students should acquire both content knowledge and analytical skills to be able to engage with legal and societal issues in an informed, critical and reflected manner. Building on White's (2002) understanding of legal knowledge, we distinguish between skills derived from declarative knowledge (e.g. legal content knowledge) and from procedural knowledge (e.g. tasks-dependent legal skills). Stressing the epistemological likeness of 'knowing the law' and 'knowing a language', White (2002: 1397) argues that

> knowledge of the law is like knowledge of a language: you never know all of it, you never know it perfectly, you cannot reduce your knowledge of it to a set of directions or descriptions or rules; rather, your competence consists of being able to use it more or less well, in one set of situations or another.

The 'Language and Law' programme does not seek to provide students with exhaustive legal training for the legal workplace as a university degree would. Instead the focus of the programme is to inform, challenge and guide students in a legally and linguistically informed way to help them develop the critical legal thinking necessary to meet the challenges of future interactions with the legal system. Notably, the critical discourse perspectives presented in this paper are influenced by van Dijk's (2009: 63) understanding of how discourse produces and reproduces social domination of one particular collective over others and how those dominated offer resistance against oppressive practices. This is not to say that legal practice equates to social domination and/or abuse of power, but that the discursive practices that constitute and separate legal professionals from non-professionals are prone to and will likely produce dominating and dominated

groups. Critical discourse studies (CDS), defined by van Dijk (2009: 62, original emphasis) as a "critical *perspective*, *position* or *attitude*", may be considered a valuable theoretical resource pool for legal language teachers in secondary and tertiary education.

We assume that a critical analysis of social problems in school systems can only be conducted by non-conformists, that is, individuals who do not acquiesce in the status quo but, instead, address, challenge and criticise discursive practices in society at large. In short, a reform of any school system is necessarily driven by non-conformism and "possibility-thinking" as a shift from "what does it do?" to the question "[*w*]*hat can I do with this*?" (Craft 2015: 293, our emphasis). School systems seem very suited to this perspective, as the classroom not only reflects the macrostructure of society, but it also reveals practices of inclusion and exclusion that are in turn likely to be reproduced in social systems. Notably, as Mertz (1998: 149) points out, "legal institutions serve a special translating function" and "use language as an important and integral part of a socially transformative process". The exclusion and disempowerment of groups within society may be associated with language ideologies operative in legal contexts. This is particularly reflected in the idea that there is a right, correct, logical and absolute answer to any question of legal language that can only be given by legal experts without undue interference by those framed as incompetent laypeople.

A central aim of the 'Language and Law' programme is that students should develop legal literacy, which is linked to increased civil empowerment in everyday life. Even though the term *legal literacy* is commonplace in the literature, there is no consensus regarding the meaning or use of the term. For the purposes of this inquiry, we conceptualise legal literacy as a certain "degree of competence" that is "required for [a] meaningful and active life in our increasingly legalistic and litigious culture" (Steininger / Rückel 2013: 1655). Typically, legal literacy is associated with the ability to comprehend written language, but as shown by Walser Kessel / Crespo (2009: 9-11), there are also other mediums at educators' disposal to convey legal content, such as illustration. However, in the context of legal

language teaching in Austria, there appears to be no agreement as to how legally relevant content should be presented, taught and learned. Currently there are no capacities for advanced teacher training available for this area of education. On the condition of expected low legal literacy levels amongst secondary school graduates, it is only reasonable to assume that secondary school teachers tend to be affected similarly by the shortcomings of legal alienation (Schimmel 2011: 1017).

Another issue for legal educators to consider is the post Web 2.0 era and the rapid technological advances that go along with the "popularization of specialised [legal] knowledge" (Cavalieri 2018: 253). Calsamiglia / van Dijk (2004: 370) define popularisation as "the transformation of specialised knowledge into 'everyday' or 'lay' knowledge". In this context, it is meaningful to differentiate between knowledge and the law itself, since unlike law, legal knowledge can be popularised. The popularisation and mediation of legal knowledge has the potential to change how individuals anticipate normative expectations in a specific social system (Luhmann 1995: 305). The anticipation of such expectations are, in turn, interdependent on the formation of legal knowledge. Luhmann (1995: 331) argues that "[n]o system can manage cognitive and normative expectations for any length of time without knowledge and law emerging". He adds that this may potentially be a result of the selective appropriation of knowledge or law, both of which have evolved into "stratified, politically consolidated systems" (Luhmann 1995: 331).

The primary role of language in teaching contexts is predominantly associated with its communicative functions. However, in legal contexts, linguistic signs are not used exclusively to fulfil communicative functions, but are also a means to generalise legal meanings that may be selected, ignored or rejected by social agents (e.g. legal professionals), who, in doing so, filter what can or cannot become part of a certain legal discourse (cf. Spitzmüller / Warnke 2011: 173). Concepts such as literacy, popularisation of knowledge and the negotiation of texts and discourses increase in complexity when applied to the legal system. After all, as Luhmann (1995: 375) states, law is constructed as socially adequate "not only when it tackles

emerging conflicts but especially when it creates conflicts and [it] can provide adequate complexity of its own to handle them". The interplay of expectations, texts and discourses that emerge in the context of law as a social system, though complex and at times difficult to discern, is thus an even greater challenge in critical legal language teaching. To a large extent, teaching legal language means to lay bare for students the social scripts operative in crucial legal settings (e.g. police interviews), i.e. to raise awareness of "concrete episodes of action and reaction" (Michel 1991: 258). It is insufficient to conceive of legal education as the teaching of a specific variety as a "language for legal purposes" (Robinson-Pant 2005: 38), since the vastness and complexity of the normative space cannot be entirely captured by the linguistic signs produced within it.

'Language and Law' is classified as a Language for Specific Purposes (LSP) course and may be described as an applied linguistic exploration into the rather rigid structures of secondary education. The programme itself is divided in two modules and is influenced by Engberg / Luttermann / Cacchiani / Preite's (2018a) work *Popularization and Knowledge Mediation*. They convincingly argue that while the primary tasks of scholarship remain the development of insights and production of knowledge, academic disciplines "are also situated in the wider world of the society they belong to" (Engberg / Luttermann / Cacchiani / Preite 2018b: XI). It is a paradox that while being a seemingly ubiquitous discursive force, law seems to be chronically underrepresented in Austrian secondary schools. This raises the question as to why the development of basic legal competence generally, and language for legal purposes specifically, is so strictly confined to individual types of school.

One tentative explanation may be that this is a result of what has been termed "academic tribalism" (Mautner 2016: 45), seemingly enforcing the ideological stance that legal competence may only be acquired by those worthy of the accolade. Scholarship in jurisprudence, it seems, is not in agreement regarding the place of legal education in schools. Piska (2018), for instance, states that while in school students cannot become fully-trained legal professionals, they can still learn to assess which legal

consequences are associated with which everyday practices. In other words, students need to be familiarised with the theoretical foundations of the legal system as well as with the defining aspects of legal practice outside the classroom. If theory meets practice in legal literacy classrooms, students will be able to deal more successfully and autonomously with unprecedented legal challenges that might overwhelm individuals with lower levels of legal literacy. For instance, decision processes as to when to contact and bring in a legal representative in legal proceedings may have a lasting impact on the outcome of a case. This of course applies particularly to cases of juvenile delinquency where the presence of a criminal lawyer, a parent or a teacher might have a considerable impact on the course of a police interview.

However, in order to make confident and autonomous decisions on such matters, individuals must understand the conduct in question and its potential legal ramifications (e.g. waiving one's rights in a certain legal context). The programme does not aim nor stipulate to turn secondary school students into legal experts, but to make a contribution to the sparsely inhabited space of legal language teaching in Austria, bringing together both legal content knowledge and a critical perspective on discursive practices, i.e. linguistic and non-linguistic. Table 1 shows the course contents across the two modules, as approved by the headteacher's office:

Module 1 (September – January)	**Module 2 (February – June)**
Module 1 is based on the foundations of the legal system, e.g. • the foundations of Austrian public law, civil law and legal philosophy; • the genesis and constructedness of law; • the constructedness of legal norms and legal interests; • the perceived legitimacy and effectiveness of law; • the methods of statutory interpretation in Austria.	Module 2 focuses on the development of critical analysis and interpretation skills in the context of • historical and contemporary normative texts and bills; • selected court hearings at the Regional Court Vienna; • linguistic phenomena relevant to historical and contemporary cases; • close reading of established literature focusing on legal linguistics.

Tab. 1: Course contents of the 'Language and Law' programme

Throughout the course students should develop reflective skills related to, but not limited to,

- the constructed divergence between ordinary and legal language use;
- the constructed divergence between ordinary language interpretation and statutory interpretation;
- the discursivity of legal knowledge and legal action;
- the agents and power structures reflected in legal discourses;
- the role of language as an instrument of power in legal practice and government.

The course design displays a dynamic element, since its contents, while based on established and approved textbooks (e.g. Höglinger / Berschl / Cassan-Juen / Kegelreiter / Nurscher / Palm-Thaler / Panholzer / Starc 2019), are regularly adapted and updated. Such adaptations are implemented with a view to reflecting current issues that arise at the intersections of language and law (e.g. recent landmark decisions of the Austrian Constitutional Court, attendance of court hearings, viewings of historical death verdicts at the Regional Court and/or the Documentation Centre of Austrian Resistance, or the discussion of the current Polish Constitutional Court crisis). Currently, the project *Wirtschafts- und Sozialpraktikum* ('Business and Social Internship') is being developed in cooperation with the University of Vienna, after students asked for the integration of more real-life issues in the legal literacy classroom. In this internship, students may choose to apply for intern positions at law offices, courts, administrative bodies, or non-government organisations with their various spheres of activity (e.g. in human rights law, asylum law etc.). In this context, focus is intended to be placed on law as an experienceable field of practice and as a force which impacts human lives in various ways. In short, it is the main objective of the legal literacy programme to bring law and its ramifications from actual practice into the classroom, rather than to theorise about what role law may play in students' lives.

III. Legal literacy and the Austrian education system

The Universal Declaration of Human Rights (UDHR 1948) guarantees students' right to education (Article 26). It is therefore even less fathomable why the role of legal literacy is seemingly left largely unconsidered. For students to successfully deal with the facets of legal challenges in life, they need to acquire both legal knowledge and skills to become responsible and autonomous citizens in increasingly globalised and juridified societies. The unequal distribution of legal literacy amongst the Austrian general population, which may, *inter alia*, be linked to unequal distributions of economic power (cf. Gale 1994: 112), reproduces a small but powerful group of individuals who are proficient users of legal language and a larger groups of those who are not.

However, although often insinuated, the group of individuals that does not consist of competent users of legal language is far from homogeneous. While not all social issues at stake can be discussed here at length, the most prominent must be mentioned, i.e. the distinction between individuals with German as a first language and individuals who do not have native language competence and might not be as privileged as L1 speakers when entering the Austrian education system. Such stark societal contrasts in the distribution of legal literacy across multilingual populations make the space of education a space of inequality. As Blommaert (2005: 69, original emphasis) points out, "voice in the era of globalisation becomes a matter of the capacity *to accomplish functions of linguistic resources translocally*, across different physical and social spaces". It does not contribute to the debate of legal language in schools that politicians use language competence as a defining criterion for membership in Austrian society, particularly when the topic of discussion is migration:

> One has a one-and-a-half year [sic!] period during which to attend a German language course. There is the possibility of extensions, and part of the cost of the course is refunded by the state. And only if someone says after four years: 'I want to stay here, but I don't want to learn German', then I believe, it is in accordance with what the great majority in this country believes that we should say to the person concerned, 'it's one or the other: if you want to stay

> here, then learn German; if you do not want to learn German, then please go back where you came from!'. (Krzyżanowski / Wodak 2009: 93)

In the statement above, given by an Austrian politician speaking about language regulations, linguistic competence is constructed as a ticket into Austrian society. This is a metaphor that would unlikely be used in relation to questions of participation. While language competence in German is constructed as a prerequisite in order to remain part of society, legal literacy, though arguably just as significant for individuals' daily lives, is seemingly not a topic of discussion. The school is attended by a considerable number of students with a migration background who, in seeking higher secondary education, clearly wish to remain part of Austrian society. In this context, the successful acquisition of German language skills should be regarded as an empowering and enabling key; German language requirements should not constitute an obstacle constructed to shut people out. At the school in question, the acquisition of German language skills is thus complemented by the legal literacy programme in the last year of students' school career. It is due to the limited human, structural and educational resources that the legal literacy programme cannot be extended in a way that enables all students to attend it. However, efforts are currently being made to implement the contents of the programme in other secondary schools.

On the macrolevel, the degree of access to legal language education may constitute a defining element in globalised democracies, and may even be viewed as a way of measuring and predicting individuals' participation and autonomy in legal settings. In this context, issues should be considered as to whether legal education is reflected in conventional school subjects and/or if legal education is part of the national curriculum at all. In Austria, neither are the case. For instance, at the secondary level, vocational schools (*Berufsbildende Schulen*) have offered subjects such as Economics and Law (*Wirtschaft und Recht*) and Political Education and Law (*Politische Bildung und Recht*). However, while such subjects do indeed contribute to the enhancement of legal education for a minority of students, it is inexplicable why access to legal education should be restrained to those groups

only. Cownie / Bradney / Burton (2003: v) argue that "law is an argument not a statement" and that "it is to be debated and discussed". It follows that a critical engagement with law and legal practice is ought to be one that reveals text or discourse immanent critiques of the status quo (Horrod 2019: 78; see also Reisigl / Wodak 2015). Notably if legal education were only to take place in pre-defined secluded spaces, such as vocational schools and universities, society most likely misses out on significant opportunities to foster independent and critical future generations.

The Austrian education system is an exclusive one, with primary school teachers dividing ten-year-olds up into those who will and those who will not be admitted to higher secondary schooling. Thus, the assumption that legal education should entirely pertain to post-secondary education is potentially not only rightfully criticised as exclusive, it also seems to create and maintain power hierarchies by upholding the participation gaps in normative systems (cf. Green [Leisser] 2018: 14). In the following section, the sociolinguistic background of participants will be presented with a view to showing the cross-cultural diversity that is also reproduced in legal literacy classrooms.

IV. Empirical study

1. Language backgrounds in the multilingual adult classroom

During this study, two groups of students were asked to complete a voluntary general questionnaire after class, collecting data about their linguistic socialisation, language exposure, self-perceived legal literacy and their attitude towards legal literacy. Group 1 consists of 100 participants, none of whom have been enrolled in the Language and Law programme before. Questionnaires were handed out in the following school subjects: English, history and Latin. Group 2 contains 13 participants, all of whom were taking the legal literacy class at the time of data collection in 2019. In group 1, the mean age is 20 (mode = 18; median = 19). In group 2, the mean age is 19.3 (mode = 19; median = 19).

1.1. Group 1

In group 1, participants most frequently disclosed the following countries of origin: Afghanistan (10.9%), Austria (42.6%), Egypt (5.0%), Germany (3.1%), Iraq (3.1%), Iran (3.1%), Serbia (3.1%), Syria (4.0%), and Turkey (6.9%). In sum, participants reported that they speak 41 different languages, presented in Table 2 in alphabetical order:

Albanian	Czech	Georgian	Japanese	Polish	Somali
Arabic	Dari	German	Catalan	Portuguese	Spanish
Armenian	Dutch	Greek	Croatian	Romanian	Tagalog
Bosnian	Edo	Hindi	Kurdish	Russian	Taj
Bulgarian	English	Hungarian	Lingala	Serbian	Turkish
Chechen	Farsi	Indian	Mongolian	Sign	Urdu
Chinese	French	Italian	Pashto	Slovakian	

Tab. 2: Languages spoken in group 1

59.41% of participants disclosed that German is currently the most dominant language in their daily life. The second self-perceived most dominant languages amongst participants are English (44.6%), German (26.7%), Turkish (5.9%), and Arabic and Romanian with 4.0% each. The mean age of German onset for non-native speakers of German was 7.0 years (mode = 3.0 years; median = 5.8 years). The mean age of fluency in speaking German was reached at the age of 8.0 years, fluent reading was accomplished at the mean age of 10.0 years. On a scale from 0 (not at all) to 10 (very well), the self-perceived ability to speak German is at 8.9/10, the ability to understand spoken German at 9.23/10, the ability to read German texts is at 9.2/10 and the ability to write German texts themselves is at 8.5/10 (mean values).

1.2. Group 2

The most frequently stated countries of origin in group 2 are Austria (76.9%), Mongolia, Guatemala and Russia with 7.7% each. Among the participants, eleven different languages are spoken, these being Arabic, Bosnian, Chechen, English, French, German, Hindi, Mongolian, Russian, Spanish and Turkish. The perceived most dominant language in daily life is also German. The perceived most dominant second languages disclosed were English (38.5%), Spanish, French, Turkish, Mongolian and Bosnian, each with a percentage of 7.7%. In group 2, the mean age of German onset for non-native speakers of German was 3.4 years (mode = 4.0 years; median = 4.0 years). The mean age of fluency in speaking the German language was reached at the age of 5.7 years. Fluent reading was accomplished by the mean age of 6. The self-perceived ability to speak German amongst participants of group 2 is at 9.5/10, the ability to understand spoken German is at 9.8/10, the ability to read German texts is at 9.5/10 and the ability to write German texts themselves is at 9/10 (mean values), where 0 is not at all and 10 is very well. The following section will present the distribution of factors contributing to legal language learning, the degree of participants' exposure to legal language and their perceived legal literacy.

2. Legal language learning, exposure and self-perceived legal literacy

2.1. Group 1

On a scale from 0 (not at all) to 10 (very much), the participants rated the following factors with regard to their perceived level of contribution to the students' learning of legal German: interaction with friends (3.7/10), interaction with family (3.4/10), reading (5.6/10), television (5/10), radio (2.4/10) and internet (6.2/10). Exposure to legal language in everyday life was rated as follows: interaction with friends (3.2/10), interaction with family (3/10), reading (4.1/10), television (3.6/10), radio (2.2/10) and

internet (4.9/10) (mean values). Figure 1 shows the distribution of factors contributing to legal language learning as disclosed by the participants:

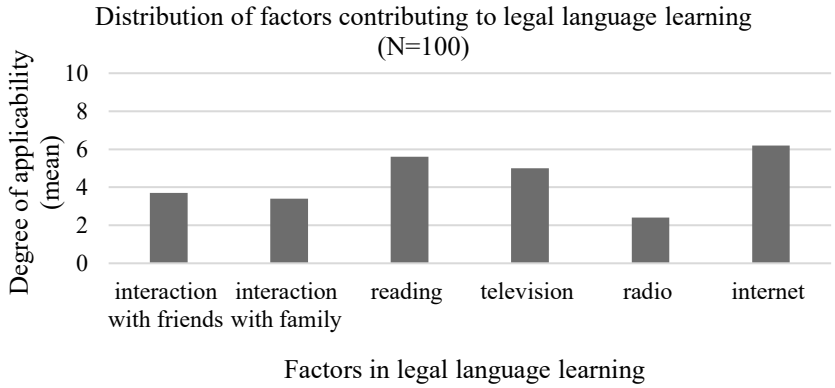


Fig. 1: Distribution of factors contributing to legal language learning (group 1)

On average, participants' self-perceived legal general knowledge in the Austrian legal system was rated at 5.3/10 (mean). The mean self-perceived ability to use legal German in conversation is at 3.8/10, the ability to understand spoken legal German at 4.7/10, the ability to read German legal texts is at 5/10 and the ability to write German legal texts themselves is at 3.7/10. Figure 2 shows the distribution of legal language skills in German in group 1:

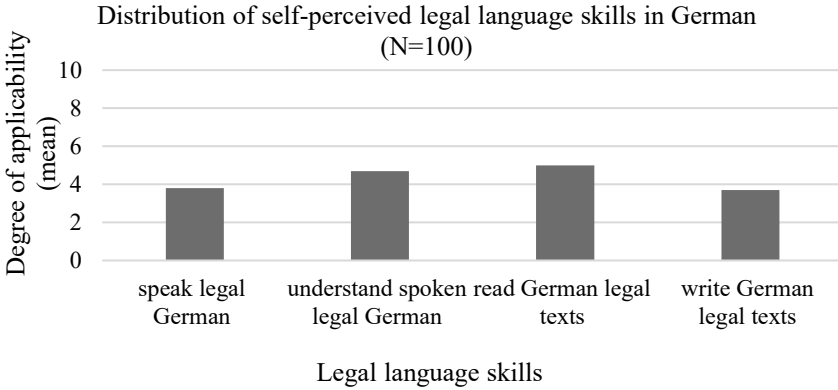


Fig. 2: Distribution of self-perceived legal language skills in German (group 1)

82.2% of participants disclosed that they consider it important/very important[1] to learn about their legal rights and obligations in a school subject. 88.1% stated that they regard it as important/very important to know how to act appropriately in legal matters. 34.7% expressed that they do not feel informed or sufficiently informed by the state about their legal rights and obligations; 16.8% stated that they are indifferent to this question; and 48.5% disclosed they feel very or sufficiently informed by the state about their legal rights and obligations. Figure 3 shows the mean strength of these attitudes across the participants of group 1:

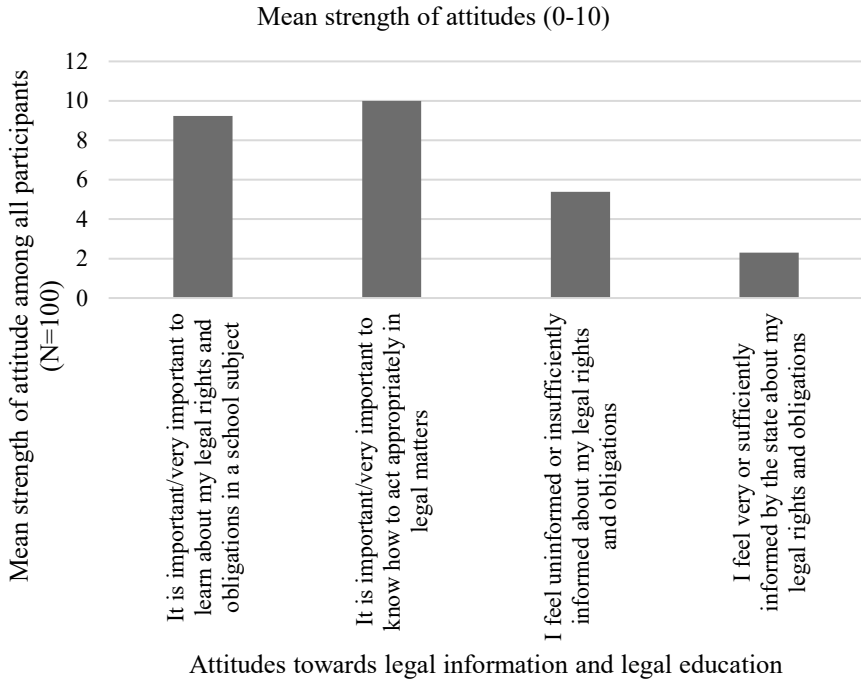


Fig. 3: Mean strength of attitudes (group 1)

[1] Where measures such as "important/very important" are used, this indicates a rating of 6 or above on a scale from 0 to 10. Likewise, measures such as "uninformed or insufficiently informed" indicate a rating of 4 or below. A rating of 5 is interpreted as "indifferent".

2.2. Group 2

Participants rated the following factors on a scale from 0 (not at all) to 10 (very much) according to their perceived contribution to their learning legal German: interaction with friends (2.2/10), interaction with family (3.4/10), reading (7.4/10), television (6.5/10), radio (1.8/10) and internet (8/10) (mean values). They also disclosed their level of exposure to legal German in the following contexts: interaction with friends (2/10), interaction with family (2.8/10), reading (4.8/10), television (5.2/10), radio (1.5/10) and internet (5.1/10) (mean values). Figure 4 shows the distribution of factors contribution to learning legal German in group 2:

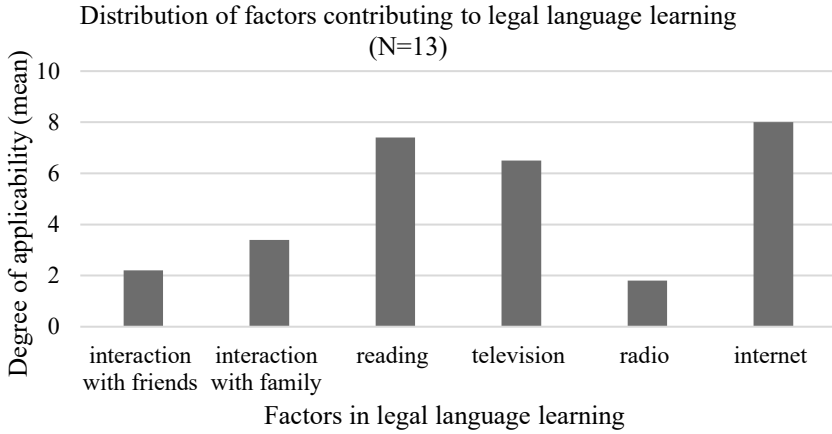


Fig. 4: Distribution of factors contributing to legal language learning (group 2)

Participants' self-perceived legal general knowledge about the Austrian legal system shows a mean rating of 4.9/10. The mean self-perceived ability to use legal German in conversation is at 3.1/10, the ability to understand spoken legal German at 5/10, the ability to read German legal texts is at 5/10 and the ability to write German legal texts is at 2.5/10. Figure 5 shows the distribution of legal language skills in German in group 2:

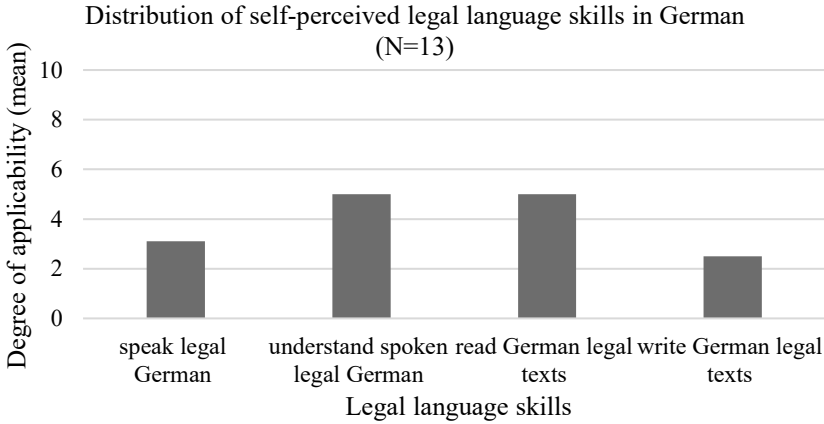


Fig. 5: Distribution of self-perceived legal language skills in German (group 2)

92.3% stated that they regard it as important/very important to learn about their legal rights and obligations in a distinct school subject. 7.7% were indifferent to a legal subject in secondary school. All participants marked it is important/very important to know how to act appropriately in legal matters. 53.8% expressed that they do not feel informed or sufficiently informed by the state about their legal rights and obligations. 23.1% stated that they are indifferent to this question. 23.1% also disclosed they feel very or sufficiently informed by the state about their legal rights and obligations. None of the participants included in this study have taken the subject before.

V. Discussion

The study reveals several insights into the linguistic background, perceived linguistic exposure and self-perceived legal literacy of individuals in adult secondary education. With more than 40 different languages at individuals' disposal, both groups show a high degree of multilingualism, which reflects Austrian post-migrant society. It is evident that on average information retrieval through the internet is the most dominant factor contributing to individuals' legal language learning across the two groups. Reading legal information and watching television were also important second-

ary and tertiary factors. This suggests that individuals tend to encounter legal language in online rather than offline environments, with friends and family seemingly remaining negligible factors. The fact that students appear to use the internet as their primary source for legal information retrieval shows that the way individuals access legal knowledge has changed significantly over the last decades, which ought to be considered in the course design and the selection of learning materials. In this context, more empirical research is needed to account for and explain the link between online and offline legal language learning, and the overall legal literacy levels in the general population.

More than 80% of participants in both groups indicated that they consider it either important or very important to learn about their legal rights and obligations in a school subject. One of the limitations of this study is the potentially diverging concepts of legal literacy amongst participants, that is, there is no shared concept, no relatable legal literacy programme currently available in Austrian schools that would allow individuals to draw comparisons. However, the vast majority of participants seem to embrace the prospect of learning about rights and obligations in a school subject *sui generis* and link such a subject to the desired ability to act appropriately in legal contexts. In both groups, participants disclosed low self-perceived writing competence in producing German legal texts, which seems to reflect the need for teaching legal writing in schools. Similarly, individuals' self-perceived ability to verbalise legal content in spoken German is low across both groups. This suggests a stark imbalance between productive and receptive language skills, that is, participants in both groups tend to perceive themselves more competent in legal language comprehension than in active production.

Importantly, general legal competence does not constitute an additional skill. It is purposeful to combine declarative knowledge relating to institutions and structures of the relevant legal system and the procedural knowledge of the functions these institutions and legal mechanisms fulfil (Bamford / Farrow / Karayanni / Knutsen 2013). The engagement with linguistic reflexivity as a learning objective of its own is equally as important

as declarative (e.g. terms and concepts) and procedural knowledge (mechanisms) within a certain legal system.

In this context, the distinction between the notion of object language and the notion of metalanguage (Spitzmüller 2019) seems highly relevant to the discussion of legal language teaching, as the relativity between the two concepts is also reflected in legal literacy classrooms. While the notion of object language refers to language *about* which statements can be made, metalanguage is language *with* which statement are made about language (cf. Spitzmüller 2019: 14). Fostering linguistic and metalinguistic awareness in secondary school students may thus play a crucial role in legal literacy classrooms. In particular, the development of metalinguistic awareness, i.e. the degree to which an individual is able "to think about the *linguistic nature* of the [legal] message" (Malakoff 1992: 518; see also Jessner 2006), may constitute a useful concept in guiding students in the process of approaching institutional and legal texts with closer scrutiny than they might have done before. Indeed, it is the contradictions within legal discourses that may "constitute a potential for transforming them in progressive and emancipatory directions" (Fairclough 2013: 304). A first step towards individuals' capability to identify, describe and criticise these contradictions is the implementation of legal literacy programmes in all secondary schools in Austria. After all, as Gale (1994: 9) puts it, "literacy is empowering only if we view literacy as enabling people to have real agency, to be able to effect changes in their lives". In this context, the implementation of teaching methods employed in content and language integrated learning (CLIL, see Dalton-Puffer 2017) might reinforce the empowering potential of legal literacy classes in which students are likely to acquire both legal content knowledge and language skills in an interactive environment.

Last but not least, it is insufficient to focus only on the constructed contrast between legal jargon and what is commonly constructed as everyday language use. For students to experience the relationship between language and power in legal contexts, it is crucial that they themselves set foot in courts and other spaces of legal practice. In doing so, educators would be

able to present students with authentic stretches of language use in context and provide them with valuable opportunities to describe, analyse and criticise the multifaceted interplay between the professional and non-professional actors involved in their various discourse positions and the diverging degrees of individuals' capacity in employing linguistic resources (cf. Blommaert 2005: 69). Secondary school should neither be nor become a place of conformism or social pressure to conform, especially not when it comes to the development of legal literacy. Conformism produces uncritical and obedient citizens, while social pressure to conform is the expression of ideology that, once operative, will convince future generations to proceed "in the normal way, [i.e. of doing] what everyone else is doing" (Hogan 2001: 30). Legal language teaching, as informed by critical discourse studies, may successfully offer opposition to any manifestations of conformism and conscientise students for the rights and obligations all individuals share.

