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Language and Law

Teaching and Translating English for Legal Purposes

Edited by HALINA SIEROCKA
HALINA ŚWIĘCZKOWSKA

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LANGUAGE AND LAW

TEACHING AND TRANSLATING ENGLISH FOR LEGAL PURPOSES

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Halina Sierocka and Halina Święczkowska

University of Białystok
Białystok 2013

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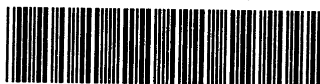
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VERSITA

STUDIES IN LOGIC, GRAMMAR
AND RHETORIC 34 (47) 2013

INTRODUCTION

English for Specific Purposes (ESP) and specifically English for Legal Purposes appears to be gaining in popularity and acquiring a new dimension in many countries, not least in Poland.

There are some aspects of Legal English that can be both a hindrance and a challenge for teachers, translators and interpreters. Despite the intention to be accurate and precise, legal discourse is frequently ambiguous and complex. This is due to its specificity affected by social, cultural and historical contexts, which again poses obstacles in teaching, learning, translating and interpreting English for Legal Purposes.

The present volume of "Studies in Logic, Grammar and Rhetoric" entitled *Language and Law – Teaching and Translating English for Legal Purposes* reflects these concerns. Academics from Polish and overseas scientific centres present their research not only in the context of translation and interpretation of law, but teaching Legal English and teaching law in English are also discussed.

The editors hope that this volume will make a contribution to the debate on the problems related to English for Legal Purposes and will provoke further discussion on translating and teaching Legal English.

Halina Sierocka
Halina Święczkowska

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VERSITA

STUDIES IN LOGIC, GRAMMAR
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LATIN MAXIMS AND PHRASES IN THE POLISH, ENGLISH AND FRENCH LEGAL SYSTEMS – THE COMPARATIVE STUDY[1]

Abstract. The aim of this research paper is to examine Latin in the context of legal translation between the Polish, English and French languages. Latin appears in contemporary legal discourse in the form of maxims, short phrases and terms. Even though it constitutes an integral element of legal drafting, Latin often attracts little attention from legal translators. It is falsely assumed that Latin elements of the text do not require translation due to several misconceptions related to the Latin language. Firstly, Latin is generally perceived as a global language with no local variations in form. Secondly, Latin is believed to be the universal point of reference in international communication (which is true only in the case of the natural sciences). Thirdly, Latin legal phrases or maxims are thought to originate solely from Roman law, thus they express only Roman legal thought.

In the first part of the paper we will address the above issues. To this end, we will briefly discuss the historical presence of Latin in the European linguistic context. We will then present the results of our research into the use of Latinisms in the Polish, French and English legal systems. The subject of our research was a set of twenty Latin maxims and phrases that frequently appear in the decisions of the Polish courts. During the first stage of the analysis, the items in question were verified in Legalis (the on-line service devoted to Polish law). The second stage of the research involved the consultation of monolingual dictionaries of French and English legal language to verify the universal character of the analyzed Latinisms. During the third stage of the analysis, we looked at the practical use of Latinisms in online databases of legal texts (Dalloz.fr, Westlaw International). The paper concludes with some comments on Latinisms in lexicographical publications and online sources.

Keywords: legal Latin, legal maxims, Latinisms, legal translation

Even though Latin constitutes an important element of the cultural heritage of Europe, it has almost disappeared from the linguistic arena and apart from several cliché expressions, is generally unknown to the average European citizen. One of the few domains where it has remained in use is

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in law. There are still many legal practitioners who use Latin to a wide extent in legal drafting and speech, believing that the language adds authority and prestige to their words. Latin appears in contemporary legal discourse only occasionally (its intensity varies from one language to another) in the form of maxims, short phrases or terms, yet when it does – it constitutes a potential pitfall for the translator. Due to several common overgeneralisations it is falsely assumed that the Latin elements of the text do not require translation.

Firstly, Latin is generally perceived as a universal language with no local variations in form. Indeed, in the Middle Ages, Latin gained the status of a *lingua franca* on the European continent. However, as the result of interaction with local languages, the form of Latin has altered in various parts of Europe.

Secondly, Latin is believed to be a universal point of reference in contemporary professional communication, which holds true, but only in the case of the natural sciences. Latin nomenclature is uniformly applied and understood by specialists working in fields such as medicine, pharmacy or biology. The same cannot be said of legal Latin, because of the culture-dependent character of law itself. As Šarčević (2000:231) put it:

> Unlike medicine, chemistry, computer science and other disciplines of the exact sciences, law remains first and foremost a national phenomenon. Each national or municipal law, as it is called, constitutes an independent legal system with its own terminological apparatus and underlying conceptual structure, its own rules of classification, sources of law.

The third source of potential confusion is the misconception that Latin legal phrases and maxims originated solely from Roman law, and thus express Roman legal thought. This is only partially true, as will be explained further on in the text.

There exists a vast literature on the topic of legal Latin and its history (an interesting discussion can be found in Tiersma, 2000; Matulewska, 2003; Mattila, 2006). However, there is still a scarcity of comparative studies that would show the scale of discrepancies in specific linguistic contexts. This study is an attempt to enrich existing knowledge with information on Polish, English and French legal Latin.

To properly understand the nature of Latinisms appearing in modern legal writing, one needs to look at the historical presence of Latin and Roman law on the European continent. This issue will be addressed in the first part of the paper. We will then present the results of a comparative study into the use of Latin in Polish, French and English contemporary legal discourse.

In the concluding part of the discussion, some comments on Latinisms in lexicographical publications and online sources will be provided.

The Roman legacy in European law

The Latin language was originally used by Romans, who during their extensive military campaign managed to gain control over vast territories of contemporary Western Europe. The Roman legacy, however, was not absorbed by the European continent in the heyday of Roman domination, but five centuries after the fall of the Empire. In the 11th century the texts of ancient Roman law were rediscovered. It was a time of significant political, economic and cultural transformation in Europe, instigated by the sudden embrace of Roman heritage (Stein, 1999).

It should be stressed here that the very term *Roman law* can be understood in two ways. In its wider sense, it covers the entire legal legacy developed in all epochs of the Roman Empire, from the Twelve Tables (dated 450 BC) to Justinian's Compilation (534 AD). In its narrow and more common meaning, *Roman law* denotes only Justinian's Compilation (also known under the name of the Corpus Juris Civilis). It is a compilation of Roman legal texts, assembled after the fall of Rome, on the initiative of Justinian, the emperor of the Eastern Empire, in order to preserve and revive the best of Roman law from all former epochs. Its most influential part, the Digest, was the collection of citations extracted from the most valuable Roman legal writings. In this paper, Roman law is understood as the Corpus Juris Civilis.

Roman law was first studied at the University of Bologna – the first university in Europe, founded in 1088 AD with the aim of studying the Corpus Juris Civilis (Glendon, Carozza & Picker, 2007). Roman legal thought was then gradually disseminated across Europe via newly-established universities. It reached first the academia and then the practitioners of law, who were often recruited among university graduates. This is how Wolff (1951:193) describes this process:

> The reception was not planned and was nowhere complete. It was a complex process of gradual infiltration through the action of university trained judges, lawyers, and draftsmen of legal documents; through opinions based on Roman law, rendered by professors of Roman law for the use of judges or parties in specific lawsuits; and through the work of learned men who undertook to draft statutes or to compile comprehensive statements of legal principles for the use of judges and attorneys.

Roman civil law, together with the immense literature devoted to this topic, soon formed the *jus commune*[2], i.e., the common legal system of Europe, applied in most western countries until the end of the 18th century (Wolff, 1951). The *jus commune* did not substitute, but interacted with other widespread bodies of law, like canon law or merchant law, as well as local customary and feudal laws (Glendon, Carozza & Picker, 2007).

Reception of the *jus commune* took different forms across Europe (Wolff, 1951). It was especially intensive in the territory of contemporary Germany, where it prevailed until the 19th century. Poland, on the other hand, strongly resisted the introduction of the *jus commune*, mostly for political reasons, i.e., difficult relations with the Holy Roman Empire, which was perceived as the heir of the Roman legacy (Jońca, 2009). The differences in absorption of Roman legal ideas could be seen even within one country, i.e. in France, divided into *pays de droit écrit* (land of written law) in the more Romanized south, and *pays de droit coutumier* (land of customary law) in the north (Janin, 2009). The *jus commune* never played a major role in the English legal system, though it was well-known in legal circles. The main motivation for the introduction of the *jus commune* on the continent was the growing need for a common legal system. The British lands, however, had developed their own legal concepts (common law and equity law) before the *jus commune* was established in mainland Europe. As Wolff (1951:198) explains:

> ... the early establishment of a well-ordered system of royal courts under Henry II (1154–89) made possible the beginning of a unification and, soon, comprehensive statements of the national law.... This, combined with the rise of a legal profession trained in the national law and proud of it, gave sufficient strength to English law to withstand the intrusion of Roman ideas.

Nonetheless, English legal draftsmen allowed the introduction of some Roman legal solutions into English law, as long as they did not interfere with the foundations of the English legal system (Wolff, 1951).

The prevalence of the *jus commune* came to an end at the time of codification of national laws. The most influential codes were the French Civil Code (1804, also called the Code of Napoleon) and the German Civil Code (1896). Both codes drew on the *jus commune*, thus they preserved some Roman rules and institutions until modern times. The French Civil Code came into force in the territory of Poland in 1808 (Wołodkiewicz, 2008). It was the first large-scale reception of Roman law in Poland (Litewski, 1995).

Latin in European legal discourse: a historical overview

Latin did not fade into oblivion after the collapse of *Imprerium Romanum* (476 AD). The language was preserved on the European continent by the Catholic Church, which established Latin as its official language and incorporated many Roman legal concepts into canon law (Jońca, 2009). In the hands of the Church, Latin was brought to the most distant areas of the European continent (stretching from Ireland to Poland and from Sicily to Scandinavia). At first, Latin was the language of liturgy. However, its presence soon extended to other fields, such as law, administration, education and the arts (Farrell, 2001). It was the language of official documents, judicial proceedings, correspondence, diplomacy, etc. Even though Latin prevailed among the educated elite, it never superseded local languages, rather it coexisted with them, in a different manner in each particular country. In Poland, in the times of the Polish First Republic, Latin had the status of one of the official languages, and was spoken and understood not only among the aristocracy, but also the poor nobility (Jońca 2009; Szczepankowska, 2007). However, with the development of national languages, Latin gradually lost its position. In France, the use of Latin in official documents was abolished in 1539, upon the decision of Francis I of France (Ordinance of Villers-Cotterêts). In Poland, Latin was officially used until 1795, i.e., the third partition of Poland.

As regards the British lands, during Roman domination Latin could be heard only among Romans and disappeared from the isles together with the conquerors in the 5th century (Tiersma, 2000). The language appeared again in these territories in 597 AD, brought by Catholic missionaries, but never enjoyed a position comparable to that in continental Europe. Shortly after conquering England (1066 AD), the Normans introduced French as the language of official communication. For several centuries that followed, English, Latin and French existed side-by-side forming a truly peculiar linguistic reality. English was the language of commonalty and oral communication, while French and Latin were the languages of the educated elite and written record. All three languages were also used in the legal context. As Tiersma (2000:34) explains:

> Many written pleadings and legal records were in Latin. Speech directed at nonlawyers – such as discussions with clients or questioning of witnesses in court – would necessarily have been in English. And interchanges with other barristers or judges in court – especially oral pleading – would have been in French...

Use of conjoined phrases, still popular in legal writing, e.g., *deem and consider, fit and proper, will and testament*, dates back to this particular time. The English Parliament finally proscribed the use of Latin in legal proceedings in 1731 (Plucknett, 1956 quoted in Tiersma, 2000). It soon turned out, however, that Latin could not be completely erased from legal writing. Many legal concepts expressed in Latin had no counterparts in the English language. This is one of the reasons why many Latinisms, e.g., *fieri facias, habeas corpus, ne exeat, nisi prius*, remained in use until modern times (Garner, 2001).

Latin in the modern era

The role of Latin significantly diminished after the emancipation of national languages (Tiersma, 2006), yet it has never vanished from the European linguistic landscape. Latin is still taught at universities, especially departments of linguistics and law faculties, as well as selected high schools, in order to preserve the legacy of Antiquity. It should be noted, however, that the presence of Latin in formal education differs from one country to another, which has a direct effect on the amount of Latinisms in professional communication.

Today, Latin is constantly being attacked by the supporters of the plain language movement, who argue that abuse of Latinisms in legal writing impedes communication and discriminates in favour of those in the know (Garner, 2001; *Łacina na ławie oskarżonych*, 2004). Yet, despite widespread criticism, legal maxims and phrases are still used by many law practitioners as a handy tool in their legal rhetoric, mostly because of the aura of splendour and erudition surrounding the language (Tiersma, 2000). Latin maxims are also referred to during the construction of new legal solutions, as a source of ever-lasting legal wisdom (Jońca, 2009), even though they themselves do not constitute binding legal rules.

In the legal context, Latin survived in the form of *maxims, phrases* or *terms of art*, scattered over the texts written in national languages. *Maxims* can be defined as independent sentences that express traditional legal principles, e.g., English *ignorantia juris neminem excusat*. *Phrases* are shorter in form than *maxims*; many of them have a native language equivalent, thus they serve mostly stylistic function, e.g., *sensu stricto, ad hoc, a contrario, a priori, de facto*, and can also be spotted in non-legal texts. As Garner (2001) pointed out, some Latin phrases have become such standard elements of legal writing that their presence is unobjectionable, e.g., *versus*,

bona fide. Latin *terms of art* convey precise legal meaning that could not be expressed otherwise in some national languages, e.g., English *prima facie, ex parte, quorum, subpoena* (Garner, 2001) or French *intuitus personae, accipiens, solvens.*

Due to the fact that Latin was the language of the Corpus Juris Civilis, which is perceived as the common foundation of continental legal systems, there is a tendency to think that all contemporary Latinisms originated directly from this particular source, and therefore must be universal. In fact, the Latin language outlived the Roman Empire by well over a thousand years, and was also applied in the formation of legal principles of national character. As a consequence, in contemporary legal discourse we can find Latinisms of different provenance, such as:

- Latinisms that have survived in unchanged form since Roman times, e.g., English *duo non possunt in solido unam rem possidere*, Polish *impossibilium nulla obligatio est*, or *superficies solo cedit*, present in Polish, English and French legal systems.
- Latinisms that were formulated in the post-Roman era, but on the basis of ancient Roman legal texts, e.g., *Polish lex posterior derogat priori, nasciturus pro iam nato habetur quotiens de commodis eius agitur*, or *lex retro non agit* (Litewski, 1995).
- Latinisms that come from canonical law, e.g., *pacta sunt servanda*, and common or equity law, e.g., *volenti non fit iniuria*, but are now applied in other legal systems (Jońca, 2009).
- Latinisms coined and used within national legal systems, even if they express concepts existing in other legal systems, e.g., *nasciturus* or *culpa in contrahendo* in Polish law, *intuitus personae* or *assipiens* in French law, or *stare decisis* or *habeas corpus* in common law.