VI. Conclusion

This explorative study has aimed to extend our knowledge on individuals' exposure to legal language and their self-perceived legal literacy. The analysis of the data shows that a clear majority of participants are users of a different first language than German, suggesting high multilingualism in legal literacy classrooms. This warrants further inquiry with regard to comparative studies of legal literacy levels amongst students with and without a migrant background. It must always be considered that there is no such thing as *the* legal literacy classroom, since, as shown in this study, the majority of students bring with them different experiences with the law and have engaged in complex and diverse processes of multilingual socialisation. The most frequently marked factors contributing to legal language learning across both test groups are using the internet, reading relevant texts, and watching television. What is more, the perceived language competence and the perceived legal language competence differ considerably across both groups. Individuals tend to perceive themselves as more competent users of the German language than of legal German, with receptive

skills receiving higher ratings than productive ones in both domains. Most individuals across the test groups show high awareness of the importance of legal literacy. In group 2, more than half (53.8%) of participants expressed a degree of dissatisfaction with the legal information offered by the Austrian administration. Most participants in both groups clearly indicated to be in favour of the implementation of legal literacy classes in adult secondary education. This corroborates the argument that the inclusion of legal literacy programmes in all secondary schools would not only contribute to the wider societal goal of equality in education, but is also reflected in students' attitudes and expectations towards the school system's responsibility to educate future generations. Legal language teaching in schools is indeed a contested field of practice. However, if the Austrian school system seeks to live up to the standard of equipping students with the knowledge and skills necessary for their life and future profession, as stated in the Austrian School Organisation Act 1962, the implementation of legal literacy classes is certainly the first step towards this goal.

VII. References

Bamford, David / Trevor C.W. Farrow / Michael Karayanni / Erik S. Knutsen. 2013. Learning the 'how' of the law. Teaching procedure and legal education. In: *Osgood Hall Law Journal* 51 (1), 45-91.

Blommaert, Jan. 2005. *Discourse. A critical introduction*. Cambridge: Cambridge University Press.

Bundesministerium für Bildung, Wissenschaft und Forschung (BMBWF). 2019. *Lehrpläne des Gymnasiums, des Realgymnasiums und des wirtschaftskundlichen Realgymnasiums für Berufstätige*. https://www.bmbwf.gv.at/Themen/schule/schulpraxis/lp/lp_ahs.html. Last access 9.6. 2020.

Calsamiglia, Helena / Teun A. van Dijk. 2004. Popularization discourse and knowledge about the genome. In: *Discourse and Society* 15 (4), 369-389.

Cavalieri, Silvia. 2018. Broadcasting legal discourse. The popularization of family law through YouTube. In: Jan Engberg / Karin Luttermann / Silvia Cacchiani / Chiara Preite (eds.), *Popularization and knowledge mediation in the law. Popularisierung und Wissensvermittlung im Recht*. Wien: Lit, 251-270.

Cownie, Fiona / Anthony Bradney / Mandy Burton. 2013. *English legal system in context*. Oxford: Oxford University Press.

Craft, Anna. 2015. Possibility thinking and wise creativity. Educational futures in England? In: Ronald A. Beghetto / James C. Kaufman (eds.), *Nurturing creativity in the classroom*. Cambridge: Cambridge University Press, 289-312.

Dalton-Puffer, Christiane. 2017. Introduction to part III. Discourse analysis and CLIL. In: Ana Llinares / Tom Morton (eds.), *Applied linguistics perspectives on CLIL*. Amsterdam: John Benjamins, 167-182.

Engberg, Jan / Karin Luttermann / Silvia Cacchiani / Chiara Preite (eds.). 2018a. *Popularization and knowledge mediation in the law. Popularisierung und Wissensvermittlung im Recht*. Wien: Lit.

Engberg, Jan / Karin Luttermann / Silvia Cacchiani / Chiara Preite. 2018b. Studying popularization in legal communication. Introduction and overview. In: Jan Engberg / Karin Luttermann / Silvia Cacchiani / Chiara Preite (eds.), *Popularization and knowledge mediation in the law. Popularisierung und Wissensvermittlung im Recht*. Wien: Lit, IX-XXV.

Fairclough, Norman. 2013. *Critical discourse analysis. The critical study of language*. Abingdon: Routledge.

Gale, Fredric G. 1994. *Political literacy. Rhetoric, ideology, and the possibility of justice*. New York, NY: State University of New York Press.

Green [Leisser], Daniel. 2018. The participation gap in the normative space. The state of play in Austria. In: Pirc, Tadej (ed.), *Participation, culture and democracy. Perspectives on public engagement and social communication*. Edinburgh: Cambridge Scholars Publishing, 8-30.

Hogan, Patrick C. 2011. *The culture of conformism. Understanding social consent*. Durham: Duke University Press.

Höglinger, Wolfgang / Annemarie Berschl / Cornelia Cassan-Juen / Günter Kegelreiter / Wolfgang Nurscher / Veronika Palm-Thaler / Herbert Panholzer / Erika Starc. 2019. *Recht kompakt*. Vienna: Manz.

Horrod, Sarah. 2019. The recontextualisation of higher education policy in learning and teaching practices. The discursive construction of community. In: Nicolina Montesano Montessori / Michael Farrelly / Jane Mulderrig (eds.), *Critical policy analysis*. Cheltenham: Edward Elgar, 73-96.

Irvine, Judith T. 1989. When talk isn't cheap. Language and political economy. In: *American Ethnologist* 16 (2), 248-267.

Jessner, Ulrike. 2006. *Linguistic awareness in multilinguals. English as a third language*. Edinburgh: Edinburgh University Press.

Krzyżanowski, Michał / Ruth Wodak. 2009. *The politics of exclusion. Debating migration in Austria*. New Brunswick: Transaction.

Luhmann, Niklas. 1995. *Social systems*. Stanford: Stanford University Press.

Malakoff, Marguerite E. 1992. Translation ability. A natural bilingual and metalinguistic skill. In: Richard J. Harris (ed.), *Cognitive processing in bilinguals*. Hillsdale: Lawrence Erlbaum, 510-530.

Mautner, Gerlinde. 2016. *Discourse and management. Critical perspectives through the language lens*. London: Palgrave.

Mertz, Elizabeth. 1998. Linguistic ideology and praxis in U.S. Law School Classrooms. In: Bambi B. Schieffelin / Kathryn A. Woolard / Paul V. Kroskrity (eds.), *Language ideologies. Practice and theory*. Oxford: Oxford University Press, 149-162.

Michel, George F. 1991. Human psychology and the minds of other animals. In: Carolyn A. Ristau (ed.), *Cognitive ethology. The minds of other animals*. Hillsdale: Lawrence Erlbaum, 252-272.

Piska, Christian. 2018. *Podiumsdiskussion 'Sprache und Recht in der Schule'*. https://staatsrecht.univie.ac.at/team/piska-christian/past-events/other-events/detailansicht-2/news/podiumsdiskussion-sprache-und-recht-in-der-schule/?tx_news_pi1%5Bcontroller%5D=News&tx_news_pi1%5Baction%5D=detail&cHash=2310db98ea13ddee16d137fc4758231b. Last access 10.6.2020.

Reisigl, Martin / Ruth Wodak. 2015. The discourse-historical approach (DHA). In: Ruth Wodak / Michael Meyer (eds.), *Methods of critical discourse studies*. London: Sage, 23-61.

Robinson-Pant, Anna. 2005. *Cross-cultural perspectives in educational research*. Maidenhead: Open University Press.

Schimmel, David. 2011. Classroom management, discipline, and the law. Clarifying confusions about students' rights and teachers' authority. In: Carolyn M. Evertson; Carol S. Weinstein (eds.), *Handbook of classroom management. Research, practice, and contemporary issues*. London: Routledge, 1005-1020.

Shuy, Roger. 2002. *Linguistic battles in trademark disputes*. London: Palgrave Macmillan.

Spitzmüller, Jürgen. 2019. 'Sprache' – 'Metasprache' – 'Metapragmatik'. Sprache und sprachliches Handeln als Gegenstand sozialer Reflexion. In: Gerd Anton / Thomas Nier / Jürgen Spitzmüller (eds.), *Handbuch Sprache im Urteil der Öffentlichkeit*. Berlin: De Gruyter, 11-30.

Spitzmüller, Jürgen / Ingo Warnke. 2011. *Diskurslinguistik. Eine Einführung in Theorien und Methoden der transtextuellen Sprachanalyse*. Berlin: De Gruyter.

Steininger, Katharina / David Rückel. 2013. Legal literacy and users' awareness of privacy, data protection and copyright legislation in the Web 2.0 era. In: *Wirtschaftsinformatik Proceedings 2013*. http://aisel.aisnet.org/wi2013/103. Last access 10.6.2020.

Van Dijk, Teun A. 2009. Critical discourse studies. A sociocognitive approach. In: Ruth Wodak / Michael Meyer (eds.), *Methods of critical discourse analysis*. London: Sage, 62-86.

Walser Kessel, Caroline / Maria Crespo. 2009. Visualisierung von Rechtsnormen durch Kinder. Darstellung ihres Fairness- und Gerechtigkeitssinns. In: *Jusletter* 24 Aug., 1-27.

White, James Boyd. 2002. Legal Knowledge. In: *Harvard Law Review* 115 (5), 1396-1431.

Legislation

School Organisation Act 1962 (Schulorganisationsgesetz 1962)
Universal Declaration of Human Rights 1948

List of abbreviations

BMBWF	Federal Ministry of Education, Science and Research (*Bundesministerium für Bildung, Wissenschaft und Forschung*)
CDS	critical discourse studies
CLIL	content and language integrated learning
L1	first language
LSP	Language for Specific Purposes
SchOG	School Organisation Act (*Schulorganisationsgesetz*)
UDHR	Universal Declaration of Human Rights

Hannes Kniffka

Giving Forensic Linguistic Expert Testimony (FLET) in Germany – and How to Learn How to Do That

Abstract

On the basis of several decades' work as a 'forensic linguist' (FL) expert in German courts and in reference to the linguistic data of a selection of about a dozen authentic court cases in which I was asked to give expert testimony, a very brief and condensed overview of the field of FL and an even shorter list of practical suggestions for studying Applied Linguistics (including FL) is given in this paper. It is a pedagogical paper generally oriented towards a young academic readership and based on a more detailed lecture at the 2nd International Legal Linguistics Workshop of the AALL at the University of Salzburg in 2019. The focus is on an exemplaric illustration of the real life implications, caveats, needs and requirements of dealing with authentic data and settings of German (superior) court cases as a linguist. It may help students to choose the right (linguistic) profession. This paper should be read in connection with and supported by Kniffka (2021a) and Kniffka (2021b).

I. Introduction

Linguistics is defined here as the science of how language works, (a) as a system in itself (e.g. the phonological system of a particular language) and (b) as a system of human communication (e.g. the system of asking directions, system of warnings (not) to behave in a certain way).

Applied Linguistics (AL), in my view, can be determined as the application of linguistic research, approaches, and analyses in three different ways. It would perhaps be more adequate to speak of three different *layers* of application.

(1) Application to fields of **linguistics** (e.g. language acquisition / learning how to speak; alphabetization / learning how to write and read; terminology systems; this is done by a linguist).
(2) Application to **other sciences**, such as medicine (aphasia research); theology ('application'; exegesis); criminology (training in FLET); computer science; stochastics; mathematics; statistics (training in FLET); media sciences; musicology (this is done by a scientist from another field in cooperation with a linguist; interdisciplinary research).
(3) Application to **practical fields of real life,** such as aphasia rehabilitation therapy; dyslexia therapy; logopedia therapy; criminalistic training of the police (e.g. sampling of evidence in anonymous authorship analysis (this is done by a practitioner of the field in cooperation with a linguist).

Forensic Linguistics (FL) is considered a branch of Applied Linguistics here, i.e. the science of linguistics applied to the science of law and to the practical work done in and for courts and other legal institutions. In Ancient Rome, court sessions were held publicly in the *Forum*, from which *forensic* is derived.

FL, in my view, is not an academic field of its own, such as computer linguistics, mathematical linguistics, sociolinguistics, psycholinguistics, clinical linguistics, let alone an independent discipline. There is also no unanimous definition of FL, as far as I can see. Some colleagues ascribe FL a rather strong autonomy and autarchy as an academic field. Others (including myself) consider FL a field of Applied Linguistics addressed to the law and the judiciary. They see FL primarily as an *auxiliary* science. The differences between the two views do not really matter for the questions discussed in this chapter. There are other distinctions which seem more relevant here, e.g. the differences between the roles of the FL expert in the Continental and in the Adversarial system: an expert opinion ("Sachverständigenbeweis") in the German system is almost always ordered by a *judge* and he/she may exercise judicial discretion; the status and role of the "Sachverständige(r)" is strictly defined in German law (cf. Bremer 1973; Jessnitzer 1978; Sendler 1986). The differences pointed out do matter and

are dealt with in section III, however, in the discussion of how FL is to be organized as a study field. We feel that FL, as a field of specialization in a postgraduate curriculum, should be built upon a fully-fledged study of any (not too narrowly defined) branch of empirical linguistics. This view is strongly based upon my personal experience as a student majoring in historical-comparative linguistics. To give just one example: in dealing with orthographic data in incriminating anonymous letters in FL, I benefitted thoroughly from the study of e.g. Osco-Umbrian inscriptions, which are written partly in 3 different alphabets, these being Greek, Latin, and Osco-Umbrian. In other words, the methodological gist of data analysis of "Trümmersprachen" (in terms of the late Jürgen Untermann) is very similar to that of anonymous extortion or threatening letters in a modern language like German. I think that FL and historical comparative linguistics / philology could benefit methodologically from each other (the so-called cumulative principle of sociolinguistics could be named in support of this, too). As stated above, some FL colleagues believe that FL should have a curriculum of its own and should be studied as such from the very beginning. I would prefer a study of FL as an integrated part of empirical linguistics, enriched by quantitative analysis in computer linguistics (CL; see section III). All in all, both study curricula seem to represent viable ways to the same end, i.e. a successful mastery of the study field called "Forensic Linguistics".

II. Basic questions of forensic linguistic analysis

In simplified terms, FL research and work on court cases can be broken down to three questions:

(1) What is said?

(2) What is meant?

(3) Who is the author/originator (and writer) of an anonymous text?

Below, a very brief illustration of (1), (2) and (3) is given by *authentic* data from original cases in German courts in which I gave forensic linguistic expert testimony (with the exception of CASE 1). All cases have been

described in detail in the FL literature, mostly in German, partly in English (see below). A more detailed description is not possible due to the limited space available in this paper. The cases are numbered 1-4 for easier descriptive identification.

1. What is said?

CASE 1: J.P. French (1990: 201-213) describes a case (from a Forensic Phonetics perspective) in which it was disputed whether an MD (Doctor of Medicine), a non-native speaker of English, had told a patient (drug addict) *You* ***can inject*** *those things* or *You* ***can't inject*** *those things.* The patient injected the drugs and died. Her family filed legal action.

CASE 2: FL expert testimony by H. Kniffka (1992: 157-193; see also Figure 1 and the description in (3) below): In this case, tried at the Superior Criminal Court in Nürnberg, Germany, the imprisoned husband (non-native speaker of German, native speaker of Arabic) of a German woman sent letters and notes (on an envelope of a letter) to his wife threatening to kill her and claiming that the letters were written by the wife herself. The case belongs to classes (1) and (3) and is discussed under (3) below. The question 'what is said?' refers to the form and the verbal means of the utterance (which words are used?).

2. What is meant?

CASE 3: This is a libel case tried at the *Oberlandesgericht* (OLG) Köln 1973. (cf. Kniffka 1981: 584-634; Kniffka 1990: 189-200): A neighbor Y sends letters to the administration manager of a condominium repeatedly complaining about neighbors X whom he has known personally and by name for years:

> Herr X bzw. seine Konkubine haben wiederholt die Waschküche benutzt zu Zeiten, als es ihnen nicht zustand. [Mr. X or his concubine have used the laundry room at times when they were not allowed to].
>
> Herr X bzw. seine Konkubine haben wiederholt den Hund den Rasen nässen lassen, sodass der Bewuchs auf Jahre hinaus gefährdet ist. [Mr. X or his concubine have repeatedly let the dog wet the lawn so that its growth will be compromised for years.]

The lady X referred to above ('concubine') files suit against the letter writer Y for insult ("Beleidigung" § 185 StGB). Y hires a well-known scholar of German philology, who states in his expert opinion that *Konkubine* is "wertneutral", "nicht-beleidigend" (a neutral, non-derogatory, non-insulting term). X orders an expert opinion by the author, who comes to the conclusion (Kniffka 1981, 1990) that the contexts cited do indeed contain and transport an insulting, derogatory meaning and connotation. The senate of the OLG Köln followed this expert opinion in its verdict.

What convinced the judges of the senate and triggered their verdict were probably two facts about German language use in 1972 presented in a non-technical, down-to-earth argumentation:

(1) There is a striking *asymmetry* in the designation of the neighbors X by Y (*Mr. X or his concubine* instead of *Mr. X or Ms. …* both known to Y by name).

(2) If *Konkubine* were indeed completely neutral in German usage in 1972, a company boss who invites his married and unmarried male employees to a Christmas party would be free to write on the invitation card "*Ich würde mich freuen, wenn Sie Ihre Frau/Konkubine mitbrächten*" with exactly the same connotation as "*Ich würde mich freuen, wenn Sie Ihre Frau/Partnerin mitbrächten*". This is definitely not true, even from a perspective on German usage in the year 2020.

The example also illustrates changes in social values and in language use (I suspect that the number of people in Germany who understand the Latin-derived word, the number of people who would file suit all the way up to the OLG and the number of people who would use the word in a derogatory sense is considerably smaller in 2020 than in 1972).

3. Who is the author (and writer) of an anonymous text?

The FL work dedicated to this question appears under headings like "Forensic Linguistic Authorship Attribution", "Forensic Linguistic Authorship Identification", "Forensic Linguistic Authorship Verification" and others, partly referentially identical, partly slightly different. The common denominator is the question *who wrote (=authored) an anonymous text and who wrote (=typed) it*? In many incriminating contexts, this is an important and integral part of a more general question known as *whodunnit?* in detective stories. I prefer the designation "Forensic Linguistic (Anonymous) Authorship Analysis" since it seems to work best as a cover term and sounds more 'open-ended' concerning the results.

The linguistic analyses directed to question (3) are considered by many people working in FL to be the core category of FL (which may be correct in purely quantitative terms). Some people even seem to identify FL with this question altogether. This is definitely inadequate since in addition to question horizons (1) and (2) mentioned above, there are many other questions and fields FL research and practical work deal with, such as trademark disputes, testaments/wills, plain language and understandability of laws, plagiarism and many others (cf. Levi 1982; Kniffka 1981).

CASE 2: Original copy represented in Figure 1 below and described in detail in Kniffka (1992: 157-193). The text belongs to (1) and (3) since it is not clear both what is said and who is the author. The text reads:

> Noch eine Aussage oder Du stirbst. Alles zurücknehmen oder auch gegen uns in Frankfurt u. Vatale keine Äußerung oder Du bist tot. [One more statement or you will die. Take everything back or no statement against us in Frankfurt u. Vatale or you will be dead].

The semantic-pragmatic reconstruction of the text reveals that the author mixes up the use of the German conjunctions *und* and *oder* (as do also many native speakers of German colloquially); in Standard German it would read *Noch eine Aussage **und** Du stirbst!*

The overall forensic context in CASE 2 is as follows. An incarcerated native speaker of Arabic sends handwritten letters and notes written on

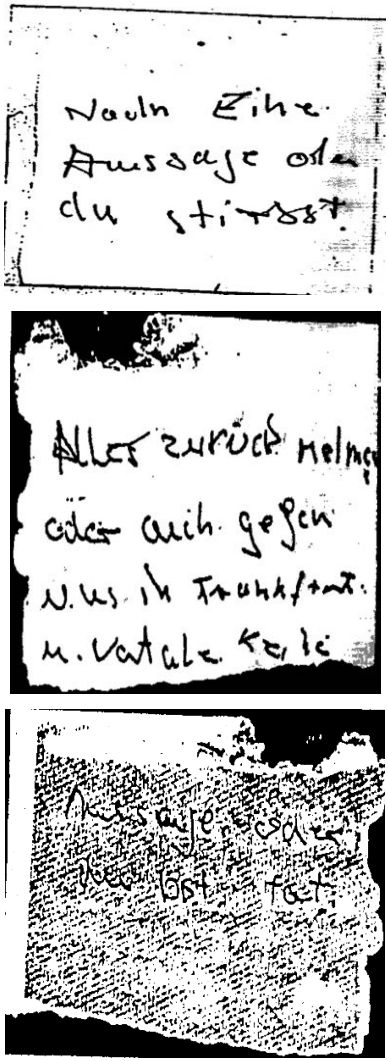
envelopes to his German wife threatening to kill her (see above). The letters and notes are found in her letter box and taken very seriously by the police (the wife supposedly knew too much). In the court hearing, the lawyers of the suspect claim that the wife has written the letters and notes herself. The handwriting experts of the *Bundeskriminalamt* (BKA) are asked for an expert opinion whether the Arab husband or his German wife had handwritten the letters. The handwriting expert opinion comes to a *non liquet* result: there is no safe proof to answer the question who wrote the threatening letters. It is less probable, however, that the wife wrote them.

On the basis of the well-known fact that with some data a *non liquet* result of expert testimony in one forensic science can be complemented or even corrected by cooperation with another forensic science, the handwriting department of the BKA suggested a FLET. The OLG ordered a linguistic expert opinion to evaluate the orthographic data. This FLET came to structurally the same result as the handwriting expert opinion (a *non liquet*), though with an even larger probability that the Arab had handwritten the letters, after some more graphemic and linguistic evidence (e.g. comma bent to the left; lexical idiosyncrasies) is found.

The exact wording of the request for a linguistic expert opinion of the OLG is that significant and typical an illustration of the real-life interaction (of which FLET is an integral part), that it is worthwhile to quote it verbatim (it is discussed in more detail in Kniffka 1992):

> (Gemäß Schreiben vom … und Gutachtenauftrag vom …ist ein sprachwissenschaftliches Gutachten darüber zu erstellen), *ob – unter Vergleich von Schreibfehlern in den anonymen Schriften und den Vergleichsschriften – Urheber der anonymen Schriften der Schreiber der Vergleichsschriften ist. Die Erstattung des Gutachtens ist sehr eilebedürftig, weil die Hauptverhandlung bereits läuft.*
>
> […a linguistic expert opinion is ordered to answer the question *whether – by comparing the writing/spelling errors in the anonymous texts and in the comparison texts – the originator of the anonymous texts is the (author and) writer of the comparison texts. The expert opinion is very urgent since the main hearing has already started*.]

This is also a real-life example of linguistic expert opinions being ordered somewhat belatedly in the judicial proceedings (at least in the old days) or, in some cases, after expert testimony by other (including more exact) sciences had failed to yield satisfactory results.



‘Noch eine
Aussage oder
Du stirbst.’

‘Alles zurücknehmen
oder auch gegen
uns in Frankfurt
u. Vatale keine’

‘Äußerung oder
Du bist tot.’

Fig. 1: Copy of threatening letter CASE 2 by incarcerated husband to his wife

CASE 4: In this case, the central question is also *who wrote/authored and typed the anonymous threatening and defamation letters*? (see Kniffka 1990: 437-456). CASE 4 deals with (lexically, syntactically, dialectically) typical or standard anonymous defamation, extortion and threatening letters, or, rather, a very large number of such letters in an industrial/business setting within a large company. The anonymous letters are possibly or probably authored and written by a lower employee, addressed to higher employees going all the way up to the CEO. After the CEO got the first dozen letters sent to his private address, the company started a large-scale investigation, including ordering a linguistic expert opinion to determine the authorship.

The case as such is regular since it concerns the typical (socio-)linguistic features of text type, genre and register. It is highly unusual, if not entirely exceptional, however, at least very remarkable indeed in several other respects. I am positive to say that in almost 50 years of active FLET I have *never* worked on a case like this, have never seen data of the kind and have never heard of a case like this.[1]

Why is CASE 4 so remarkable? (a) There were some 112 items of incriminating letters (*Tatschriften*) in sum, over a period of several years. In fact, the number of incriminating texts surpassed the number of comparison texts of several suspects (which is very unusual indeed, too). (b) The expert opinion given in CASE 4 took the relatively longest time to be produced: a team of 4 fully trained German Studies linguists and one general linguist worked for 3 months intensively without arriving even at a working hypothesis. Quite a lot of other academic specialists were consulted in addition, in particular aphasiologists, psychologists, psychiatrists, philologists specializing in English, Romance, Slavic, Scandinavian, Ural-Altaic and other languages. The results after 3 months were equally meager and disappointing. Our team did not even arrive at any plausibility and likelihood results, let alone a specific working hypothesis, and was very disappointed

[1] It is, of course, important to account for productivity, frequency distributions and standards of criminal genres as much as for 'normal' everyday non-criminal genres of verbal behavior.

and ready to give it all up and issue a *non liquet* result. As team leader and young linguist, I wanted to give it a last try and went through *all* the data again on my own for yet another month. After that month, it was not my linguistic experience or FL expertise, rather it was simply my relatively detailed knowledge of US culture based on a longer stay that brought the solution – and the fact that we are dealing with a small piece of evidence which can be overlooked easily (see below).

The suspect was a middle-aged man, born and raised and exclusively living in Cologne, Germany. He had broken off middle school and had never had any foreign language instruction, including English and French. He had never traveled to another country, except briefly to the Netherlands when he was in school. He spoke Standard German as spoken in Cologne and, of course, Cologne dialect (*Kölsch*). The problem of this suspect was that he had written anonymous letters of complaint to his former employer (of little or no criminal coloring), which had brought him to the attention of the police.

What eventually struck my visual perception was a tiny little graphemic piece of data. In Germany, maybe especially in the Rhineland, and also in other (non-European) cultures, an emblem and a proverbial saying are very well-known and frequently used in everyday conversation, **the three apes**, or **the three monkeys**: an emblem in which one monkey is covering his ears with both hands, meaning *nichts hören*, in Cologne dialect (*Kölsch*) *nix hüre*, 'not hear anything'. Another monkey is covering his mouth with one hand, signaling *nichts sagen*, 'not say anything'. The third ape is covering both eyes with his hands, *nichts sehen*, 'not see anything'. As previously stated, it is quite popular in Cologne and there are many references to it in everyday life and even many sculptures of it in Cologne. As such, children and adults in Cologne and elsewhere know this emblem very well and have seen it many times in writing.

This culturally well-established and widespread expression occurs several times in the incriminating letters sent. The data collected in CASE 4 *all* show one strange orthographic feature: ***Die drei-Affen, die 3-Affen, de drej-ape***… are always and exclusively written with a hyphen, no matter

whether the numeral is represented by a number or by letters. This is definitely not customary in Standard Written German, no matter what stylistic and linguistic level.

What gave me the clue was my time in and knowledge of the US culture with this hyphenation standard (*a five-hour-trip; a 3-hour-journey; a 3-way-trip; a 3-people-fight, ...*). It does not exist in German spelling, at least not in this form and frequency of occurrence.

After this, a working hypothesis was set up that the writer of the incriminating texts was *not* the Cologne man already incarcerated, nor that he was the sole writer. After consulting several colleagues specializing in other European languages about spelling and hyphenation standards, I stated a working hypothesis that the writer of several incriminating letters was very likely a native speaker and writer of American English. I reported this to the criminal police investigators and they checked the entire personnel for native speakers of American English and eventually came up with one man who fulfilled the criteria exactly. He was a native speaker of American English who had lived in Germany for decades and spoke and wrote German very well.

He was observed by the police and, after 3 months, was caught in the act of writing yet another anonymous threatening letter.

After that, I went through the 100+ anonymous letters again with the hypothesis that there was a non-native author involved, probably a native speaker of American English, and found various language data supporting this hypothesis, as collected in Table 1.

Notation: Before a '/' the actually occurring, behind a '/' the reconstructed (intended) form is notated	
Jener Flegel, jener Halunke, jene Männer / dieser Flegel, dieser Halunke, diese Männer; *Genau wie Sie es selbst tun/genau wie Sie;* *Ihren besonderen Busenfreund/Ihren besonderen Freund* oder *Ihren Busenfreund;* *… dann würden auch noch einige mehr ebenfalls …/… dann würden auch noch einige andere…*; non-idiomatic (German) word order is found in many constructions in the text. *Diese Maßnahmen werden mit … begegnet / … diesen Maßnahmen wird mit … begegnet;* this construction type occurs several times in the letters. *… Sie können doch dem Kollegen X in keiner Weise auch nur das Wasser reichen /dem Kollegen nicht das Wasser reichen;* *Ähnlich hat C insgeheim wiedergegeben/Ähnliches hat C insgeheim erklärt;* *Nennt man das nicht „Unzucht im Abhängigkeitsverhältnis?"/„Unzucht mit Abhängigen?";* *Ihre Möbeleinrichtungen zerschlagen/Möbeleinrichtung zerschlagen; … auf Geschäftsunkosten nach D. fahren/ … auf Geschäftskosten nach D. fahren; Eine Krähe hackt einer anderen nicht in die Augen / Eine Krähe hackt einer anderen kein Auge aus.* (Non-)Idiomatic quotation of well-known German proverb and non-acquaintance with the proverb and its status (several examples in the corpus of incriminated letters).	
Orthographic deviations	*Äüßerung, Außerung, Aüßerung / Äußerung.* [There are many examples of this kind in the incriminated letters]; a hapax legomenon in the incriminated letters is *Pfüi Teufel!* Altogether 5 spellings *Die drei-Affen* in (different) incriminated letters occur.
Result of the linguistic expert testimony	The German suspect is released and exonerated after the FLET has been received by the court. A native speaker of American English employed in the company is observed by the police and caught in the act of writing another anonymous incriminated letter.

Tab. 1: Selection of reconstructed features and feature configurations in incriminating letters suggesting non-native language behavior

We had always found that the use of German was somehow 'strange' and non-idiomatic, but were not able to find an adequate explanation. This was due primarily to the enormous amount of data in this case. In addition, there were incentives for too many hypotheses based on a multitude of data from the general setting. To name just one: the German suspect had been in psychiatric treatment repeatedly and showed some linguistic phenomena which cannot be discussed here.

The pedagogical and learning essence one can draw from this case is, in addition to the general provision of looking at data even more carefully, a twofold one:

1. Forensic Linguist Expert Testimony cannot only help get people into prison, but also to get them out of prison. In my view, this is sufficient justification to look at cases like CASE 4 with great accuracy and carry out a very careful evaluation.

   The example also shows that the 'smoking gun' connotations, which some linguists and people who are unaware of the work done in FL feel tempted to proclaim, are totally unjustified. As in every other profession, it depends on *how* it is done.

2. CASE 4 also contains some hints for the major virtues necessary for doing FL work. Undoubtedly, the most important virtue necessary in FLET is *patience*. Forensic linguistic authorship analysis usually takes much more time than both Forensic Phonetic Analysis and Forensic Handwriting and Graphometric Analysis.

   One can gain yet another insight from this. Whoever wants to perform forensic linguistic scientific analysis must be a very patient researcher and person. People who 'want to see in the evening what they have done during the day' will probably not be very happy in this job and will very likely not be the best choice for it.

III. Dos and don'ts in studying (Forensic) Linguistics: Some suggestions

Practical Dos and Don'ts and other hints from academia for studying 'new' interdisciplinary fields like Forensic Linguistics are somewhat scarce in Germany. Descending into the daily work of FL seems somewhat neglected in the German academic scene. One might even get the impression that the closer you get to real life practical application areas of FL, the quieter it gets and the scarcer practical instructions become *from the linguistic side* of how to acquire decent academic training in the field.

If it is still true that many young students of linguistics and FL in Germany prefer to read and go by an introduction into their field written in English rather than in German, I am definitely somewhat puzzled. As a long-time linguist, I am confident that this is not due to the language(s) ipsa natura. It may be – among many other possible motivations – that the high esteem for 'theory' and a widespread preference for theoretical concepts and questions in the German speaking academic culture(s) lead the students away, if I may say so, from doing hard empirical FL work. To be sure: 'theory' and theoretical discussion is absolutely necessary, indispensable and essential in FL as an Applied Science. No Applied Science would be possible without theoretical reflection. All researchers in FL whom I am aware of agree on that. People who do research in theoretical and applied realms also agree, however, that theory can be detrimental, short-sighted and counterproductive if it is done to *avoid or minimize* an occupation with practical consequences and the hard, partly risky and annoying daily duties of empirical FL work. Practical FL work without theoretical reflection is boring and unscientific. Theorizing in FL without empirical construct validation is l'art pour l'art and in effect pointless and worthless for the science in question.

With these few concerns in mind, and with apologies that this 'theoretical discussion' cannot be more detailed here, I would like to state some *practical*, personal, subjective, strictly non-representative hints and suggestions for studying the field of *forensic linguistics* in Germany:

1. Study linguistics (General, Theoretical, Applied, Historical-Comparative, Mathematical …) in the broadest perspective possible at your university.
2. Try to get a double degree in Law *and* in Linguistics (if this is at all possible).
3. Learn to *observe* language behavior and analyze linguistic data very thoroughly. In Transformational Grammar (TG), there was a threefold task to strive for adequacy, cf. BCTW (Bechert / Clément / Thümmel / Wagner 1971: Einleitung): (a) observational adequacy; (b) descriptive adequacy; (c) explanatory adequacy. It seems that the first mentioned ("observational adequacy") has been (and is still?) neglected at the cost of the other two. This holds for FL, in my view, par excellence.
4. Get solid training (as for the thematic scope and the methodologies) in/of *Sociolinguistics* and *Sociology of language*, including the 'Ethnography of Communication'.
5. Get solid training in *Psycholinguistics*, including *Developmental Psycholinguistics.* Try to acquire a thorough familiarity with modern analytical tools and technological assets of quantitative analysis of language data, including *descriptive* and *inferential statistics.*
6. Please do not ever forget: addressing, persuading, convincing *a judge* may be quite different from addressing a linguistic *colleague.* The 'double translation process' (law – linguistics – law) is as important as is the linguistic analysis itself. You need to develop some brilliant practical skills for this. Please do remember: FL is an *auxiliary* science in this context.
7. Give expert testimony on qualitative textual and cultural data only for your *native* language and culture, unless you have lived for years and decades in a foreign culture.
8. The dilemma of giving expert testimony on data of non-native languages may be solved by Computer Linguistic analysis and quantitative analysis, or by quantitative and CL analysis in cooperation with a native speaker linguist.

9. Try to get a fully-fledged education in Computer Linguistics – together with a strong plea for empirical linguistic-philological text analysis in the old classical traditions, and a brief postulate stated 40 years ago (Kniffka 1981: 613 "*Eine meßtheoretische ersetzt nicht eine linguistische Fragestellung*" [A measurement theory question cannot be substituted for an intrinsic linguistic question]).
10. As a recent publication for an update in FL authorship analysis, I would like to recommend Shlomo E. Argamon's (2018) paper "Computational forensic authorship analysis: Promises and pitfalls", in *Language and Law/Linguagem e Direito 5* (2), 7-37.

IV. References

Argamon, Shlomo. 2018. Computational forensic authorship analysis. Promises and pitfalls. In: *Language and Law/Linguagem e Direito* 5 (2), 7-37.

Bechert, Johannes / Danielle Clément / Wolfgang Thümmel / Johannes Wagner. 1971. *Einführung in die generative Transformationsgrammatik*. München: Hueber Verlag.

Bremer, Heinz. 1973. *Der Sachverständige. Seine Stellung im privaten und öffentlichen Recht*. Heidelberg: Verlagsgesellschaft Recht und Wirtschaft.

French, J. Peter. 1990. Analytic procedures for the determination of disputed utterances. In: Hannes Kniffka (ed.), *Texte zu Theorie und Praxis forensischer Linguistik*. Tübingen: Max Niemeyer Verlag, 201-213.

Jessnitzer, Kurt. 1978. *Der gerichtliche Sachverständige*. 7th edition. Köln: Heimanns.

Kniffka, Hannes. 1981. Der Linguist als Gutachter bei Gericht. Überlegungen und Materialien zu einer "Angewandten Soziolinguistik". In: Günter Peuser / Stefan Winter (eds.), *Angewandte Sprachwissenschaft. Grundfragen – Bereiche – Methoden*. Bonn: Bouvier Verlag H. Grundmann, 584-634.

Kniffka, Hannes. 1990. Alles ist Tatfrage des Einzelfalls – Oder: "Herr X bzw. seine Konkubine". In: Hannes Kniffka (ed.), *Texte zu Theorie und Praxis forensischer Linguistik*. Tübingen: Max Niemeyer Verlag, 189-200.

Kniffka, Hannes. 1992. Sprachwissenschaftliche Hilfe bei der Täterermittlung. In: Günther Grewendorf (ed.), *Rechtskultur als Sprachkultur. Zur forensischen Funktion der Sprachanalyse*. Frankfurt am Main: Suhrkamp, 157-193.

Kniffka, Hannes. 2021a. Forensic linguistic expert testimony in German court cases. Past and present. A note on range of variation, diversity, heterogeneity. In: *Linguistische Berichte* 266, 137-162.

Kniffka, Hannes. 2021b. Some practical contributions of legal linguistics to the judicial training of judges, prosecutors and other legal professionals in Germany. Paper read at the 3rd International Legal Linguistics Workshop of the AALL, 12 December 2020. In: Karin Luttermann / Albert Busch (eds.), *Sprache und Recht. Konstitutions- und Transferprozesse in nationaler und europäischer Dimension*. Berlin: Lit, 205-226.

Levi, Judith N. 1982. *Linguistics, language, and the law. A topical bibliography*. Bloomington, IN: Indiana University Linguistics Club, XI, 48.

Sendler, Horst. 1986. Richter und Sachverständige. In: *Neue Juristische Wochenschrift* 47, 2907-2970.

List of abbreviations

AL	Applied Linguistics
BCTW	Bechert / Clément / Thümmel / Wagner
BKA	Federal Criminal Police Office (*Bundeskriminalamt*)
CEO	chief executive officer
CL	Computational / Computer Linguistics
FL	Forensic Linguistics
FLET	Forensic Linguistic Expert Testimony
MD	Doctor of Medicine
OLG	*Oberlandesgericht*
TG	Transformational Grammar
US	United States

Stavros Kozobolis

Regulations and Directives in EU Competition Law. Insights Regarding Deontic Modality from the English-Greek Language Pair

Abstract

This study builds on a previous study (Kozobolis 2020) on deontic modality in EU legislative texts and focuses on the expression of deontic modality in regulations and directives regarding EU Competition Law. Regulations and directives are legislative acts of the secondary EU Law carrying binding force. Regulations are "binding legislative acts which must be applied in their entirety across the EU" (European Union's official website, n.d.),[1] while directives are "legislative acts that set out a goal that all EU countries must achieve, but it is up to the individual countries to devise their own laws on how to reach these goals" (European Union's official website, n.d.).[2]

In this study, we focus on comparing the binding force of regulations and directives by investigating deontic modality, i.e. modals, semi-modals and related patterns that convey obligation and permission (Biel 2014a: 340). In order to do so, we seek to investigate deontic modals, semi-modals and related patterns in a bilingual English-Greek corpus composed of 68 legislative texts. The corpus is divided into two subcorpora, i.e. subcorpus A, which is composed of regulations, and subcorpus B, which consists of directives, and is analyzed quantitatively using the AntConc software (Anthony 2019), while a qualitative analysis is also carried out.

[1] See the following weblink: https://europa.eu/european-union/law/legal-acts_en. Last access 23.10.2020.

[2] See previous footnote.

I. Introduction

The production of EU texts in general follows a complex procedure resulting mainly from their specific characteristics.[3] More specifically, the concept of multilingualism and the principle of equal authenticity are very prominent within the Union, but at the same time they pose a lot of challenges in the production of multilingual and equally authentic texts.[4] In this complex procedure, translation is present. Indeed, the drafting and the production of EU legal instruments, such as directives and regulations, pass through many stages where translation is prominent (Robinson 2005; Sosoni 2012).

This study focuses on two specific types of legislative texts of EU secondary law, namely regulations and directives. A regulation is "a binding legislative act which must be applied in its entirety across the EU" (European Union's official website, n.d.),[5] while a directive is "a legislative act that sets out a goal that all EU countries must achieve, but it is up to the individual countries to devise their own laws on how to reach these goals".[6] The main purpose of the study is to compare deontic modality in these two types of legislative texts. The results are also compared with the specific institutional guidelines for authors and translators by the EU Institutions, i.e. the Joint Practical Guide (2015) and the Style Guide (2018) for every language involved in the study.

For the purposes of this study, a bilingual corpus (English-Greek), composed of 68 legislative texts regarding EU Competition Law, was compiled and analysed. The analysis of the corpus aims at investigating deontic modality. In particular, modal verbs, semi-modal verbs as well as related

[3] I would like to thank my supervisors, Dr. Sotirios Livas, Professor at the Department of Foreign Languages, Translation and Interpreting of the Ionian University in Greece and Dr. Vilelmini Sosoni, Assistant Professor at the Department of Foreign Languages, Translation and Interpreting of the Ionian University in Greece, for making fruitful comments and revising this paper as well as for guiding me during my studies.

[4] For detailed discussion on the specific characteristics of the EU texts, see Šarčević (1997), Felici (2010), Sosoni (2012) among others.

[5] See footnote 4.

[6] See footnote 4.

patterns that indicate deontic modality, such as verbs in the indicative mood, adverbs and other expressions identified in the corpus are analysed and presented. The specific research questions to be answered are as follows:

- How is deontic modality expressed in regulations and directives in the English-Greek bilingual corpus?
- Are there significant differences in the distribution and types of deontic modality in regulations and directives?
- To what extent are the relevant institutional guidelines for English and Greek followed?

The paper is divided into two parts. The first part contains theoretical insights about modality in general and modality in EU legislative texts in particular, while in the second part the methodology and the results of the analysis are presented and discussed.

II. General remarks on modality

Modality can be studied from many perspectives: as a philosophical concept, as a subject of the study of logic, or as a grammatical category (Morante / Sporleder 2012: 225). Thus, even an exhaustive and extensive study can provide only a limited view of modality (Morante / Sporleder 2012: 225). As Salkie / Busutil / van der Auwera (2009: 7) aptly mention,

> modality is a big intrigue. Questions erstwhile considered solved become open questions again. New observations and hypotheses come to light, not least because the subject matter is changing.

There is no generally accepted definition of modality. Many scholars have provided several definitions of the category. For instance, Kreidler (1998: 301) defines modality as "the expression of necessity, possibility and probability, often through modal verbs", while Portner (2009: 1) considers it to be "the linguistic phenomenon whereby grammar allows one to say things about, or on the basis of, situations which need not be real". Modality can be expressed, aside from linguistic means, with paralinguistic elements, too (cf .Klairis / Mpampiniotis 2005: 180).

In linguistic terms, there are two ways in which languages deal grammatically with modality, namely modal systems and mood (cf. Palmer 2001: 4). As far as the languages of this study are concerned, English and Greek have several differences in terms of the expression of modality. On the one hand, English has three main moods, i.e. indicative, subjunctive and imperative. However, the subjunctive mood appears to be falling into disuse and at the same time a modal system of modal verbs has been created (cf. Palmer 2001: 4). On the other hand, Greek makes good use of moods, as well as of other lexical means, and its modal verb system is not as well-formed as that of English.

More specifically, in English, modality can be expressed in several ways (cf. Kreidler 1998: 240). In particular, it can be expressed with nouns, such as *duty*, *obligation*, *likelihood*, with adjectives like *necessary*, *possible*, *likely*, and with adverbs such as *obviously*, *probably*, *perhaps* (Kreidler 1998: 240). However, the most prominent way for the expression of modality in English is through modal verbs. In particular, there are three main categories of modal verbs (cf. Depraetere / Reed 2006: 272; Collins 2009: 14; Huddleston / Pullum 2002: 106-115), i.e. central modals, such as *can*, *could*, *may*, *might*, *must*, *shall*, *should* etc., peripheral or marginal modals, like *dare* and *need*, and semi-modals, quasi-modals or periphrastic modals, such as *have to*, *be able to*, *be going to* and others.

Palmer (2003: 7) distinguishes three main categories of modality in English, i.e. epistemic, deontic and dynamic. Epistemic modality has to do with the speaker's attitude to the status of the proposition, while on the other hand, deontic and dynamic modality relate to the potentiality of the event that is signaled by the proposition (cf. Palmer 2003: 7). Both deontic and dynamic modality can be deemed as directives. Their main difference is that with deontic modality, the directive is controlled by circumstances external to the subject of the sentence, while in dynamic modality the control is internal to the subject (cf. Palmer 2001: 77, 2003: 7).

In Greek, modality is also expressed in various ways, i.e. with inflectional moods, with modal verbs, like *πρέπει* [prepei] ('must'), *μπορεί* [borei] ('can/may'), with adverbs like *ίσως* [isos] ('maybe'), πιθανόν ['pithanon']

(possible) and others, as well as with the combination of particles like *ας* [as] and *να* [na] with verbs etc. (cf. Holton / Mackridge / Philippaki-Warnburton 1999: 202-212; Klairis / Mpampiniotis 2005: 176-181). As far as modal verbs in Greek are concerned, *πρέπει* [prepei] is used for the expression of obligation or strong possibility, while *μπορεί* [borei] is used for the expression of slight possibility or permission (cf. Holton / Mackridge / Philippaki-Warnburton 1999: 202-203). However, we should mention that, as Tsangalidis (2004: 231) aptly observes, the formal status of modal verbs in Greek is very much in doubt. Indeed, the use of modal verbs in Greek is not as extensive as in English. On the contrary, Greek uses mainly the three inflectional moods, i.e. indicative, subjunctive and imperative, which are distinguished morphologically either by the use of specific morphological endings (imperative), or with the use of some particles combined with the verb (indicative and subjunctive).

III. Modality in EU legislative texts

Modality forms a huge and challenging area for linguistic research in legal language. Legal language generally aims to communicate rights and duties to the citizens. After all, the fundamental functions of law are, according to Hart (2012: 26-27), to impose duties and confer power. These concepts are realized through deontic modality (cf. Biel 2014b: 158).

As mentioned above, deontic modality is related to directives arising from contributing factors that are external to the relevant individual (cf. Palmer 2001: 9). Thus, it is also related to obligation and permission, which are two of the main concepts that can be identified in legal language. As far as EU legislation is concerned, there are some institutional guidelines for authors and translators, which are described in the Style Guides and the Joint Practical Guides for every language.

In particular, we examine the specific guidelines given to drafters and translators of EU legislative texts focusing on four documents, namely the English Style Guide (2018a) and the Joint Practical Guide for English (2015a) as well as the Greek Style Guide (2018b) and the Joint Practical

Guide for Greek (2015b). Their main purpose is to ensure the highest quality of the Community legislation in order to guarantee citizens' rights and ease the judicial control (cf. Greek Style Guide 2018b: 104).

More specifically, the English Style Guide (2018a: 48-50) suggests the extensive use of the modal verb *shall* (and not *must*) for the expression of an obligation or requirement (positive obligation) in the main clauses of the enacting terms. Even though *shall* has been a victim of the 'modal revolution' under the Plain Language Movement (cf. Williams 2009: 200; Garzone 2013: 69; Biel 2014a: 341 among others), it is still used a lot in the EU legislative language. Correspondingly, *shall not* has prevailed over *must not* or *may not* for the imposition of a prohibition (negative obligation). Furthermore, for the expression of positive permission, the modal *may* is proposed, while for non-permission (negative permission), *need not* is suggested (cf. English Style Guide 2018a: 49).

On the contrary, in non-enacting terms, subordinate clauses and indirect quotations, *shall* should not be used. Instead, authors and translators are guided to use *must*, *has/have to* and *is/are required to* in order to express positive obligation. Correspondingly, *must not* should be used for a prohibition. Lastly, the use of a simple imperative rather than *shall* is proposed for instructions in annexes (cf. English Style Guide 2018a: 50).

As we can see, the guidelines for authors and translators for English legislative texts are mainly focused on the use of modal verbs for the expression of meanings such as positive obligation, negative obligation, positive permission and negative permission. However, the same does not apply for Greek, in which, as Tsangalidis (2004: 231) aptly observes, the modal verbs are in doubt. Indeed, the discussion on modal verbs in Greek is focused on two main modals, i.e. *πρέπει* [prepei], which means *must*, and *μπορεί* [borei], which has the meaning of *may* or *can*. Nevertheless, the guidelines on drafting and translating legislative texts in Greek focus mainly on the distinction between binding and non-binding acts and the proper use of the indicative mood (cf. Joint Practical Guide for Greek 2015b: 12; Greek Style Guide 2018b: 112). In particular, verbs in the present tense of the indicative mood should be used in the enacting terms of

legislative acts with binding force in correspondence with the use of *shall* in English (cf. Joint Practical Guide for Greek 2015b: 12). However, it is highlighted that the present simple tense should be used in the main clauses of the enacting terms and not in the subordinate clauses, the recitals and the annexes (cf. Greek Style Guide 2018b: 113). In addition, the future tense should be avoided.

To sum up, deontic modality is expressed in a different way in EU legislative texts in English and Greek. On the one hand, English uses modal verbs in order to express concepts such as obligation, prohibition and permission. On the other hand, the institutional guidelines for Greek propose the use of inflectional moods (especially the present tense of the indicative mood). However, as Palmer (2001) argues, a comparative study of modality between various distinct languages is very useful.

IV. Corpus design and methodology

In line with the above, the present study focuses on deontic modality in regulations and directives related to EU Competition Law. In particular, the study of deontic modality follows a corpus-based approach (cf. Tognini-Bonelli 2001: 65). A corpus is "a large collection of authentic texts that have been gathered in electronic form according to a specific set of criteria" and intends to be "used as a representative sample of a particular language or subset of that language" (Bowker / Pearson 2002: 9). In the case at hand, a bilingual English-Greek corpus composed of the same English and Greek versions of regulations and directives concerning the EU Competition Law was compiled. All legislative texts were downloaded from the Eur-Lex database and were stored as plain text. The corpus is divided into two subcorpora, i.e. the subcorpus of regulations and the subcorpus of directives. Table 1 illustrates the information about the subcorpora.

English Subcorpus		**Greek Subcorpus**	
English Suborpus: regulations		**Greek Subcorpus: regulations**	
Files	19	Files	19
Word Tokens	188,539	Word Tokens	194,230
Word Types	4,888	Word Types	9,463
English Subcorpus: directives		**Greek Subcorpus: directives**	
Files	15	Files	15
Word Tokens	340,948	Word Tokens	348,815
Word Types	6,154	Word Types	12,888

Tab. 1: Subcorpora information

Regulations and directives form a very interesting area of research as far as deontic modality is concerned because of their binding force. Both these legal types of legislative texts aim at imposing duties to their addressees and, thus, shape their behavior. However, the fact that regulations apply automatically and uniformly to all EU members as soon as they enter into force, but directives leave them free to choose how to achieve a certain result (cf. European Union's official website, n.d.)[7] seems to be a very interesting difference worth examining.

Thus, this comparative study aims firstly at investigating and comparing deontic modality, namely the category that relates the most to the concepts of imposing duties (obligation and prohibition) and conferring power (permission and non-permission) in regulations and directives concerning EU Competition Law. In addition, it will be examined whether the relevant institutional guidelines of the Style Guides and the Joint Practical Guides for English and Greek are followed.

The corpus is firstly analysed quantitatively using AntConc,[8] a third-generation analysis software program (cf. McEnery / Hardie 2012: 40). More precisely, the frequency of modal verbs, semi-modal verbs and related

[7] See footnote 4.

[8] The version of the software used for this study is AntConc 3.5.8. (Dev) (Windows) 2019.

patterns in the two subcorpora is extracted using the Wordlist tool of the AntConc software and is displayed per thousand words. The results are displayed in graphs, following Biel's (2014b: 158; see also Saeed 2003: 136) discussion on deontic obligation and deontic permission.

Then, the results are analysed qualitatively in order to come to a more detailed conclusion regarding deontic modality and achieve triangulation of the results. More precisely, the concordance lines and the collocations of modal verbs as well as of other interesting findings are searched more thoroughly. In addition, three regulations and three directives are also analysed manually. Thus, we aim at triangulating the results and reaching robust results. Quantitative and qualitative analyses are the main methodological tools for the analysis of a corpus and have both something to contribute to corpus study (cf. Hasko 2012: 4761; Dash 2008: 12).

V. Results

In this chapter, the findings of the study are summarized. Firstly, the findings of the quantitative analysis for each subcorpus are displayed in graphs and discussed (section V.1). The discussion follows Biel's (2014b: 158) discussion on deontic obligation and deontic permission. Black colour is used to present modals and other patterns expressing deontic obligation, while grey colour signifies deontic permission. Then, the findings of the qualitative analysis are displayed and discussed (section V.2).

1. Quantitative analysis

1.1. English subcorpus: Regulations

As we have already mentioned before, English has a well-formed set of modal verbs for the expression of modality. In Figure 1, modals, semi-modals and other patterns[9] in the English subcorpus of regulations are displayed.

[9] For the purpose of this study, "related pattern" refers to any word, such as a noun, verb, adverb, adjective and others, that carries deontic modal meaning.

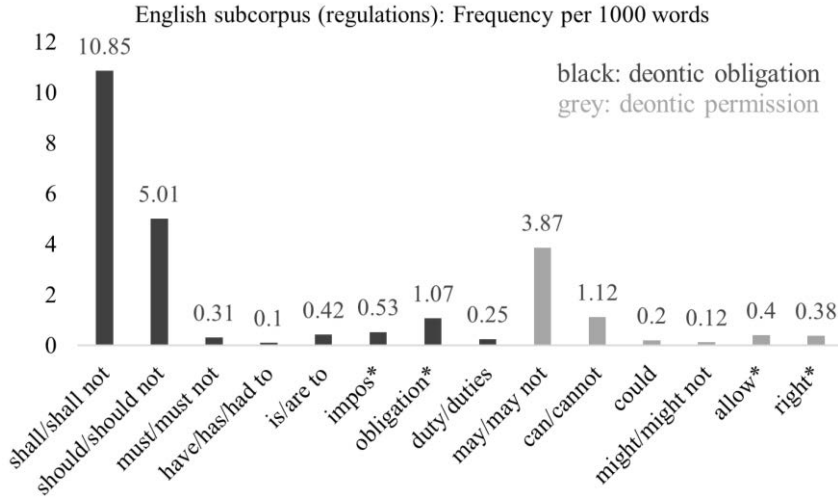


Fig. 1: Obligation and permission modals, semi-modals and related patterns in the English subcorpus (regulations)

Starting the discussion on deontic obligation in the English subcorpus of regulations, we can see that the modal verb *shall* and its negation is the most prominent (Figure 1). This is quite normal and in line with the results of previous studies on deontic modality (cf. Felici 2012; Garzone 2013; Biel 2014a; Biel 2014b) as well as with the institutional guidelines for the expression of obligation in the enacting terms of EU legislative texts.

A closer look at the words that *shall* collocates with (using MI value and 3 as cutoff point) reveals some interesting findings. For example, we can observe that *shall*, apart from obvious statistically significant collocations with infinitive forms (such as *apply*, *begin*, *notify* and others), presents statistically significant collocations with verbs in the passive voice (e.g. *interrupted*, *maintained*, *deducted* and others). However, as Felici (2012) aptly observes, *shall* is polysemous and has not only one meaning in EU secondary legislation.

In addition, *should* and *should not* are also very frequent in the English subcorpus of regulations. However, as we can see from the Concordance Plot tool, *should* is mainly presented in the preamble of regulations and not

in the enacting terms, something that is in accordance with the institutional guidelines.

Finally, other modals (*must*) and semi-modals (*is/are to, have/has/had to*) are not very frequent in the subcorpus, while related patterns like the noun *obligation* and the duty-imposing verb *impos** present relatively high frequency in the English subcorpus of regulations.

As far as deontic permission is concerned, we can see that it is expressed mainly with the use of the modal *may* in the English subcorpus of regulations, something that is in line with the institutional guidelines. The modal verb *can* is also frequent, while other modal verbs like *could* and *might*, as well as the forms of the verb *allow** and of the noun *right** seem not to be very frequent in the corpus.

1.2. English subcorpus: Directives

As we can see from Figure 2, which presents the frequency per 1000 words of modal verbs, semi-modal verbs and related patterns, the results of the quantitative analysis of the subcorpus of directives are similar to those of the regulations.

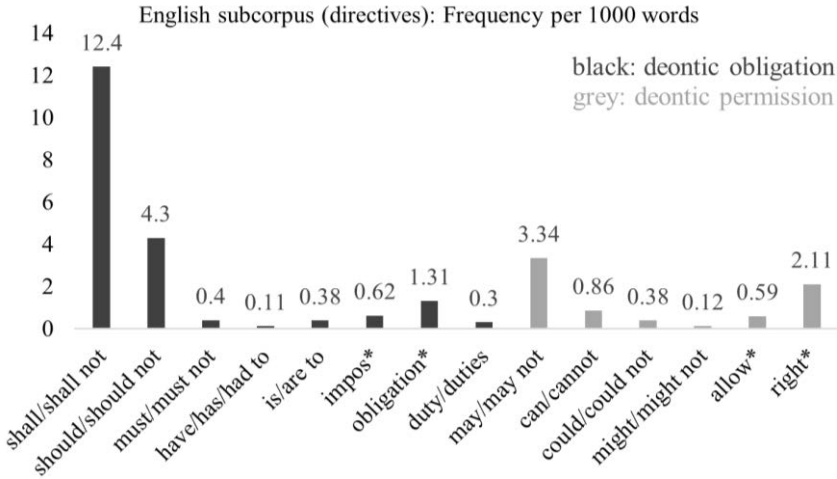


Fig. 2: Obligation and permission modals, semi-modals and related patterns in the English subcorpus (directives)

More specifically, *shall* and *shall not* are used slightly more frequently in the English subcorpus of directives than in the subcorpus of regulations. *Should* and *should not* are also presented very frequently. However, they occur slightly less frequency in the subcorpus of directives than in the subcorpus of regulations.

Other modals (*must*) and semi-modals (*is/are to, have/has/had to*) are not very frequent in the subcorpus of directives, while other related patterns that express deontic obligation, such as duty-imposing verbs like *impos** as well as the noun *obligation**, are relatively frequent in the subcorpus.

Deontic permission is mainly expressed with *may*, although this is slightly less frequent in directives than in regulations. The use of *may not* for the expression of negative permission seems odd because the institutional guidelines suggest the use of *need not*. However, both *may not* and *need not* do not appear many times in the subcorpus (27 and 3 times respectively).

Other modal verbs and semi-modals (*can*, *could*, *might*) as well as other patterns, such as verbs like *allow**, appear less frequently in the subcorpus of directives. However, the noun *right** shows respectively higher frequency in the subcorpus of directives than in the subcorpus of regulations (from 0.38 times/1000 words to 2.11 times/1000 words).

1.3. Greek subcorpus: Regulations

As we can see in Figure 3, the use of modal verbs in Greek is not as usual as in English. The modal verbs that are analysed are *πρέπει* [prepei], which is the *par excellence* modal for imposing obligation in Greek (cf. Sosoni / Kermanidis / Livas 2018: 190), *μπορεί/μπορούν* [borei/boroun] and *δύναται/δύνανται* [dynatai/dynantai], which are used to express permission or possibility and have the meaning of *can* and *may*. The small number of Greek modal verbs is quite anticipated because the system of modal verbs in Greek is not as well-formed as in English.

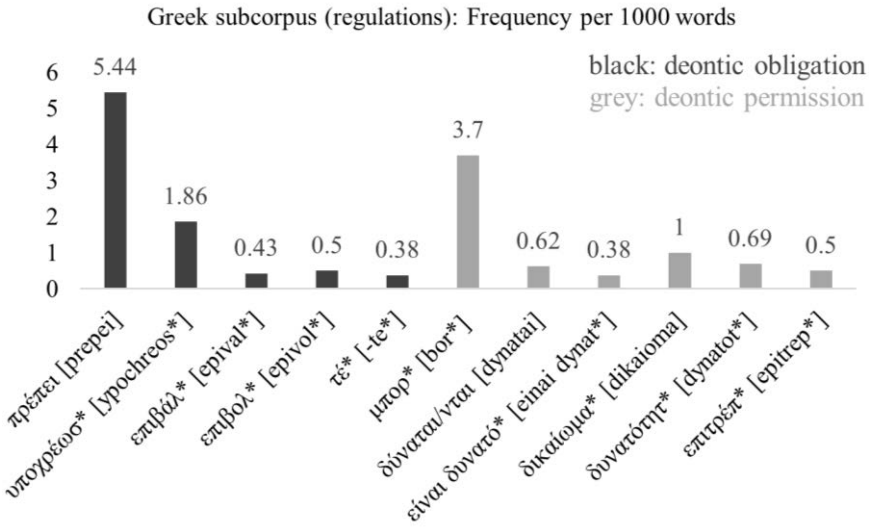


Fig. 3: Obligation and permission modals, semi-modals and related patterns in the Greek subcorpus (regulations)

As we can see from Figure 3, the Greek modal *πρέπει* [prepei] is very frequent in the Greek subcorpus of regulations. *Πρέπει* [prepei] is highly mandatory and is the only Greek modal that carries the meaning of obligation. However, more than half of its instances collocate with the Greek particle *θα* [tha]. The meaning of *θα πρέπει* [tha prepei] is more moderate than of the mandatory *πρέπει* [prepei]. In addition, the Concordance Plot tool shows that *πρέπει* [prepei] is usually used in the preamble of regulations and not in the enacting terms, where the institutional guidelines suggest the use of verbs in the present simple tense of the indicative mood in the main clauses in correspondence with the use of *shall* in English. The latter will be discussed in more detail during the qualitative analysis.

In addition, other patterns related to deontic obligation were identified in the wordlist of the Greek subcorpus of regulations. For example, nouns, such as *υποχρέωσ** [ypochreos*], which means 'obligation'/'responsibility', and *επιβολ** [epivol*], which means 'enforcement', as well as adjectives with the suffixes *-τέος, -τέα, -τέο* [-teos, -tea, -teo], which indicate that the meaning of the adjective must be done (e.g. *εφαρμοστέος*

[efarmosteos] means that something must be applied), are present in the Greek subcorpus of regulations. However, their frequency is not as high as the frequency of *πρέπει* [prepei].