Methodology

The aim of the research was to verify the universality of Polish Latinisms by comparing their use in Polish, French and English legal discourse. It was decided that the subject of the analysis should be Latin maxims and phrases that are still willingly used by Polish legal practitioners. Hence, during the selection of the research material we consulted two ranking lists assembled by Wołodkiewicz (2001). They present Latin maxims and phrases found in the decisions rendered by Polish courts, listed in order from most to least popular, together with the exact number of occurrences in the analysed corpus.

During the first stage of the analysis the popularity of the Latinisms in question was verified in *Legalis* (LPL) – an online information service devoted to Polish law. The second stage of the research involved a verification process in order to establish whether Polish Latinisms also exist in French and English legal discourse. To this end, we consulted the following monolingual legal dictionaries:

- *Adages du droit français* (Roland & Boyer, 1999) – RBA – the richest dictionary of French legal maxims (including maxims coined both in French and Latin);
- *Locutions latines du droit français* (Roland & Boyer, 1998) – RBL – the richest dictionary of Latin phrases in French legal discourse;
- *Black's Law Dictionary* (Garner, 2009) – BLD – perceived as the most exhaustive lexicographic work devoted to English legal language, including also comments on foreign and historical legal concepts, e.g., civil or Roman law.

The above legal dictionaries constitute a written record of lexical items that belong to specific legal discourse. They also provide general information on the grammar, syntax and meaning of the items, but they do not account for their actual use. Therefore, during the third stage of the analysis, the Latinisms in question were verified in the following on-line legal databases:

- *Dalloz.fr* – DFR – a legal information service devoted to French law;
- *Westlaw International UK Collection* – WLI – a legal information service concerning English-speaking countries (i.e., UK, US, Australia, Hong Kong, Canada and EU); in this study only the UK legal context was taken into account.

Both DFR and WLI contain authentic legal texts, such as court decisions, statutes, sample documents and articles from law journals. Therefore, they mirror the actual use of legal terminology. Their content and form are comparable to *Legalis*; the three databases in question are intended for legal professionals and for informational purposes. In this study, the above mentioned legal databases serve the function of specialised comparable corpora, from which examples of the practical use of Latinisms can be extracted. This methodology corresponds to corpus-driven approaches in corpus linguistics, which rely on different kinds of authentic texts as a source of linguistic knowledge, rather than on a corpus built according to pre-existing requirements (Tongini & Bonelli, 2010; Gałuskina, 2013a). Use of existing databases, however, does not allow extraction of exact statistical data, because of the undefined corpus size.

Research results

A general discussion of the research results is presented below. The detailed data can be found in Appendix 1.

Maxims

The top ten maxims on the list by Wołodkiewicz (2001) were selected for the analysis; they were as follows:

1. ***lex retro non agit*** (*the law is not retroactive*);
2. ***in dubio pro reo*** (*in a doubtful case, for the defendant*);
3. ***nullum crimen (nulla poena) sine lege (poenali)*** (*no punishment without a law authorizing it*);
4. ***pacta sunt servanda*** (*agreements must be kept*);
5. ***superficies solo cedit*** (*whatever is attached to the land forms part of it*);
6. ***nemo plus iuris in alium transfere***[3] ***potest, quam ipse habet*** (*no one can transfer to another a greater right that he himself has*);
7. ***clara non sunt interpretanda*** (*what is clear does not need interpretation*);
8. ***ignorantia iuris nocet*** (*ignorance of law excuses no one*);
9. ***ne bis in idem*** (*not twice for the same thing*);
10. ***exceptiones non sunt extendendae*** (*exceptions cannot be extended*).

The investigation of the items in the LPL produced dozens, hundreds or even several thousand results, confirming the popularity of the above phrases in Polish legal writing.

With regard to French, two out of the ten maxims – *lex retro non agit* and *clara non sunt interpretanda* – were not included in the RBA. Four maxims were present in the RBA, but in forms that are different from those used in Polish:

- *nemo plus juris* ***ad*** *alium transferre potest quam ipse habet* – instead of – *nemo plus iuris* ***in*** *alium transferre potest, quam ipse habet*,
- *ignorantia* ***legis non excusat*** – instead of – *ignorantia* ***iuris nocet***,
- ***non*** *bis in idem* – instead of – ***ne*** *bis in idem*,
- ***exceptio est strictimissimae interpretationis*** – instead of – ***exceptiones non sunt extendendae.***

Verification of the maxims in the DFR showed that two maxims included in the RBA do not appear or appear only once in the DFR, which suggests that in practice they are hardly ever used by legal practitioners. These are: *ignorantia iuris nocet* and *nemo plus iuris in alium transfere potest, quam ipse habet.*

Moreover, examination of the DFR revealed several form variations of the maxims analysed. The Polish version of the maxim *ne bis in idem* appears in the DFR only once. The item occurs more often in the variant form *non bis in idem* (this form is also registered in the RBA), but only in the context of criminal law. The maxim *nullum poena sine lege* is also registered in the DFR in several variant forms, such as *nullum crimen nulla poena sine lege* and *nullum crimen, nulla poena, nullum judicium sine lege.* Maxims *lex retro non agit* and *clara non sunt interpretanda* are absent both in the RBA and the DFR.

As far as English is concerned, the BLD does not include four out of the ten maxims:

- *lex retro non agit,*
- *in dubio pro reo,*
- *clara non sunt interpretanda,*
- *exceptiones non sunt extendendae.*

With regard to the maxim *nullum crimen (nulla poena) sine lege (poenali),* the BLD includes only one variant: *nulla poena sine lege.* Two maxims appear in the BLD in a modified form; they are as follows:

- *nemo plus juris* ***ad alienum*** *transferre potest quam ipse haberet* – instead of – *nemo plus iuris* ***in alium*** *transferre potest, quam ipse habet*;
- *ignorantia juris non excusat, ignorantia juris neminem excusat, ignorantia legis non excusat, ignorantia juris haud excusat* – instead of – *ignorantia iuris nocet.*

One of the maxims, *ne bis in idem* (including the variant from: *non bis in idem*) is registered in the BLD, but with the annotation that this is a civil law maxim expressing the same principle as the English rule against double jeopardy.

The WLI registers two of the four maxims not found in the BLD: *lex retro non agit* and *in dubio pro reo. Lex retro non agit,* however, appears in the WLI twice and in the context of Polish law (an English translation of a Polish Constitutional Court judgment and the case against Poland before the European Commission of Human Rights). The search in the WLI produced no results for one maxim – *clara non sunt interpretanda,* which confirms its strictly local character. The WLI registers two out of the four maxims which are not included in the BLD:

- *singularia non sunt extendenda* or *exceptiones sunt strictissimae interpretationis* – variants of the Polish maxim *exceptiones non sunt extendendae*;
- five variants of *ignorantia iuris nocet,* including one that is not registered in the BLD – *ignorantia legis neminem excusat,* plus all variants with *juris* spelled as *iuris.*

- four variants of *nemo plus iuris in alium transfere potest, quam ipse habet*, three – not mentioned in the BLD, plus all variants with *juris* spelled as *iuris*. The interesting fact is that similar variants of the maxim appear also in Polish legal texts (found in the LPL). Form variations do not influence the meaning of the maxim, yet appear awkward to professionals from other legal communities.

Phrases

The first ten phrases on the list by Wołodkiewicz (2011; without *ius* as it is too ambiguous) were selected for the analysis:

1. ***ratio legis*** (*the purpose of a law*)
2. ***contra legem*** (*against the law*)
3. ***erga omnes*** (*towards all*)
4. ***res iudicata*** (*a thing adjudicated*)
5. ***rebus sic stantibus*** (*matters so standing*)
6. ***verba legis*** (*wording of an act*)
7. ***in personam*** (*against a person*)
8. ***in rem*** (*against a thing*)
9. ***quo ad usum*** (*how to use the joint property*)
10. ***ad personam*** (*personal*)

In general, most of the above phrases are present in French and English sources, albeit with several quite notable exceptions. As regards French legal discourse, four out of the ten phrases are not registered in the RBL: *res judicata*, *verba legis*, *quo ad usum*, *ad personam*. Two of them – *verba legis* and *quo ad usum* are also not included in the DFR. As for English, three phrases – *verba legis*, *quo ad usum* and *ad personam* – are not included either in the BLD or the WLI. *Erga omnes* is absent in the BLD, but it produces ample results in the WLI and forms interesting collocations (discussed below).

Since Latin phrases do not constitute independent locutions, it might be expected that they form distinct syntactic patterns in the three linguistic contexts discussed here (Gałuskina 2013b). By way of illustration, let us look at the collocations of *contra legem* and *erga omnes* extracted from Polish, French and English legal databases.

The collocations with *contra legem* are as follows:

- Polish (LPL): wykładnia *contra legem*, pogląd *contra legem*, interpretacja *contra legem*, wyniki *contra legem*, uznanie *contra legem*;
- French (DFR): interprétation *contra legem*, fait *contra legem*, lacune *contra legem*, pratiques *contra legem*, usage *contra legem*, traditions *contra legem*;

- English (WLI): custom *contra legem*, *contra legem* interpetation, to interpret *contra legem*, to apply *contra legem*.

At first sight, *contra legem* (*against the law*) forms similar collocations in the three languages analysed, yet under closer scrutiny some discrepancies in the practical use of the phrase can be observed. The collocations in the three languages in question concern legal interpretation that is contrary to law governing a particular problematic issue. This seems to be the only acceptable use of this expression in Polish, while in French and English this phrase also forms collocations referring to unlawful customs. Moreover, in English, *contra legem* forms collocations with verbs, which is not acceptable in Polish or French.

Even bigger differences can be observed when we consider the Latin phrase *erga omnes*. The collocations with *erga omnes* extracted from Polish, French and English legal databases are as follows:

- Polish (LPL): skutek *erga omnes*, skuteczne *erga omnes*, skuteczność *erga omnes*, bezskuteczne *erga omnes*, obowiązywać *erga omnes*, wiązać *erga omnes*;
- French (DFR): opposable *erga omnes*, applicable *erga omnes*, effet *erga omnes*, qualité *erga omnes*, s'imposer *erga omnes*, valoir *erga omnes*;
- English (WLI): *erga omnes* character of a norm, obligations *erga omnes*, responsibility *erga omnes*, *erga omnes* nature of a norm, invocation *erga omnes*, claims *erga omnes*, *erga omnes* rule, *erga omnes* effect, *erga omnes partes* effect.

Erga omnes (*towards all*) is usually used in Polish in the context of the effectiveness of legal rights. In French and English, this use is extended to the effectiveness of legal provisions. Moreover, in English, in the context of international public law, this expression refers to the obligations and responsibilities of states. The WLI registers a collocation with the extended version of the phrase, namely *erga omnes partes effect* (*effect towards all parties*). It seems to be the combination of two contrary Latin phrases – *erga omnes* and *inter partes* (*between the parties*), not observed in either Polish or French legal discourse.

Latin is an inflected language, thus declension should take place when Latin phrases are used in another inflected language, such as Polish. When it comes to non-inflected languages, like English and French, Latin expressions should remain in the nominative form. In practice, however, these grammatical rules are not always followed. Recently the tendency not to inflect Latinisms within Polish sentences has been observed (Gałuskina, 2013b). Moreover, in languages without declension, different inflected forms of one Latin expression represent various parts of speech. For example, in English,

bona fide (*with good faith* or *in good faith*) is an adjective or an adverb, while *bona fides* (*good faith*) is a noun (Garner, 2009). In French, *intuitus personae* (*personal reasons*) is a noun, while *intuitu personae* (*for personal reasons*) is an adjective or an adverb (Cornu, 2004).

Conclusion

The above analysis serves mostly as an illustration of the problem of national character of legal Latin, since it was conducted on a small number of Latinisms, albeit the most popular ones. However, even this relatively small-scale research revealed significant incongruities among Latinisms in the specific context of Polish, English and French law. The research was undertaken with the assumption that some differences might occur, but the scale of the discrepancies found surpassed initial expectations. The data gathered in the research indicate that there exists no singular universally-applied legal Latin, but rather numerous *legal Latins* integrated into the Polish, English and French linguistic context. Only some of the currently-used Latinisms are actual extracts from the original *Corpus Juris Civilis*. Many were coined using the Latin language, but instead of relating to Roman law or a common European legal heritage, they express local legal concepts, for example *clara non sunt interpretanda* and *lex retro non agit*. *Clara non sunt interpretanda* was coined using the Latin language, but expresses the rule of law interpretation characteristic within the Polish legal system (Nowacki & Tobor, 2000). *Lex retro non agit* – the most popular Latin maxim in Polish legal discourse – was formulated in its Latin form as late as the early 20th century (Mattila, 2006). Even though it expresses the general legal principle of non-retroactivity of the law, existing in other legal systems, this maxim in its Latin form is familiar only to Polish legal practitioners. In France, the meaning of *lex retro non agit* is expressed by a different maxim: *la loi ne dispose que pour l'avenir*.

Moreover, throughout the centuries Latin has evolved in a separate manner in each linguistic system. Once Latinisms had become absorbed by a particular language, they were shaped by the new linguistic environment, drifting away at the same time from their common roots. As a result, today there exist numerous versions of Latin maxims, some used worldwide, while others are effective only in a limited area. Furthermore, the same Latin maxim may have several versions within one legal system. Thus, even if a Latinism exists in a target language, we can expect differences in its practical application or form. As illustrated above, Latin phrases form different

syntactic patterns when used in different languages. The research showed that the phrases that could be used with considerable freedom in one language, formed only a few restricted collocations in another, or appeared within a more limited context.

As can be inferred from the above discussion, the odds that a Polish Latinism is non-existent or occurs in a different form in French or English are actually very high. Therefore, automatic transfer of Latinisms from the original into the target language is, to put it mildly, a fairly risky translation technique. Each Latin expression encountered in a translated text requires analysis similar to the one conducted in this paper. A dictionary is the first source consulted by most translators, yet the research should not end there. Our study revealed significant discrepancies between information provided in monolingual specialised dictionaries and specialist corpora. Moreover, it seems that most monolingual dictionaries are designed to assist reception of a text, rather than its production. They provide definitions of Latinisms, which are intended to help native speakers understand the meaning, but fail to include information on grammatical and syntactic features of the terms.