As far as deontic permission is concerned, it is mainly expressed with the modal verb *μπορεί* [borei], which has the meaning of *can* and *may*. Another modal with the same meaning is *δύναται/δύνανται* [dynatai/dynantai]. However, it is not very frequent in the subcorpus. Other related patterns identified in this subcorpus are expressions such as *είναι δυνατόν* [einai dynaton], which means that something is possible, nouns, such as *δυνατότητ** [dynatotit*], which means 'possibility', and *δικαίωμα** [dikaioma*], which means 'right', and verbs, like *επιτρέπ** [epitrep*] ('allow'). However, the most prominent way for the expression of deontic permission is through the modal verb *μπορεί* [borei].

1.4. Greek subcorpus: Directives

The results of the quantitative analysis of the Greek subcorpus of directives are not very different from those of the Greek subcorpus of regulations. Figure 4 presents the frequency per 1000 words of modals, semi-modals and related patterns identified from the Wordlist tool of AntConc software.

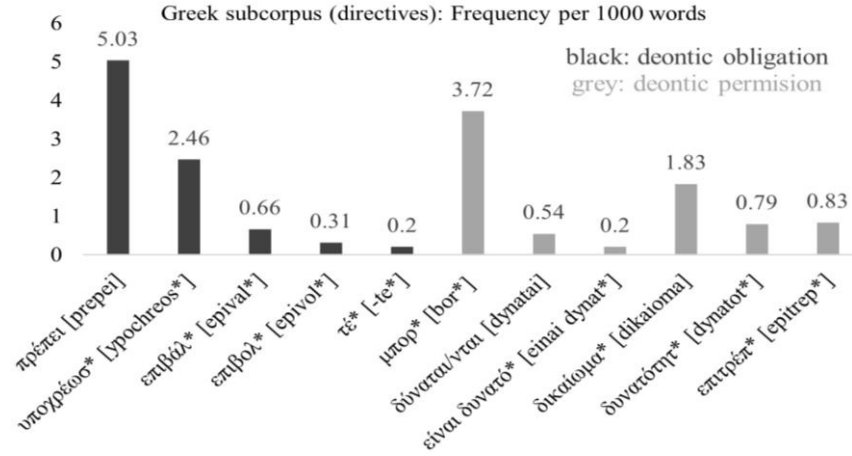


Fig. 4. Obligation and permission modals, semi-modals and related patterns in the Greek subcorpus (directives)

As we can see, *πρέπει* [prepei] is used very frequently for the expression of deontic obligation in the Greek subcorpus of directives. However, the majority (76.4%) of instances of *πρέπει* [prepei] collocates with the particle *θα* (tha) and, thus, its meaning is not very mandatory.

Other related patterns, such as the nouns *υποχρέωσ** [ypochreos*] and *επιβολ** [epivol*] as well as adjectives with the suffixes *-τέος, -τέα, -τέο* [-teos, -tea, -teo], are also present in the subcorpus (cf. chapter V.1.3). However, as already mentioned for the subcorpus of regulations, verbs in the indicative mood should be examined thoroughly, as their use is suggested in the main clauses of the enacting terms from the institutional guidelines for the expression of obligation and prohibition.

For the expression of deontic permission in the Greek subcorpus of directives, the modal verb *μπορεί* [borei] is used frequently. On the other hand, the modal verb *δύναται* [dynatai] as well as other related patterns, such as the expressions *είναι δυνατόν* [einai dynaton] and others, do not present high frequency. Finally, the noun *δικαίωμα** [dikaioma*] ('right') presents relatively high frequency.

2. Qualitative analysis

As already mentioned in the previous chapter, *shall* is the most prominent modal for the expression of deontic obligation in both English subcorpora. This result is quite anticipated, especially if we consider that the institutional guidelines clearly suggest its use over other modal verbs in the main clauses of the enacting terms. However, there are still some questions to be answered as far as *shall* is concerned. More specifically, it is yet to be examined whether the majority of its occurrences appear in the enacting terms of the English regulations and directives or in other parts of the legislative texts, such as the preamble, as well as whether its deontic obligation meaning corresponds with the use of verbs in the present simple tense of indicative mood in the Greek subcorpora.

As far as the first question is concerned, we can conclude from the Concordance Plot tool of the AntConc that the majority of the hits of the modal

verb *shall* appear in the enacting terms of the English subcorpora of the regulations and directives. This means that in general terms, the relevant institutional guideline is often followed. In addition, as we mentioned in the previous chapter, the other modal, namely *should*, that expresses deontic obligation appears mainly in the preamble.

Another feature that explains the high frequency of *shall* in both English subcorpora is its polysemy. As Felici (2012: 56-58) aptly observes, *shall* is polysemous and has various meanings in legislative texts of EU secondary legislation. Nevertheless, this study focuses on its deontic use. The qualitative analysis has shown that *shall* often presents statistically significant collocates with dynamic verbs, such as *ensure*, *submit*, *provide* and others. The following examples are indicative of the deontic use of *shall* in both English subcorpora. More precisely, in examples 1 and 2, *shall* is highly mandatory.

Example 1 (Directive 2014/104/EU of the European Parliament and of the Council)

> [EN] Member States **shall ensure** that any natural or legal person who has suffered harm caused by an infringement of competition law is able to claim and to obtain full compensation for that harm.
>
> [EL] Τα κράτη μέλη **εξασφαλίζουν** ότι οιοδήποτε φυσικό ή νομικό πρόσωπο που έχει υποστεί ζημία λόγω παράβασης του δικαίου ανταγωνισμού μπορεί να αξιώσει και να επιτύχει πλήρη αποζημίωση για την εν λόγω ζημία.

Example 2 (Regulation (EU) No 596/2014 of the European Parliament and of the Council)

> [EN] ESMA **shall submit** those draft regulatory technical standards to the Commission by 3 July 2015.
>
> [EL] Η ΕΑΚΑΑ **υποβάλλει** στην Επιτροπή τα εν λόγω σχέδια ρυθμιστικών τεχνικών προτύπων μέχρι τις 3 Ιουλίου 2015.

As far as the second question is concerned, the qualitative analysis has shown that the majority of instances of deontic *shall* is translated with verbs in present tense of the indicative mood in Greek. This is in accordance with the institutional rules and can also be observed in examples 1

and 2 as well as in the following examples, which present instances of deontic *shall*:

Example 3 (Council Regulation (EC) No 1/2003)

> [EN] The abuse of a dominant position referred to in Article 82 of the Treaty **shall be prohibited**, no prior decision to that effect being required.
>
> [EL] Η καταχρηστική εκμετάλλευση δεσπόζουσας θέσης όπως αναφέρεται στο άρθρο 82 της συνθήκης **απαγορεύεται**, χωρίς να είναι αναγκαία η προηγούμενη έκδοση σχετικής απόφασης.

Example 4 (Directive 2014/65/EU of the European Parliament and of the Council)

> [EN] The investment firm **shall provide** all information, including a programme of operations setting out…
>
> [EL] Η επιχείρηση επενδύσεων **παρέχει** όλες τις πληροφορίες, συμπεριλαμβανομένου προγράμματος δραστηριοτήτων…

Example 5 (Directive 2014/65/EU of the European Parliament and of the Council)

> [EN] Member States **shall require** any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an investment firm first to notify in writing the competent authorities…
>
> [EL] Τα κράτη μέλη **απαιτούν** από κάθε φυσικό ή νομικό πρόσωπο, το οποίο αποφάσισε να παύσει να κατέχει, άμεσα ή έμμεσα, ειδική συμμετοχή σε επιχείρηση επενδύσεων, να απευθύνει προηγουμένως γραπτή κοινοποίηση στις αρμόδιες αρχές…

Another very interesting point that arose from the quantitative analysis of the Greek subcorpora is the high frequency of the modal verb *πρέπει* [prepei], even though its use is not recommended by the institutional guidelines for the expression of authoritative meanings in the main clauses of the enacting terms. As already mentioned in the discussion of this particular modal in the previous chapter, it exhibits high frequency in the non-normative parts of the legislative acts, such as the preamble. In addition, it collocates significantly with the particle *θα* (*θα πρέπει* [tha prepei]) in both subcorpora and is used in order to introduce a less authoritative meaning,

which is in accordance with the relevant institutional guidelines for Greek. The following example is very indicative and shows that *θα πρέπει* [tha prepei] corresponds mainly to the English modal verb *should*:

Example 6 (Council Regulation (EC) No 1/2003)

> [EN] To this end, they **should** be empowered to apply Community law.
>
> [EL] Προς τούτο, οι εν λόγω αρχές **θα πρέπει** να έχουν την εξουσία να εφαρμόζουν την κοινοτική νομοθεσία.

However, *πρέπει* [prepei] is also encountered in some instances where it is clearly deontic.

Example 7 (Council Regulation (EC) No 1/2003)

> [EN] Where that is the case, it is **necessary** to ensure that…
>
> [EL] Όταν συμβαίνει αυτό, **πρέπει απαραιτήτως** να λαμβάνεται μέριμνα…

So far, we have mentioned findings from the qualitative analysis that have to do with deontic obligation. As far as deontic permission is concerned, the qualitative analysis provided some interesting findings regarding deontic permission *may* and its Greek equivalents. *May* is, of course, polysemous (like many modals). As far as deontic permission *may* is concerned, we can conclude from the qualitative analysis that it is translated mainly with the Greek modal verb *δύναται/δύνανται* [dynatai/dynantai]. Less frequently, it is translated with the Greek modal verb *μπορεί/μπορούν* [borei/boroun] or with other expressions, such as *έχει το δικαίωμα* [echei to dikaioma] ('has the right to'). For instance, compare the following examples:

Example 8 (Council Regulation (EC) No 1/2003)

> [EN] For this purpose, acting on their own initiative or on a complaint, they **may take** the following decisions.
>
> [EL] Προς το σκοπό αυτό, **δύνανται**, αυτεπαγγέλτως ή κατόπιν καταγγελίας, **να εκδίδουν** τις ακόλουθες αποφάσεις.

Example 9 (Council Regulation (EC) No 1/2003)

> [EN] If the Commission has a legitimate interest in doing so, it **may** also **find** that an infringement has been committed in the past.
>
> [EL] Εφόσον έχει σχετικό έννομο συμφέρον, η Επιτροπή **μπορεί** επίσης **να διαπιστώνει** ότι η παράβαση έχει διαπραχθεί στο παρελθόν.

On the other hand, the modal verb *can,* which can also have the meaning of ability, is usually translated with the Greek modal verb *μπορεί/μπορούν* [borei/boroun], as for example:

Example 10 (Directive 2014/104/EU of the European Parliament and of the Council)

> [EN] …the conditions under which injured parties **can** exercise the right to compensation…
>
> [EL] …σχετικά με τις προϋποθέσεις υπό τις οποίες τα ζημιωθέντα μέρη **μπορούν** να ασκήσουν το δικαίωμα αποζημίωσης…

VI. Summary of the results and final remarks

This study built on a previous study on legislative texts regarding EU Competition Law (Kozobolis 2020) and its initial purpose was to comparatively investigate deontic modality in regulations and directives regarding EU Competition Law. Regulations and directives were chosen for the present study because they are the legal acts of EU secondary law with binding force. However, they have a very interesting difference, namely that regulations apply automatically and uniformly to all EU members as soon as they enter into force, while directives leave them free to choose how to achieve a certain result. Thus, a comparative study between these two legal types was deemed necessary (see also Kozobolis 2020: 104).

For the purposes of this study and in order to answer the research questions set from the beginning, a bilingual English-Greek corpus was compiled and analysed using the AntConc software. In addition, two subcorpora were compiled, i.e. the subcorpus of regulations and the subcorpus of directives. The questions that the study aimed to answer are as follows:

- How is deontic modality expressed in regulations and directives in the English-Greek bilingual corpus?
- Are there significant differences in the distribution and types of deontic modality in regulations and directives?
- To what extent are the relevant institutional guidelines for English and Greek followed?

In order to answer these questions, the corpus was analysed using quantitative and qualitative analysis methods. At first, the corpus was analysed quantitatively using the AntConc software. More specifically, modals, semi-modals and other related patterns were analysed and presented in graphs (section V). The results were then compared to the specific institutional guidelines for English and Greek.

After the quantitative results, a more thorough qualitative analysis followed, in which the concordances and the collocations of modal verbs were analysed in depth. In addition, the analysis of three regulations and directives provided another source of results, while their comparison to those of the quantitative analysis was also very fruitful.

Revisiting the questions from the beginning of the study, the analysis provided the following answers:

As far as the first question is concerned, deontic modality is expressed in various ways in both regulations and directives in English and Greek. On the one hand, the most prominent way for the expression of deontic modality in English is the use of modal verbs. More specifically, the modal verb *shall* is used a lot for the expression of deontic obligation. The qualitative analysis showed that its deontic use corresponds to the presence of verbs in the indicative mood in the Greek subcorpus as expected. The Greek modal *πρέπει* [prepei], which means *must*, is normally highly mandatory, but it collocates a lot with the Greek particle *θα* [tha] and is not highly authoritative. However, sometimes it is used in order to express deontic obligation (see previous chapter). Other related patterns in both subcorpora, like nouns, verbs, adverbs and adjectives, are also present, but their frequency is not very high. On the other hand, deontic permission is

mainly expressed in English subcorpora with the use of modal *may*, which is mainly translated with the Greek modal *δύναται/δύνανται* [dynatai/dynantai]. Again, certain nouns, verbs, adverbs, adjectives and other related patterns present deontic use, but their frequency is not as high.

The second question, which was actually the starting point of this study, was answered mainly from the quantitative analysis. Regulations and directives do not seem to present significant differences in the expression of deontic modality in both languages. This can lead us to the conclusion that their binding force prevails. Even in directives, which give their addressees the freedom to reach a certain result and do not have to be implemented right away (as is the case with regulations), the binding force seems to be as powerful as it is in regulations.

As far as the third question is concerned, we can claim that the institutional guidelines regarding deontic modality for authors and translators are often followed, something that is line with other studies on other languages (cf. Biel 2014a). The institutional guidelines are mainly about the main clauses of the enacting terms, namely the normative part of a legislative act. From the qualitative analysis, we can conclude that the rules are often followed in the enacting terms of both languages. In English, *shall* is used to a great extent, while *must* and *should* are usually avoided, whereas in Greek, verbs in the present simple tense are used in correspondence to *shall* as it is suggested in the guidelines. In addition, deontic permission is expressed mainly with the use of modal *may* in English, as suggested.

The present study was quite challenging because of the specific nature of modality and the fact that it varies a lot from one language to another (cf. Palmer 2001: 2). Indeed, deontic modality is expressed differently in English and Greek. However, its complexity makes it a very interesting area of research. This study showed that deontic modality is generally expressed with the same means in regulations and directives regarding EU Competition Law and that the institutional guidelines for authors and translators of EU legislative texts in English and Greek are often followed. However, the fact that deontic modality is a very complex category leaves space for more studies which will cast more light on it and re-evaluate the results of the

present study. For example, the results of this study could be the starting point for a comparative study of deontic modality between EU legislative texts, such as regulations and directives, and other types of legal instruments, such as judgements of the General Court.

VII. References

Anthony, Laurence. 2019. *AntConc* (Version 3.5.8) [Computer Software]. Tokyo, Japan: Waseda University. https://www.laurenceanthony.net/software.

Biel, Łucja. 2014a. The textual fit of translated EU law. A corpus-based study of deontic modality. In: *The Translator* 20 (3), 332-355.

Biel, Łucja. 2014b. *Lost in the Eurofog. The textual fit of translated law*. Frankfurt am Main: Peter Lang.

Bowker, Lynne / Jennifer Pearson. 2002. *Working with specialized language. A practical guide to using corpora.* London: Routledge.

Collins, Peter. 2009. *Modals and quasi-modals in English*. Amsterdam: Rodopi.

Dash, Niladri Sekhar. 2008. *Corpus linguistics. An introduction*. New Delhi: Pearson Longman.

Depraetere, Ilse / Susan Reed. 2006. Mood and modality in English. In: Bas Aarts / April McMahon (eds.), *The handbook of English linguistics*. Malden, MA: Blackwell, 269-290.

European Commission. 2018a. *English Style Guide. A handbook for authors and translators in the European Commission for English*. http://ec.europa.eu/info/sites/info/files/styleguide_english_dgt_en.pdf. Last access 21.10.2020.

European Commission. 2018b. *Greek Style Guide. A handbook for authors and translators in the European Commission for Greek*. https://ec.europa.eu/translation/greek/guidelines/documents/styleguide_greek_dgt_el.pdf. Last access 21.10.2020.

European Union. n.d. *Official website of the European Union*. https://europa.eu/european-union/eu-law/legal-acts_en. Last access 10.4.2020.

Felici, Annarita. 2010. Translating EU law. Legal issues and multiple dynamics. In: *Perspectives. Studies in Translatology* 18 (2), 95-108.

Felici, Annarita. 2012. 'Shall' ambiguities in EU legislative texts. In: *Comparative Legilinguistics* 10, 51-66.

Garzone, Giuliana. 2013. Variation in the use of modality in legislative texts. Focus on *shall*. In: *Journal of Pragmatics* 57, 68–81.

Hart, H.L.A. 2012. *The concept of law*. Oxford: Oxford University Press.

Hasko, Victoria. 2012. Qualitative corpus analysis. In: Carol A. Chapelle (ed.), *The Encyclopedia of Applied Linguistics*. Wiley Online Library, 4758-4764.

Holton, David / Peter Mackridge / Irene Philippaki-Warburton. 1999. *Γραμματική της ελληνικής γλώσσας / Grammatikḗ tēs Ellēnikḗs glṓssas.* Translated by Vasilis Spyropoulos. Athens: Patakis.

Huddleston, Rodney / Geoffrey K. Pullum. 2002. *The Cambridge grammar of English language.* London: Cambridge University Press.

Klairis, Ch. / G. Mpampiniotis (in cooperation with A. Mozer / Aik. Mpakakou-Orfanou / St. Skopetas). 2005. *Γραμματική της νέας ελληνικής. δομολειτουργική-επικοινωνιακή / Grammatikí tīs néas ellīnikís. Domoleitourgikí-epikoinōniakí* [in Greek]. Athens: Ellinika grammata.

Kozobolis, Stavros. 2020. A corpus-based study on deontic modality in competition law. Insights from the English-Greek language pair. In: *Estudios de Traducción* 10, 91-106.

Kreidler, Charles W. 1998. *Introducing English semantics*. London: Routledge.

McEnery, Tony / Andrew Hardie. 2012. *Corpus linguistics. Method, theory and practice.* Cambridge: Cambridge University Press.

Morante, Roser / Caroline Sporleder. 2012. Modality and negation. An introduction to the special issue. In: *Computational Linguistics* 38, 223-260.

Palmer, Frank R. 2001. *Mood and modality*. 2nd edition. Cambridge: Cambridge University Press.

Palmer, Frank. 2003. Modality in English. Theoretical, descriptive and typological issues. In: Roberta Facchinetti / Frank Palmer / Manfred Krug (eds.), *Modality in contemporary English*. Berlin: Mouton de Gruyter, 1-18.

Portner, Paul. 2009. *Modality*. Oxford: Oxford University Press.

Publications Office. 2015a. *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation for English*. Luxembourg. https://op.europa.eu/en/publication-detail/-/publication/3879747d-7a3c-411b-a3a0-55c14e2ba732. Last access 21.10.2020.

Publications Office. 2015b. *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation for Greek*. Luxembourg. https://op.europa.eu/el/publication-detail/-/publication/3879747d-7a3c-411b-a3a0-55c14e2ba732/language-el. Last access 21.10.2020.

Robinson, William. 2005. How the European Commission drafts legislation in 20 languages. In: *Clarity* 53, 4-10.

Saeed, John I. 2003. *Semantics*. 2nd edition. Chichester: Wiley Blackwell.

Salkie, Raphael / Pierre Busuttil / Johann van der Auwera (eds.). 2009. *Modality in English. Theory and description*. Berlin: Mouton de Gruyter.

Šarčević, Susan. 1997. *New approach to legal translation*. The Hague: Klüwer Law International.

Sosoni, Vilelmini. 2012. A hybrid translation theory for EU texts. In: *Vertimo Studijos* 5 (5), 76-89.

Sosoni, Vilelmini / Katia Lida Kermanidis / Sotirios Livas. 2018. Observing Eurolects. The case of Greek. In: Laura Mori (ed.), *Observing Eurolects. Corpus analysis of linguistic variation in EU law*. Amsterdam: John Benjamins, 169-198. (Studies in Corpus Linguistics 86)

Tognini-Bonelli, Elena. 2001. *Corpus linguistics at work*. Band 6. Amsterdam: John Benjamins.

Tsangalidis, Anastasios. 2004. Disambiguating modals in English and Greek. In: Roberta Facchinetti / Frank Palmer (eds.), *English modality in perspective*. Frankfurt am Main: Peter Lang, 231-268.

Williams, Christopher. 2009. Legal English and the 'modal revolution'. In: Raphael Salkie / Pierre Busuttil / Johann van der Auwera (eds.), *Modality in English. Theory and description*. Berlin: Mouton de Gruyter, 199-210.

List of abbreviations

EC European Commission
EL Greek
EN English
EU European Union

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Building Immigration through Legal Language: A Corpus-Driven Analysis of British Judicial Decisions

Abstract

This research introduces the analysis of a 3.7-million-word corpus of judicial decisions issued by British courts between the years 2016 and 2017 which revolve around the phenomenon of immigration. The study is framed within the field of corpus-based discourse analysis (CBDA) and aims at providing a portrayal of migrants as seen through the lens of the judiciary, which adds to the literature in the area, mostly focused on their representation in the media.

The corpus was processed using *Wordsmith 8.0* (Scott 2019) and the list of the top 1,000 keywords (KWs) extracted was analysed. They were filtered by removing those KWs which pertained to general legal terminology and classified into six major topics, namely *appraisal*, *asylum*, *non-general legal terms*, *provenance*, *family* and *humanisation*. Statistically, the categories *provenance* and *asylum* stand out as the ones displaying the highest keyness average, thus being more representative of the corpus and revealing that a large proportion of the texts dealt with asylum requests, appeals or deportations. The rest of the categories, especially *appraisal* and *humanisation*, clearly relate to the distressing circumstances that migrants go through in their pursuit of asylum in the UK, often being prey to human trafficking. The category *non-general legal terms* also associates the phenomenon of migration to crime, including instances of foreign citizens being denied asylum or being directly returned to their home countries due to a previous criminal record. However, the figures associated with this vision of migrants are less significant than those displayed by other categories such as *humanisation* or *appraisal*.

I. Introduction

In recent years, Eurostat,[1] the statistical office of the European Union, has reported that the United Kingdom was the country in the EU receiving the highest number of long-term immigrants.[2] This was the case from 2009 to 2011, when roughly 575,000 citizens migrated to British soil every year. From 2012 to 2017, the UK moved to the second position in the rank, below Germany, adding up to 3.5 million migrants crossing their borders within that time span. Immigration policies have become a major concern in Europe and specifically in the United Kingdom, where the political debate has often steered towards this issue.

However, how does the legal system react to this phenomenon? What can legal texts tell us about migrants? And most importantly, what image do judicial decisions project of migrants going through legal proceedings?

Migration movements into the UK have been examined from different angles in the field of corpus-based discourse analysis (CBDA). As explained in further detail in section II, authors such as Baker / Gabrielatos / McEnery (2013) have analysed the representation of migrants in the British press, yet little research has been devoted to legal texts (with a few exceptions) in spite of them potentially being capable of adding a unique perspective to their portrayal.

Judicial decisions are fundamental as a legal genre in case law legal systems like the UK's, where the law revolves around the principle of binding precedent to work, that is to say, a case tried at a higher court must be cited and applied whenever it is similar to the one being heard in its essence (the *ratio decidendi*). Another fact that makes judicial decisions an outstanding legal genre is that they not only cover all the branches of law, but might also present full embedded sections of other public and private law genres, therefore displaying great lexical richness and variety and being highly representative of this English for Specific Purposes (ESP) branch.

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[1] Eurostat office website: https://ec.europa.eu/eurostat/databrowser/view/tps00176/default/bar?lang=en. Last access 20.9.2020.

[2] The data recorded in this section are prior to Brexit.

This research therefore seeks to bridge the existing gap and explore the image of migrants through the analysis of legal text. To that end, a 3.7-million-word corpus of British judicial decisions was processed. It comprises 600 texts issued between 2016 and 2017 and was obtained from official online sources.

Section II of this study offers a literature review of corpus-based discourse analyses of texts dealing with immigration, and section III introduces the methodology implemented to obtain the results, which are displayed and discussed in section IV, followed by the conclusion in section V.

II. Literature review

Legal language has traditionally been described by implementing rather prescriptive methodologies based on scholars' deep knowledge of the field (Mellinkoff 1963; Alcaraz Varó 1994; Tiersma 1999), which do not usually incorporate corpus linguistics techniques for its characterisation. Nevertheless, there is a growing tendency to apply those techniques to the study of legalese (Marín Pérez / Rea Rizzo 2012; Biel / Engberg 2013; Pontrandolfo / Goźdź-Roszkowski 2014; Breeze 2015). Such studies allow for a bottom-up characterisation of large text collections, whose capacity to represent a specialised language is greater than more reduced language samples. However, there is still a need to continue exploring legal language in such a manner so that the conclusions drawn allow scholars to provide a more comprehensible and more reliable representation of this ESP variety. In fact, corpus-based language studies allow us to unveil features of language use which might otherwise remain unnoticed.

There seems to be common agreement on the objective nature of legal texts, particularly as regards judicial decisions, which are expected to be based on mere fact and leave little room for subjectivity. Yet, as illustrated by Marín Pérez (2019) through the automatic identification of linguistic evidence extracted from two Spanish and British legal corpora, the role of subjective language potentially capable of expressing appraisal is more than relevant.

The phenomenon of immigration has also been examined within the field of discourse analysis based on the data extracted from newspaper corpora. The presence of immigration in public discourse has been explored by authors like Baker / Gabrielatos / McEnery (2013), who present a longitudinal analysis of the representation of Muslims in the British press. They classify the keywords found in the corpus and group them into different categories, showing that Muslims were connected by the news writers to the idea of conflict (cf. Baker / Gabrielatos / McEnery 2013: 275) and were prone to take offence and to get involved into radicalism. Along these lines, Taylor (2014) also examines two corpora of Italian and British newspaper articles where she identifies the idea that immigration and crime are explicitly related in the Italian texts, whereas the British corpus does present such an evident association.

On the other hand, the number of studies focusing on legal texts and immigration is scarce. This is the case of Pérez-Paredes / Aguado Jiménez / Sánchez Hernández (2017) and Sánchez / Aguado / Pérez-Paredes (2019), who scrutinise UK and Spanish legislation and official information in search for the institutional perspective adopted in the way migrants are portrayed. Sánchez / Aguado / Pérez-Paredes (2019) affirm that, while Spanish legislative texts appear to favour the integration of migrants by relating them to other terms such as *ciudadano* ('citizen') or *personas* ('people'), which frequently collocate with the term or appear in its vicinity, the British corpus illustrates the relationship between migrants in the UK and control processes (Pérez-Paredes / Aguado Jiménez / Sánchez Hernández 2017), which they are subject to, avoiding the more humanised angle the Spanish legal texts seem to display.

In light of the above, there seems to be a need for more corpus-based/driven studies of legal texts that allow for a reliable characterisation of the phenomenon of immigration in European countries, where the figures clearly demonstrate its major social relevance. Examining legal texts in relation to this topic might complement the work that has been done to date on the public representation on migrants and let us study such a complex

phenomenon in much greater depth. This study was thus conceived to try and bridge the existing gap.

III. Methodology

1. Corpus description

As shown in Table 1, the corpus used in this study comprises 600 judicial decisions issued by British courts, which contain 3.7 million running words or tokens. As a consequence, the number of types, that is, the number of different words in a text collection regardless of the number of times they occur within it, is 25,268.

The source employed to obtain the texts, which were produced between 2016 and 2017, is the *BAILII*[3] (British and Irish Legal Information Institute), which offers free access to public judgments from British courts.

Corpus	Texts	Tokens	Types
British corpus *BAILII*	600	3,723,587 **(3.7m)**	25,268

Tab. 1: Corpus description

The selection of the texts in the corpus was made with the search engines included in the *BAILII* website, which allows for advanced searches. The search terms used to obtain the texts were *immigration*, *migration*, *immigrant* and *migrant*. All the texts selected are judicial decisions made by courts and tribunals within the British jurisdiction.

2. Keywords analysis

The legal corpus was processed using *Wordsmith 8.0* (Scott 2019), which allowed for the identification of the keywords in it. To that end, a 20-million-word general English corpus, LACELL (*Lingüística Aplicada Computacional, Enseñanza de Lenguas y Lexicografía*), was also analysed and compared with the legal one through the implementation of the *log-*

[3] http://www.bailii.org/. Last access 20.9.2020.

likelihood algorithm (Rayson / Garside 2000), which led to the automatic extraction of the most relevant keywords in the specialised corpus.

Keywords (KWs) are terms in specialised corpora which stand out as relevant and representative of a given corpus due to their peculiar statistical behaviour when contrasted with general language usage. The measure or algorithm applied for their identification might vary but it essentially relates to term frequency and distribution in two corpora, one of them used as reference (the general corpus). A word like *defendant*, while it may be found and used in general language, occurs more frequently in legal texts; therefore, its frequency and distribution in a legal corpus will be higher than in a general one. If *defendant* was identified as a top-ranking legal KW in a collection of legal texts, this might also be indicative of the topic such texts revolve around, together with other terms within the KW list.

In that vein, a closer scrutiny of the top 1,000 KWs retrieved from our legal corpus showed that a large proportion of those KWs were legal terms referring to legal proceedings and courts such as *decision*, *appeal*, *tribunal*, *appellant* or *judge*, which amount to approximately 65% out of the KW inventory considered for this research (another 10% were function words, which were also discarded). Consequently, a direct relationship could easily be established between these KWs and the legal genre the corpus stems from, namely judicial decisions. Table 2, which shows the top 20 KWs identified by the software, illustrates this trend.

KW rank	KW list	Raw freq.	Rel. freq. (per 10,000 W)	Keyness
1	DECISION	13,879	37.27319	32,991.55469
2	APPEAL	11,214	30.11612	29,484.05078
3	IMMIGRATION	8,512	22.85967	25,938.05469
4	TRIBUNAL	7,824	21.01199	24,135.77344
5	APPELLANT	7,574	20.34060	24,133.78711
6	COURT	11,428	30.69083	24,042.83008
7	THAT	81,725	219.47923	23,276.23828
8	THE	305,801	821.25380	21,986.9082
9	JUDGE	786	2.11086	20,659.1582
10	ARTICLE	7,966	21.39335	20,558.2500
11	CASE	11,742	31.53410	18,067.63672
12	EVIDENCE	8,861	23.79694	17,524.17773
13	PARAGRAPH	6,111	16.41159	16,229.87988
14	APPLICATION	7,144	19.18580	15,945.07617
15	CLAIMANT	493	1.32399	15,010.29688
16	STATE	9,264	24.87923	14,588.84375
17	MR	10,959	29.43129	13,102.01367
18	RESPONDENT	4,015	10.78261	12,832.74414
19	V	6,244	16.76877	12,799.22656
20	SECRETARY	6,258	16.80637	12,712.34766

Tab. 2: Top 20 keywords

In addition, other topics were also spotted in the examination of the KWs at issue, which caught our attention and might provide further information on the image that British courts project of migrants. The following sections explore the different categories covered in greater detail.

IV. Results and discussion

Following from the above, the corpus was processed and, once the general legal terms and function words had been filtered out, the remaining KWs (roughly 25%) were selected for analysis. Then, they were classified into

semantic categories, as already stated. Table 3 displays the thematic groups which the KWs gathered around. The highest figures associated to each parameter (left column) have been highlighted to facilitate their visual comparison.

	APPRAISAL	ASYLUM	NON-GENERAL LEGAL KWs	PROVENANCE	HUMANISATION	FAMILY
# items	51	37	35	20	18	4
Av. freq.	578.56	1,025	594.94	756	918.31	2,637.25
Av. keyness	831.13	1,742.69	1,161	1,838.77	1,427.32	1,676.79
% items	30.90%	22.42%	21.21%	12.12%	10.90%	2.42%
Text range	12.3%	15.5%	14.07%	8%	11%	7%

Tab. 3: KW topics and figures

The category which represents the highest proportion of vocabulary items with respect to the whole list of selected KWs is *appraisal*, in line with the findings presented by Marín Pérez (2019), which are described in greater detail in section III.1. Roughly 30% of the terms selected were capable of expressing the speaker's attitude and thus fall within this category. Words like *error*, *proportionality*, *reasonable*, *arguable* or *exceptional* stand within the first positions in the KW rank. This might be interpreted in consonance with Marín Pérez's (2019) conclusions. The British legal system relies on the principle of binding precedent or *stare decisis,* which allows for greater freedom to interpret the law, which is said to be judge-made. Therefore, the greater proportion of these vocabulary items as opposed to other systems confirms such freedom and demonstrates that immigration is a sensitive issue which may provoke a gut reaction on the part of legal actors involved in legal proceedings, as it often relates to situations of inhumanity, suffering or injustice that migrants have to go through.

In spite of the high figures, *appraisal* is not the most frequent category, as *family*, which contains a very low proportion of terms, such as *child*, *spouse* or *marriage*, presents the highest average frequency, namely 2,637.25. However, their small proportion prevents them from being as representative of the corpus as other groups such as *appraisal*, *provenance* or *asylum*, which could be said to signal the major themes the corpus revolves around, given their high average data.

If we focus solely on keyness, which refers to a term or group of terms whose statistical behaviour makes them stand out in a specialised corpus when contrasted with the same group of terms in a general one, it is the category *provenance* which ranks first, followed by *asylum* and *family*. Nonetheless, and for practical reasons, we decided to concentrate on those categories which may offer a more vivid and graphic portrayal of migration in the UK, given the space limitations and the large amount of data available. Therefore, the sections below display a detailed analysis of the categories *appraisal*, *humanisation* and *non-general legal terms*.

1. Appraisal in Spanish and British judicial decisions

As stated in the literature review, Marín Pérez (2019) scrutinises the two corpora described above in search for linguistic evidence of the vocabulary that might potentially convey the speaker's attitude towards the propositional content of a text. This study was carried out implementing the appraisal system model, from systemic linguistics, which will be briefly described herein as defined by White (2015), Martin (2000), Eggins / Slade (1997), Rothery / Stenglin (2000) and Kaltenbacher (2006).

The appraisal system framework allows for the systematisation of language into categories and subcategories which express such meanings as *affect*, *appreciation*, *judgment* or *amplification*. It would be unexpected to find out that the presence of such lexicon could be more than merely incidental in judicial decisions, given their very textual nature; however, Marín Pérez (2019) found that their rate of occurrence among the most frequent 2,500 types obtained from two corpora of Spanish and British legal texts was greater than initially thought. There was a considerable difference between

the Spanish and the British text collections since the latter contained 33% more of these vocabulary items than the Spanish set. The author relates these findings to the legal systems the texts stem from. She concludes that case law systems like the British one, where the principle of binding precedent allows for greater freedom to interpret and apply the law, might favour the use of vocabulary potentially capable of expressing the speaker's/writer's stance towards the content of the text, as is the case with the British judgments at issue.

As regards the proportion of items found in each of the abovementioned categories from the appraisal system, which was used as the point of departure for the present research, it was found that the differences amongst them and between the Spanish and British corpora were considerable. The category *affect*, which signals emotion on the part of the speaker/writer or appeals to the listener/reader, stood out as the most relevant of the four major systems mentioned above. Approximately 20% of the words in the British type frequency list belonged in this system, being twice as many as the Spanish set, which displayed 10%. The findings described in section III.2.1 below confirm Marín Pérez's (2019) conclusions, as one of the central topics the top 1,000 KWs from the British corpus belong in is *appraisal*.

2. Appraisal KWs

As already stated, the list containing the top 1,000 KWs was filtered by removing those legal terms which related directly to the legal genre the texts belong in, that is, judicial decisions. They represented 65% of the items in the list together with approximately 10% function words. Terms like *regulations*, *supreme*, *discretion*, *promulgate*, *article* or *solicitor* were not taken into consideration for the analysis below since they do not reflect upon the legal processes that migrants have to go through, for instance, in their attempt to be granted a residence permit, which was identified as one of the major themes depicted in the texts at issue. Table 4 displays the top 15 keywords grouped under the label *appraisal*.

KW rank	Keywords	Raw freq.	Rel. freq. (per 10,000 W)	Keyness
104	ERROR	1,684	4.52252	3,219.88916
148	PROPORTIONALITY	777	2.08669	2,372.38306
159	REASONABLE	1,551	4.16533	2,181.39624
232	ERRED	474	1.27296	1,459.25122
239	ARGUABLE	497	1.33473	1,425.27502
245	EXCEPTIONAL	747	2.00613	1,379.84375
280	CREDIBILITY	564	1.51466	1,225.61755
282	COMPELLING	507	1.36159	1,221.82092
284	HARM	824	2.21291	1,207.05762
285	DISPROPORTIONATE	446	1.19776	1,203.64795
303	FAILURE	1,074	2.88431	1,126.03296
304	LIMITED	1,370	3.67924	1,122.56836
307	PROPORTIONATE	392	1.05274	1,113.55908
373	NECESSARY	1,814	4.87164	914.70312
405	SIGNIFICANT	1,175	3.15555	822.25213
460	PRECARIOUS	297	0.79761	701.19360

Tab. 4: Top 15 appraisal KWs

As shown in Table 3, *appraisal* comprises 51 vocabulary items, thus standing first as the most populated of the six thematic categories considered for this analysis. Nevertheless, its average frequency (578.56) and keyness (831.13) is not as high as other groups such as *family* or *asylum*. In spite of that fact, its text range, which signals the average proportion of texts where a word can be found, is higher than other categories, ranking third and being found in 12.3% of the texts in the corpus on average. This data points at its relevance within the corpus and reinforces our view that, contrary to our perception that legal language in general and judicial decisions in particular are expected to be predominantly objective, there is room for subjectivity, above all when it comes to such sensitive issues as immigration.

It is striking that some of the top 15 keywords within this category clearly point at a lack of proportionality in applying the law or the errors and harm migrants might have been subject to. Let us examine their context of usage in greater detail to confirm this perception. The term *error* appears as the most representative of the group as its keyness value is roughly 3,220, almost twice as much as the average for the whole list of 1,000 KWs (1,761). These figures indicate that the argument of a legal error might be recurrent in the texts.

The examination of the concordance lines associated with this term is directly linked to familiar or humanitarian situations surrounding the migrants' appeals to previous decisions which were made erroneously, according to the arguments presented by their defence teams. In the extract (1), we are told about a child being erroneously expelled from the UK, a personal drama that affects many migrant families who find it hard to be reunited in their host countries. Similarly, extract (2) exposes the situation of a Chinese family who were persecuted in their home country for breaking the policy of the only child and appeal for the protection of the UK government, while extract (3) reflects upon a migrant's need for medical treatment for a very serious illness, which he may not receive if he was definitely deported to Tanzania, his home country.

(1) The Secretary of State applied for permission to appeal on the ground that the judge **erred** […] when assessing whether it is reasonable for the eldest child to leave the UK […] The finding was thus **erroneous**, and the **error** also undermined […]

(2) […] the judge was in **error** and his finding in that respect cannot stand […]. The question is whether the applicants, as persons who have breached China's one child policy, may be considered members of a particular social group who face persecution […]

(3) That such **error** as there may have been as to Mr Ali's country of origin could have had little bearing upon the real question of the proportionality of the decision to refuse the appellant's application for LTR. Mr Ali […] would not be able to support himself in Tanzania and would be required to leave NHS treatment and engage with limited AIDS treatment provided at an expense in an African country.

The term *disproportionate* was also scrutinised. The extracts below offer us quite a comprehensive picture of migration in the UK, probably transposable to other countries in the EU, by highlighting the idea that asylum seekers and migrants have often suffered political persecution prior to their voyage to European soil, as extract (4) describes when it says that the defendant has "a well-founded fear of persecution in his own home village". In addition, domestic violence is also found in association with the phenomenon of migration, as shown in extract (5), where migrant women are portrayed as victims of this social scourge who suffer its "disproportionate effects". Likewise, the family context is once more connected with migration in extract (6) where they reflect upon the consequences of deporting one of the members of a married couple, which "would involve indefinite separation".

Nevertheless, extract (7) adds another dimension to the portrait of migrants as presented in British judicial decisions, that of crime, which will be explored in greater detail in section IV.4. Extract (4) refers to deportation as a disproportionate measure applied to cases when a sentence of imprisonment is not severe, in this case, between twelve months and four years.

(4) I find, given that I have found that he does have a well-founded fear of persecution in his own home village […], that it would be a **disproportionate** interference to the legitimate aim of the public interest of immigration control […]

(5) That domestic violence had a **disproportionate** effect on women, especially migrant women, was commented upon in the Scottish Government's […]

(6) Removal would involve indefinite separation. That was a **disproportionate** interference with the fundamental right to cohabit as a married couple.

(7) Those rules, applicable where offenders have received sentences of between 12 months and four years, provide guidance to officials as to categories of case where it is accepted by the Secretary of State that deportation would be **disproportionate**.

Another instance within the category *appraisal* is *precarious,* at the bottom of the *appraisal* category, which might also be used in contexts illustrating the circumstances that migrants have to endure throughout their

regularization processes. *Precarious* is not as relevant as *error* as regards its keyness, standing in 15th position within the rank, although its expressive potential is considerable. In extract (8) below, this term is used to describe an uncertain situation which the migrant's employers used to their advantage. Yet, basically, it pertains to the administrative instability of their situation, being *liable to deportation at any time*, as extract (9) shows. Within this specific legal context, the term *precarious* gains special significance as it is also related to *unlawful*, as extract (10) illustrates:

(8) In the two cases before us, the employment tribunals both found that the reason for the employers' mistreatment of their employees was their victims' vulnerability owing to their **precarious** immigration status.

(9) Delay may be relevant in a second, less obvious, way. An immigrant without leave to enter or remain is in a very **precarious** situation, liable to be removed at any time.

(10) Although an individual's presence in the host country might be described as "unlawful" the word used to describe the commensurate immigration status of such a person was not "unlawful" but "**precarious**", suggesting that the two words were not being used interchangeably.

3. Humanisation KWs

The set of KWs included in Table 5 was grouped under the label *humanisation* as a way of finding a common connection amongst them. They all refer to the human side of the migration; for instance, *persecution*, *trafficking*, *torture*, *abuse* or *segregation* highlight the hard circumstances that surround the life of migrants in their home countries who often find themselves involved in similar situations when they arrive on European soil.

KW rank	Keywords	Raw freq.	Rel. freq. (per 10,000 W)	Keyness
32	RIGHTS	4,748	12.75115	8,989.16797
128	TRAFFICKING	913	2.45194	2,686.68506
163	PERSONS	1,182	3.17436	2,091.49463
281	PERSECUTION	496	1.33205	1,222.91882
296	HUMAN	1,968	5.28523	1,141.88599
311	TORTURE	546	1.46633	1,105.37341
511	ABUSE	578	1.55227	629.67504
529	VICTIM	577	1.54958	608.37664
564	EMPLOYMENT	104	0.27930	563.02624
578	TRAFFICKED	176	0.47266	538.66546
587	OFFENDER	247	0.66334	528.80529
842	VICTIMS	383	1.02858	316.84835
848	SEGREGATION	160	0.42969	315.30719
929	PRISONERS	321	0.86207	268.29672

Tab. 5: Top 15 humanisation KWs

The category *humanisation* is made up of 10.9% of the items in the list of KWs selected, ranking fifth out of six categories as regards this parameter (see Table 3); however, its average keyness, that is, its capacity to represent the whole term inventory, is considerably high, ranking third in this case (1,427.32). The average frequency of these terms is also high, standing at less than 100 points below the second one in the list, *asylum*. Similarly, its degree of representativeness and its relevance as a thematic group is thus reinforced by its high text range, since, in spite of including fewer items than other categories, these are much better distributed throughout the corpus appearing in 11% of the texts.

Out of the top *humanisation* KWs in Table 5, the terms *torture* and *trafficking* appeared to be particularly illuminating in as far as they reveal how migrants have to go through distressful circumstances both in their home and host countries, where they often continue to be victims of abuse. The

keyness figure associated to the latter, *trafficking*, is particularly outstanding, as it is almost 1,000 points above the average for the whole KW list, hence its significance and capacity to represent the corpus and provide a clearer insight into the picture of immigration which is offered in British judicial decisions.

As extracts (11) and (12) below exemplify, migrants are aware of the risk of being deported, often alleging that "they have been the victims of torture" (extract 11) in their home countries. Furthermore, in extract (12), the claimant, a migrant, states that he was also the victim of torture on British soil while being kept under custody at an immigration removal centre. It is probably extract (13) which depicts more vividly how migrant women are recruited by criminal organisations, who take advantage of their vulnerable situations and exploit them in Europe. In this extract, the defendant declares that she was pregnant and was forced to lie under oath that she had not been a victim of human trafficking. Once more and, like a large proportion of the concordances examined illustrate, extract (14) identifies migrants (the generic appellant in this case) as victims of human trafficking.

(11) Thus far, I have considered what the evidence says about the position facing returning asylum seekers […] But I also have to consider whether the individual circumstances […] to put them significantly more at risk […] three of them allege that they have been the victims of **torture**.

(12) […] the Claimant informed Healthcare at the Immigration Removal Centre that he was a victim of **torture**.

(13) I was pregnant and because I was made to swear an oath in [the trafficking destination country], not to tell anyone about the **trafficking** […].

(14) Tribunals must take into account, where relevant, a decision that an appellant has been a victim of **trafficking**.

Along these lines, the word *victim* (in extract (15) below) revolves around the same idea, which portrays migrants as prey to illegal organisations involved in human trafficking. In that vein, extract (16) exposes how migrants often also suffer racial discrimination and appear as the object of racially motivated offences.

(15) […] he is at risk of retrafficking in Pakistan or he has been denied the benefits and protections which would have flowed from a decision that he was a child trafficking **victim** […]

(16) […] where the allegedly offending words on a charge of racially aggravated criminal damage directed to the **victim**, a Turkish resident in this country for some years, were "bloody foreigners".

4. Non-general legal KWs

The category *non-general legal KWs,* exemplified below in Table 6, offers us a more specialised picture of migration as reflected on legal texts, since it comprises those terms that relate to the legal proceedings in which migrants might get involved. This thematic group is not the one displaying the highest frequency values (it ranks fifth out of the six categories in this research); however, it is the third one as regards the number of items that fall within it (21.21%) and the second one concerning text distribution (14.07%). In spite of keyness and frequency not being higher than the average, its greater text range (the average proportion of texts where they can be found) and the larger number of items found in it make it stand out as a relevant group to be considered for analysis.

KW rank	Keywords	Raw freq.	Rel. freq. (per 10,000 W)	Keyness
28	DETENTION	3509	9.42371	10,480.3838
84	BREACH	1475	3.96123	3,749.33618
156	CRIMINAL	1279	3.43486	2,241.82861
231	LAWFUL	557	1.49587	1,460.37085
294	IMPRISONMENT	574	1.54152	1,161.11682
298	OFFENCE	1033	2.77421	1,137.68164
300	OFFENCES	732	1.96585	1,131.81582
326	LAWFULLY	367	0.98561	1,046.62805
330	DETAIN	374	1.00441	1,035.96143
346	DUTY	1016	2.72855	995.29400
347	OBLIGATION	595	1.59792	994.50677
349	COMPLY	523	1.40456	990.72668
360	DAMAGES	590	1.58449	955.15411
367	ILLEGAL	616	1.65432	934.12060
374	AUTHORITY	1664	4.46881	910.76678

Tab. 6: Top 15 non-general legal KWs

Similarly to many other examples in this thematic group, *criminal* is associated with regulations and directives which define what concepts like *foreign criminal* are according to British regulations. In extract (17) and as already mentioned above, a foreign criminal is presented as a non-British citizen who commits an indictable offence and is sentenced to more than 12 months with certain exceptions. A large amount of the contexts of usage of the term *criminal* are very similar to this example although others also relate migrants to crime; however, their proportion is considerably lower, as illustrated in extracts (18) and (19), where some foreign citizens are linked to criminal activity.

(17) […] a "foreign **criminal**", a person who is not a British citizen, following conviction for a criminal offence for which he has been sentenced to 12 months imprisonment or more […]

(18) […] Mr Feng had any involvement with the **criminal** activity for which Mr Dong was convicted. There is, however, an issue about the extent of business dealings, if any, between Mr Feng and Mr Dong and whether they were friends.

(19) From the evidence before us we find that it is likely that the Appellant had been involved with **criminal** activity in the past for which he was not arrested or charged.

Unlike *criminal*, the term *offence* establishes a more direct connection between the concept of crime and migration, whereby migrants appear as the perpetrators, as shown below. In these extracts, the defendants are accused of injuries, of inducing the breach of immigration law and of drug dealing. This relationship sometimes affects their applications or appeals to remain in the country, thus hindering the possibility of being granted leave to do so due to some pre-existing criminal record.

(20) […] The appellant is the only person to have been convicted and sentenced for this **offence** […] The injured party had great difficulty in accepting his injury […]

(21) The particulars of that **offence** are that on a date […] you did an act which facilitated the commission of a breach of immigration law by the said Chen Liang, who was not a citizen of the European Union.

(22) The appellant states that he came to the UK in fear of his life. He states that he wanted to claim asylum but he did not do so. When his visa expired he remained here illegally, and then committed a serious drug **offence**.

5. Remaining categories

The remaining categories add to the portrait of migration in the UK by basically reinforcing the major elements that have already been examined above. The thematic group *family*, which ranks first according to frequency (2,637.25 on average) and third due to keyness (1,676.79), is not as well distributed as other categories, being found in 7% of the text in the corpus. It is the term *family* itself which stands out as the most frequent of the set and displays a considerably high keyness value, 2,000 points above the average for the whole corpus (roughly 1,700). Following from the above and given the high figures associated with the category *asylum* (sum-

marised in Table 2) and the scrutiny of most of the concordance lines above, the texts in the corpus fundamentally revolve around asylum requests and appeals to reconsider rejections or deportation orders. Therefore, the term *family* is key as part of these requests, where the right to family unification or family rooting is often employed as an argument by the defence teams, as illustrated by the excerpts below.

(23) […] the appeal should have been allowed because he could demonstrate compliance and this meant that an adverse decision would be disproportionate to his Article 8 rights because such a decision would require his separation from the rest of his **family**.

(24) Mr Folkes submitted witness statements from a range of individuals who praised his integrity, hard work, community activities and commitment to friends and **family**.

The category *asylum* differentiates itself as the most relevant topic in the corpus. Its average keyness as well as the keyness of terms like *asylum* itself (11,834.72), *deportation* (7,734.13), *remain* (4,564.85) or *refugee* (3,221.28) clearly indicate their significance and degree of representativeness within the text collection, as stated above. Extracts (25), (26) and (27) below exemplify various cases where foreign citizens were granted asylum at a given point in time (25), failed to obtain it and were investigated for that reason in their home country (26), or their asylum claim was refused (27).

(25) The applicant was born in Libya in 1975. In 1997, he entered the United Kingdom and claimed **asylum**. In 2001, the respondent recognised the applicant as a refugee.

(26) […] British Embassy in Khartoum that any individual identified as failed **asylum** seeker it is standard practice to have their documents removed and detained for investigation by the immigration authorities […]

(27) The origins of this appeal are traceable to a decision made on behalf of the Secretary of State for the Home Department […] whereby the application of the Appellant, a national of Pakistan aged 20 years, for asylum, was refused.

Finally, the category *provenance*, which stands first as regards keyness alongside with *asylum* (at a very short distance), completes the information contained in the latter by adding to the profile of asylum seekers and letting

us know about their home countries, such as Nigeria, Afghanistan, Iraq, Pakistan, Ethiopia or Somalia, amongst others. The term *regime*, which is polysemic, was also included within this group whenever used as a synonym for authoritarian government, since it may inform us about the political situation in these countries and contribute to complementing other categories such as *humanisation* or *appraisal.* As exemplified below, this term might point at the distressing circumstances which migrants often have to face in their home countries prior to their pursuit for asylum in the UK.

(28) […] can see no reason why Sudanese authorities should differentiate between political activities outside and inside Sudan, provided their aim is to change the political situation in Sudan in ways threatening President Umar al-Bashir's **regime** […]

(29) There is evidence that students and youth activists have been targeted for their role in the civil unrest and criticism of the **regime**. A paper from the African Centre for Justice and Peace Studies […]

V. Conclusion

The main objective of this research was to offer a portrait of migration in the UK as seen through the lens of the judiciary. It was intended to bridge the existing gap in the area, since most of the literature analyses this phenomenon from the perspective of news texts, while very little research has been done to date within the field of legal English, in spite of its potential.

For that purpose, a 3.7-million-word corpus was analysed and a list of the top 1,000 keywords extracted from it was filtered and divided into six different thematic categories, namely *appraisal*, *asylum*, *non-general legal terms*, *provenance*, *family* and *humanisation.* The categories were analysed both quantitatively, by scrutinising different parameters such as keyness, frequency, number of items in the category or text range, and qualitatively, through the interpretation of the results obtained.

As regards the quantitative dimension of the analysis and the average figures associated with each category and parameter, the group *appraisal* stood out as the one with the greatest proportion of vocabulary items in-

cluded in it, followed by *asylum* and *non-general legal terms*. The vocabulary set displaying the highest keyness values, which might indicate the capacity for a term or group of terms to represent a specialised text collection when compared against a general corpus, is *provenance*, while *asylum* and *family* stand in second and third position respectively.

Such figures, amongst others examined above, reveal that the texts revolve around legal proceedings related to asylum requests, appeals or sentences of deportation, given that terms like *deportation*, *refugee*, *visa* or *immigrant* itself present high values for several of the parameters considered, hence their statistical significance as topic markers.

Nevertheless, the fact that *appraisal* stood out as the most populated category caught our attention and was analysed in greater detail, showing that terms like *error*, *disproportionate* or *precarious* were often connected to the distressing circumstances that migrants go through in their process to be granted residence permit in the UK, having to suffer political persecutions, having instable working conditions or being separated from their closest relatives.

The examination of the category *humanisation* led to a similar interpretation, as it revealed migrants as victims of torture and human trafficking both in their home and host countries, as the context of usage of terms like *persecution*, *torture*, *trafficking* or *abuse* illustrate.

Finally, the thematic group *non-general legal terms*, mostly linked to the regulations and directives that are cited in the texts, also relates migrants to crime, presenting them as perpetrators of major offences such as injuries, drug dealing or the breach of immigration law, which often hinder the granting of asylum requests. From a statistical perspective, this association between migration and crime is less significant than other relationships established above.

VI. References

Alcaraz Varó, Enrique. 1994. *El inglés jurídico. Textos y documentos*. Madrid: Ariel Derecho.

Baker, Paul / Costas Gabrielatos / Tony McEnery. 2013. *Discourse analysis and media attitudes. The representation of Islam in the British press*. Cambridge: Cambridge University Press.

Biel, Łucja / Jan Engberg. 2013. Research models and methods in legal translation. In: *Linguistica Antverpiensia* 12, 1-11.

Breeze, Ruth. 2015. Teaching the vocabulary of legal documents. A corpus-driven approach. In: *ESP Today* 3 (1), 44-63.

Eggins, Suzanne / Diana Slade. 1997. *Analysing casual conversation.* London: Casell.

Kaltenbacher, Martin. 2006. Culture-related linguistic differences in tourist websites. The emotive and the factual. A corpus analysis within the framework of appraisal. In: Goeff Thompson / Susan Hunston (eds.), *System and corpus. Exploring connections*. London: Equinox, 269-292.

Marín Pérez, María José / Camino Rea Rizzo. 2012. Structure and design of the BLRC. A legal corpus of judicial decisions from the UK. In: *Journal of English Studies* 10, 131-145.

Marín Pérez, María José. 2019. Exploring the unexpected in legal discourse. A corpus-based contrastive analysis of Spanish and British judgments on immigration. In: *ESP Today* 7 (2), 161-183.

Martin, James. 2000. Beyond Exchange. APPRAISAL Systems in English. In: Susan Hunston / Geoff Thompson (eds.), *Evaluation in text. Authorial stance and the construction of discourse.* Oxford: Oxford University Press, 142-175.

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

Pérez-Paredes, Pascual / Pilar Aguado Jiménez / Purificación Sánchez Hernández. 2017. Constructing immigrants in UK legislation and administration informative texts. A corpus-driven study (2007–2011). In: *Discourse and Society* 28 (1), 81-103.

Pontrandolfo, Gianluca / Stanislav Goź ź-Roszkowski. 2014. Exploring the local grammar of evaluation. The case of adjectival patterns in American and Italian judicial discourse. In: *Research in Language* 12 (1), 71-91.

Rayson, Paul / Roger Garside. 2000. Comparing corpora using frequency profiling. In: Adam Kilgarriff / Tony Berber Sardinha (eds.), *Proceedings of the workshop on comparing corpora, held in conjunction with the 38th annual meeting of the Association for Computational Linguistics (ACL 2000)*. Hong Kong: Association for Computational Linguistics, 1-6.

Rothery, Joan / Maree Stenglin. 2000. Interpreting literature. The role of APPRAISAL. In: Len Unsworth (ed.), *Researching language in schools and communities. Functional linguistics perspectives.* London: Casell, 222-244.

Sánchez, Purificación / Pilar Aguado / Pascual Pérez-Paredes. 2019. Featuring immigrants and citizens. A comparison between Spanish and English primary legislation and administration information texts (2007–2011). In: Lorella Viola / Andreas Musolff (eds.), *Migration and media. Discourses about identities in crisis*. Amsterdam: John Benjamins, 63-90.

Scott, Mike. 2019. *WordSmith Tools version 8.* Stroud: Lexical Analysis Software.

Taylor, Charlotte. 2014. Investigating the representation of migrants in the UK and Italian press. A cross-linguistic corpus-assisted discourse analysis. In: *International Journal of Corpus Linguistics* 19 (3), 368-400.

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

White, Peter. 2015. *The language of attitude, arguability and interpersonal positioning*. The Appraisal website. http://www.grammatics.com/appraisal/. Last access 20.9.2020.

List of abbreviations

BAILII	British and Irish Legal Information Institute
CBDA	corpus-based discourse analysis
ESP	English for Specific Purposes
EU	European Union
KW	keyword
LACELL	*Lingüística Aplicada Computacional, Enseñanza de Lenguas y Lexicografía*
UK	United Kingdom

Maria Mushchinina

Aufrufe im Russischen: Zur Form und Interpretation

Abstract

Der Artikel befasst sich am Beispiel des Russischen mit dem Spezialfall von Aufforderungen – den Aufrufen. Beispielhaft werden Aufrufe betrachtet, die in der Regel die Form kurzer Losungen haben. Wenn solche Aufrufe gegen bestimmte soziale Gruppen gerichtet werden, können sie unter bestimmten Umständen als Sprachdelikte gewertet werden. Aufrufe können in direkter Form ausgedrückt sein, wobei sie sich über typische grammatische Merkmale definieren lassen. Werden sie in indirekter Form ausgedrückt, könnten andere Merkmale eruiert werden, die Äußerungen als Aufrufe deuten lassen. In der vorliegenden Untersuchung dienen dafür Konzepte, die das direktive Potenzial einer Äußerung realisieren können. Um Tendenzen bei der Wahrnehmung indirekt ausgedrückter Aufrufe festzustellen, wurden Befragungen unter 32 russischen Muttersprachlern durchgeführt. Die Ergebnisse der Untersuchung tragen zur systematischen Interpretation indirekt ausgedrückter Sprechakte bei.

I. Einleitung

Der vorliegende Beitrag handelt von Aufrufen, d.h. von Aufforderungen zum Handeln, die sich grundsätzlich an einen kollektiven Empfänger wenden. Die Aufrufe dieser Art sind in der mündlichen oder schriftlichen Kommunikation anzutreffen. Vermitteln Aufrufe eine negative Einstellung bestimmter sozialer Schichten zu anderen, dann können sie negative gesellschaftliche Entwicklungen und Ereignisse signalisieren und bewirken. Es handelt sich insbesondere um Aufrufe, die zu extremistischer Tätigkeit auffordern. Das sind Äußerungen, die als Sprachdelikte qualifiziert werden können und damit sowohl ein linguistisches als auch ein juristisches Anliegen sind. Ob eine Äußerung ein Sprachdelikt darstellt, kann nur in einem Gerichtsverfahren entschieden werden. Damit aber die Entscheidung des Gerichts eine objektive, linguistisch belegte Grundlage bekommt und

systematisch erfolgt, müssen hierzu linguistische Methoden in Anspruch genommen werden.[1] Dementsprechend beschäftigt sich einer der Bereiche der linguistischen Gerichtsexpertise mit der Beurteilung der Semantik und Pragmatik sprachlicher Äußerungen. Dabei sucht die linguistische Expertise nach entsprechenden Theorien der linguistischen Pragmatik, Semantik, Lexikologie und anderer Ebenen der Sprachbetrachtung. Im vorliegenden Artikel werden die Aufrufe aus der Perspektive der Sprechakttheorie betrachtet. Dabei handelt es sich einerseits um die Definition des Aufrufs als eines Sprechakttyps, andererseits um die Möglichkeiten der Sprechakttheorie bei der Deutung von Aufrufen. Außerdem werden Aufrufe im Russischen aus der Perspektive ihrer grammatischen Form beschrieben. Weiterhin setzt sich der Artikel mit direkt und indirekt ausgedrückten Aufrufen sowie mit Tendenzen bei der Rezeption bestimmter Formen von Aufrufen auseinander. Die Darstellung dieser Tendenzen basiert auf einer Untersuchung zur Wahrnehmung von indirekt ausgedrückten Aufrufen. Somit deutet der Artikel einige Möglichkeiten, aber auch die Grenzen der Sprechakttheorie für ihre praxisbezogene Anwendung an.