Bilingual legal dictionaries are no better. The selection of Latinisms in dictionaries appears to be subjective. Some dictionaries register almost no Latin expressions, e.g., the Polish-French legal dictionaries by Machowska (2008) and Łozińska-Małkiewicz (2000), and the Polish-English legal dictionary by Pieńkos (2002b), while others include many commonly known Latinisms, but omit those that are problematic for the translator. For example, French-Polish (Pieńkos, 2002a) and English-Polish (Jaślan & Jaślan, 1994) legal dictionaries contain more Latinisms than the aforementioned dictionaries from Polish into English and French. They provide Polish translations of Latinisms, even though many Latin expressions appear in exactly the same Latin form also in Polish legal discourse, e.g., *ad hoc*, *ad rem*, *lucrum cessans*, *lex commissoria* and *negotiorum gestio*. Thus, the dictionaries fail to answer the questions of crucial importance for translators: is it possible to use the source language Latinism in an unchanged form in the target language, if not – is there a variation of a given Latinism or an equivalent Latinism in the target language. Moreover, bilingual dictionaries seem not to distinguish between Latinisms that belong to different languages. As a result, in the dictionaries by Jaślan & Jaślan (1994) and Pieńkos (2002a) one can find Polish Latinisms among English or French entries, e.g., *ignorantia juris nocet* and *nemo plus juris ad alienum transferre potest quam ipse haberet*.

As of today, there exists no lexicographical work that can provide a translator with the up-to-date and comprehensive information necessary

to make an informed decision on how to translate a given Latinism. The research in the corpus of legal texts may be more time-consuming, but gives a much broader picture. Considering the scale of discrepancies in the application of Latin in Polish, French and English legal discourse, such in-depth investigation should not be perceived as an option, but a necessity.

NOTES

1. The paper is an outcome of the project financed by the National Science Centre in Poland.

2. The Latin sound [j] is spelled differently in the three languages analysed here. Polish orthography accepts only version *ius commune*, French – *jus commune*, while in English both versions are acceptable.

3. There is no spelling mistake here; in Polish this maxim is traditionally spelled with or without a second letter '*r*'.

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Appendix 1
Detailed presentation of analysis results

Table 1

Occurrence of analysed Latin maxims in selected sources

Latin maxim	LPL	RBA	DFR	BLD	WLI - UK Collection
lex retro non agit	+	–	–	–	+/– (twice)
in dubio pro reo	+	+	+	–	+
nullum crimen (nulla poena) sine lege (poenali)	+ variants: *nullum crimen, nulla poena sine lege*; *nullum crimen sine lege*; *nulla poena sine lege*	+ variant: *nullum poena sine lege*	+ variants: *nullum crimen nulla poena sine lege*; *nullum crimen, nulla poena, nullum judicium, sine lege*	+ variant: *nulla poena sine lege*	+
pacta sunt servanda	+	+	+	+	+
superficies solo cedit	+	+	+	+	+/– (three times)
nemo plus iuris in alium transfere potest, quam ipse habet	+ other variants: *nemo plus iuris in alium* ***transferre*** *potest quam ipse habet*; *nemo plus iuris* ***ad*** *alium* ***transferre*** *potest quam ipse habet*; *nemo plus iuris ad alium* ***transferre*** *potest. quam ipse* ***haberet***	+ variant: *nemo plus* ***juris*** *ad alium* ***transferre*** *potest quam ipse habet*	+/– (once)	+ variant: *nemo plus juris* ***ad alienum transferre*** *potest quam ipse* ***haberet***	+ other variants: *nemo plus iuris* ***ad*** *alium* ***transferre*** *potest quam ipse habet*; *nemo plus* ***juris*** ***ad*** *alium* ***transferre*** *potest quam ipse* ***haberet***; *nemo plus* ***juris*** *in alium* ***transferre*** *potest quam ipse habet*
clara non sunt interpretanda	+	–	–	–	–

Latin maxim	LPL	RBA	DFR	BLD	WLI – UK Collection
ignorantia iuris nocet	+	+ variant: *ignorantia legis non excusat*	+/– (once)	+ variants: *ignorantia juris non excusat*; *ignorantia juris neminem excusat*; *ignorantia legis non excusat*; *ignorantia juris haud excusat*	+ variants: *ignorantia iuris non excusat*; ***ignorantia iuris neminem excusat***; ***ignorantia iuris haud excusat***; ***ignorantia juris neminem excusat***; *ignorantia legis neminem excusat*
ne bis in idem	+	+ variant: ***non** bis in idem*	+/– (once for *ne bis in idem*, several times for *non bis in idem*)	+ other variant: ***non** bis in idem*	+
exceptiones non sunt extendendae	+	+ variant: *exceptio est strictimissimae interpretationis*	–	–	+ variants: ***singularia non sunt extendenda***; ***exceptiones sunt strictissimae interpretationis***

Table 2

Occurrence of analysed Latin phrases in selected sources

Latin phrase	LPL	RBL	DFR	BLD	WLI – UK Collection
ratio legis	+	+	+	+ other variant: *ratio juris*	+
contra legem	+	+	+	+	+
erga omnes	+	+	+	–	+
res iudicata/judicata	+	–	+	+	+
rebus sic stantibus	+	+	+	+	+
verba legis	+	–	–	–	–
in personam	+	+	+	+	+
in rem	+	+	+	+	+
quo ad usum	+	–	–	–	–
ad personam	+	–	+/– (three times)	–	–

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THE ROLE OF TEACHER KNOWLEDGE IN ESP COURSE DESIGN

Abstract. English for specific purposes (ESP) has been conceptualized by its leading scholars, like Hutchinson and Waters (1987) or Dudley-Evans and St. John (1998), as a multi-stage process, where the ESP practitioner fulfils a variety of roles, including that of learner needs researcher, course designer, language instructor, learning assessor, and course evaluator. The performance of these roles requires considerable knowledge of a linguistic, socio-cultural and pedagogical nature, necessary to inform the teacher's cognitive processes, particularly those involved in course decision making. The necessary professional knowledge of the ESP teacher, which is gained through professional schooling, teacher training, and teaching experience, comprises both relevant theoretical concepts (knowing what) and performance skills (knowing how). It directly impacts on all stages of the ESP process, namely the planning, design, teaching, assessment and evaluation of a course, largely determining its quality. The present paper focuses on ESP teacher cognition, especially those cognitions (i.e. knowledge and beliefs) that are involved in course design, informing the teacher's choices of course parameters and instructional practices. Elaborating on the concepts developed by language cognition scholars, like Shulman (1987), Andrews (e.g. 2007), and Borg (e.g. 2006), the author tries to outline the internal structure of ESP teacher cognition and describe the function of each subordinate knowledge base. The paper also presents the preliminary results of a small-scale exploratory study into the professional cognition of 13 teachers of Legal and Business English employed at the University of Warsaw.

Keywords: English for specific purposes, teacher cognition, teacher knowledge, professional knowledge base, teacher decision making, course design

English for specific purposes (ESP) is universally recognized as a truly learner-centered type of language instruction, distinguished from other approaches by 'a commitment to the goal of providing language instruction that addresses students' own specific purposes' (Belcher, 2009:2), related to employment or education. In order to exhibit these distinctive variables, an ESP course must be focused on the learners' occupational or educational reasons to learn, have content that is relevant to the learners' target language and communication needs, and be oriented towards the destination

(learning outcomes) to which the learners are to be taken in order to become communicatively proficient in a given professional or disciplinary specialist discourse. Yet despite being so needs-relevant and goal-oriented, somewhat paradoxically, the most learner-centered type of language instruction is also the most teacher dependent, and at times even teacher controlled, especially in some educational contexts where input from learners and other stakeholders tends to be limited and teacher autonomy is considerably high, such as tertiary EFL contexts. The reason for the teacher dependence of ESP is simple: nowhere in English language teaching is the teacher's impact on course design and course effectiveness greater than in ESP.

A Conceptualization of ESP Teacher Cognition

It should be noted that the teacher dependence of ESP is not environmental but purely ontological in nature, because it derives from the general conceptualization of specific purpose language instruction as a complex process, which starts with preparation for planning and designing a course to be taught and ends with evaluation of the course taught, involving the teacher as the principal actor in all its stages. There seems to be a consensus among leading scholars like Robinson (1991) or Dudley-Evans and St. John (1998) that the ESP process consists of five key stages: needs analysis, course design, teaching and learning, assessment, and evaluation. Each of these stages places considerable demands on the ESP practitioner, who is required to play not one, obvious role of the language teacher, viewed, alternatively, as knowledge provider or learning facilitator, but five highly complex roles, corresponding to the key stages of the ESP process. Thus, in the needs-analysis stage, the ESP teacher plays the role of a researcher assessing the learners' present and target language and communication needs, analyzing their affective, cognitive and social factors, and in addition – acting as a language analyst describing the targeted domain-specific language use in linguistic, pragmatic, and socio-cultural terms. Next, in the course design stage, the ESP practitioner has to plan course goals and objectives (learning outcomes) and set the course parameters of content and methodology, before embarking on the task of actual course development, involving syllabus design and materials development. In the subsequent stage, the ESP teacher finally has the chance to provide needs-relevant language instruction and to facilitate and mediate learning of the targeted, domain-specific use of English as a foreign or second language, acting as both the primary knower and the exemplary user of the target language and

its specialist subset. Then, in the assessment stage, the ESP practitioner is required to grade the learners' classroom performance and their overall learning progress, which involves writing achievement tests and developing graded classroom communicative activities. While learner assessment is a natural part of any teaching, in ESP it is perhaps more challenging than in other types of English language teaching (ELT) as it requires considerable knowledge of the discourse and practices of the target group, in which the language teacher is but a knowledgeable outsider. Finally, in the course evaluation stage, the teacher needs to constructively reflect on his or her own work as a needs analyst, course designer, language instructor, and learning assessor in order to be able to re-design the course or its parts in order to make it more focused on learner needs and thus – more effective.

The number and complexity of teacher roles (of which only target situation analysis and the targeted specialist discourse description can be 'outsourced' to experts) attest to the great impact that teachers have on the scope and organization, as well as overall effectiveness of ESP courses, which is typically viewed as either fitness for (learner) purpose or effective transformation of language learners into communicatively competent language users (see Harvey & Knight, 1996 for conceptions of quality in higher education). The multiplicity of teacher roles also suggests the formative influence of ESP teachers' psychological (cognitive and affective) and social variables on their actual teaching practice. Specifically, viewed in the post-behaviorist terms of either cognitivism or social constructivism, all teaching, including language teaching, can be conceptualized as thoughtful behavior informed by teachers' professional and pedagogical knowledge, and involving various cognitive processes, such as information processing, judgment formation, and decision making. In the case of language teachers, the professional knowledge system, which is both mentally and socially constructed and reconstructed in a continual fashion, consists of various cognitions, comprising learned theoretical (declarative) knowledge, acquired practical (procedural) knowledge, and experience-based beliefs and conceptions about language, language use, language learning, language learners, language teaching, and language teachers, including the teacher's mindset or an implicit conception of self as an individual and a professional (see Dweck, 2006 for the concept of mindset).

The idea of teacher cognition as affecting the teaching process was first posited by Shulman (1987), who encapsulated it in the overreaching concept of pedagogical content knowledge (PCK), covering all professional knowledge bases and job-related individual beliefs and assumptions held by teach-

ers. In the last three decades this and similar conceptualizations of teacher cognition have been developed and empirically investigated by teacher cognition researchers. Naturally, utmost attention has been given to language teachers' subject matter knowledge, which has been described and investigated as teacher language awareness (TLA) by such researchers as Andrews (e.g. 1997, 2001, 2003, 2007) and Van Lier (e.g. 1995), or, alternatively, as knowledge about language (KAL) by Borg (e.g. 1999, 2003). Though the leading teacher cognition scholars differ in some minor details, all of them seem to agree on the general notion of TLA/KAL as 'the knowledge that teachers have of the underlying systems of the language that enables them to teach effectively' (Thornbury, 1997) by making them able to analyze language, understand how it works and explain it to learners. Central to this linguistic and metalinguistic awareness, which is seen as a property of expert language teachers, is "he sensitivity to grammatical, lexical and phonological features, and the effect on meaning brought about by the use of different forms" (Hales, 1997:217). Conceptualized as hinging on the sensitivity to and understanding of form-functional patterns, TLA/KAL is particularly relevant to ESP teaching, which by definition is concerned with language use, communicative proficiency, and the relationship between linguistic form and semantic or socio-semiotic meaning.

Unfortunately, the concept of TLA/KAL does not fully account for the subject matter cognition of the ESP teacher, who is engaged in a teaching enterprise involving also the realm of content studies, in addition to language and pedagogy. Consequently, the general knowledge system of an expert ESP teacher, or in other words his or her PCK, must contain an extra knowledge base with cognitions related to the basic facts, concepts, values and practices of the discipline or profession that a given type of ESP serves. Sadly, no leading teacher cognition researcher has yet undertaken a description of the professional knowledge of the ESP practitioner, probably because for most outsiders, teaching ESP is not truly different in kind to teaching English for general purpose (EGP), except for the need to contextualize input according to the learners' specifism. The task of conducting an inquiry into ESP teacher professional cognition is thus left to teacher-researchers, committed to improving the quality of their work by analyzing their own thinking, knowledge, and instructional practices.

However, before any exploratory study of ESP teacher cognition can be carried out, some theorizing about its scope, structure and role in the ESP process has to be done in order to set the scene. Building on the ideas of Shulman, Borg, Andrews and others, it may perhaps be argued that

the overall professional knowledge of ESP teachers (or their PCK) should be conceptualized as consisting of three knowledge bases: (1) the language knowledge base, comprising cognitions about language in general, the target language, and the specialist discourse taught; (2) the subject content knowledge base, containing at least basic-level cognitions about the academic discipline, profession or occupation to which the ESP taught is related; and (3) the pedagogical knowledge base, made up of cognitions about general and specific (language) pedagogy, including theories of learning. In more detail, the posited structure of ESP teachers' cognition might look as follows:

The language knowledge base

- Knowledge of the target language (TL) and the targeted specialist discourse, including declarative knowledge of the TL systems and procedural knowledge of relevant TL use;
- Teacher's own EFL and ESP learning experience, including exposure to and experience of various language classrooms, instructional practices, teaching methods, learning strategies etc., as well as experience-based beliefs and conceptions;
- Knowledge about the target language, comprising theories of language, theories of language use, theories of second language acquisition and learning, as well as overall language awareness of TL forms and meanings;
- Awareness of the TL culture with its shared values and social meanings;
- Linguistic research and language analysis expertise, including the procedural knowledge of linguistic, discourse, and genre analysis.

The subject content knowledge base

- Knowledge of the basic concepts and tenets of the discipline to which ESP is related;
- Awareness of the discipline culture, its basic values and typical practices (situations, activities, tasks);
- Familiarity with the discipline- or profession- specific discourse practices (typical speech acts and genres).

Knowledge of pedagogy

- Knowledge of general learning theories, educational psychology, and theories of motivation;
- Views of the learner and learner psychological and affective factors impacting language learning (learning strategies and motivation);

- Views of teaching and teacher role in the teaching and learning process (as the source of language knowledge or the facilitator and mediator of student learning);
- Knowledge of language teaching approaches, methods and techniques, as well as perceptions about their effectiveness;
- Knowledge of language classrooms and broader teaching contexts, especially about socio-cultural aspects of the learner and other stakeholder variables enhancing or impairing language learning.

As the above makes clear, teacher cognitions are not always easy to discern and classify, as some of them seem to belong in more than one category. For instance, the view of the language learner belongs simultaneously in the language knowledge base as part of the teacher's knowledge about language (and specifically – about second language learning) and in the specific pedagogical knowledge base as part of the teacher's knowledge of educational psychology and general learning theories. This and similar situations show that while the concept of ESP teachers' PCK as consisting of separate subordinate knowledge bases is useful as a framework for describing what an expert practitioner should know to be able to make informed course decisions and exhibit teaching practices that are conducive to ESP learning, in reality all teacher cognitions seem to be structured in a less orderly fashion, being more of an amalgam of relevant facts and beliefs, which are intertwined, interrelated and constantly interacting within one big professional knowledge system (see Turner-Bisset, 1999 for an amalgam conception of PCK). Furthermore, although the ESP teacher needs a broad professional knowledge system, it seems that individual cognitions are not used all at one time, but rather called upon whenever needed to enable information processing, judgment formation, problem solving or the decision making required in the process of course design or teaching.

As concerns the specific functions of the three subsystems of ESP teacher cognition identified above, it appears that TLA is active in all five stages of the ESP process, from needs analysis to course evaluation, whereas subject content knowledge is mainly used in the course design stage, particularly in syllabus and materials development, and pedagogical knowledge is chiefly used in the teaching and learning stage for the selection of classroom behaviors, but also in course design for the selection of teaching methods and techniques. It should be noted that all types of teacher cognition are used in course design, which is easily the most cognitively demanding stage of the ESP process, where all important course decisions about goals, objectives, content and methodology have to be made, and then translated into teachable and learnable chunks of input to be presented and practiced in

such a way as to ensure maximal learning intake. The largely intra-mental cognitive process of course design starts with interpreting the findings of the various needs analyses performed at the onset of course preparation, namely target situation analysis (TSA), which has identified the target domain specific language use in terms of typical situations, tasks, skills and texts; the target language description, consisting of linguistic, discourse or genre analysis of the identified typical texts, and the present situation analysis (PSA), which has determined the learners' language and communication shortcomings by measuring their current interlanguage and communicative competence against the target language and communication needs. These findings are then processed in order to establish the course needs or parameters of goals, objectives, content and methodology, which is done with reference to the findings of the remaining needs analyses conducted, i.e. learner factor analysis, which has established students' cognitive, affective and social variables that may impact the learning process, and teaching context analysis, which has diagnosed the specific learning situation, including the needs and demands of other stakeholders involved in the ESP enterprise. Collectively, it seems that the learner and contextual variables act as a socio-cultural filter, adjusting the identified target needs to a particular group of learners, taught in a particular setting by a particular teacher in order to maximize the effectiveness of the course. Afterwards, in the actual course design, the course needs are put together in the form of a syllabus organizing the language to be taught, or input, into structural units according to an adopted principle, where again decisions about materials and activities as well as the kind of classroom interaction to foster in the course are informed by teacher cognition.

A study into ESP teacher cognition

As the above discussion shows, ESP teacher cognition with its knowledge bases and processes is what makes course design as well as the teaching of ESP possible. Unfortunately, being intra-mental, it does not lend itself easily to scholarly inquiry. Most existing research is exploratory in nature and concerned predominantly with establishing effective teaching practices and the cognitive competences that underlie them by studying expert teachers. The preferred type of inquiry is a case study, where teacher cognition is researched by a combination of quantitative and qualitative methods like questionnaires, interviews, teacher narratives and essays, and classroom observation. Such methodology may be criticized as impossible to verify and

thus lacking in objectivism, hence some researchers try to objectify the procedure by using linguistic knowledge tests, in which teachers are asked to perform linguistic or discourse analysis of provided language samples or to identify specific linguistic or pragmatic features in order to effectively gauge their knowledge of the language systems, constituting the explicit (declarative) part of their language awareness, (see Borg, 2006 for an excellent review of teacher cognition research).

The study into ESP teacher cognition involved in the course design and teaching of academic courses of Legal and Business English undertaken by the author has been designed as a multi-method project, of which only a pilot study has been conducted so far. The project is aimed at establishing what types of cognitions are used by ESP teachers working in tertiary EFL contexts in designing their ESP courses, by asking them to answer various multiple-choice as well as open-ended questions, which in the author's opinion, based on relevant research, parallel those that aware teachers are bound to ask themselves while making decisions about course objectives, content, and methodology in order to choose options that best suit the learner type and the teaching context. The pilot study consisted of a three-part questionnaire, containing three groups of questions: about the teachers' social variables, their self-perception as ESP teachers, and their course design and teaching practices used in current ESP practice. The sample consisted of 13 experienced teachers of Legal English (8) and Business English (5), employed at the University of Warsaw. There were 11 women and 2 men in the group, with an average of 24 years experience in EFL teaching (13–40 years) and 18 years in ESP teaching (7–40 years). The respondents were non-native speakers of English, with a solid language education, as all held a Master's degree in English studies (11) or applied linguistics (2) and three were currently completing doctoral studies, but with little formal schooling in the disciplines to which their ESP courses were related, i.e. law and economics. Among the teachers of Business English, two had completed doctoral studies at the Warsaw School of Economics but had not written their doctoral dissertations, while only one teacher of Legal English had completed a non-degree law course of British and EU Law at the University of Warsaw. Interestingly, of the remaining 10 respondents only 4 claimed to have an interest in the discipline to which their ESP course was related, which would suggest that for almost 50%, the decision to undertake a given type of ESP was either accidental or motivated by non-cognitive factors, although such a conclusion appears to be inconsistent with the finding that 9 respondents were additionally involved in translation, 3 had conducted academic research, and 5 had authored an ESP course book or an e-learning

course, which would seem to suggest a genuine involvement with the type of ESP taught.

As concerns the respondents' perception of their job, 5 subjects saw themselves as EFL teachers, 3 as ESP practitioners, 3 as both, 0 as CLIL practitioners, and 2 as 'all of the above', including the CLIL teacher, which suggests that those questioned either do not fully distinguish between various types of ELT or adhere to a broad-angled view of ESP as not different in kind from EGP except for some learner specifism. Asked about their preferred teacher role in the classroom, a decisive majority of respondents said that they acted as a learning facilitator, followed by being a source of knowledge on a par with the more experienced EFL user, a more experienced member of the target community, and a teacher of non-linguistic subject content, with respective scores of 1.62, 2.8, 3.08, and 3.61 on a 5-point Likert scale of 1 (very relevant) – 5 (irrelevant). These scores may be seen as indicative of the classic view of ESP as wholly language-centered and also as demonstrating a relatively strong commitment to communicative teaching, in which the teacher is expected to facilitate and mediate students' learning rather than provide explicit (declarative) knowledge. Also, it seems that most of those questioned did not view the teaching of subject content as a necessary part of ESP because 8 respondents regarded it as entirely (7) or largely (1) irrelevant and only 4 saw it as very relevant (1) or relevant (3), which attests to the limited popularity of CLIL on the one hand and a tendency to view learners' specifism as context for linguistic input, rather than the type of input to be provided.

The questionnaire also yielded interesting results about the performance of specific ESP teacher roles in the form of a needs researcher, a course designer, a materials and activities developer, and a course evaluator. It turns out, that while all respondents claimed to have conducted some form of needs analysis at the onset of their course, only half did so routinely, and even then the assessment was limited to a student needs analysis (SNA), comprising elements of both present situation analysis and student factor analysis, which was conducted by 70% of respondents, while target needs analysis (TSA) was rarely done and by only 30% of the respondents, suggesting little knowledge of student objective target needs and an equally limited concern with making the course truly relevant to learner professional needs. This is partly justified by certain characteristics of the teaching context, where undergraduate students of law or economics have practically no current EFL needs, as a result of being in full time native-language education and generally pre-service, which means that an academic ESP course can only be focused on the students' delayed target needs, which

perhaps do not have to be teacher-analyzed, as they have been described by many experts and course book writers, whose insights can be used instead of carrying out one's own, expensive and time consuming target situation analysis. At the same time, most respondents designed their own course syllabus (75%), either all by themselves (Legal English teachers) or jointly (Business English teachers), but invariably with no collaboration from subject content teachers and a limited interest from departmental authorities. The remaining 25% admitted to using a syllabus borrowed from a course book, which they developed by adjusting the proposed materials and activities and adding original ones. Likewise, a decisive majority of respondents (85%) developed their own materials, i.e. selected and enhanced authentic materials, but only a third wrote them from scratch, which is hardly surprising in the case of non-native speakers. In search of appropriate input, about 65% used a compilation of several course books instead of a single one, which further attests to the respondents' considerable engagement in course design. All the respondents claimed to have designed their own output-generating activities, at least partly, with 60% saying that they did so always or usually and 40% choosing the option 'sometimes.' Finally, while all conducted some course evaluation, it usually took the form of the university's mandatory student course evaluation questionnaire, which is not particularly informative for ESP purposes, as it uses a standard evaluation form developed for all teachers. Only 38% carried out their own course evaluation at the end of selected parts of the course (either a semester or a year), which usually consisted of having the students complete a self-devised questionnaire intended to gauge their opinions about the objectives, content and methodology of the course, but sometimes taking the form of a class discussion. Summing up, it seems that by concentrating on designing their courses and teaching them effectively, rather than conducting an extensive needs analysis and course evaluation, those questioned adopted a convenient, but relatively narrow view of their profession, seeing themselves as ESP teachers rather than ESP practitioners. To some extent, self-conceptions of this kind may be seen as a logical corollary of the previously indicated ontological problem with discerning ESP from EGP and CLIL, with obvious consequences for the perception of the teacher's own role in the teaching process. However, a more plausible interpretation is that in a teaching context characterized by a limited interest in course design from any relevant stakeholders, including the students who often choose an ESP course according to class-schedule rather than cognitive preferences, the highly autonomous ESP teachers tend to do what is convenient for them and good enough for their students. The rationale for this attitude may

again be contextual, namely that taking any more effort than necessary, for instance getting involved in a large-scale target needs analysis, has to be done in the teachers' own time and budget and in all probability would not be acknowledged, let alone appreciated, by any university departments or units involved, either those organizing the studies in this particular subject, or those employing the teachers. As for psychological or affective reasons, some light should be shed on this and other teacher self-perception issues in a subsequent stage of the research project, when the respondents will be asked to provide metaphors describing ESP teaching, ESP teachers and ESP learners.

The last part of the questionnaire asked the respondents to describe an ESP course they are currently teaching at the university. Here the focus was on the decision making process involved in course design. Responding to a question about the course goals or general objectives, 92% of the respondents pointed to communicative competence (putting its socio-cultural component over the pragma-linguistic one), while only 23% indicated linguistic competence, which is consistent with the definition of ESP as language instruction concerned with language use and learner communicative proficiency. These results correlated with the respondents' choice of specific course objectives (learning outcomes), where teaching domain – specific vocabulary, functions or discourse were clearly favored over grammar teaching, indicating a focus on the form-function relationship, which is promoted in ESP, rather than on the linguistic form alone. At the same time, however, the teaching of disciplinary concepts was ranked considerably higher than the teaching of either target group (TG) culture or TL national culture, which may be interpreted as indicative of a cognitive rather than sociocultural interest in the subject discipline and its practices. This may be attributed to the lack of practical experience of domain-specific practices and the related social-semiotics, as none of the teachers is even a peripheral member of the target group. This interpretation is supported by the respondents' definition of the language they teach in their ESP courses, which is seen as a subset of International English (EIL) owned by both L1 and L2 users rather than a subset of a national English owned by a country-based community of native speakers, where the former was selected by 50% of respondents and the latter by 34%, with the rest selecting both options.

As concerns the content taught, the English language or its specific subset was chosen by, respectively, 30% and 38% of the respondents, but the subject discipline (law or economics) was indicated by 58%, and the targeted professional culture by 7.5%, which means that for an estimated one third to a half of the respondents, ESP consists of teaching both language

and subject content, even if reduced to basic concepts and practices and not necessarily viewed as CLIL. Rather, these findings may be interpreted as indicative of a growing popularity of content-based approaches to ESP teaching, especially the adjunct model of content-based instruction (CBI) which is taught alongside subject courses. This conclusion is supported by the respondents' answers to a question about the type of syllabus used, where the topical or thematic syllabus favored by CBI was chosen by 77% of the teachers, surpassing in popularity both notional (54%) and functional (46%) syllabuses, typically associated with ESP as a specific variety of communicative teaching. The answers to this question also revealed the surprisingly limited popularity of the task-based syllabus, the skills-based syllabus, and the situational syllabus, selected respectively by 30%, 23%, and 7.7% of the respondents, as well as the expected lack of popularity for the structural syllabus, which was used only by 7.7% of the teachers. Of course, the consolidated results for the notional, functional, task-based, skills-based and situational syllabuses are significantly higher than for the thematic syllabus, which shows that communicative teaching continues to be favored over more cognitively-oriented approaches, especially the genre-based syllabus, which was not selected by any respondents. However, the results revealing the respondents' syllabus preferences should be approached carefully, as they may have been distorted by a considerably long and detailed list of options offered, which made the choice considerably difficult.

A final comment about content selection that has to be made is that the growing popularity of content-based teaching is hardly surprising in the knowledge context of an institution of higher education, where gaining as much subject knowledge as possible is often seen as a priority by students. Consequently, an opportunity to increase professional knowledge in addition to linguistic knowledge may be an important reason for choosing an ESP course over an EGP course, as disclosed by a study into the expectations and motivation of students of English for Legal Purposes (ELP) courses at the University of Warsaw conducted by the author (Górska-Poręcka, 2011), where cognitive motivation for enrolment was indicated by 94% of the 78 predominantly pre-experience informants in their second or third year of 5-year long LLM studies, and was slightly stronger than pragmatic or professional motivation, mentioned by 92%.