II. Aufruf in der Klassifikation der Sprechakte

1. Eine begriffliche und terminologische Klärung

Ein Sprechakt ist ein „Vollzug einer Handlung durch eine sprachliche Äußerung“ (Stukenbrock 2013: 220). Aufrufe sind ein Spezialfall von direktiven Sprechakten (Direktiva), also von Aufforderungen im weitesten Sinne, wobei zu den Letzteren u.a. auch Befehl, Bitte, Empfehlung

[1] Hierbei ist natürlich die Frage der Kompetenzaufteilung zwischen Juristen und Linguisten von Bedeutung. Diese Frage hat inzwischen eine reiche Tradition, die allerdings an dieser Stelle nicht ausführlich beleuchtet werden kann (näher dazu sowie zur linguistischen Gerichtsexpertise in Russland in Sachen Beleidigung und sprachlicher Extremismus und Terrorismus siehe jeweils Mushchinina 2020 und 2021). An dieser Stelle ist jedoch zu betonen, dass die juristischen Methoden der Tatbestandbestimmung bei der Auseinandersetzung mit extremistischen Äußerungen nicht zum Gegenstand dieses Beitrags gehören. Damit bleibt hier auch die Frage ausgeklammert, wann ein Aufruf gerichtlich als Straftat gewertet wird.

gehören. Die Direktiva sind einer der tragenden Typen in den bekannten Klassifikationen der Sprechakte, wobei sie in der Regel auch unter dieser terminologischen Bezeichnung genannt werden (vgl. einige in Tabelle 1):

Werk	**Klassifikation der Sprechakte**
Austin (1962)	Verdiktiva, ***Exzerzitiva***, Kommissiva, Konduktiva, Expositiva
Searle (1976)	Assertiva, ***Direktiva***, Kommissiva, Expressiva, Deklarativa
Bach / Harnish (1979)	Konstativa, ***Direktiva***, Kommissiva, Expressiva, Effektiva, Verdiktiva
Weigand (1984)	Deklarativa, Repräsentativa, ***Direktiva***, Explorativa
Brandt / Reis / Rosengren / Zimmermann (1992)	Handlungserklärungen (Deklarativa, Expressiva, Assertiva, ***Direktiva***) vs. Einstellungsbekundungen

Tab. 1: Klassifikation der Sprechakte

Während die Einteilung der Sprechakte in Gruppen (Typen) sprachübergreifend ist, ist die Bezeichnung einzelner Sprechakte innerhalb jedes Typs terminologisch nicht unproblematisch. Diese Bezeichnungen werden von der jeweiligen allgemeinsprachlichen Vorstellung von einer Handlung abgeleitet: *Aufruf* – von *aufrufen*, *Bitte* – von *bitten* usw. Dabei sind diese allgemeinsprachlichen Bezeichnungen – wie auch die meisten Elemente des Wortschatzes in jeder Sprache – mehrdeutig oder ihre semantischen Grenzen sind verschwommen (vgl. auch Baranov 2007: 415). Außerdem kann man nicht von zwischensprachlicher Eins-zu-Eins-Äquivalenz bei der Definition einzelner Sprechakte ausgehen. So wäre zum Beispiel im Falle der Zuordnung des Sprechaktes призыв (Aufruf) zunächst zu klären, wie der Begriff 'призыв' von verwandten Begriffen wie 'воззвание' (Zusammenrufen) oder 'обращение' (Anrede, Ansprache) abzugrenzen ist oder ob 'призыв' als Oberbegriff für 'призыв-лозунг' (Aufruf als Losung), 'призыв-апелляция' (Aufruf als Appell), 'призыв-обращение' (Aufruf als Anrede) und 'призыв-воззвание' (Aufruf als Zusammenrufen) zu betrachten ist (vgl. Baranov 2007: 422-432; näher siehe Kapitel II.2). Wird eine sprachübergreifende Zuordnung dieses Sprechaktes angestrebt, so wäre eine gleiche Abgrenzung zunächst in allen interessierenden Sprachen

vorzunehmen. Danach erst könnte eine Äquivalenz in den terminologischen Bezeichnungen einzelner Sprechakte zwischen den jeweiligen Sprachen hergestellt werden. In Tabelle 2 wird diese Vorgehensweise nur angedeutet:

Russisch-Deutsch	Synonyme	Polnisch-Deutsch
призыв: u.a. Aufruf, Aufforderung, Mahnung, Ruf, Appell, Losung *воззвание*: u.a. Aufruf, Appell, Proklamation *обращение*: u.a. Aufruf, Anrede, Appell	*Aufruf* *Aufforderung* *Appell* *Mahnruf*	*wezwanie*: u.a. Aufruf, Aufforderung, Ruf, Vorladung *apel*: u.a. Aufruf, Appell, Beschwerde *zawołanie*: u.a. Ruf, Aufruf, Anruf

Tab. 2: Problematik der terminologischen Äquivalenz

Um von einem Sprechakt innerhalb eines Sprechakttyps zu sprechen, müssen im Rahmen eines Begriffssystems Merkmale genannt werden, die diesen Sprechakt definieren würden. Jede Entsprechung der Bezeichnungen dieses Sprechaktes zwischen einzelnen Sprachen – und damit zum Beispiel die Begriffsäquivalenz zwischen dem deutschen 'Aufruf' und dem russischen 'призыв' – ist dann nur bedingt.

2. Zur Definition des Aufrufs als Sprechakt

Der Sprechakt des Aufrufs wird in der Literatur zu den Sprechakten im Allgemeinen und zu den Direktiva im Einzelnen relativ selten explizit genannt (insbesondere für das Russische, Petrova 2008: 126; vgl. auch Baranov 2007: 412). Bei der Untersuchung von Klassifikationsprinzipien in Bezug auf Direktiva referiert Petrova zehn Arbeiten zu dieser Sprechaktgruppe und zählt insgesamt 37 Typen der direktiven Sprechakte auf. Dabei gehören zu den am häufigsten behandelten direktiven Sprechakten, die mindestens in sieben Arbeiten genannt werden, приказ (Befehl), просьба (Bitte), мольба (Flehen), совет (Ratschlag), разрешение (Erlaubnis), запрет (Verbot), предложение (Angebot, Vorschlag), требование (Forderung, Aufforderung) und рекомендация (Empfehlung) (vgl. Petrova 2008: 127). Der Aufruf wird hingegen nur in zwei unter-

suchten Arbeiten behandelt (Filatova 1997; Formanovskaja 1994). An dieser Stelle ist Petrova zuzustimmen, dass diese geringe Zahl nicht darauf zurückzuführen ist, dass einzelne Sprechakte keine prototypischen Direktiva wären, sondern darauf, dass viele Sprechakte unter den Direktiva nicht weiter differenziert und bei einzelnen Forschern „intuitiv" bestimmt werden (vgl. Petrova 2008: 126). Dies führt u.a. dazu, dass den Direktiva auch Sprechakte zugeordnet werden können, bei denen die direktive (auffordernde) Illokution nicht zentral ist (z.B. Zustimmung oder Drohung, vgl. Filatova 1997: 62). Eine solche sehr breite Interpretation der Direktiva erklärt Filatova mit der Möglichkeit im Russischen, auch bei nicht direktiven Sprechakten den Imperativ zu verwenden (vgl. Filatova 1997: 70-71).

Es wäre nicht zufriedenstellend, Aufrufe von sonstigen Aufforderungen nicht zu differenzieren. Denn Aufrufe sind keine Randerscheinung, sondern sprachliche Handlungen, die (a) gesellschaftlich relevant sind und unter Umständen Rechtsfolgen nach sich ziehen können. Dabei ist der Adressat eines Aufrufs (b) ein gesellschaftlich relevantes Subjekt (kollektives Subjekt) oder dessen Vertreter. Außerdem (c) äußert der Sprecher durch den Aufruf eine Einstellung, die sich im Rahmen der Anschauung einer bestimmten gesellschaftlichen Gruppe gebildet hat. Somit sind die gesellschaftliche Relevanz des Sprechers, des Adressaten und des Inhalts der durch den Sprechakt formulierten Aufforderung die wichtigsten unterscheidenden Merkmale von Aufrufen in ihrer Gegenüberstellung zu anderen Direktiva.

Obwohl bestimmte Muster bei der Untersuchung der Pragmatik der Aufrufe auch von anderen direktiven Sprechakten übernommen werden können (wie weiter unten zu sehen sein wird), müssen für den Sprechakt Aufruf Merkmale genannt werden, um diesem Sprechakt einen eigenen Platz im Begriffssystem der Direktiva zuzuweisen. Hilfreich erscheint dafür die obengenannte Zusammenfassung von Petrova (2008: 132), bei der die folgenden Faktoren für die Beschreibung der Direktiva relevant sind:

- Das Vorliegen der Handlungsfreiheit des Adressaten: Der Adressat hat grundsätzlich die freie Wahl bei der Ausführung der Handlung. Eine sofortige Ausführung der Handlung wird nicht vorausgesetzt.

- Das Interesse an der Handlungsausführung: besteht seitens des Sprechers. Dem Adressaten wird jedoch suggeriert, dass die Handlung und ihr Ergebnis auch in seinem Interesse wären.
- Der Status der Kommunikationsteilnehmer: Der Sprecher verfügt entweder über einen höheren oder den gleichen gesellschaftlichen Status im Vergleich zum Adressaten.
- Die Handlungsausführung: Die Handlungsaufforderung kann sich entweder nur an den Adressaten richten (exklusiver Aufruf) oder an den Adressaten und den Sprecher zusammen (inklusiver Aufruf) (vgl. auch Baranov 2007: 421).
- Die Initiative der Handlung: Im Unterschied zu einigen wenigen Sprechakten, die eine Reaktion auf einen vorhergehenden Sprechakt darstellen (reaktive Sprechakte, z.B. Erlaubnis), gehören Aufrufe zu den initiativen Sprechakten.

Zu weiteren Merkmalen des Sprechaktes Aufruf ist Folgendes hinzuzufügen: Der Erfolg des Aufrufs kann nicht sichergestellt werden und ist nicht überprüfbar. Der Aufruf kann durch Kommunikationskanäle vermittelt werden (Flyer, Plakate, Ansprachen durch Sendekanäle u.a.), die keinen direkten Kontakt des Sprechers und des Adressaten voraussetzen. Deswegen kann bei den Aufrufen nicht sichergestellt werden, dass der Adressat die durch den Aufruf formulierte direktive Botschaft wahrnimmt, und zwar dass er diese Botschaft als eine an ihn gerichtete Aufforderung wahrnimmt. Auch die eigentliche Ausführung der Handlung kann durch den Sprecher nicht unmittelbar überprüft werden.

Wie in Kapitel II.1 erwähnt, nennt Baranov bei der Auseinandersetzung mit dem Sprechakt Aufruf einzelne Aufruftypen: призыв-лозунг (Aufruf als Losung), призыв-апелляция (Aufruf als Appell), призыв-обращение (Aufruf als Anrede) und призыв-воззвание (Aufruf als Zusammenrufen) (vgl. Baranov 2007: 422-432). Die jeweiligen Übersetzungen sollen an dieser Stelle aus den o.g. Gründen als bedingt betrachtet werden. Eine Losung ist in der Regel ein inklusiver Aufruf, der eine politische Idee oder Verhaltensweise formuliert. Die Person des Sprechers und des Adressaten bleibt unbekannt. Ein Appell ist ein exklusiver Aufruf vonseiten eines bekannten

Sprechers. Beim Appell wird die wertende Teilnahme der Gesellschaft für die Lösung eines gesellschaftlich relevanten Anliegens in Anspruch genommen. Eine Anrede ist ein komplexer Aufruf, der sich an einen bekannten kollektiven Adressaten wendet und in der Regel die Form eines kohärenten Textes hat. Ein Zusammenrufen unterscheidet sich von der Anrede dadurch, dass die Person des Adressaten unbekannt bleibt. Eine weitere Klassifikation der Aufrufe schlagen Toricidze / Aleksidze vor, die je nach der Form der Aufrufe zwischen den „Aufrufen in Form von Äußerungen", „Aufrufen in Form von Texten" und den „kombinierten Aufrufen" unterscheiden (Toricidze / Aleksidze 2009: 136-137). Im ersten Fall handelt es sich um Aufrufe, die in etwa der Losung und dem Appell bei Baranov entsprechen. Die „Aufrufe in Form von Texten" sind „autonome isolierte Mitteilungen", und die „kombinierten Aufrufe" verwenden zur Erreichung des illokutiven Ziels andere, zum Beispiel visuelle oder auditive kommunikative Mittel.

Wie aus diesen Darstellungen ersichtlich wird, können Aufruftypen nach mehreren Kriterien unterschieden werden. So verwendet Baranov zum Beispiel Kriterien wie strukturelle Komplexität (kurze Äußerungen oder längere Texte), Inklusivität bzw. Exklusivität des Sprechers, Bekanntheit des Sprechers und des Adressaten u.a. (vgl. Baranov 2007: 432). Dies bedeutet vor allem, dass einzelne Aufrufe unter Umständen Merkmale verschiedener Aufruftypen aufweisen können. Die Beispiele, die in den Kapiteln III und IV dargestellt werden und zum Gegenstand von Probandenbefragungen wurden, sind größtenteils dem Typ Losung zuzuordnen. Das sind kurze Äußerungen, die sowohl inklusiv als auch exklusiv sein können. Viele dieser Äußerungen ermöglichen eine Interpretation bzgl. einer konkreteren gesellschaftlichen bzw. politischen Auffassung des Sprechers erst im Kontext. Von Interesse für die Untersuchung war vielmehr das appellative Potenzial dieser Äußerungen und seine Wahrnehmung in Abhängigkeit von der Form der Äußerungen.

III. Sprachliche Form der Aufrufe

Die Intention des Sprechers, also die Illokution des Aufrufs, kann direkt und indirekt ausgedrückt sein. Die direkt ausgedrückte Illokution entspricht der wörtlichen Bedeutung. Das grammatische und lexikalische Instrumentarium, das zum Ausdruck dieser Illokution verwendet wird, ist im Allgemeinen überschaubar, obwohl die Rezeption dieser Illokution trotzdem kontextuell bedingt sein kann. Die indirekt ausgedrückte Illokution des Aufrufs besteht parallel zur Illokution eines anderen Typs.

1. Direkt ausgedrückte Aufrufe

Baranov nennt mehrere grammatische Mittel bzw. grammatische Strukturen zum Ausdruck der direkt ausgedrückten Illokution (vgl. Baranov 2007: 433-439):

- Imperativ (exklusiv und inklusiv):
  (1) *Бери оружие – борись за расу!* [K/S/S: 66][2] 'Greife zur Waffe, kämpfe für [deine] Rasse!'
  (2) *Будем верны* + Dativ! 'Seien wir treu + Dativ!'
- Explizit performative Aufrufe:
  (3) *Я призываю вас* ... 'Ich rufe euch (Sie) ... auf'

Jedoch liegt in der negativen Form keine Illokution des Aufrufs vor, wenn sich die Negation auf die performative Formel selbst bezieht:

(4) *Я не призываю вас* ... 'Ich rufe euch (Sie) nicht ... auf'

Dabei ist eine Negation bei Aufrufen durchaus möglich, vgl.:

(5) *Не позволим* + Infinitiv! 'Wir lassen es nicht zu, dass ...!'

- Phraseologisierte Formeln mit *даешь*, *давай/те* ('lass uns / lasst uns'), *долой*, *вон* ('Fort mit ...!'):

[2] Die im Folgenden angeführten Beispiele lehnen sich zum Teil an die bereits genannte Übersicht von Baranov. Andere Quellen werden zusätzlich angegeben (hier als Kürzel). Ein gesondertes Verzeichnis dieser Quellen ist nach dem Literaturverzeichnis aufgeführt.

(6) *Долой сионистское телевидение*! 'Fort mit dem zionistischen Fernsehen!'

- Elliptische Äußerungen, in denen die eliminierten Elemente performative Ausdrücke der Aufforderung sind. Die verbleibenden Elemente bilden den informativen Kern (das Rhema) der Äußerung. Hierzu zählen:
- Nominale Sätze:

(7) *Хлеба и зрелищ!* <- Мы требуем хлеба и зрелищ. '(Wir fordern) Brot und Spiele!'

- Präpositionalkonstruktionen:

(8) *К оружию!* <- Мы призываем к оружию! '(Wir fordern auf,) zur Waffe (zu greifen)!'

- Infinitiv mit Negation:

(9) *Не отступать!* 'Nicht zurücktreten!'

<- Мы призываем не отступать! 'Wir fordern auf, nicht zurückzutreten!'

Einen ähnlichen Fall stellen Nominalisierungen und nominalisierungsähnliche Formeln sowie Negationspartikeln mit imperativischer Intonation dar:

(10) *Никакой поддержки* + Dativ! 'Keine Unterstützung für...!'

(11) *Смерть* + Dativ! '(Wir fordern) den Tod für ...!'

(12) *Нет диктату!* '[Wir sagen] Nein zum Diktat!'

- Ausdrücke mit der Bedeutung deontischer Notwendigkeit:

(13) *Необходимо действовать!* 'Es ist notwendig zu handeln!'

Trotz der typischen grammatischen Strukturen, die bei Aufrufen verwendet werden, ist eine entsprechende lexikalische Auffüllung dieser Strukturen notwendig, damit ein Aufruf als solcher verstanden wird. Am wenigsten sind von der lexikalischen Realisierung phraseologisierte Formeln mit

den Partikeln abhängig, die auch lexikalisch eine Aufforderung bezeichnen, zum Beispiel *Долой ...!* oder *Вон ...!* ('Fort mit...!').

Ansonsten ist die Illokution des Aufrufs stark kontextuell bedingt. Im folgenden Beispiel ist der erste Teil ein Aufruf, der durch den Imperativ ausgedrückt ist. Der zweite Teil ist formal eine Repräsentation der gegebenen Umstände und ist auf den ersten Blick eine Begründung des ersten Teils. Doch liegt hier ein Widerspruch zwischen dem Inhalt und dem Stil der Äußerung vor: Die Äußerung ist im offiziellen Stil formuliert, während eine offizielle Quelle kaum zu einer Nichtteilnahme an den Wahlen aufrufen würde. Es wäre vielmehr plausibel, diese Äußerung als eine Drohung zu deuten:

- Direktiv (direkt) + repräsentativ (indirekt):

  (14) *Не принимайте участие в голосовании! На избирательных участках возможны теракты*. [K/S/S: 78]

  'Nehmt (Nehmen Sie) an der Abstimmung nicht teil! In den Wahllokalen sind Attentate möglich.'

Im nächsten Beispiel liegt ebenfalls ein semantischer Widerspruch zwischen den beiden Teilen der Äußerung vor, wobei sie nicht als Aufruf, sondern als Ironie verstanden wird:

- Repräsentativ (direkt) + direktiv (direkt):

  (15) *Я, [Name], вас презираю и буду вам вредить. Голосуйте за меня!* [K/S/S:42]

  'Ich (Name) verachte euch (Sie) und werde euch (Ihnen) schaden. Gebt (Geben Sie) mir eure Stimme!'

2. Indirekt ausgedrückte Aufrufe

Bei der indirekt ausgedrückten Illokution des Aufrufs gibt es keine formalen grammatischen Merkmale, die eine Zuordnung der Äußerung zum Sprechakt Aufruf begründen würden. Dennoch gibt es eine Menge von Äußerungen, welche die Illokution des Aufrufs realisieren können, ohne sich der typischen grammatischen Mittel zum Ausdruck einer Aufforderung zu

bedienen. Solche Äußerungen hängen von der lexikalischen Realisierung des Inhalts ab. Ihr Verständnis als Aufforderung ist nicht sichergestellt. Jedoch kann in der direkten Illokution nach Hinweisen gesucht werden, die eine indirekte Illokution erlauben würden. Können dabei Tendenzen nachgewiesen werden, dann kann erklärt werden, warum solche Äußerungen als Aufrufe wahrgenommen werden können.

Eine Methode, die zu diesem Zweck in Frage kommt, schlägt Weigand (1984) vor, die sich mit der repräsentativen und explorativen Form der indirekt ausgedrückten Direktiva beschäftigt. Am Beispiel einer direkt und indirekt ausgedrückten Aufforderung zum „Rasen mähen" nennt sie mehrere Möglichkeiten, diese Aufforderung indirekt auszudrücken. Die betrachtete Art der Aufforderung nennt sie Monitiv – „eine Aufforderung, die mit Anspruch auf Erfüllung, jedoch ohne zu erwartende Sanktionen vorgebracht wird" (Weigand 1984: 67). Die Formulierungsmöglichkeiten der indirekt ausgedrückten Aufforderung ordnet sie zwei Gruppen zu: (a) Äußerungen, die in ihrer direkten Illokution repräsentativ (weltdarstellend) sind, und (b) Äußerungen, die in ihrer direkten Illokution explorativ sind, also auf die Antworthandlung abzielen. Das Inferieren der Illokution einer Aufforderung soll nach Weigand als eine Dreiersequenz erfolgen, wie hier zum Beispiel bei der formal explorativen Äußerung: 1. Könntest du nicht den Rasen mähen? – 2. Ja, das könnte ich. – 3. Also tu´s! (vgl. Weigand 1984: 70).

Bei den indirekt ausgedrückten Aufforderungen schlägt Weigand weiterhin vor, in den Äußerungen nach Konzepten zu suchen, die eine Schlussfolgerung auf die Aufforderung veranlassen würden. Unter solchen Konzepten nennt sie – hier beispielhaft für repräsentative Äußerungen – das „Konzept des Grundes für die gewünschte Handlung", das „Konzept der Handlung [...] unter Gesichtspunkten, die die Ausführung dieser Handlung nahelegen: Notwendigkeit, Norm, Zweckmäßigkeit", das „Konzept des Hörers, der die Handlung ausführen soll, unter den Gesichtspunkten von Notwendigkeit, Norm, Zweckmäßigkeit, Möglichkeit, Wunsch", das „Konzept des Sprechers unter den Gesichtspunkten von Wunsch oder Bedeutung der Handlung" sowie das „Konzept des Dritten als Autorität oder

Vorbild“ (Weigand 1984: 76). Ein Beispiel für das „Konzept des Grundes“ wäre zum Beispiel „Der Rasen ist schon ziemlich lang“ (Weigand 1984: 73). Die von Weigand vorgeschlagene Dreiersequenz wäre in diesem Fall: 1. Der Rasen ist schon ziemlich lang. – 2. Was ist also zu tun? – 3. Mähe ihn!

Dieses Modell wurde bei der Untersuchung indirekt ausgedrückter Aufrufe im Russischen angewandt, worauf im Folgenden näher eingegangen wird.

IV. Zur empirischen Untersuchung indirekter Aufrufe

1. Anwendung des Modells von Weigand (1984)

Die bei der Untersuchung verwendeten Beispiele wurden zum Teil der Fachliteratur, die sich mit der Theorie und Praxis der linguistischen Expertise auseinandersetzt, entnommen (vgl. das entsprechende Verzeichnis). Als weitere Quelle für die Beispiele wurden Gutachten des Russischen Föderalen Zentrums für Gerichtsexpertise am Justizministerium der Russischen Föderation verwendet. In Anlehnung an das Konzeptmodell von Weigand konnten nach der Untersuchung der Beispiele vier Konzepte unterschieden werden: Begründung der Handlung, Zweckmäßigkeit, Norm oder Notwendigkeit der Handlung, Appell an die Sprecher-Hörer-Gemeinschaft (inklusiv) und Appell an den Hörer (exklusiv). Diese Konzepte wurden sowohl auf repräsentative als auch auf explorative Äußerungen angewandt, was in den folgenden Tabellen beispielhaft gezeigt wird (Tabellen 3 und 4).

Konzept	**Beispiele**
1. Begründung der Handlung	*Уровень преступности среди них наиболее высок.* [K/S/S: 34] 'Das Niveau der Kriminalität ist bei ihnen besonders hoch.'
2. Zweckmäßigkeit, Norm oder Notwendigkeit der Handlung	*Этот мир не исправить проповедями!* [K/S/S: 69] 'Es ist nicht möglich, diese Welt mit Predigten zu verbessern.'
3. Appell an die Sprecher-Hörer-Gemeinschaft (inklusiv)	*Время пришло воздвигнуть наш крест!* [V: 133] 'Es ist Zeit, unser Kreuz zu errichten!'
4. Appell an den Hörer (exklusiv)	*Ты слишком долго молчал и терпел!* [G1] 'Du hast zu lange gewartet und es geduldet!'

Tab. 3: Repräsentativ → direktiv

Entsprechend der Hypothese von Weigand würde die Entscheidung für indirekt ausgedrückte Illokution des Aufrufs bei den repräsentativen Äußerungen durch die folgende Dreiersequenz erfolgen:

a. Darstellung / Suggestion eines negativen Zustandes (explizit / implizit) → Etwas ist unbefriedigend.

b. Frage nach einer reparierenden Handlung → Was ist zu machen?

c. Aufforderung zum Herstellen eines Gegenzustandes (der eigentliche Aufruf) → Tue / tut etwas dagegen.

Konzept	Beispiele
1. Begründung der Handlung	*Не грозит ли белым людям вымирание?* [G1] 'Droht nicht etwa den weißen Menschen das Aussterben?'
2. Zweckmäßigkeit, Norm oder Notwendigkeit der Handlung	*Можно ли добиться этой святой цели, действуя в одиночку?* [G2] 'Ist es möglich, dieses heilige Ziel zu erreichen, wenn man allein handelt?'
3. Appell an die Sprecher-Hörer-Gemeinschaft (inklusiv)	*Не пора ли нам объединиться и отомстить?* [G3] 'Ist es nicht Zeit, dass wir uns vereinen und uns rächen?'
4. Appell an den Hörer (exklusiv)	*Долго вы будете бездействовать?* [K/S/S: 65] 'Wie lange werdet ihr (werden Sie) untätig sein?'

Tab. 4: Explorativ → direktiv

Bei den explorativen Äußerungen kann die Wahrnehmung der Illokution der Aufforderung wie folgt geprüft werden:

a. Frage nach der Einstellung des Hörers zum negativen / unbefriedigenden Zustand → Willst du, dass das so ist?
b. Der negative Zustand wird nicht akzeptiert → Nein.
c. Aufforderung zum Herstellen eines Gegenzustandes (der eigentliche Aufruf) → Dann tue / tut etwas dagegen.

Betrachtet an einem Beispiel sieht die Dreiersequenz wie folgt aus:

1) Durch die Äußerung *Этот мир не исправить проповедями!* ('Es ist nicht möglich, diese Welt mit Predigten zu verbessern!') wird angedeutet, dass die Welt „verbessert" werden muss. Außerdem wird eine Unmöglichkeit der positiven Entwicklung der Welt unter Anwendung bestimmter Methoden („Predigten") konstatiert. Diese Unmöglichkeit wird grammatisch durch den unabhängigen Infinitiv *не исправить* ('nicht zu verbessern') ausgedrückt.
2) Dadurch wird eine Notwendigkeit, nach einer Lösung für diese unbefriedigende Situation zu suchen, suggeriert, und zwar mit anderen Handlungen als „Predigten".

3) Schließlich muss der Rezipient eine Notwendigkeit der Anwendung anderer Handlungen als „Predigten" empfinden. Nimmt er sich selbst als Adressaten der Äußerung wahr, dann könnte er zu dem Schluss kommen, dass die Vollziehung dieser anderen Handlung von ihm erwartet wird.

Zu welcher Handlung indirekt aufgefordert wird, ist aus solchen Äußerungen oft nicht direkt ersichtlich. Auch eine scheinbar konkreter formulierte Äußerung wie *Время пришло воздвигнуть наш крест!* ('Es ist Zeit, unser Kreuz zu errichten!') nennt keine expliziten Handlungen des Adressaten, sondern ruft mithilfe einer Metapher („Kreuzerrichtung") zu irgendwelchen Handlungen im Interesse des Sprechers und Adressaten auf.

Ob der Adressat eine Äußerung tatsächlich als einen indirekten Aufruf versteht, hängt u.a. vom Kontext und von den Umständen der Rezeption, vom Wissenshintergrund und der Denkweise des Adressaten, von seiner Einstellung zu den aktuellen sozialen Umständen und zur Quelle der Äußerung sowie von seiner gesellschaftlichen Rolle ab. Damit ist nie sichergestellt, dass der Rezipient die Äußerung überhaupt als einen indirekt ausgedrückten Aufruf verstehen würde.

Wie oben erwähnt, sind die Wirkung der jeweiligen Äußerung und ihr Verstehen als Aufruf auch von der lexikalischen Auffüllung der Äußerung abhängig. Diese lexikalisch bedingte Wirkung kann aber nicht gemessen werden.

Die untersuchten Äußerungen wurden ausschließlich in Entsprechung mit ihrer allgemeinen Bedeutung dem jeweiligen Konzept zugeordnet. Wegen der geringen Anzahl der untersuchten Äußerungen kann außerdem nur von Tendenzen bei der Wahrnehmung der indirekt ausgedrückten Aufrufe gesprochen werden.

2. Studie 1: Repräsentative vs. explorative Form der Äußerung

Um die Wahrnehmung der o.g. Konzepte und somit das Modell insgesamt empirisch zu prüfen, wurde eine Probandenbefragung durchgeführt. Insbesondere wurde verglichen, ob und zu welchem Grad die Äußerungen, die

sich dem jeweiligen Konzept zuordnen ließen, als Aufrufe wahrgenommen werden.

An der Befragung haben insgesamt 32 russische Muttersprachler teilgenommen: 15 Schüler der gymnasialen Oberstufe sowie 17 Muttersprachler im Alter von 34 bis 46 Jahren. Die zweite Probandengruppe bestand aus Akademikern und Akademikerinnen mit verschiedenen Hochschulabschlüssen, ausgenommen sprachwissenschaftliche Abschlüsse. Für jedes Konzept wurden jeweils drei Äußerungen verwendet, die in Tabelle 5 angeführt sind. Somit waren für jedes Konzept jeweils 96 Antworten möglich (3 Äußerungen pro Konzept x 32 Probanden). Um die Vergleichbarkeit zwischen den repräsentativen und explorativen Äußerungen zu erhöhen, wurden Äußerungen mit der gleichen Proposition verwendet. Repräsentative Äußerungen wurden somit zu explorativen modifiziert und umgekehrt, zum Beispiel: *Ничто не стоит на пути твоей мести!* ('Nichts steht deiner Rache im Wege!', Originalbeispiel aus G4, eine repräsentative Äußerung) vs. *Что стоит на пути твоей мести?* ('Was steht deiner Rache im Wege?', modifizierte explorative Äußerung, im Folgenden gekennzeichnet als $^{(mod)}$). Das bedeutet, dass bei den Befragungen 50% aller verwendeten Beispiele modifizierte Äußerungen waren. Aufgrund der unterschiedlichen Form der Äußerungen kamen bei vielen Modifikationen mehrere Möglichkeiten in Frage. Bei der Modifikation von repräsentativen Äußerungen zu explorativen wurden Entscheidungsfragen verwendet.

In Tabelle 5 beziehen sich die Prozentzahlen jeweils auf die Auswertung des ganzen Konzepts.

Die an die Probanden gerichtete Aufgabe bestand darin, die Äußerungen zu markieren, die für die Probanden eine Aufforderung zum Handeln beinhalteten. Den Probanden wurden drei Möglichkeiten zur Wahl vorgeschlagen: direkte Aufforderung, indirekte Aufforderung und keine Aufforderung. Im Laufe der Befragung wurde festgestellt, dass sich die Probanden vor allem entscheiden mussten, ob eine Aufforderung grundsätzlich vorliegt. Die Entscheidung darüber, ob sie in direkter oder indirekter Form vorliegt, war meistens zweitrangig. In mehreren Fällen konnten sich die Probanden zwischen der direkten und indirekten Aufforderung nicht

entscheiden und markierten beide Möglichkeiten. Deswegen wurden bei der Auswertung die Entscheidungen für das Vorliegen einer direkten und indirekten Aufforderung zusammengelegt.