Moving now to methodology and classroom practices, a 70% majority of the respondents said they used an eclectic teaching method, with 7.7% opting for the communicative method, another 7.7% choosing the task-based method and 15% not being able to specify their answer. These results lend themselves to several plausible interpretations, ranging from the con-

tention that they attest to the growing preference for a pan-methodological or post-method approach, noticed by many authors (e.g. Belcher, 2009), to a negative comment that they indicate a lack of specific pedagogical knowledge, where choosing the eclectic method option could be seen as an avoidance strategy. However, given the professional experience of the respondents, it appears that this methodological eclecticism is the result of an attempt to fuse communicative and cognitive methods into a methodology that would fit the purposes of university students in a low immersion EFL context, described by one of the respondents, an experienced teacher of Business English as 'whatever works.' Among other interesting findings were also those concerning the type of language input provided and its relationship to learner output. As the questionnaire disclosed, most teachers put authenticity over comprehensibility, opting for authentic materials prepared by TG members for real communicative purposes rather than teacher-prepared or adapted materials, providing what Krashen (1985) calls 'comprehensible input' (i.e. one step above the learners' current interlanguage). Authenticity was also favored in output generating activities, where all the respondents claimed to use tasks (understood as meaningful and pragmatically valid activities), with half indicating that such tasks took up as much as 50–80% of their teaching time. Finally, the teachers questioned defined contextualization of language use as related to target situations with their typical activities, tasks and texts rather than to the students' limited current ESP experience, which again indicates a strong preference for practicing language use under conditions that imitate real life and can be re-created in the language classroom only by means of authentic tasks and texts.

Conclusion

In conclusion, it seems that just as English for specific purposes is distinct from English for general purposes, the professional knowledge of the ESP practitioner differs considerably from the cognition of the EGP teacher. The main difference concerns the subject-matter part of pedagogical content knowledge, which in general language teachers contains only language cognitions, collectively known as teacher language awareness or TLA, but in ESP practitioners encompasses also some subject knowledge of the discipline to which the ESP taught is related. Other differences have to do with complex and cognitively demanding roles that ESP teachers have to play and their EGP counterparts do not, which require additional cognitive abilities, for instance, expertise in conducting needs analysis, designing a course, or

developing materials. As distinct from the general language teacher's cognition, the professional cognition of the ESP teacher deserves to be thoroughly explored, both theoretically and empirically. The pilot study presented here constitutes the author's first and very imperfect attempt at exploring ESP teacher cognition in an attempt to validate the proposed conceptualization. Nonetheless, the study yielded many interesting results, which may be summarized as follows:

- Working in a setting characterized by high levels of teacher autonomy and low levels of involvement with other stakeholders, the studied group exhibited considerable readiness to undertake the roles of ESP course designer and teacher, but show less enthusiasm for the roles of needs analyst and course evaluator;
- The respondents generally saw their teacher role as learning facilitators and mediators, which is consistent with communicative teaching, although a sizable percentage assumed the typically university role of knowledge provider;
- As language instructors, the questioned teachers seemed to be set against using one methodology, preferring instead to use multiple methodologies (the eclectic method);
- In their classroom practices the respondents appeared to be greatly concerned with providing authentic rather than comprehensive input, and practicing it by having students perform authentic activities or tasks;
- The language taught in the course tended to be international rather than national English in an attempt to prepare the students for work in an international environment;
- As course designers, the teachers recognized the necessity to teach to delayed, professional needs, as present, educational needs were largely non-existent but they rarely conducted their own target needs analysis, relying instead on the expert knowledge of course book writers;
- To better choose the course input, the respondents assessed their students' present language and learning needs, as well as relevant cognitive and affective variables;
- All members of the group developed their own syllabuses, but while Legal English teachers worked individually, Business English teachers collaborated to produce a standard syllabus;
- The syllabuses designed tended to be communicative, which is consistent with the overall course goal of developing communicative competence but there was considerable interest in content-based instruction and so an increased use of the thematic syllabus;

- The teachers varied considerably in their attitude to the non-linguistic subject content, which for most, served merely to contextualize input, but for some was a legitimate part of the course content;
- A similar diversity was observed in the teachers' choice of course objectives, where teaching domain-specific lexis, teaching functions, and teaching disciplinary concepts were the three most popular options, indicating a desire to teach both communicatively and cognitively.

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DEVELOPMENTS IN ESP TEACHING

Abstract. The fast changing business environment and the ever-growing demand facing professional communicators in the 21st century pose new challenges to language learners and teachers alike. Competitive business organizations attempt to recruit employees who have excellent linguistic competence coupled with nonlinguistic competences and skills. It is not easy to acquire these additional competences and skills. However, most of them are transferable and can be greatly improved if students are provided with adequate teaching materials and appropriate input from the teacher. The aim of the paper is to address the complexity of ESP teaching today. Firstly, it presents an overview of the changes that have occurred in the practice of teaching ESP in the last few decades. It also sheds some light on the increasing importance of needs analysis. Then it presents new developments in teaching English for professional communication at the tertiary level of education. These developments include (1) content-and-language integrated learning, (2) use of didactic case studies, (3) corpus studies conducted for teaching purposes and aimed at identifying high-frequency language elements: terms, specialized lexis items, collocations, formulae, acronyms, etc., that need to be prioritized in language courses, (4) more effective course-books with higher terminology indexes, (5) extended use of online materials, (6) teaching writing for specialized purposes, and (7) teaching cross-cultural and social skills. The new approach is more challenging for ESP teachers and requires much higher qualifications, such as content knowledge and transferable skills. In order to increase students' employability and promotion opportunities, we need teaching materials and approaches that help streamline students' efforts, economize on time, and increase the effectiveness of language courses.

Keywords: English for Specific Purposes, business English, needs analysis, teaching priorities, materials development

Teaching English for Specific Purposes (ESP) is a prime illustration of the saying "what comes in time, changes over time." ESP as a term came into language more than 50 years ago. The notion of a language for specific job-related purposes appeared in the sixties and the early seventies of the 20th century and was connected with the pioneering research of Halliday, MacIntosh and Strevens (1964). Since its introduction ESP has been changing and developing all the time, and it is expected to change and develop in the future as well.

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Widdowson (1983:10) is of the opinion that "ESP is simply a matter of describing a particular area of language and then using this description as a course specification to impart to learners the necessary restricted competence with this particular area." Hutchinson and Waters (1987:19) support the idea that ESP must be seen as an approach, rather than a product.

According to Hutchinson and Waters (1987:5), there were three main reasons for the emergence of all varieties of ESP: the demands of the New World after WW II, a revolution in linguistics, and a focus shift from the teacher to the learner (Hutchinson & Waters, 1987; Dudley-Evans & St. Johns, 1998). English became subject to the wants, needs, and demands of people other than language teachers. It was the learner who explicitly called for courses tailored to meet their professional needs.

A significant discovery at that time was that the ways in which we speak a language and write in a language vary. The significance of this discovery was that, as a result of these variations in language use, language teaching could be tailored to both spoken and written professional situations. In the late 1960s and the early 1970s, there were first attempts to teach English for Science and Technology (EST). It was the first variety of language for specific purposes that received scientific attention. Hutchinson and Waters (1987), Swales (1980), and Selinker and Tarone (1981) were among the EST pioneers.

Another significant discovery came from the psychology of learning – the research showed that another focus shift was needed, that from language delivery to language acquisition (Hutchinson & Waters, 1987). Focus on learners' needs became as important as the methodology of language teaching. Designing courses that could best meet these needs was bound to be a success.

According to the definition given by Hutchinson and Waters (1987:19), "ESP is an approach to language teaching in which all decisions as to content and method are based on the learner's reason for learning." It was a real revolution in language teaching – from a teacher-centered approach to a learner-centered and learning-centered approach, a milestone in language teaching that had its repercussions for the decades to come.

In 1983, Carter distinguished three varieties of ESP: English as a restricted language, English for Academic and Occupational Purposes, and English with specific topics. The famous "tree of ELP" (Hutchinson & Waters, 1987) shows that ESP was subdivided into English for Science and Technology (EST), English for Business and Economics (EBE), and English for Social Studies (ESS). Each of these three varieties was further

subdivided into EAP and EOP. Now ESP is an umbrella term which includes English for Science and Technology, English for Academic Purposes, English for Business and Economics, English for Management, English for Medicine, English for Finance and Banking, English for Law, English for Tourism/Engineering/Accounting, etc.

The number of ESP dictionaries reflects the creation and development of each variety of ESP. By analyzing the year of publication, the type and the number of ESP dictionaries on the market, we can make conclusions on the popularity of each ESP variety. In the 1980s and 1990s, about 80 new ESP dictionaries (mostly technical) appeared on the Polish market, and during the period 1990–2006 there were more than a hundred new business dictionaries available in Poland. It demonstrates the popularity and expansion of ESP.

Today we can witness that publishers not only offer course-books and on-line materials for the varieties of ESP presented above but also publish books and materials targeted at a single profession, e.g. English for Nurses, English for Job Hunters, English for Beauticians or Air Speak (English for Air Traffic Controllers). The variety of course-books on offer shows that there is a huge demand for highly specialized language courses.

At the early stages of ESP teaching, courses were aimed mainly at specialized linguistic competence. In the 1970s, specialized terminology and functional language were regarded to be the priorities in ESP courses. Courses were, to a great extent, language-oriented, and their main aim was to teach specialized lexis and grammar. In the mid-1970s and 1980s, a new approach to teaching business English appeared – it was the communicative language teaching approach focused on communication in typical professional situations. With time the priority of linguistic competence was replaced by the priority of communicative competence, and communication skills became target number one in ESP.

In Europe, the 1990s were the decade when the following important innovations were introduced: the euro, financial deregulation, and venture capital. Throughout the world, globalization processes brought greater job mobility and international cooperation. It was also the time when new communication technologies became more accessible worldwide: the Internet and mobile phones have significantly facilitated and sped up communication. All these changes have had a strong impact on learners' needs.

Successful ESP courses imply that course-book authors cater for future real-life needs of learners, especially in the case of pre-experienced adult students, who may not fully realize what language competence their future job will require of them. Target situations, in which they will have to com-

municate effectively, have to be examined (as part of needs analysis) and considered when designing a course-book.

A learner-centered approach adapted in ESP courses has allowed for the following developments in language teaching:

- inclusion of materials into a syllabus is based on the learners' reasons for learning,
- courses are more intensive – learners want to achieve good language competence in the shortest time possible,
- learners can negotiate the syllabus,
- learning is understood as an active construction of meaning,
- teaching is perceived as guiding, scaffolding, and facilitating learning,
- real-life tasks are prioritized,
- meaningful and purposeful interaction can be created through language,
- tasks are cognitively more challenging,
- learners have more autonomy,
- learners accept more responsibility for the outcome of the learning process,
- making vocabulary personal helps to make it more memorable (McCarten, 2007).

Today we can still witness that demand for English for Specific Purposes continues to increase and expand throughout the world (Dudley-Evans, 2001). Learners need courses matching their ever growing needs and requirements resulting from what the labour market demands.

The aim of the next sections of the paper is to address the complexity of ESP teaching today. Firstly, it presents recent developments in teaching English to pre-experienced adult students at the tertiary level of education which include (1) content-and-language integrated learning, (2) use of didactic case studies, (3) corpus studies conducted for teaching purposes and aimed at identifying high frequency language elements: terms, specialized lexis items, collocations, phrases, formulae, acronyms, etc., that need to be prioritized in language courses, (4) more effective course-books with higher terminology indexes, (5) extended use of online materials, (6) teaching writing for specific purposes, and (7) teaching professional culture and non-linguistic skills. Then it focuses on new challenges that ESP teachers face, and, finally, it offers some practical recommendations for ESP teachers.

Recent Developments in ESP

In this section the information will generally refer to all ESP varieties, but examples will refer mostly to business English teaching.

Content-and-language Integrated Learning (CLIL)

Content-and-language integrated learning was introduced in ESP at the end of the 20th century. It has been advocated by the Language Division of the Council of Europe in all types of formal education: primary, secondary, and tertiary (Language Division 2004). In their report Council of Europe experts strongly support CLIL courses run at universities. They also advocate materials development for specific groups of students to facilitate CLIL.

The classical model of CLIL requires two teachers: a language teacher and a subject matter teacher. In practice, however, the dominant teaching model at universities now is that with one teacher who teaches both subject matter and language.

It can be expected that this type of learning will become more popular in the future. More and more universities all over the world look for and welcome students from abroad – from neighboring countries or from emerging economies – countries like China or India. The only way to give education to these students is in the medium of English, which is taught in most secondary schools all over the world. Some experts say that we are facing the "Englishization" of tertiary education. It could be a unique opportunity to provide international students with intensive CLIL courses in ESP.

The priorities in CLIL comprise professional communication skills combined with practicing active language skills. CLIL offers teaching that is targeted at content matter, but strong emphasis is also put on using academic, professional, and authentic course materials with high terminology input.

There are four types of knowledge presented by Anderson and Krathwohl (2001):

- factual knowledge – basic facts, components, terminology,
- conceptual knowledge – knowledge of classification, rules, theories, models, and processes,
- procedural knowledge – ability to perform specific tasks and to solve problems,
- meta-cognitive knowledge – understanding learning strategies, understanding the importance of life-long learning.

In CLIL we have more opportunities to teach conceptual, procedural, and meta-cognitive type of knowledge which are more difficult to teach

than factual knowledge. This makes teaching ESP at tertiary level more meaningful and effective.

For language teachers CLIL can frequently be very difficult. As language teachers they may not want to learn the content matter. It has to be remembered that the direct and indirect costs of postgraduate or doctoral studies (in terms of time and money) are usually high. In addition, there may be negative attitudes to teaching content matter and no trust in the value of CLIL. As a result of these difficulties, constraints, and negative attitudes, language teachers refrain from accepting teaching positions in CLIL courses. Consequently, universities look for content matter teachers with good linguistic competence. Then, however, the primary focus is on content matter, and ESP is given a secondary focus only.

Use of Didactic Case Studies

A learner-centered approach provides students with lots of opportunities to practice analytical and creative thinking, problem solving, and decision making. It teaches critical and constructive thinking, evaluation and forecasting and thus contributes to the development of conceptual thinking. A learner-centered approach encourages students to defend their ideas and to reflect on their thinking when they take decisions, critically compare, and evaluate options or design an action plan. It also allows them to compromise and reach a consensus when they work in teams. The use of didactic case studies in tertiary education is a prime example of a learner-centered approach.

The case study method is used extensively in law, medicine, psychology, economics, management, and in finance. It is also used in some varieties of ESP. A didactic case presents a real life problem that either has been solved or needs to be solved. It gives some background information to the problem. It often contains some data in the form of graphs, documents, interviews, tables, etc. that may be helpful in identifying the problem and in solving it.

Language skills which can be practiced in the case study method include:

- reading skills with exposure to new vocabulary in various professional areas,
- speaking skills such as:
    - presenting opinions,
    - criticizing,
    - negotiating,
    - making a point,

comparing alternatives,
taking a decision and justifying the choice,
presenting conclusions,

- writing skills.

There are many advantages of the case study method. First of all, most students like realistic real-life tasks. Cases require team work and cooperation and can be adjusted to the level of language competence in a particular group of learners. Teachers have numerous opportunities to supplement a case with new tasks, both spoken and written. Additionally and importantly, students know that they use the language they will need most in real-life professional situations.

The didactic qualities of case studies include the following:

- language is a tool to perform a real-life task,
- the method allows to practice all language skills with emphasis on the productive skills of speaking and writing which are most difficult to master,
- it offers 'learning by doing',
- it is student-centered,
- speaking is more spontaneous,
- student speaking time is prolonged,
- language is practiced in a natural way (language is the means, not an end).

Frendo (2007:13) is of the opinion that in teaching business English, like in the world of business language, it is not the end, it is the means to achieve the end. He says,

> in the business English classroom this is often done via tasks, which are activities where the focus is primarily on using language to do something. It is the outcome of the task which is important, just as in the business world the language is a means to the end, not an end in itself. The theory is that that language is learned via the interaction; the learners learn by doing the task. Many researchers claim that task-based learning, coupled with judicious feedback which allows learners to pay more attention to form, is the most productive way of using a language.

Case studies may be challenging not only for the student but also for the teacher. They require professional thinking, knowledge of certain rules and mechanisms, as well as excellent analytical skills. Sometimes the methodology of analyzing more complex cases may be difficult or time-consuming. It, however, should not lead to eliminating case studies from ESP teaching practice, especially in teaching English for Medicine, Law, and Business;

in these content areas case studies have been used for decades in tertiary education, and they can be equally effective in teaching ESP.

Use of Corpus Evidence in Materials Development

The two quotations presented below show the importance of terminology and specialized lexis in ESP teaching. Thornbury (2002:14) is of the opinion that "the advent of the communicative approach in the 1970s set the stage for a major re-think of the role of vocabulary." Frendo (2007:8) in *How to Teach Business English* says that "one of the key influences on business English teaching in recent years has been our deepening understanding of the role of lexis." Teaching materials used in ESP courses should reflect the language used by professionals in typical communication acts. The content of any ESP course today needs to be judiciously selected both in terms of content matter and material selection. It is true that publishers offer much better ESP course-books now; ten or twenty years ago some ESP areas were not provided with course-books at all or the choice was limited to two or three course-books. However, course-book authors do not consider extremely important corpus evidence concerning language use.

Thornbury (2002:35) says that "the relative frequency of a word is a key factor in determining its inclusion in a syllabus. The argument for teaching the most frequent words in the language is a powerful one. It is claimed that the most frequent words express the most frequent meanings in the language."

Why do we need corpus studies? High-frequency language elements: core vocabulary (both ESP terms and specialized lexical items), area specific collocations, phrases, formulaic sequences, abbreviations and acronyms used in the language of professional communication need to be identified in corpus studies carried out for teaching purposes. Frequency lists should be a prerequisite for authors of ESP course-books. Intuition and experience of course-book writers cannot provide the hard evidence that is accessible by means of corpus studies into authentic spoken and written texts.

Students need to be exposed to the highest-frequency ESP language elements very early in the course. It will give them a sense of achievement and improve their motivation. The didactic value of a course prioritizing such elements will increase significantly. Learning time will be better used. Learning efforts will be more focused. Consequently, the effectiveness of ESP courses is likely to increase.

Monitoring Specialized Terminology Indexes in Teaching Materials

ESP terminology is the most important single factor that makes a quantum of difference between general English and English for Specific Purposes.

Highest frequency ESP terms are of key importance in professional communication. K. Wartburton (2005), responsible for IBM's terminology strategy, says, "Terminology is the DNA of knowledge." Proper understanding and use of professional terminology allow for effective communication between specialists.

However, in tertiary teaching we need to look at terminology use from a wider perspective. Input materials have to be assessed by means of two criteria:

- the quality of ESP terms contained in teaching materials (understood as corpus-based information on which ESP terms to include),
- the quantity of ESP terms understood as their concentration in teaching materials.

A terminology index (Lukszyn, 2008) is a research tool which allows to measure the concentration of ESP terms and collocations in a text, a collection of texts or a course-book. It is measured by the ratio of ESP terms and collocations to the total number of running words in a given text or a collection of texts. This tool:

- provides unbiased quantitative data on language use in teaching materials,
- measures the didactic value of an ESP text,
- helps to assess teaching materials in terms of how much new core ESP terminology (and specific lexis) students can learn using a given text,
- shows the repetition rate of key ESP terms,
- identifies texts that require supplementation,
- assures high quality of teaching materials.

The use of the terminology index allows to measure the concentration of core ESP language elements and grade it according to students' language competence and to students' needs. It also allows for controlling the number of newly introduced specialized language elements and for monitoring their repetition rate (recycling). If the repetition rate of a given term or collocation is high, students have a more intensive input and are more likely to memorize the term.

For example, the terminology index in authentic business texts amounts to 0.25 (Lukszyn, 2008), which means that every fourth word in a text is a business term. The terminology index may vary slightly depending on the genre, subject matter, the intended reader, and the author. Effective teaching materials for tertiary students need to have a relatively high terminology index, close to that found in authentic ESP texts.

Most probably terminology indexes for other varieties of ESP differ from that in business English texts, and they may probably be either higher

(e.g. in authentic language of chemistry, medicine or law) or lower (e.g. in the language of history, management, pedagogy or sociology) than that for authentic business texts.

In practical terms, it is quite easy to measure the terminology index for a particular course-book. It is enough to take several 100-word long samples of texts from the course-book and to count the terminology indexes in them. If the consolidated terminology index in those samples is close to 0.25 (for business texts), it can be interpreted as high enough. Course-books with a high terminology index usually do not require any supplementation.

Additionally, when analyzing the samples, it is possible to measure the concentration of specialized collocations in them. Collocations are as important in specialized communication as specialized terms. Thus, a high concentration of specialized collocations, because of its high didactic input, makes the text more effective.

Extended Use of Online Materials and E-courses

Many ESP teachers encourage their students to make use of online materials as supplementary teaching texts. It is a good practice as it gives learners an opportunity to have greater exposure to authentic specialized texts. Students usually like to use online materials (area specific texts, documentaries, case studies, articles in quality professional journals, company websites, video clips, etc.) and think that such materials add variety to the learning process.

The popularity of e-courses is increasing and will probably continue to increase in the future. Most e-courses that are currently offered to learners are in general language, not in ESP. However, there are a few courses in business English, and in the future courses in other ESP varieties are likely to become available as well. Learners like them since they offer greater flexibility than regular language classes. They also give an immediate feedback to the learner.

Recently, a new generation business English course-books have been introduced on the market. Besides a student's book, teacher's book, workbook, and skills book, publishers sell these books with an additional e-learning component for students. Teachers can manage the teaching materials and monitor each student's performance in e-component tasks. This kind of blended learning offers more intensive exposure to business English – the e-component allows for 30–40 additional hours of language learning.

Massive Open Online Courses (MOOCs) are a completely new type of online courses run by the best and most renowned universities worldwide and offered for free to all learners wanting to enroll. For instance, Coursera

– an online system of free training – offers specialized courses in law, management, finance, and economics as well as in sociology, history, medical sciences, and mathematics taught by university professors from such reputable universities as Stanford, Harvard or the London School of Economics. Up to now more than six million people worldwide have already enrolled in these courses. Many of them also take language courses offered by Coursera; for the time being these are courses in general languages only.

The popularity of MOOCs shows that there is a huge demand for online learning; in the future this demand is likely to increase. Most probably online ESP courses will be offered to mass learners in the years to come. The practical lesson for ESP practitioners at universities is to be aware of the changes, to make attempts to incorporate online materials in ESP courses, and also to consider developing online courses and online supplementary materials for adult learners of ESP.

Teaching Writing for Specific Purposes

In the recent decade we have seen that more and more ESP courses have offered a component of professional writing. It refers particularly to the language of business and law as these ESP varieties require that professionals have particularly good writing skills. There are texts and documents they have to produce in a professional and standardized way.

Professional writing has been incorporated into language courses to meet the needs of students who will need to be effective, informative, and persuasive communicators in writing. Each of the following groups of professionals needs instruction in specialized forms of writing: managers, management consultants, and business people as well as lawyers. The writing code in each of these professions is different, even though they have certain elements in common.

In the world of business these forms of writing include business reports, memoranda, corporate profiles, trade contracts, commercial correspondence, business plans, annual reports, advertisements, agendas, itineraries, minutes, press releases, among others. Each of the forms of writing listed here has a special layout, structure, style, and tone. It requires a specialized routine language, brevity of form, and clarity of argumentation. It also requires a specific degree of formality and appropriate wording. University students certainly need to learn how to write for professional purposes.

Teaching writing is a difficult task for two basic reasons: (1) secondary school students generally do not know how to write in a logical, clear, brief, and structured way, neither do they know how to write in an informative or persuasive way, and (2) teaching writing for professional purposes is time-

consuming and needs a lot of planning, organizing, drafting, and redrafting. With a limited number of classes in ESP courses at universities it is often difficult to provide students with enough opportunities for acquiring good writing skills.

If students want to take external certificate qualifications (e.g. English for Business LCCI or BEC), it is necessary to teach them to produce business texts required for the exam. The growing popularity of certificate exams seems to indicate that more and more students want to have written confirmation of their competence in a given ESP awarded to them by an external examination board. An increasing number of corporations require such language certificates from their employees and from job applicants.

Teaching Sociolinguistic and Pragmatic Competence

The last (but not least) development in ESP teaching refers to teaching non-linguistic skills. Good communication skills require excellent language skills matched with good pragmatic and sociolinguistic skills. Many of these skills are transferable and can be learned. Professionals usually need good interpersonal skills, business and managerial skills, analytical skills, persuasion skills as well as specific micro-skills.

In business these micro-skills are extremely important and can have far-reaching consequences for professional performance; thanks to those skills you can generate profits for your company and contribute to its development and growth. They include such micro-skills as e.g. negotiating, networking, chairing a meeting and participating in one, delivering business presentations, giving a sales pitch, attending customers, presenting facts and figures, using visuals, networking, and telephoning.

Harmer (2003:10) says that

> an enormous growth area in English language teaching has been in the area of Business English because many students perceive a need for the kind of language which will allow them to operate in the world of English-medium commerce. Once again there is specific vocabulary and language events (presenting to colleagues, the language of contracts, etc.) which are unlikely to appear in a general English course, but which are vitally important for business students. And so teachers find themselves training classes in such procedures as the art of negotiating, the correct use of phones and e-mail, or the reading of business reports.

In our globalized world, good interpersonal skills also encompass cross-cultural skills. Professionals are likely to have contacts with other professionals as well as customers and clients from different cultures. Awareness of cultural differences makes cross-cultural contacts significantly easier and

beneficial for all parties involved. Accepting that we are culturally diverse and respecting things that are culturally important for others help in developing and maintaining good professional contacts with foreigners. Cross-cultural skills help to avoid potentially dangerous cultural clashes or misunderstandings, which may have negative consequences.

The knowledge of the basic principles of professional etiquette also plays a significant role. Students who know the rules of etiquette, good manners, and rituals prevailing in their future profession will probably find it easier to adapt to the code of good practices that are respected in their profession. Even very small details can work to students' advantage, e.g. how to promptly reply to letters or emails, how to address people or what dress code to follow.

Some universities teach professional skills in separate courses. They give courses in negotiations or in business culture. If, however, this is not the case, ESP teachers have to consider teaching those skills during language classes, time permitting. There are some ESP course-books that are accompanied by skills books and cross-cultural components. The decision of what to include in the course depends on numerous criteria, with the number of teaching hours being the strongest determinant of what a syllabus can realistically include.

It is important to remember, as McGrath (2002:98) says, that

> knowledge and skill combine in efficient communication. However, teaching for knowledge is very different from teaching for skill. Knowledge can be 'presented' or 'discovered'; it can also be forgotten. Skill, on the other hand, can only be acquired through practice, and once acquired is relatively easily maintained. The fact is that while we can 'teach' knowledge, we cannot teach skill. Skill has to be learned, and practice is a central element in that learning.

The Challenges ESP Teachers Face Today

The first and most essential piece of information that can be offered to novice ESP teachers is that they will have to learn many new things they were not taught during their university years. And they will have to continue learning throughout their professional life. As simple as that. As demanding as that. The bar for qualified ESP teaching is going higher and higher.

The idea that ESP is a general language plus specialized vocabulary, advocated by some laymen, has already been rejected. University teachers who think that in ESP teaching they are not responsible for transferring area specific knowledge are in a slim minority now. Teachers have to understand the meaning of specialized terms, they have to know and understand

the basic facts, mechanisms and processes they discuss with their students, and they have to have some rudimentary knowledge in the subject matter they teach.

In order to increase the effectiveness of the courses they teach, ESP teachers are expected to learn many new things that will help them make their teaching better and more effective. These include learning:

- how to respond to learners' needs,
- how to teach non-linguistic skills (pragmatic and sociolinguistic skills),
- what to prioritize in an ESP course (high-frequency lists),
- how to select and incorporate authentic materials into the course,
- how to evaluate teaching materials using quantitative methods,
- how to make use of online materials and social networks,
- what new teaching techniques to implement (e.g. case studies),
- how to teach for ESP certificate exams,
- how to teach effective writing for professional purposes.

ESP teachers need to put a lot of time and energy into being better performers in what they do professionally. It can be achieved by either self-education, by collaborating with and learning from subject matter specialists, by taking postgraduate courses offered to novice ESP teachers or by enrolling for doctoral studies either in ESP or in the subject matter.

Witnessing so many developments in ESP teaching, it can be assumed that the potential for growth is huge. ESP teachers who will follow these developments and who will be open to possible challenges in the future are likely to succeed. Teachers need to change and develop – changes lead to improvements in the quality of ESP teaching. Changes should not be avoided; change resistant teachers find it difficult to adapt to the changing needs of their students, to develop, and improve as ESP teachers.

Conclusions and Discussion

For more than 50 years of ESP courses learners' needs have always been most relevant and central in the practice of ESP teaching. Over time these needs have become more complex. Today's labour market does not resemble that of the 1980s or 1990s. Today employers demand more from their employees than they used to. Therefore, tertiary students who want to meet these demands have to invest more time, money, and energy to achieve good language competence.