Repräsentativa -> Direktiva	**Explorativa -> Direktiva**
1. Begründung der Handlung: 28%	***1. Begründung der Handlung: 21%***
(mod) Белым людям грозит вымирание! 'Den weißen Menschen droht das Aussterben!'	*Не грозит ли белым людям вымирание?* [G1] 'Droht nicht etwa den weißen Menschen das Aussterben?'
Из-за бездеятельности X. уничтожают белых! [K/S/S: 74f] 'Wegen der Untätigkeit von X werden weiße Menschen vernichtet!'	*(mod) Из-за бездеятельности X. уничтожают белых – не правда ли?* 'Wegen der Untätigkeit von X werden weiße Menschen vernichtet – oder stimmt das etwa nicht?'
Уровень преступности среди них наиболее высок. [K/S/S: 34] 'Das Niveau der Kriminalität ist bei ihnen besonders hoch.'	*(mod) Не самый ли высокий среди них уровень преступности?* 'Haben sie nicht etwa das höchste Niveau der Kriminalität?'
2. Zweckmäßigkeit / Norm / Notwendigkeit der Handlung: 40%	***2. Zweckmäßigkeit / Norm/ Notwendigkeit der Handlung: 34%***
Этот мир не исправить проповедями! [K/S/S: 69] 'Es ist nicht möglich, diese Welt mit Predigten zu verbessern!'	*(mod) Можно ли исправить этот мир проповедями?* 'Ist es möglich, diese Welt mit Predigten zu verbessern?'
(mod) Этой святой цели нельзя добиться, действуя в одиночку! 'Es ist nicht möglich, dieses heilige Ziel zu erreichen, wenn man allein handelt!'	*Можно ли добиться этой святой цели, действуя в одиночку?* [G2] 'Ist es möglich, dieses heilige Ziel zu erreichen, wenn man allein handelt?'
Бороться за расу в наши дни делает честь каждому человеку доброй воли. (K/S/S: 69, Äußerung für die Zwecke der Befragung modifiziert) 'Der Kampf für die Rasse ist heutzutage die Ehrensache eines gutwilligen Mannes!'	*(mod) Бороться за расу – не это ли в наши дни делает честь каждому человеку доброй воли?* 'Der Kampf für die Rasse: Ist das heutzutage nicht die Ehrensache eines gutwilligen Mannes?'

3. Appell an die Sprecher-Hörer-Gemeinschaft (inklusiv): 74%	***3. Appell an die Sprecher-Hörer-Gemeinschaft (inklusiv): 64%***
Время пришло воздвигнуть наш крест! 'Es ist Zeit, unser Kreuz zu errichten!'	*(mod) Не пришло ли время воздвигнуть наш крест?* 'Ist es nicht Zeit, unser Kreuz zu errichten?'
(mod) Нам пора объединиться и отомстить! 'Es ist Zeit, dass wir uns vereinen und uns rächen!'	*Не пора ли нам объединиться и отомстить?* [G3] 'Ist es nicht Zeit, dass wir uns vereinen und uns rächen?'
Они убивают наших детей! [K/S/S: 60] 'Sie töten unsere Kinder!'	*(mod) Помним ли мы, что они убивают наших детей?* 'Ist uns bewusst, dass sie unsere Kinder töten?'
4. Appell an den Hörer (exklusiv): 82%	***4. Appell an den Hörer (exklusiv): 76%***
Ты слишком долго молчал и терпел! 'Du hast zu lange gewartet und es geduldet!'	*(mod) Не слишком ли долго ты молчал и терпел?* 'Hast du nicht zu lange gewartet und es geduldet?'
(mod) Вы слишком долго бездействуете! 'Ihr seid (Sie sind) zu lange untätig!'	*Долго вы будете бездействовать?* [K/S/S: 65] 'Wie lange werdet ihr (werden Sie) untätig sein?'
Ничто не стоит на пути твоей мести! [G4] 'Nichts steht deiner Rache im Wege!'	*(mod) Стоит ли что-то на пути твоей мести?* 'Steht etwas deiner Rache im Wege?'

Tab. 5: Wahrnehmung von Äußerungen als Aufruf

Wie aus Tabelle 5 ersichtlich, hat sich die Wahrnehmung der repräsentativen und explorativen Äußerungen, die den Konzepten 1. Begründung der Handlung und 2. Zweckmäßigkeit / Norm / Notwendigkeit der Handlung entsprechen, als Aufrufe nur teilweise bestätigt. In den beiden ersten Konzepten wurden die Äußerungen insgesamt in weniger als 50% der Fälle als Aufforderungen bzw. Aufrufe wahrgenommen – maximal zu 40% (Konzept 2, repräsentativ). Dies bedeutet mit anderen Worten, dass die

Probanden die von Weigand vermutete Schlussfolgerung durch eine Dreiersequenz (vgl. IV.1) bei diesen Konzepten in weniger als 50% der Fälle vollziehen und die Äußerung überwiegend in ihrer Illokution als repräsentativ bzw. explorativ deuten.

Wesentlich häufiger wurden aber die Äußerungen mit deiktischen Elementen als Handlungsaufforderungen verstanden. Vor allem waren das die Aufrufe, die in irgendeiner Form einen Appell an den Hörer enthielten (Konzept 4: 82% bzw. 76% der positiven Antworten).

Um die Wirkung deiktischer Elemente auf die Wahrnehmung einer Äußerung näher zu verfolgen, wurde eine weitere Studie durchgeführt.

3. Studie 2: Vorliegen deiktischer Elemente

An der zweiten Studie haben die gleichen Probanden wie an der ersten Befragung teilgenommen. Diese kleinere Befragung galt dem Vergleich von drei Paaren von Äußerungen mit oder ohne ein deiktisches Element (vgl. Tabelle 6). In der Aufgabenstellung war in diesem Fall vorgegeben, dass es sich bei den vorgelegten Äußerungen um Aufforderungen handelt. Die Probanden mussten nun angeben, in welcher von jeweils zwei Formulierungen mit der gleichen Proposition diese Aufforderung klarer zum Ausdruck kommt. In jedem Paar waren die beiden Äußerungen entweder repräsentativ oder explorativ.

Die Befragung hat gezeigt, dass die Äußerungen mit einem deiktischen Element tatsächlich deutlich häufiger als Handlungsaufforderung wahrgenommen werden (in 79% aller Fälle) als Äußerungen ohne deiktische Elemente (21%).

Kein deiktisches Element: 21%	**Deiktisches Element vorhanden: 79%**
Можно ли добиться этой святой цели, действуя в одиночку? 'Ist es möglich, dieses heilige Ziel zu erreichen, wenn man allein handelt?'	*Можешь ли **ты** добиться этой святой цели, действуя в одиночку?* 'Kannst **du** dieses heilige Ziel erreichen, wenn du allein handelst?'
Уровень преступности среди них наиболее высок. 'Das Niveau der Kriminalität ist bei ihnen besonders hoch.'	***Ты** знаешь, что уровень преступности среди них наиболее высок.* '**Du** weißt, dass das Niveau der Kriminalität bei ihnen besonders hoch ist.'
Этот мир не исправить проповедями! 'Es ist nicht möglich, diese Welt mit Predigten zu verbessern!'	***Вы** не исправите этот мир проповедями!* '**Ihr** werdet (**Sie** werden) diese Welt mit Predigten nicht verbessern!'

Tab. 6: Äußerungen mit vs. ohne deiktische Elemente

V. Schlussfolgerung und Ausblick

Die vorliegende Untersuchung bezieht sich aus der Perspektive der Sprechakttheorie auf den Sprechakt Aufruf, der in der Kommunikation die Form einer rechtsrelevanten Äußerung annehmen kann. Dies geschieht vor dem Hintergrund der grundsätzlichen Möglichkeit der linguistischen Theorie, pragmalinguistische Methoden für die Zwecke der linguistischen Gerichtsexpertise zu entwickeln und sie hilfestellend für die juristische Praxis anzuwenden.

Die Untersuchung verwendet eines der Modelle, welche Schlussfolgerungen über die Rezeption von indirekt ausgedrückten Aufrufen ziehen lassen. Das Modell berücksichtigt allgemeine Konzepte der Äußerungen, klammert aber die möglichen kommunikativen Situationen sowie die Merkmale der Kommunikationsteilnehmer aus. Es beansprucht auch keine Vollständigkeit der Liste von Konzepten, sondern betrachtet einige mögliche Konzepte. Die Untersuchung skizziert eine Vorgehensweise bei der Auseinandersetzung mit der pragmatischen Wirkung indirekt ausgedrückter

Aufrufe, die nicht auf den Vorstellungen der/des Forschenden, sondern auf der tatsächlichen Rezeption von Sprachrezipienten fußt.

Es ist zu berücksichtigen, dass die Befragungsteilnehmer keine typischen Rezipienten der Aufrufe zu extremistischen Handlungen waren. Ihr Wissenshintergrund unterschied sich vom Wissenshintergrund authentischer Rezipienten extremistischer Aufrufe. Auch verfügten die Teilnehmer nicht über eine authentische Disponiertheit für eine entsprechende Deutung der Aufrufe. Dennoch konnte durch die Befragungen aufgezeigt werden, dass deiktische Elemente den Äußerungen ein zusätzliches direktives Potenzial vermitteln können.

VI. Literatur

Austin, John L. 1962. *How to do things with words*. Cambridge: Clarendon Press.

Bach, Kent / Robert M Harnish. 1979. *Linguistic communication and speech acts*. Cambridge: M.I.T. Press.

Baranov, Anatolij N. 2007. *Lingvističeskaja ėkspertiza teksta. Teoretičeskie osnovanija i praktika* [*Linguistische Textexpertise. Theoretische Begründung und Praxis*]. Moskva: Flinta.

Brandt, Margareta / Marga Reis / Inger Rosengren / Ilse Zimmermann. 1992. Satztyp, Satzmodus und Illokution. In: Inger Rosengren (Hrsg.), *Satz und Illokution*. Tübingen: Niemeyer, 1-90.

Filatova, Elena A. 1997. *Pobuditel´nye vyskazyvanija kak rečevye akty v sovremennom russkom jazyke* [*Aufforderungsäußerungen als Sprechakte in der modernen russischen Sprache*]. Moskva: MGU.

Formanovskaja, Natal´ja I. 1994. Pragmatika pobuždenija i logika jazyka [Pragmatik der Aufforderung und Logik der Sprache]. In: *Russkij jazyk za rubežom* 5-6, 34-40.

Mushchinina, Maria. 2020. Linguistische Gerichtsexpertise in Russland. Theorie und Praxis. In: Franziska Heidrich / Klaus Schubert (Hrsg.), *Fachkommunikation – gelenkt, geregelt, optimiert*. Hildesheim: Universitätsverlag Hildesheim, 123-143.

Mushchinina, Maria. 2021. Sprachdelikte. Ein Anwendungsgebiet für die Linguistik. In: Karin Luttermann / Albert Busch (Hrsg.), *Sprache und Recht. Konstitutions- und Transferprozesse in nationaler und europäischer Dimension*. Berlin: Lit, 251-271.

Petrova, Elena B. 2008. Katalogizacija pobuditel´nych rečevych aktov v lingvističeskoj pragmatike [Katalogisierung der Direktiva in der linguistischen Pragmatik]. In: *Vestnik VGU / Lingvistika i mežkul´turnaja kommunikacija* 3, 124-133.

Searle, John R. 1976. A classification of illocutionary acts. In: *Language in Society* 5 (1), 1-23.

Stukenbrock, Anja. 2013. Sprachliche Interaktion. In: Peter Auer (Hrsg.), *Sprachwissenschaft. Grammatik – Interaktion – Kognition*. Stuttgart: J.B. Metzler, 217-259.

Toricidze, David / Marina Aleksidze. 2009. Konzept „prizyv" s pozicii teorii rečevych aktov [Das Konzept „Aufruf" aus der Perspektive der Sprechakttheorie]. In: *Russian Language Journal* 59, 135-148.

Weigand, Edda. 1984. Lassen sich Sprechakte grammatisch definieren? In: Gerhard Stickel (Hrsg.), *Pragmatik in der Grammatik*. Düsseldorf: Schwann-Bagel, 65-91.

Quellen der Beispiele

[B]: Baranov, Anatolij N. 2007. *Lingvističeskaja ėkspertiza teksta: teoretičeskie osnovanija i praktika* [*Linguistische Textexpertise: Theoretische Begründung und Praxis*]. Moskva: Flinta.

[K/S/S]: Kukuškina, Ol´ga V. / Julija A. Safonova / Tatjana N. Sekeraž 2014. *Metodika provedenija sudebnoj psichologo-lingvistič skoj ėkspertizy materialov po delam, svjazannym s protivodejstviem ėkstremizmu i terrorizmu* [*Anleitung zur Durchführung der psychologisch-linguistischen Gerichtsexpertise in Gerichtssachen zur Bekämpfung des Extremismus und Terrorismus*]. Moskva: FBU RFCSĖ pri Minjuste Rossii.

[V]: Vorošilova, Maria B. 2019. *Lingvističeskaja ėkspertiza konfliktnogo teksta* [*Linguistische Expertise des konfliktträchtigen Textes*]. Moskva: Flinta.

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Mila Seppälä / Attila Krizsán

The Objective Reasonableness of a Reasonable Officer: The Role of Graduation on the U.S. Statutory Limits on the Use of Force by Law Enforcement

Abstract

This article focuses on the structures of oppression in the United States that have legitimized the use of excessive force by law enforcement when encountering black Americans in particular. We investigate the use of force via state statutes in order to determine how possible abuse of power and lack of accountability has been legitimized by the legislature of the United States. By employing the system of graduation as defined by Martin / White (2005) and Hood (2004, 2006) as well as vagueness and specification in legal writing, we concentrate on the ways power has been allocated in the use of force statutes. In addition, we investigate whether any regulatory measures on law enforcement have been put in place by the legislative or the judiciary of the Unites States. Our findings indicate that, in general, patterns of graduation in the statutes allowed broadening the scope of actions of law enforcement on the one hand, and narrowed the scope of their obligations on the other. Thus, linguistic patterns of graduation functioned to increase the power of law enforcement. We argue that while the statutes are ostensibly protecting the right of police officers to effectively perform their duties of upholding justice and protecting citizens, effectively the statutes legalize killings that are often racially motivated. By raising attention to the role of language that contributes to legalizing these actions, we aim to support social change through encouraging change in the language of law and the ways it legitimizes the use of excessive police force.

I. Introduction

In 2015, Amnesty International concluded their investigation on state legislation regulating the use of force by law enforcement in the United States with the following remark:[1]

> The United States has failed to respect and protect the right to life by failing to ensure that domestic legislation meets international human rights law and standards on the use of lethal force by law enforcement officers. (Amnesty International 2015: 2)

Their conclusion was based on the finding that, for example, none of the state laws comply with the standard set by UN resolutions (United Nations General Assembly resolution 34/169 of 17 December 1979, Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders 1990). The resolutions state that law enforcement officials should only use force if there is no other means to prevent serious human injury. Furthermore, in these cases the force used must be the minimum amount considered necessary to prevent the situation from escalating. In addition to this, none of the U.S. state laws require officers using deadly force to be held accountable by measures such as the obligatory reporting of the use of force. By not being up to the international standard of regulation and being even further from being guided by principles of accountability, currently the laws in the U.S. "actually prevent holding law enforcement officials accountable for violations of human rights" according to Amnesty International (2015: 3).

Lack of accountability is especially problematic when considering excessive police force within the historical context of structural oppression of black Americans. Statistics show that black men in particular are still grossly overrepresented in police killings. For example, a 2017 report by a research collaborative Mapping Police Violence recounts that compared to the rest of the population "[b]lack people were more likely to be killed by

[1] We would like to thank Professor Matti Peikola as well as Professor Benita Heiskanen and her team at the John Morton Center for their constructive comments and suggestions on the manuscript.

police, more likely to be unarmed and less likely to be threatening someone when killed" (policeviolencereport.org 2017, emphasis removed). Furthermore, the team found that of the 1,147 cases of police killings, only in 13 of these cases the officers responsible were charged with a crime. Official statistics show the same type of overrepresentation of black Americans in police shootings (United States Bureau of Justice Statistics 2016). It is hard to gain conclusive and accurate statistics to map out the full extent of the problem as most states do not require their local law departments to gather or disclose information about police killings.

It is apparent that there are institutional structures in place that prevent accountability and legitimize abuses of power by law enforcement officials. In this study, we will examine such institutional structures by focusing on the 41 existing state legislations that regulate the rights and obligations of law enforcement concerning the use of force. Specifically, we will concentrate on the linguistic strategies used to distribute power in these statutes. We focus on two types of power that can be regulated in a piece of legislative writing: 1) the power of the legal subject(s) of the statute, and 2) the interpretative power of the judiciary. To analyze the interpretative power given to the judiciary in the use of force statutes, we will utilize concepts of vagueness and specification. Law texts, i.e. a collection of texts that have been agreed upon as the law and are enforced by the ruling authority to set the norms and rules a society is required to operate with, need to resolve a dichotomy of functions. The production of such law texts is an outcome of choices on various levels of grammar and semantics, or, as Halliday puts it, "text is meaning and meaning is choice" (Halliday 1978: 137). Via these choices, textual structure reflects the norms of the producers of a text in terms of the functions of intended application for the texts produced. Particularly important for our study are the choices related to the function of law texts in terms of specificity and vagueness. That is, any piece of law text needs to be precise enough to have guidance value to its intended subjects as well as process value for the officials enforcing it (see e.g. Endicott 2000, 2005). However, law texts also need to account for all the possible situations a particular law is intended for. This requirement for all-

inclusiveness is often solved with semantic indeterminacy or vagueness (cf. Bhatia 2005: 10). Interpreting such vagueness is left to the judges that have to apply the law in any particular case (cf. Endicott 2005: 43). Therefore, this study will explore the vagueness and specificity in the statutes in order to analyze the interpretive power that has been allocated to the judiciary.

A piece of legislative writing distributes power to its legal subject(s) by determining their rights and obligations in a specific situation. To investigate the power of law enforcement, we will examine how meaning is scaled, i.e. how attitudes can be strengthened or downplayed by up/downscaling the force of statements or by sharpening or softening the focus of categorical boundaries according to the appraisal framework advanced by Martin / White (2005) and further defined by Hood (2004, 2006). In this study, we focus on institutionally established attitudes and evaluations by investigating their creation in a legislative context and examining the ways scaling meaning in statutes can function to restrict or increase the rights and obligations of law enforcement. Thus, our research questions are 1) how much power is given to the law enforcement, 2) how much of that power is restricted, and 3) how much of that regulation is left to the judiciary to determine.

II. Legislative writing

The language in a piece of legislative writing quite literally has the ability to either restrict or give power to the people defined as the subject(s) of the law due to setting the norms and rules a society is required to operate with. It is the main goal of this study to examine what types of linguistic actions lawmakers take to achieve the intended power distribution. There has been a lot of debate over the benefits of vagueness and specification, which we argue are central to power distribution. For one, vagueness always requires human interpretation and in cases of conflict over the intent of a piece of legislative text, the interpretation is ultimately left to the judges settling the cases that fall under the scope of such vague law. Proponents of *textualist jurisprudence* champion the idea that law text itself should be the primary

guide in judicial decision-making as it is "the law that governs, not the intent of the lawgiver" (see e.g. Scalia 1997: 17). If any vagueness cannot be interpreted through text, it should be considered with careful examination of the tradition. Textualists argue that judges should not have the right to "make law" through interpretation that is affected by value judgements (see e.g. concurring opinion on *Schad v. Arizona 111 S. Ct. 2491* (1991)).

However, Endicott (2005: 37) points out that while precision and specificity do ascertain that a piece of law will be interpreted the way it was intended and restrains officials and judges alike from coming to inconsistent conclusions, some standards just simply cannot be determined precisely. More importantly, he argues that specificity might produce even more arbitrary results than vague standards (Endicott 2005: 38). On the other hand, Bhatia (2005: 337) considers vagueness and specification not to be contrary to each other but rather to be "two sides of the coin". He suggests that vagueness and specification are different, context-dependent ways to serve the functions a piece of legislature has in different systems (Bhatia 2005: 338). For example, in the United States, where governance is clearly separated between all three branches, the judiciary has developed into a common law system, where judges can 'make law' by setting authoritative precedent. Thus, legislators often produce law that is specific and complex in order to clearly express their intent and restrict the judges (cf. Bhatia 2005: 340).

In this study, vagueness and specification will be considered particularly in the ways they relate to the rights and obligations of law enforcement that are either restricted or increased. It is important to consider what functions vagueness serves in the use of force statutes and what opportunities of interpretation have been left for judges when ruling over cases of possible misconduct. The Supreme Court in the United States has also had a history of judicial activism and indeed changed law with decisions like *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) that declared racial segregation unconstitutional and *Roe v. Wade*, 410 U.S. 113 (1973) that legalized abortions. It is easy to accuse the judges behind these decisions of making judgements based on values and ideologies. However, scholars

such as Chemerinsky (2000) make a valid argument that choosing to rely purely on text and tradition is a value-based judgement as well. It can be argued that value judgements always affect the way judges choose to interpret and define the vagueness they might be confronted with.

III. Graduation and power in language

In order to examine how power has been distributed to the law enforcement in the state statutes, we will utilize the concept of graduation. *Graduation*, *attitude* (i.e. evaluation related to feelings, behavior and composition) and *engagement* (evaluative positioning via dialogicity), are the three subsystems that form Appraisal Theory as it has been developed by Martin / White (2005) as a tool to analyze language of evaluation. Of graduation, the subtype relevant to this study, Martin / White (2005: 2) had this to say:

> [W]hat has been dealt with under headings such as 'intensification' and 'vague language', providing a framework for describing how speakers/writers increase and decrease the force of their assertions and how they sharpen or blur the semantic categorisations with which they operate.

As described, "vague language" is closely related to power in legislative texts. Thus, if vagueness appears as a token of graduation, graduation appears to be relevant to this study as well. The scope of any given concept that appears in a law text will also define the scope of the legal subject(s) and the legal action(s) managed by that law text. Thus, sharpening or blurring those concepts will dictate the scope of power allocated as well. Yet, before examining how graduation might operate in a legislative context, we will briefly describe some of the findings by Martin / White (2005), Hood (2004, 2006) and Hood / Martin (2007) of graduation in relation to the meanings they construct.

Martin / White (2005) approach graduation from the perspective that it can denote attitude and value positions in interpersonal communication. According to them, graduation, just as the other subsystems of Appraisal Theory, is part of what Halliday calls the interpersonal metafunction (cf. Halliday / Matthiessen 2014: 30-31), that is the function of language related to the performance of social relations. They define graduation under the two

subtypes of focus and force. *Force* relates to the up/downscaling of qualities (*extremely* upset), processes (*greatly* reduced) and modalities (*very* possible) as grading according to intensity (cf. Martin / White 2005: 140). Scaling concrete or abstract entities along the lines of amount (*many* problems) and extent in time and space (*recent* arrival vs. *widespread* hostility) is considered quantification (cf. Martin / White 2005: 148-149). *Focus*, on the other hand, relates to the sharpening or blurring of semantic categories or "the preciseness by which category boundaries are drawn" (Martin / White 2005: 137). Concepts can be graded according to their prototypicality or how much they resemble the perceived core type of a category. This type of grading, sharpening or softening the borders, can be done to various elements such as 1) non-gradable ideational categories (*real* jazz vs. *kind of* jazz), 2) gradable categories (*true* father vs. father *of sorts*) and 3) attitudinal categories (*genuinely* upset vs. *sort of* upset) (cf. Martin / White 2005: 138). Firstly, Martin / White's (2005: 139) results indicate that scaling non-gradable elements is an indication of a negative/positive evaluation by the speaker/writer. Secondly, scaling gradable and attitudinal elements has the effect of aligning or distancing the speaker/writer from the value positions advanced by the text or maintaining solidarity with their perceived audiences.

Hood (2004, 2006) and Hood / Martin (2007) apply these theories of focus and force to academic texts. Hood / Martin (2007: 758) find that academic writers manage the expectations of appearing objective while still persuading readers of the importance of their work by avoiding explicitly attitudinal and evaluative remarks. Implicit negative/positive attitudes and evaluation towards the writer itself or other researchers are flagged by graduating non-attitudinal, so-called ideational meaning (cf. Hood / Martin 2007: 747). Ideational meanings stand for another metafunction of language than the interpersonal metafunction. These meanings are related to a function of language that constructs experiences and 'realities' (cf. Halliday / Matthiessen 2014: 30-31). Graduating non-attitudinal meanings thus also functions to promote solidarity within the research community while still offering critique and creating "space for their own research" (Hood / Martin

2007: 758). The results of these studies also allowed for the expansion on the subtypes of force and focus. Intensifying force is extended to processes as enhancement (*frequently* show) while scaling the focus of processes is considered as fulfilment (*seems* to be arguing) (see e.g. figure 25.6. in Hood / Martin 2007: 755). Finally, scaling the focus of entities is divided according to their authenticity (*real* research) or specificity (*in particular*) (cf. Hood / Martin 2007: 755).

However, it is important to note the specialized nature of the texts under analysis in this study. Legislative texts do have an interpersonal function by setting norms and values and communicating them to the society at large. However, by setting the boundaries of what one can and cannot do law texts also fulfil an ideational function (i.e. they create social realities). Subsequently, it can be presumed that graduation has this duality of functions in laws texts as well. In fact, up/downscaling the force and sharpening/blurring the focus of categories in a law text has the direct effect of scaling the scope of that law. In other words, up/downscaling the force and sharpening/blurring the focus of categories in sections that determine the rights and obligations of law enforcement will result in scaling the scope of those rights and obligations. For example, in Alabama Code § 13A-3-27 it is stated that a law enforcement official has the right to use *force* that is *necessary* but that statement is then softened with *believes to be necessary*. In this, graduation functions to increase the rights of law enforcement. However, as a secondary function, the statement also implies an implicit positive attitudinal evaluation about the capabilities of law enforcement officials by setting the standard of *necessary force* according to the beliefs of officers.

IV. Data and methods

We conducted this study on a corpus compiled of the 41 state statutes that had sections regulating the use of force by law enforcement. For nine states (Maryland, Massachusetts, Michigan, Ohio, South Carolina, Virginia, West Virginia, Wisconsin, Wyoming and the District of Columbia), no such code could be found. The laws were located by searching the statutes

in each of the government websites. If regulation existed, it was most likely to be found under criminal or penal law that determined the justification for the use of force by law enforcement. The use of force statutes varied significantly in length state by state, ranging from one single subsection with 55 words (Oklahoma) to a 1,500-word long statute with multiple subsections and specifying clauses (Hawaii). However, the basic tenets of the laws were strikingly uniform, and variation could only be found on how much the conditions allowing or restricting action were specified. Certain sections were excluded from the data on the basis that they did not determine any legal actions, or the legal subject was something else than a law enforcement official. These excluded sections contained mostly terminological explanations and sections describing how private citizens should act when assisting in an arrest.

We analyzed the corpus with the UAM corpus tool program and annotated the sections according to the 1) *graduation* found in them and 2) the realization of that graduation in *vague* or *specific* terms. First, we identified the instances of graduation in the sections according to the framework by Martin / White (2005) and Hood / Martin (2007). We analyzed graduation in the corpus to determine if the power distributed to the law enforcement was restricted or increased as well as to identify any implicit attitudinal evaluations. We also examined the interpretative power allocated to the judiciary. We analyzed whether a term fulfilling a graduating function, like in *reasonable* force, was vague or specific to identify the role the judiciary could have in its interpretation to regulate the law enforcement. We utilized the definition of vagueness by Engberg / Heller (2008: 147), who describe vagueness as semantic indeterminacy that:

1) makes it impossible to determine the truth value of a sentence, and
2) makes it possible to be more specific.

We categorized the graduating terms as specific unless both above-mentioned conditions applied. Thus, we categorized a term like *believe* as specific because it can be either true or untrue. In contrast, *reasonable* is vague as it is impossible to classify it as true or untrue and it is possible to be more specific when describing entities and processes. Specificity by its

very nature restricts the power allocated to the judiciary by leaving little space for interpretation. However, vague terms like *reasonable* allow room for the judiciary to interpret the actual power distributed to the law enforcement and set regulation at their own discretion.

V. Results

We will start by explicating how sharpening and softening the categorical boundaries of objects and processes could be used to scale power, before considering the role that scaling the force of processes and quantity had in the data.

1. Focus

Scaling the focus of the categorical boundaries of entities and processes accounted for 741 occurrences out of 783 in total (94%) of graduation in the data. Softening the focus of a category was slightly more common with 385 occurrences (49%) than sharpening the focus with 356 occurrences (43%). Importantly, softening and sharpening functioned to achieve different goals in the data. *Softening* functioned to increase the rights of law enforcement as well as decrease their obligations. Thus, it functioned to distribute power to the law enforcement. Softening was implemented with both vague and specific terms, which reserved the courts some regulatory power by way of interpretation. *Sharpening* functioned to restrict both the rights as well as the obligations of law enforcement. Thus, while sharpening decreased the power allocated to the law enforcement by restricting their rights, it also functioned to increase their power by restricting their obligations. However, it is significant that sharpening to restrict the rights of law enforcement was always implemented with vague terms. This de facto reserved the actual power to determine the extent of the regulatory measures to the courts. We will further explicate these results with a closer examination of some of the most common types of usage.

First, we will consider the semantically specific term *believe.* In the data, *believe* functioned to soften the authenticity of the categorical boundaries

of an entity. *Believe* is the most common softening element used and it alone accounted for 190 occurrences out of 334 cases of softening found in the data (57%). In fact, *believe* is so fundamental to the construction of the statutes under analysis that it was the 7th most common lexical word in the whole data and it was present in each statute. Alabama Code § 13A-3-27 shows how *believe* defined the core of the use of force statutes:

(1) A peace officer is justified in using that degree of physical force which he reasonably *believes* to be necessary.

(2) (h)(1) In using deadly physical force when and to the extent that he reasonably *believes* it necessary to prevent what he reasonably *believes* to be the escape of a prisoner accused or convicted of a felony from any detention facility, or from armed escort or guard.

In (1), *believe* essentially softens the category of "physical force that is necessary". The standard "physical force that is necessary" is defined by the subjective belief of the officer in question instead of on the basis of the actual circumstances. Thus, *believe* softens the authenticity of necessary force and broadens the scope of the action police officers can take. This is also true in example (2), where *believe* not only broadens the scope of the action taken by law enforcement officials but also the scope of the conditions that trigger the legal action from situations involving escape to situations where an officer *believes* an escape is occurring. Thus, *believe* functions to increase the rights of law enforcement and allocate them more power. In addition, since *believe*, while subjective, is still a specific term per the definition by Engberg / Heller (2008: 147), the judiciary does not have much power in trying to regulate these conditions. Finally, trusting that the beliefs of the officers are always proper reactions to the reality of the circumstances has quite strong positive implications about the capacity and integrity of law enforcement officials.

The categorical boundaries of processes were softened as well:

(3) The officer may use deadly force only when and to the extent the officer reasonably believes the use of deadly force is necessary to make

the arrest or terminate the escape or *attempted* escape from custody of a person the officer reasonably believes (Alaska Code AS 11.81.370).

(4) Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, where, if *feasible*, some warning is given (Washington Code RCW 9A.16.020).