In the opinion of Richards (2006:1), the worldwide demand for English has created an enormous demand for quality language teaching and lan-

guage teaching materials and resources. He claims that learners set themselves demanding goals and that "they want to be able to master English to a high level of accuracy and fluency." He adds, "employers, too, insist that their employees have good English language skills, and fluency in English is a prerequisite for success and advancement in many fields of employment in today's world." This new demand is a consequence of several processes that have occurred in those 50 years: globalization of the labour market, higher employee mobility, increased competition, expansion of big multinational organizations, extensive use of cheap labour, off-shoring, closer cross-border cooperation, progress in communications and information technology, greater access to university education, and growing unemployment, to name just a few most significant ones.

ESP teachers have to be aware of all the developments presented in this paper. They need to remember that universities seek to employ only the best ESP teachers. Their employability is bound to increase if their qualifications in ESP teaching are constantly upgraded. Generally speaking, specialization in language teaching is inevitable. Consequently, investment in professional life-long learning and development translates into more employment opportunities. Novice ESP teachers are strongly recommended to make the effort and learn the fundamentals of the subject matter relevant to the ESP variety they want to teach. It is important to remember that such rudimentary knowledge is always beneficial when teaching ESP to adult students.

Looking back 50 years, it can be said that tremendous progress has been made in all aspects of ESP teaching. All the developments presented in the paper support this view and demonstrate that the effectiveness of ESP courses has improved significantly over time. ESP course-books are more interesting for learners, they offer real-life tasks and contain many authentic texts. Frequently they are accompanied by workbooks and skills books. On the one hand, it makes teaching easier for the teacher, but on the other, it poses new challenges and threats that the teacher has to face.

It can be concluded that all elements of the teaching/learning process (the learner, the teacher, and teaching materials) have changed and developed over the last 50 years and that great progress has been made in ESP teaching. The effectiveness of ESP courses has increased significantly; consequently, the level of language competence and communicative competence among professionals has risen.

Still, there are some areas for further improvement: ESP varieties still require intensive corpus studies for teaching purposes, the didactic relevance

of teaching materials has to be monitored and upgraded, and technology has to be widely used in ESP teaching practice. Research in psycholinguistics and neurolinguistics can shed some new light on the learning process as well. It is to be hoped that more new developments are likely to come for ESP in the future.

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STUDIES IN LOGIC, GRAMMAR
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TEACHING AND LEARNING FOREIGN LANGUAGES FOR LEGAL PURPOSES IN CROATIA

Abstract. In accordance with the Bologna Declaration, modern languages and communication skills have a growing importance in all professions. With the prospect of Croatian membership of the EU and taking into consideration the conditions of the growing internationalization of law in general, knowledge of foreign languages represents an indispensable prerequisite for international communication within the legal profession. Thus, teaching foreign languages in the field of law, especially English and German, is necessary not only for the professional education of Croatian law students, but also for their mobility within the network of European universities. This paper presents a case-study of the current situation in teaching Legal English and Legal German in Croatian Law Schools. First, the status of foreign languages for specific purposes (FLSP) in the Higher Education System of the Republic of Croatia in general is analyzed. The main part of the paper is dedicated to teaching Legal English and / or Legal German as compulsory courses within the curricula of Croatian law faculties (status, syllabus design, teaching methods). Then some projects on teaching foreign languages to practicing lawyers will be presented. With the prospect of Croatian membership of the EU, specific education programmes for lawyer-linguists have been introduced by the Law Faculties of Zagreb and Osijek. These programmes, developed within the lifelong education project for lawyers, offer an opportunity for Croatian law students and young lawyers not only to improve their knowledge of Legal English and Legal German, but also to learn other languages of the EU, like French or Italian. These new programmes are the response of Croatian foreign language teachers to the current requirements of the European labour market and the challenges of the internationalization of the modern world.

Keywords: Legal English, Legal German, Croatian law faculties, new teaching programmes.

In the Appendix to the Recommendation of the Council of Europe concerning the learning and teaching of modern languages, education institutions are encouraged to ensure resources and provide opportunities for senior secondary students and students of higher and further education to continue learning language appropriate to their programmes of

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study and fields of work (Council of Europe, 1982). With the prospect of Croatian membership of the EU and taking into consideration the need to adjust the Croatian law system to that of the European Union, knowledge of foreign languages is an indispensable pre-requisite for the education of Croatian lawyers. The aim of this paper is to inform the wider academic society about the current situation concerning the status of foreign languages for specific purposes (FLSP) in the Higher Education System of the Republic of Croatia in general, with specific reference to teaching Legal English and Legal German in Croatian Law Schools. In the introductory part of this paper the status of FLSP in the Croatian Higher Education System will be presented, while the main part of the discussion will be dedicated to teaching Legal English and Legal German at four Law Faculties in Croatia, with specific reference to the Law Faculty at the University of Osijek. Special attention will be paid to lifelong education programmes introduced by the Law Faculties of Zagreb and Osijek for law students and young lawyers as an answer to the current requirements for Croatian membership of the EU, the European labour market and the challenges of the internationalization of the modern world.

Foreign languages for specific purposes in the Croatian Higher Education System

According to the Croatian National Education Standard (CNES, 2005), contemporary foreign language teaching is founded on principles of communicative competence in foreign languages, as determined by the Common European Framework of Reference for Languages – CEFR (CEFR, 2005). The National Curriculum Framework (NCF, 2010) contains provisions for foreign language teaching in Croatian secondary schools that are determined in accordance with the CEFR. At the tertiary level of education, the following claim reflects the current situation in Croatia: The higher the education level, the scarcer are the provisions for foreign language teaching (Cigan, 2013). The only legal regulation on higher education, the Scientific Activity and Higher Education Act (Official Gazette No. 123/03, 198/03, 105/04, 174/04, 02/07, 46/07, 45/09, 63/11), barely mentions foreign languages. By granting a high level of autonomy to higher education institutions, it provides for foreign languages only within the framework of individual study programmes and in this respect it points out the importance of harmonization of higher education curricula with the goals and

achievements of the European tertiary education system. In an attempt to achieve this goal, the Republic of Croatia signed the Bologna Declaration in May 2001. The Bologna process introduced additional requirements in terms of curriculum reform, mobility of students, the teaching and non-teaching staff, and in particular the teaching and learning of foreign languages. It was recognised that the language policies of higher education institutions should include clearly defined activities to promote foreign language learning and the acquisition of linguistic communicative skills as prerequisites for academic mobility within the European Higher Education Area. As determined by the curriculum, students should master a foreign language to such a level, as to be able to read scientific and professional papers in a foreign language, to participate in conferences and use a foreign language in direct communication with native speakers. Due to the autonomy of higher education institutions, these ideas are implemented at Croatian universities in different ways, with different intensity and different approaches to the status and importance of foreign languages. This situation was confirmed by a study on teaching foreign languages at Croatian Universities, which was conducted in 2009 in 143 departments of 5 Croatian Universities (Osijek, Zagreb, Zadar, Rijeka and Split). It showed that 31% of the departments do not offer LSP to their first year students at all. On the other hand, only 30% of the departments require FL in the second and third year, whereas only 7% have an FL course incorporated into their curriculum continuously during 6 semesters (Poljaković & Martinović, 2009). These data reflect the current situation of FLT in Croatian Higher Schools, indicating that there are a great many discrepancies concerning the status of foreign languages for specific purposes, the intensity of FL courses, as well as the respective ECTS credit allocation and assessment. To illustrate these discrepancies, this paper will present the situation at the Josip Juraj Strossmayer University of Osijek for the academic year 2010/2011. Data are taken from the annual report issued every year by the University – "Sveučilišni godišnjak" (J. J. Strossmayer University, 2011) and refer to BA and MA level studies. It should be stated that students learn mainly English or German. The University encompasses 9 faculties, 1 Academy of Arts and 5 separate departments of: Mathematics, Physics, Biology, Chemistry, and Cultural Studies.

As shown in Table 1, it is difficult to find two faculties within the University in which foreign languages enjoy the same status, are allocated the same number of credits or are allocated the same number of teaching hours per semester. There are many differences between the departments of Physics, Chemistry, Biology and Mathematics. The Department of Chemistry has

Table 1

Intensity of FLT indicated by hours and number of ECTS credits at the University of Osijek 2011/12 per semester (sem)

Faculty	1st sem	2nd sem	3rd sem	4th sem	5th sem	6th sem	7th sem	8th sem	9th sem	10th sem	ECTS/ semester
Economics	30	30	30	30	30	30	45M	45M	45M	45M	3–5
Elec. Engineering	30el	30el	30EE	30EE	30EE	45EE	–	–	–	–	0–3
Civil Engineering	30el	30el	–	–	–	–	–	–	–	–	2
Humanities	30	30	30	30	–	–	–	–	–	–	2
Medicine	20	20	20	20	20	20	20	20	20	20	1
Agriculture	75	75	–	–	–	–	–	–	75el	–	6
Education	60	60	30El	30El	–	–	–	–	–		2
Food Technology	30	30	30FT	30FT	–	–	–	–	–	–	2
Academy of Arts	30	30	30	30	–	–	–	–		–	3
Law	60	60	60	60	–	–	–	–	30el	–	3–4,5
Dept. Maths.	30	30	30	30							3
Dept. Physics	30	30	30	30							2
Dept. Chemistry	30	30									2
Dept. of Cult. Stud.	30	30	30	30							1

The abbreviations **M** (Marketing), **EE** (Electric Engineering) and **FT** (Food Technology) denote the study groups at specific faculties allocated with more hours of FL than other study groups at those faculties; the abbreviation **el** stands for "elective course".

LSP only in the first and second semester, and the Departments of Physics and Mathematics, as well as that of Cultural Studies have LSP in the first four semesters. The Department of Biology does not have any foreign languages in its curriculum at all, so this department is not included in the table. On the other hand, the student workload of 30 hours a semester is allocated a different number of credits in different departments: the Department of Mathematics offers 3 ECTS points, the Department of Physics – 2 ECTS points, the Department of Chemistry – 2 ECTS points and the Department of Cultural Studies – 1 ECTS point.

With regard to specific faculties, we can see that the data vary from one faculty to another. It should be explained that the data in capital letters attached to some faculties refer to specific study groups being an exception to the rule, in which LSP is taught with more intensity than in other groups of the same faculty. So, *M* attached to the Faculty of Economics refers to the *Study of Marketing*, in which students are taught LSP (Business English and

Business German) throughout all semesters in continuity, whereas in other study groups the teaching period for LSP as a compulsory course takes six semesters (at the BA level). At the BA level the number of credits allocated to the course equals 3 per semester, at the MA level (the Marketing Study group) 5 credits. It should be pointed out that the number of credits for LSP at the MA level of this faculty is the same as that for other courses at that level: 5 ECTS points equally distributed to all the courses. At the faculties of Electrical Engineering and Civil Engineering, LSP is taught only in the first two semesters at the BA level, as elective courses. The number of ECTS points at the faculty of Civil Engineering is 2 per semester, whereas at the Faculty of Electrical Engineering it varies from 0 to 3 credits: for most study groups, LSP has the status of an elective course with no credits allocated, with the exception of the Civil Engineering Study Group, in which only *English for Electrical Engineers* (German is not offered at all!) is taught as a compulsory course throughout 6 semesters at the BA level with 3 ECTS points allocated in every semester.

As the Faculty of Humanities and Social Sciences includes many study groups, the data presented here refer to two representative study areas: the Study of Psychology and the Study of Croatian Language and Literature (study groups focused on studying foreign languages were not taken into consideration, our topic being languages for specific purposes). In the two respective groups LSP (English or German) is taught as a compulsory course in the first four semesters (BA level) and is allocated 2 ECTS points per semester. A similar situation is present at the Faculty of Education, the only difference being that LSP in the third and the fourth semester is an elective course.

The only faculty in which LSP is taught in continuity from the first to the last semester is the Faculty of Medicine, but only English is taught 20 hours per semester – German is not offered at all. The course is allocated only 1 ECTS point per semester.

At the Faculty of Agriculture, LSP is taught only to first year students (1st and 2nd semester), but more intensely than at other faculties, and the workload of 75 hours of lessons is allocated 6 ECTS points per semester, which is the highest number of credits allocated to LSP within the University of Osijek. In addition, at this faculty, LSP is also offered in the 9th semester as an elective course.

As for the Faculty of Food Technology, LSP as a compulsory course is available only to first year students in all study groups, with the exception of the "main" study programme *Food Technology*, in which LSP is taught for four semesters at the BA level. The course is allocated 2 credits in every

semester. An interesting example of teaching FLSP is the Academy of Arts, where the choice of the respective FL was made according to the needs of the specific study field: Italian and German are taught within the "Voice" Study Group, while English and German are taught within the "Music" Study Group. In all study groups, foreign languages are taught at the BA level in the first four semesters. In comparison to other faculties at the University of Osijek, the Law Faculty falls within the average range on the ratings of interest: FL for legal purposes is taught in the first four semesters as a compulsory course, but with twice as high intensity as at other faculties. The credits allocated are in mid-range: 3 for compulsory courses and 4.5 for elective courses. The situation at this faculty concerning the status of LSP will be discussed in detail in a comparative study of Croatian law faculties in the main part of the paper.

Consideration of the relevant data concerning LSP in the curricula of the faculties within the University of Osijek demonstrates that the autonomy of the faculties has influenced differences in the status, intensity of teaching, as well as the number of credits allocated to courses. Nevertheless, a slight improvement in the situation can be seen in comparison to the academic year 2005/2006 – the first year of implementation of the Bologna Declaration in Croatian Higher Education – when the number of credits was lower within the University, and at three out of ten faculties (the Departments were established in later years) LSP was an elective course with no credits allocated (Kordić, 2009). In the academic year 2010/11 there were two faculties in which LSP was an elective course, and one of them still had no ECTS credits allocated to the course. This implies that the administrative authorities of higher education institutions have gradually become aware of the importance of FL for their specific fields and have shown an effort to apply the requirements of the Bologna Declaration concerning FLT in a pragmatic approach, attempting to prioritise courses belonging to the area of specific professionalism. Table 2 illustrates these changes.