In example (3), the vague term *attempt* softens the fulfilment of a process and it is a common example of how vagueness and softening are used to broaden the scope of the law to include all cases it was intended for. If it is the intent of the law to justify the use of force in order to prevent escape of a person held in custody, it is desirable to prevent all attempts of escape as well. In example (4), the vague term *feasible* softens the realization of the action to give "some warning" before employing deadly force. This in turn reduces the obligation for law enforcement officials to always give a warning. As *feasible* is a vague term, the courts must interpret case by case what circumstances constitute as *feasible* to give warning if accusations of wrongful conduct arise.

Sharpening categorical boundaries was almost as common as softening as out of the 190 occurrences of *believe,* 179 times (94%) it is sharpened by the semantically vague term *reasonably*. Examples (1) and (2) demonstrate this usage of *reasonably believe* as does New York Penal Law § 35.30 (5). In fact, similar statements could be found in all the other statutes as well. *Reasonable* also appeared alone. Consider the examples taken from Louisiana Code Article 220 (6) and Arizona Code 13-410 (7):

(5) A police officer or a peace officer, in the course of effecting or attempting to effect an arrest, or of preventing or attempting to prevent the escape from custody, of a person whom he or she *reasonably believes* to have committed an offense, may use physical force when and to the extent he or she *reasonably believes* such to be necessary to effect the arrest, or to prevent the escape from custody, or in self-defense or to defend a third person from what he or she *reasonably believes* to be the use or imminent use of physical force.

(6) The person making a lawful arrest may use *reasonable* force to effect the arrest and detention, and also to overcome any resistance or threatened resistance of the person being arrested or detained.

(7) The threatened use of deadly physical force by a person against another is justified pursuant to section 13-409 only if a *reasonable* person effecting the arrest or preventing the escape would believe the suspect or escapee is […].

In (5) *believe* softens the boundaries of action triggering conditions "committed an offence" and "the use or imminent use of physical force" and the scope of the action "necessary to effect the arrest". *Reasonably* functions to specify this act of believing. In (6) and (7) *reasonable* specifies the manner of an officer and the amount of force that can be used. In this way, it can be considered that *reasonably* functions to restrict the power given to the law enforcement by setting standards to the manner of believing and behaving. However, by its own indeterminacy, *reasonably* also turns previously specific terms into vague statements: *reasonably believe, reasonable person* and *reasonable force.* The truth value of *believe* can be deciphered as a person either believes or does not. This is not possible for *reasonably believe* and as a standard it is also impossible to fully specify. This is also true for statements like *reasonable person* or *reasonable force.* Thus, the actual restrictive power *reasonable* has is determined by the courts that interpret its meaning.

Yet, it is difficult to answer what exactly counts as *reasonable* force or *reasonably* believing and indeed, the courts that have been left to resolve this question have also struggled and contested much over its meaning. For example, in *Johnson v. Glick*, 481 F.2d 1028 (1973), the Federal Court of Appeals of the 2nd Circuit determined that "undue force" according to the 14th Amendment ("nor shall any State deprive any person of life, liberty, or property, without due process of law") should be tested against four factors that all had to apply:

1) the need for the application of force,
2) the relationship between the need and the amount of force that was used,
3) the extent of injury inflicted,
4) the force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.

The so-called Glick test was conceived in a ruling over a pretrial detainee. A. Johnson claims that excessive force had been inflicted upon him by a guard, which had violated his constitutional rights. Thus, the case was judged according to the "undue force" clause in the 14th Amendment (United States Constitution 1868) as it applies to the treatment of people already seized in custody. However, this standard was quickly appropriated into all claims of *unreasonable* and *excessive* force (see e.g. Brown 1991: 1261). In addition to *Johnson v. Glick*, in *Tennessee v. Garner*, 471 U.S. 1 (1985), the Supreme Court set another standard by concluding that laws that allow the use of deadly force while arresting nonviolent citizens is unreasonable and unconstitutional according to the 4th Amendment ("the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated").

In *Graham v. Connor*, 490 U.S. 386 (1989), the Supreme Court decided that the so-called Glick test should not be applied to test "unreasonable force" and concurred that in the line of *Tennessee v. Garner* only the "objective reasonableness" that takes into account the "totality of circumstances" should be considered while any concerns of "good faith" and subjective intents of the officers are not relevant. In *Graham v. Connor*, 490 U.S. 386 (1989), the Supreme Court led by Justice Rehnquist concluded that "objective reasonableness" should be considered from the perspective of a "reasonable" officer on the scene not "with the 20/20 vision of hindsight" and emphasized the need for officers to "make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving".

It is perhaps this statement that best describes the reasoning behind the Supreme Court judges:

> An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional. (*Graham v. Connor*, 490 U.S. 386, 1989)

These types of considerations are well in line with "objective" judicial decision-making that is based purely on text. However, it is worth questioning if emphasizing "objectiveness" actually makes the decision objective. Arguably the decision in *Graham v. Connor,* which still is the standard applied today, only eliminates one regulatory measure of subjective intentions and offers no other standard than the "objective reasonableness" of a "reasonable officer". This ultimately offers very little as restrictive measure as the standard for *reasonable* is defined on the terms of law enforcement officials themselves. Consequently, we conclude that *reasonably* could theoretically restrict the law enforcement but at least as of now, the judiciary seems content to interpret it in a non-restrictive way.

Other examples of sharpening the focus of categorical boundaries can be seen in (8) and (9):

(8) A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which he would be justified in using if the warrant were valid, unless he *knows* that the warrant is invalid. (Illinois Code 720 ILCS 5/7-5)

(9) When necessarily used by a peace officer to overcome *actual* resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty. (Washington Code RCW 9A.16.020)

In (8), *knows* sharpens the specificity of what constitutes as an "invalid warrant" that does not trigger the conditions for action. The officer has to *know* that the warrant is invalid for it to have an effect in the justification. This increases the scope of the conditions triggering the rights of law enforcement and, thus, the power allocated to them. However, in (9),

sharpening the realization of resistance with *actual* has the opposite effect of decreasing the scope of the conditions triggering the rights of law enforcement. Next, we will briefly summarize the findings from the force category that concerns the scaling of intensity and quantity. It is important to note that, as only 42 occurrences (6%) in the data represented the force category, these results are tentative at best.

2. Force

All the cases of graduating the force of statements were represented by intensification. The cases represented were upscaling and downscaling the intensity of a quality, namely *necessary,* and upscaling the rigor of a process. See Delaware Code § 467 (10), Alaska Code AS 11.81.370 (11) and Tennessee Code § 39-11-620 (12):

(10) (a)(1) The defendant is making an arrest or assisting in making an arrest and believes that such force is *immediately* necessary to effect the arrest.

(11) (a) A law enforcement officer, after giving notice of the officer's identity as such, may use or threaten to use force that is *reasonably* necessary to accomplish the arrest of an individual suspected of a criminal act who resists or flees from the arrest.

(12) (2)(3) may otherwise endanger life or inflict serious physical injury unless arrested *without delay*.

The upscaling of intensity in example (10) with *immediately* and the upscaling of rigor in (12) with *without delay* show a different way of achieving the same function of implanting a sense of urgency into the arresting action. As such, they restrict the scope of conditions that trigger the legal right to take action. It is noteworthy that these cases always appeared in the sections defining the right to use deadly force. Thus, as the allowed scope of the actual force used is increased, the conditions that trigger the legal right to apply that force are restricted. The restricting effect is emphasized when compared to the downscaling of *necessary* with *reasonably* in example (11). In (11), *reasonably* downscales the intensity of *necessary*

and functions to broaden the scope of the legal action taken. All the force type graduating elements were realized with vague terms. However, excluding *reasonably,* all of them were quite easily defined qualities describing the passage of time. Due to the limited amount of data found, these preliminary conclusions were the only ones made.

VI. Discussion

The results of the analysis show that graduating ideational meanings, particularly the focus of categorical boundaries, did indeed function to scale the power distributed to the law enforcement. Softening the boundaries functioned to broaden the scope of actions and conditions triggering action on the one hand, and narrow the scope of obligations on the other. Downscaling the intensity of a quality, in the few cases that were discovered, seemed to function in the same manner. Thus, softening categorical boundaries and downscaling intensity functioned to increase the power of law enforcement. Conversely, sharpening categorical boundaries functioned to narrow the scope of action and conditions triggering action as did the few cases of upscaling the intensity of processes. Hence, sharpening categorical boundaries and upscaling intensity functioned to restrict the power of law enforcement. However, it is noteworthy, that sharpening categorical boundaries did not only function to narrow the scope of the rights of law enforcement, but it also functioned to narrow the scope of their obligations. Even more importantly, the most common softening term *believe* is specific, while the most common sharpening term *reasonably* is vague. Consequently, the term that allocated most power to the law enforcement cannot be regulated by the judiciary. Yet, the term that is most commonly used to regulate the power of law enforcement does so in actuality only through the interpretative power of the judiciary.

The legislative intent deciphered from this dynamic is arguably to assert the rights of law enforcement as strongly as possible, while leaving the responsibility of regulation to the judiciary and local police departments. The judiciary interpreting this intent has decided to leave the responsibility to determine what a “reasonable” officer that uses “reasonable” force is to

the law enforcement officials themselves. It is already problematic in itself to trust in the ability of police departments to implement rigorous self-regulation, but more so when there is clear evidence of misconduct that has been left unchecked. Encounters between police officers and black Americans, who are unarmed or not, accused of criminal activity or not, keep turning violent and fatal. Likewise, the legal cases setting precedent for "reasonable" force were cases of police violence against black men. In *Johnson v. Glick,* Australia Johnson was a black prisoner brutalized by a guard and his claim of excessive force was dismissed. In *Tennessee v. Garner,* Edward Garner, a black teen, was killed for stealing a handbag with 10 dollars and his father's claim was dismissed even though the Tennessee state law was later determined as unconstitutional. In *Graham v. Connor,* Dethorne Graham, a black man suffering from a seizure caused by diabetes was brutalized and his claim was dismissed. The fact that the Supreme Court chooses not to interfere in any claims of excessive force is undoubtedly a value-based judgement.

Ultimately, the statutes and the judiciary do not set any significant regulation on the use of force by law enforcement officials. For one, *believe* is a difficult standard to regulate. If all the conditions that trigger the right for action need only be based on the beliefs the officers have, it is hard to start challenging those beliefs, even when officers are acting in bad faith. *Reasonably* does deter completely arbitrary behavior, yet the refusal by the judiciary to determine it more restrictively severely limits its ability to regulate conduct. The justification for *reasonably believe,* at least in its current form as a vague non-restrictive legal standard, should be reconsidered by bill drafters and members of the judiciary alike. Further research on the subject is needed, particularly from the perspective of jurisprudence, but this research could offer a valid starting point. It would be beneficial to analyze other texts that regulate the use of force by law enforcement like the UN resolutions or similar laws in other national contexts. In addition, this study is from a top-down perspective and, obviously, solving these problems in the statutes would not be enough to solve police brutality. Racial bias is a problem steeped deep in the very institution of law

enforcement in the United States. Ultimately, the local police departments are responsible for educating their officers to combat racial bias and excessive use of force. However, it is important that the pressure and incentive for this change comes from the top as well and that officers abusing their powers can be held accountable.

VII. References

Alabama Code § 13A-3-27. 1975. *Use of force in making an arrest or preventing an escape.* https://judicial.alabama.gov/docs/library/docs/13A-3-27.pdf. Last access 18.2.2022.

Alaska Code § 11.81.370. n.d. *Justification. Use of force by a peace officer in making an arrest or terminating an escape*. http://www.akleg.gov/basis/statutes.asp#11.81.370. Last access 18.2.2022.

Arizona Code § 13-410. n.d. *Justification; Use of deadly physical force in law enforcement*. http://www.azleg.gov/ars/13/00410.htm. Last access 29.9.2020.

Amnesty International. 2015. *Deadly force. Police use of lethal force in the United States*. http://www.amnestyusa.org/wp-content/uploads/2015/06/aiusa_deadlyforcereportjune2015-1.pdf. Last access 18.2.2022.

Bhatia, Vijay K. 2005. Specificity and generality in legislative expression. Two sides of the coin. In: Vijay K. Bhatia / Jan Engberg / Maurizio Gotti / Dorothee Heller (eds.), *Vagueness in normative texts*. Berlin: Peter Lang, 337-356.

Brown, Jill I. 1991. Defining reasonable police conduct. Graham v. Connor and excessive force during arrest. In: *UCLA Law Review* 38 (5), 1257-1286.

Brown v. Board of Education of Topeka, Kansas 347 U.S. 483. 1954. *Justia*. http://supreme.justia.com/cases/federal/us/347/483/. Last access 29.9.2020.

Chemerinsky, Erwin. 2000. The jurisprudence of Justice Scalia. A critical appraisal. In: *University of Hawai'i Law Review* 22 (2), 385-402.

Delaware Code DEL§ 467. n.d. *Justification – Use of force in law enforcement.* https://delcode.delaware.gov/title11/c004/index.shtml. Last access 29.9.2020.

Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders. 1990. Basic principles on the use of force and firearms by law enforcement officials. In: *Office of the High Commissioner*. http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx. Last access 29.9.2020.

Endicott, Timothy. 2000. *Vagueness in law*. Oxford: Oxford University Press.

Endicott, Timothy. 2005. The value of vagueness. In: Vijay K. Bhatia / Jan Engberg / Maurizio Gotti / Dorothee Heller (eds.), *Vagueness in normative texts*. Berlin: Peter Lang, 27-48.

Engberg, Jan / Dorothee Heller. 2008. Vagueness and indeterminacy in law. In: Vijay K. Bhatia / Christopher N. Candlin / Jan Engberg (eds.), *Legal discourse across cultures and systems*. Hong Kong: Hong Kong University Press, 145-168.

Graham v. Connor. 490 U.S. 386. 1989. *Justia*. https://supreme.justia.com/cases/federal/us/490/386/. Last access 29.9.2020.

Halliday, Michael A.K. 1978. *Language as social semiotic. The social interpretation of language and meaning.* London: Edward Arnold.

Halliday, Michael A.K. / Christian Matthiessen. 2014. *Halliday's introduction to systemic functional grammar*. Revised edition. London: Routledge Taylor & Francis Group.

Hood, Susan. 2004. Managing attitude in undergraduate academic writing. A focus on the introduction to research reports. In: Louise J. Ravelli / Robert A. Ellis (eds.), *Analysing academic writing*. *Contextualized frameworks*. London: Continuum, 24-44.

Hood, Susan. 2006. The persuasive power of prosodies. Radiating values in academic writing. In: *Journal of English for Academic Purposes* 5 (1), 37-49.

Hood, Susan / James R. Martin. 2007. Invoking attitude. The play of graduation in appraising discourse. In: Hasan Ruqaiya / Christian Matthiessen / Jonathan J. Webster (eds.), *Continuing discourse on language. A functional perspective*. Volume 2. London: Equinox, 739-764.

Illinois Code 720 ILCS 5/7-5. 2012. *Justifiable use of force; exoneration*. http://ilga.gov/legislation/ilcs/ilcs4.asp?DocName=072000050HArt.+7&ActID=1876&ChapterID=53&SeqStart=8300000&SeqEnd=9800000. Last access 29.9.2020.

Johnson v. Glick, 481 F.2d 1028. 1973. *Casetext.* https://casetext.com/case/johnson-v-glick. Last access 29.9.2020.

Louisiana Code CCRP Art. 220. n.d. *Submission to arrest; use of force*. https://www.legis.la.gov/legis/Law.aspx?d=112373. Last access 29.9.2020.

Mapping police violence. 2017. *Police violence report*. https://policeviolencereport.org/. Last access 29.9.2020.

Martin, James R. / Peter R.R. White. 2005. *The language of evaluation. Appraisal in English.* Hampshire: Palgrave MacMillan.

New York Penal Law § 35.30. 1968. *Justification; use of physical force in making an arrest or in preventing an escape*. https://www.nysenate.gov/legislation/laws/PEN/35.30. Last access 18.2.2022.

Roe v. Wade 410 U.S. 113. 1973. *Justia.* https://supreme.justia.com/cases/federal/us/410/113/case.html. Last access 29.9.2020.

Scalia, Antonin. 1997. *Matter of interpretation. Federal courts and the law*. Princeton, NJ: Princeton University Press.

Schad v. Arizona 111 S. Ct. 2491. 1991. *Casemine*. https://www.casemine.com/judgement/us/5914888cadd7b049344f4fcc. Last access 29.9.2020.

Tennessee Code § 39-11-620. 1989. *Use of deadly force by a law enforcement officer*. https://www.lexisnexis.com/hottopics/tncode/. Last access 29.9.2020.

Tennessee v. Garner 471 U.S. 1. 1985. *Justia.* https://supreme.justia.com/cases/federal/us/471/1/case.html. Last access 29.9.2020.

United Nations General Assembly resolution 34/169 of 17 December 1979. 1979. Code of conduct for law enforcement officials. In: *Office of the High Commissioner*. http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx. Last access 29.9.2020.

United States Bureau of Justice Statistics. 2016. *Prisoners in 2015* [PDF]. https://www.bjs.gov/content/pub/pdf/p15.pdf. Last access 29.9.2020.

United States Constitution. 1868. *Bill of Rights and Later Amendments*. http://www.ushistory.org/documents/amendments.htm. Last access 29.9.2020.

Washington Code RCW 9A.16.020. 1979. *Use of force – When lawful.* https://app.leg.wa.gov/rcw/default.aspx?cite=9A.16.020. Last access 29.9.2020.

List of abbreviations

UN United Nations
US United States

Section III

Wiener Erklärung / Vienna Declaration

Wiener Erklärung zur Forschungsethik in der Rechtslinguistik

Die Österreichische Gesellschaft für Rechtslinguistik (ÖGRL) verabschiedet auf ihrer 4. Generalversammlung vom 9. Mai 2021, unter Hinweis auf das Staatsgrundgesetz 1867, auf die Europäische Menschenrechtskonvention 1950 samt der dazu ergangenen Protokolle, auf die Deklaration von Helsinki 1964 über Ethische Grundsätze für die medizinische Forschung am Menschen, auf die Klagenfurter Erklärung zur österreichischen Sprachenpolitik 2011, sowie auf die einschlägigen Erklärungen des Vorstands der ÖGRL und unter Miteinbeziehung der Stellungnahmen ihrer Beirät*innen, nachfolgende Erklärung:

Die Generalversammlung,

eingedenk der Ziele und Grundsätze der Deklaration von Helsinki und in Bekräftigung, dass Wissen und Gewissen auch in der Rechtslinguistik, vor allem aber in der Angewandten Rechtslinguistik, untrennbar verbunden sind;

im Bewusstsein der wesentlichen Bedeutung von Sprache und Recht für den Menschen als Individuum und als gesellschaftliches Wesen sowie als Mittel der Kommunikation und Verständigung für seine Entwicklung;

mit Ausdruck der Besorgnis über die fehlende Vereinheitlichung der Grundlagen ethisch vertretbarer rechtslinguistischer Forschung in der Republik Österreich und weltweit;

erklärend, dass eine Vereinheitlichung der Grundlagen ethisch vertretbarer rechtslinguistischer Forschung von größter Wichtigkeit ist;

betonend, dass die durch Analogieschluss ergründbaren Richtlinien nicht ausreichen, um die ethischen Aspekte der rechtslinguistischen Forschung in Österreich vollumfänglich zu regeln;

in Anerkennung der dringenden Notwendigkeit einer stärkeren Verflechtung interdisziplinärer und transdisziplinärer Ansätze zur ethischen Forschung am Menschen in rechtlichen Kontexten;

sowie in Anerkennung der Tatsache, dass Rechtslinguist*innen durch ihre Nähe zu Gerichten und Rechtsprechung sowohl eine rechtliche als auch eine besondere ethische Veranwortlichkeit trifft;

in Anbetracht der Bedeutung, die rechtslinguistische Erkenntnisse für die Rechtsfindung entfalten können;

1. empfiehlt die Vereinheitlichung der Grundlagen ethisch vertretbarer rechtslinguistischer Forschung in der Republik Österreich;
2. legt dem Gesetzgeber nahe, Grundlagen zur ethisch vertretbaren Durchführung rechtslinguistischer Forschung zu schaffen;
3. ersucht die Bundesregierung nachdrücklich, die Österreichische Gesellschaft für Rechtslinguistik als Vertreterin der Rechtslinguist*innen in Österreich in Vorbereitung der Schaffung solcher gesetzlichen Grundlagen miteinzubeziehen;
4. empfiehlt die Schaffung gesetzlicher Grundlagen zu ethisch vertretbarer Durchführung rechtslinguistischer Forschung in einer präzisen, geschlechterrepräsentativen, transparenten, verständlichen und leicht zugänglichen Form in einer klaren und einfachen Sprache;
5. bekundet ihre Bereitschaft, einen aktiven Beitrag zur Schaffung von Grundlagen zur ethisch vertretbaren Durchführung rechtslinguistischer Forschung zu leisten;
6. fordert alle Rechtslinguist*innen auf, bei Vorliegen von Befangenheit oder bei geplanter Verwendung einer ethisch nicht vertretbaren Methode die Mitwirkung am Gutachten oder am Forschungsprojekt abzulehnen;
7. legt allen Rechtslinguist*innen bei Durchführung eines Forschungsprojekts oder bei Beauftragung als Gutachter*in nahe, jede unsachliche Beeinflussung unverzüglich anzuzeigen;
8. bekräftigt ihre Bereitschaft, die Rechtslinguist*innen in Österreich und weltweit bei der Durchführung ethisch vertretbarer Forschungsvorhaben zu unterstützen;

9. ersucht die österreichischen Ethikkommissionen, ihrerseits die Bestrebungen der Österreichischen Gesellschaft für Rechtslinguistik dabei zu unterstützen und zu beraten, einheitliche Grundlagen ethisch vertretbarer rechtslinguistischer Forschung zu schaffen;
10. beschließt, die rechtslinguistische Grundlagenforschung unter Berücksichtigung ethisch vertretbarer Grundsätze unermüdlich voranzutreiben;
11. ersucht den Vorstand, über den Stand der Durchführung dieser Erklärung regelmäßig Bericht zu erstatten.

Wien, am 9. Mai 2021

Die Wiener Erklärung zur Forschungsethik in der Rechtslinguistik wurde von der Generalversammlung der ÖGRL am 9. Mai 2021 verabschiedet. Sie kann online auf der Webseite der ÖGRL zugegriffen werden: oegrl.com.

Vienna Declaration for Research Ethics in Legal Linguistics

The Austrian Association for Legal Linguistics (AALL) adopts the following declaration at the 4th General Assembly of the Austrian Association for Legal Linguistics on 9th May 2021, with reference to the Basic Law 1867, the European Convention on Human Rights 1950 including its protocols, the Declaration of Helsinki 1964, the Klagenfurt Declaration on Austrian Language Policy 2011, as well as the relevant declarations of the Executive Board of the AALL and the opinions issues by members of the advisory board:

The General Assembly,

considering the aims and principles of the Declaration of Helsinki and affirming that knowledge and conscience are inextricably linked in legal linguistics, but above all in applied legal linguistics;

conscious of the great significance of language and law for humans as individuals and as a social beings, as well as a means of communication and common understanding for their development;

expressing concern regarding the lack of standardisation in the foundations of ethically justifiable legal linguistic research in the Republic of Austria and in the world;

declaring that a standardisation of the foundations of ethically justifiable legal linguistic research is of the greatest importance;

emphasising that the guidelines derived from the conclusion by analogy are not sufficient to comprehensively regulate all ethical aspects of legal linguistic research in Austria;

recognising the urgent need for a stronger integration of interdisciplinary and transdisciplinary approaches to ethical research on and people in legal contexts;

and in recognition of the fact that legal linguists, due to their proximity to courts and jurisprudence, have both a legal as well as a special ethical responsibility;

in view of the importance which legal linguistic knowledge can develop for the judicial process;

1. recommends the standardisation of the foundations of ethically justifiable legal linguistic research in the Republic of Austria;
2. urges the legislature to create foundations for the ethically justifiable conduct of legal linguistic research;
3. urges the Federal Government to involve the Austrian Association for Legal Linguistics as the representative of legal linguists in Austria in preparation for the creation of such legal foundations;
4. recommends the creation of a legal basis for the ethically justifiable implementation of legal linguistic research in a precise, gender-representative, transparent, understandable and easily accessible form in clear and simple language;
5. expresses its readiness to make an active contribution to the creation of the foundations for the ethically justifiable implementation of legal linguistic research;
6. calls on all legal linguists to refuse to participate in a report or a research project if they are biased or if an ethically unjustifiable method is planned to be used;
7. urges all legal linguists when carrying out a research project or when commissioned as consultants to report any improper influence immediately;
8. confirms its readiness to support legal linguists in Austria and around the world in carrying out ethically justifiable research projects;
9. requests that the Austrian ethics committees for their part support the efforts of the Austrian Association for Legal Linguistics to create a uniform basis for ethically justifiable legal linguistic research and to act in an advisory capacity;

10. resolves to tirelessly advance fundamental legal linguistic research, taking into account ethically justifiable principles;
11. requests that the Executive Board report regularly on the state of implementation of this declaration.

Vienna, on 9th May 2021

The Vienna Declaration on Research Ethics in Legal Linguistics was passed by the General Assembly of the AALL in its original German version on 9th May 2021. It can be accessed online in German on the AALL website: oegrl.com.

This English translation is for information only. The official version is the German original.

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Jens Fleischhauer studied General Linguistics and Philosophy at Heinrich-Heine University Düsseldorf. He received his doctoral degree in General Linguistics from the same university. Currently, he is a post-doc researcher at the University of Düsseldorf and heading a project funded by the Deutsche Forschungsgemeinschaft (DFG; German Research Foundation) on the composition of German as well as Persian light verb constructions. The project's title is "Light verb constructions: Families and composition". His research is mainly directed on the syntax-semantics interface, especially on aspectual composition, complex predicates and modification. He is particularly interested in comparative semantics with a special focus on Germanic, Slavic and Iranian languages.

Daniel Green is a university assistant (prae doc) at the Institute for English Business Communication at the Vienna University of Economics and Business (WU). He is also a lecturer at the Centre for Teacher Education and has contributed to research seminars on methods of computer-assisted statutory interpretation at the Department of Constitutional and Administrative Law at the University of Vienna. He studied English and History at the University of Vienna (Mag.phil.), as well as Law at the University of Edinburgh (LL.M). In his diploma thesis he investigated adjectival vagueness in the Austrian Civil Code. He is the founding president of the Austrian Association for Legal Linguistics and (co-)organises all major AALL events. He also teaches English, History and Law in Vienna, Austria.

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Rechtslinguistik
Studien zu Text und Kommunikation
Studies on Text and Communication
hrsg. von Claire Kramsch (Berkeley), Claus Luttermann (Eichstätt-Ingolstadt) und Karin Luttermann (Eichstätt-Ingolstadt)

Karin Luttermann; Albert Busch (Hg.)
Sprache und Recht: Konstitutions- und Transferprozesse in nationaler und europäischer Dimension
Dieser Themenband zur Schnittstellendisziplin *Rechtslinguistik* stellt eine spannende und fortdauernde Diskussion vor, die ihren Ausgang mit dem Symposium Rechtslinguistik zum 50. Jubiläum der Gesellschaft für Angewandte Linguistik (GAL) an der Universität Duisburg-Essen nahm. Der Band führt Wissenschaftler verschiedener (Teil-)Disziplinen und Praktiker zusammen und zeigt Entwicklungslinien in der Rechtslinguistik. Den Schwerpunkt bilden die Themenfelder *Recht und Konstitution*, *Recht und Forensik* sowie *Recht und Transfer*. Die Themen werden in fünfzehn Einzelbeiträgen, auch über nationale Bezüge hinaus, im europäischen Vergleich behandelt. Ziel ist es, den interdisziplinären Dialog an der Schnittstelle zwischen Sprache und Recht zu fördern, Forschungsperspektiven fortzuentwickeln und den Blick auf angewandte rechtslinguistische Zugänge zu weiten.
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Projekt Angewandte Linguistik (PAL)
Prof. Dr. Karin Luttermann (Universität Eichstätt-Ingolstadt), Prof. Dr. Christina Gansel (Universität Greifswald)

Christina Gansel; Sergej Nefedov; Irina Jesan (Hg.)
Kommunikative Praktiken in sozialen Kontexten
Sprachliche Mittel im Einsatz
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Es werden Praktiken aus der Sphäre der Wissenschaftskommunikation, des Journalismus, der tradierten Kulturalität oder der historischen Herausbildung von Höf ichkeitsstrukturen und Textsorten erfasst. Makro-, meso- und mikrostrukturelle Ebenen bilden jeweils einen Ausgangspunkt der Untersuchungen.
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Friedrich Markewitz
Das Schulprogramm als Textsorte zwischen Erziehungs- und Wissenschaftssystem
Eine systemtheoretisch-textsortenlinguistische Untersuchung
Aufarbeitungen der historischen Textsortenwelt sowie komplexer Großtextsorten stellen seit langer Zeit ein Forschungsdesiderat der Textlinguistik dar. Diese Arbeit ist als umfassender Versuch der Füllung dieser Leerstellen zu verstehen. Gegenstand ist die historische Textsorte ‚Schulprogramm': Diese im 18. und 19. Jahrhundert enorm einf ussreiche Textsorte des historischen Bildungswesens wird in ihrer Genese, Weiterentwicklung und Ausdifferenzierung über einen Zeitraum von 150 Jahren mit textsortenlinguistischen Analysewerkzeugen und Rückgriff auf die Luhmann'sche Systemtheorie aufgearbeitet.
Bd. 2, 2019, 750 S., 84,90 €, br., ISBN 978-3-643-14043-2

Christina Gansel; Karin Luttermann (Hg.)
Nachhaltigkeit – Konzept, Kommunikation, Textsorten
Nachhaltigkeit gilt seit der Weltkonferenz zu Umwelt und Entwicklung im Jahr 1992 in Rio de Janeiro als Leitbild gesellschaftlichen Handelns und ist sprachlich in gesellschaftlicher Kommunikation verankert. Nachhaltig zu handeln, ist erklärtes Ziel der Gesellschaft in Politik, Wirtschaft, Tourismus, Werbung, Recht und Verwaltung sowie Religion. Die Beiträge des Bandes ref ektieren in linguistischer Perspektive, wie sich die hohe Frequenz des Lexems *Nachhaltigkeit* im Gebrauch auf die sprachliche Ausformung des Konzepts auswirkt, ob und in welcher Weise ein Resonanzraum für ökologische Gefährdungen und soziale Herausforderungen in gesellschaftlicher Kommunikation entstanden ist und in welchen Textsorten das Konzept *Nachhaltigkeit* spezif sche Gestalt gewinnt.
Bd. 1, 2020, 416 S., 39,90 €, gb., ISBN 978-3-643-14688-5

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In this volume, scholars explore and discuss current issues in Theoretical Legal Linguistics (TLL) and Applied Legal Linguistics (ALL), contributing to the growing body of international research in the field. Focus is placed on the interconnected skills, tasks and approaches to the study of legal language in its plethora of facets as presented at the first international conference and the second International Legal Linguistics Workshop (ILLWS19) of the Austrian Association for Legal Linguistics. The articles present research in the areas of contract interpretation, bijuralism, the European Reference Language System, clear language and communication in legal settings, issues in legal semantics, plain legal language in multilingual legislative drafting, legal language teaching, light verb constructions in legal German, forensic linguistic expert testimony, deontic modality in legislative drafting, migration and legal language, appeals in Russian and their qualification as language crimes, and graduation in the use of force statutes. The concepts, methods, and findings offer valuable insights into current research in legal linguistics.

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