Foreign Languages at Croatian Law Faculties

Law Faculties in Croatia are no exception to the general diversity in Croatian universities in their approach to FLSP. Table 3 presents the distribution of foreign language courses (as a rule English or German) at four law faculties in Croatia with reference to their status, intensity of teaching hours per week (L = lectures, E = classes) and the ECTS credits allocated to them. The data refer to integrated BA and MA level courses lasting ten

Table 2

Comparison of ECTS for LSP in 2005/6 and in 2010/11

Faculty	Average ECTS per semester	
	2005/2006	2010/2011
Faculty of Economics	3	3–5
Faculty of El. Engineering (elective)	0	0–3
Faculty of Civil Engineering (elective)	2	2
Law	3	3–4,5
Humanities	2	2
Education	2	2
Medicine	1	1
Agriculture	0	6
Food Technology	2	2
Academy of Arts	0	3

Table 3

FLT at Croatian law faculties in 2012/13 with number of ECTS credits per semester

Faculty	Semester	Status	Teaching hours	Credits (ECTS)
Law Faculty Osijek	1	Compulsory	2 L + 2 E	3
	2	Compulsory	2 L + 2 E	3
	3	Compulsory	2 L + 2 E	3
	4	Compulsory	2 L + 2 E	3
	9	Elective	2 L	4.5
Law Faculty Zagreb	1	Compulsory	2 E	2
	2	Compulsory	2 E	2
	3	Compulsory	2 E	2
	4	Compulsory	2 E	2
	9	Elective	2 L	4
Law Faculty Rijeka	1	Compulsory	2 E	4
	2	Compulsory	2 E	4
	3	Compulsory	2 E	4
	4	Compulsory	2 E	4
	5	Elective	2 L	5
Law Faculty Split	4	Compulsory	2 L + 1 E	4
	5	Compulsory	2 L + 1 E	4

(L= lectures; E= classes)

semesters altogether (at each faculty there is also the study of applied sciences – "Stručni studij" encompassing 6 semesters in which LSP is taught with lower intensity per week and with fewer credits allocated).

Analysis of the data displayed in the Table 3 indicates considerable differences concerning the status, the intensity of FLT per week, as well as the number of credits allocated to LSP. Two out of four law faculties (Zagreb and Osijek) offer LSP as elective courses in the 9th semester (5th year). At the Law Faculty in Rijeka FL is offered as an elective course in the 5th semester, whereas FL as an elective course is not included in the curriculum of the Law Faculty in Split. In Zagreb, four elective courses are offered: *English in the Field of Law, German in the Field of Law* and *French in the Field of Law*, including the interdisciplinary course *Comparative Legal Linguistics*. In Osijek, two elective FL courses are offered: *Deutsch für Strafrecht* and *English for EU Law*. In Rijeka, the course *Terminology of the EU* is offered in English and in German. The student workload in LSP as an elective course is granted 5 ECTS points in Rijeka, 4.5 ECTS points in Osijek and 4 ECTS points in Zagreb.

The intensity of teaching LSP as a compulsory course also varies: in Osijek, Zagreb and Rijeka it is taught in 4 semesters and in Split in only two semesters. If we compare the total number of ECTS credits with the number of lectures and classes per week, there are obvious discrepancies between the student workload and the number of credits which vary from one law faculty to another (Tables 4 and 5).

Table 4

Distribution of ECTS credits for LSP at Croatian law faculties

Law faculty		Osijek	Zagreb	Rijeka*	Split
ECTS Credits for LSP	Compulsory course	12	8	16	8
	Elective course	4,5	4	5	–

Table 5

Intensity of FL as a compulsory course per semester indicated by no. of hours

Law faculty	Osijek	Zagreb	Rijeka	Split
Lectures	30	0	0	30
Exercises	30	30	30	15
Total No of hours/semester	60	30	30	45

Even a superficial comparison of the student workload with the number of ECTS credits indicates great differences between Croatian law faculties. Although the number of teaching hours per semester at the Faculty of Law in Osijek is twice as high as that at the other law faculties, the total number of ECTS credits allocated to compulsory courses is relatively low (12 ECTS in Osijek in comparison to 16 in Rijeka). As these data indicate, in spite of the promotion of FL learning by the Council of Europe, the Sorbonne and the Bologna Declaration, its status, intensity of teaching and the recognition of its significance at the state level is diverse and inconsistent not only in higher education in Croatia as a whole, but also within faculties of the same profile. The low number of ECTS credits allocated to foreign language courses in comparison to courses in the field of law, which are allocated a minimum of 5 ECTS points per semester, is perceived by many FL teachers as a form of degradation of foreign languages with respect to the role they are expected to play within the legal profession under circumstances of political and legal integration across the Continent. It seems though, that communicative competence in foreign languages, as promoted by the Bologna Declaration and corresponding international documents, remains appreciated more at the declaratory level, and is still far from having achieved actual implementation at Croatian law faculties. This discouraging situation provided an incentive to conduct a research study into the significance of the knowledge of foreign languages for Croatian lawyers. In two different studies (Kordić, 2009; Poljaković & Martinović, 2009) it was shown that law students and lawyers consider foreign languages, especially English, important for their profession. Knowledge of German and French is also regarded as being important for the legal profession (Kordić, 2009). Investigation of reference materials used by Croatian lawyers in writing scientific papers indicated that the percentage of those who need or use references in German for their professional work (22%) was higher than that of those who learned the language as their first foreign language (16%). This leads to the conclusion that German should be taught in Croatian law faculties with greater intensity than it actually is. The same might hold for French also, especially in view of the fact that it is not offered in the curricula of Croatian law faculties at all (the only exception is French as an elective course at the Law Faculty in Zagreb), although the language is one of the working languages of the EU (Kordić, 2009).

Teaching FL at the Law Faculty of Osijek – A Case Study

As stated in the introduction to this paper, the need to develop foreign language communication skills in the field of law represents a precondition both for law students' professional education and for their mobility within the network of European universities as promoted by the Bologna Declaration. At Croatian law faculties, students are obliged to attend courses in one foreign language – either English or German. The right to choose between English and German represents a problem in many faculties, because, due to the positioning of English as a language of international communication and modern electronic media today, many students choose English rather than German, in spite of the fact that German was their FL 1. For example, in the academic year 2012/2013, in the first year of the Integrated BA and MA studies, there were 175 students learning English and 21 students learning German. It is only as a result of the outstanding efforts on the part of FL teachers, that in last two years the number of students attending German courses has not decreased. Special activities include promotional lectures for future law students on Career Day, organized once a year at the Law Faculties in Zagreb and Osijek; extracurricular activities promoting the learning of German; reports on web-pages of the faculty and in local newspapers on the results of FL international projects and programmes, etc. Language for legal purposes at Croatian Law Faculties is taught by studying a content-based subject, in which FL functions both as an object of teaching and a means of learning content. By this approach, Content and Language Integrated Learning (CLIL) in the field of law represents a way of learning which "is improved through increased motivation and the study of natural language seen in context" (Darn, 2006). Thereby, students are educated to be able to apply their FL knowledge in all professional situations. By means of legal terminology, they are taught the different branches of law, the differences between the Common Law System, the Continental Civil Law System and the EU-Law System. They learn how to apply that knowledge in communication on legal topics and how to develop their speaking and presentation skills by giving presentations in English or German. Additionally, students are motivated to learn foreign languages by different novelties incorporated into lectures: by listening to lectures held by native speaking professors from abroad, by taking part in international seminars with fellow students from abroad, by carrying out language projects and attending language conferences, by introducing new lifelong education programmes for young lawyers, etc.

FL Teaching and Learning projects

In the period 2005–2008, successful cooperation was established with The Robert Bosch Foundation representative Jens Wuttke, employed as a German teacher at the Law Faculty in Pecs, Hungary. A series of seminars for law students from Pecs and Osijek were organized and held in the German language. The first seminar was called *IurOP 2005: Recht dreidimensional* (IurOP: Law in three dimensions), in which students from both faculties gave presentations on the topics of Croatian, Hungarian and German national law systems. In the year 2006, the seminar *Recht verbindet* (Law connects) was organized and the following year it was named *Recht europäisch* (Law in the European Context). Seminars were held in the first week of May – two days in Osijek and the following two days in Pecs. The overall idea of the project was to establish contacts between the students of two neighbouring countries, to develop tolerance and respect for other cultures and nations, to widen their knowledge in the field of law and to improve their communication skills in FL.

In the period of time between 2003 and 2008, the Faculty of Law in Osijek established cooperation with the Foundation *Internationale Rechtliche Zusammenarbeit.* Professor Ivan Glasser, the then representative of the Foundation, held lectures twice a semester within the course "German for Lawyers", which focused on sharing experiences of German legal practice. Apart from that, Professor Glasser held public lectures for teachers and students of the Faculty of Law in Osijek concerning a case-study method for teaching law in Germany. In this way, Croatian students had the opportunity of interacting with a native speaker of German and taking part in lectures held in the same manner as in Germany.

Similar projects were developed within the course, English for Lawyers. In 2006, the Law Faculty of Osijek took part in an English Fellow Project, which enabled students of all Croatian law faculties to take part in lectures and seminars held in English by Daniela Capretti from the USA. The most recent visitor was Professor Terrence Sawyer from Gonzaga University, USA, whose visit was supported by the Fulbright Foundation, and took place in the spring of 2013. Professor Sawyer held his lectures within English Language courses using the most modern teaching methodology, audio-visual materials and movies. Thereby, Croatian law students familiarized themselves with the topics and methods used in teaching students of law in the USA. Apart from this, students of the Faculty of Law were motivated to learn foreign languages by carrying out different small projects of a linguistic character.

One of these projects was research entitled "The linguistic landscape

of the town of Osijek", in which two teams of second year students used the fieldwork method to explore which languages are used in the town of Osijek, in its street signs and inscriptions on public buildings, as well as in the names of cafes, restaurants, shops, etc. The results were presented at the end of the winter semester this year. In cooperation with their English teacher Ljubica Kordić, representatives of the two student teams wrote a paper based on this project and presented it at the international conference of the Croatian Association of Applied Linguistics, held in Dubrovnik in April 2013. Presentation of the paper entitled the "Linguistic Landscape of the Town Osijek from a Historical Perspective" found favour with the participants of the conference, mostly experienced linguists. It was even recorded for a radio station, Croatian Radio 1, which made the students proud of their research and increased their self-confidence and motivation for learning foreign languages.

Taking part in the TEMPUS-project *Foreign Languages in the Field of Law*

The TEMPUS (Trans-European Mobility Programme for University Studies) supports projects between the Higher Education sector of the EU and its member states. Its main task is to foster cooperation and understanding between cultures and to facilitate university modernization by supporting structural reforms in higher education, curriculum development and innovation, teacher training and especially the mobility of academic and administrative staff from higher education institutions. The Law Faculty of Osijek participated as a Consortium member in the Tempus project *Foreign Languages in the Field of Law* (FLIFL) initiated by the Faculty of Law in Zagreb in 2006. It included 13 institutions from Croatia and the EU (South Bank University of London, University of Innsbruck, University of Mannheim, Université Pantheon-Assas, Paris, Forensic Linguistics Institute, Lanfair, UK). The objective of the project was to adjust the education of Croatian law students to the Bologna requirements and facilitate the integration of Croatian faculties of law into the network of European universities.

The main activities within the project were directed at two groups of experts: lawyers and teachers of foreign languages in the field of law. In that respect the project had three main goals: 1) legal education of FL teachers employed at Croatian law faculties to improve their professional credibility and excellence in LSP (teacher training programmes), 2) specialization of Croatian lawyers in foreign languages for law (lawyer training programmes) and 3) development of FL curricula and modern teaching methodology in ac-

cordance with the Bologna requirements and the results of the needs analysis that was conducted among Croatian lawyers at the beginning of the Project. After the teacher training was finished, a series of foreign language courses in legal English and legal German were organized at Croatian law faculties. In the two last years of the project, FL courses *English for Lawyers, German for Lawyers, English for EU Law* and *International Legal English* (ILEC) were held for lawyers employed in the wider region. Altogether 138 lawyers participated in the FL training. This project was successfully carried out at the Law Faculty of Osijek and very well accepted by the local community. The fact, that the FL training of lawyers lasted for three further years after the official completion of the TEMPUS-project, confirms the sustainability of this project and its general idea that legal professionals need knowledge of foreign languages in their professional life. The knowledge and experience that FL teachers of the Law Faculty in Osijek acquired by participating in this project made them capable of developing new education programmes that would help young lawyers adjust to new political and professional circumstances and challenges.

Introducing new lifelong learning programmes

The development of innovative lifelong education programmes belongs to one of the main strategies of the University of Osijek. Lifelong learning, as defined in the document *Strategy of the Josip Juraj Strossmayer University of Osijek 2011–2020*, represents "one of the important guidelines for development of higher education in the European Union. Such activities require special, appropriate, and well equipped premises that can attract international students and businessmen, thus contributing to internal integration of the University, as well as to strengthening of the University internationalization. Strengthening of internal integration will be achieved through the development of lifelong learning programs by integrating expertise of various University units" (J. J. Strossmayer, 2011:54). The Department of Foreign Languages of the Faculty of Law in Osijek has initiated the introduction of a new lifelong education programme for lawyers. This was a pragmatic response to the requirements of the EU labour market being opened to Croatian lawyers. The European Personnel Selection Office (EPSO) of the European Commission announced job opportunities in the European labour market with the prospect of Croatian full membership of the EU in July 2013[1]. According to data from December 2012, the European Union needs translators, interpreters, lawyer linguists, administrators, heads of departments and other officials in the field of Communication, Legal Affairs and Programme Man-

agement in the offices of the European Commission, the Court of the EU and other institutions whose employees should master both legal and linguistic knowledge.

As knowledge of the EU working languages is required for future candidates, the Departments for Foreign Languages of the Law Faculty in Zagreb and the Law Faculty in Osijek initiated their Lifelong Education Programmes for Lawyer Linguists: the former in the summer semester of the year 2011/12 and the latter in the winter semester 2012/13. They organized similar programmes, adapting them to the specific circumstances of their respective faculties and the specialization of their specific teaching staff. In Osijek, the programme encompasses seven courses with a total of 130 hours. In total, 20 ECTS credits are allocated to the Programme. The programme was offered in the winter semester of 2012/2013 to graduate lawyers and 5th year law students and was financed by a participant fee payable in instalments. The programme carried out in Osijek includes the following courses: *English Legal Translation, German Legal Translation, French Legal Translation, Theory of Legal Translation and EU-Terminology, Croatian Language for Lawyer Linguists, EU Law for Lawyer Linguists* and *EU Vocabulary and On-line Translation Tools.* It was mostly carried out by professors teaching at the Law Faculty of Osijek, but also by guest professors from the Faculty of Humanities for the courses *Croatian Language for Lawyer Linguists* and *French Legal Translation.* In the first term, 25 participants participated in this programme and the evaluation lists they filled in at the end of the programme indicate that they were very satisfied with it. By widening their knowledge in EU Law and comparative legal terminology, as well as by acquiring practical communication and translation skills in the working languages of the EU, they felt more self-confident and more qualified to meet the requirements of the opening European labour market. That is the reason why this lifelong learning programme will be offered in the next academic year as well. In accordance with the University strategy of strengthening internationalization of the University, the next step, the Department of Foreign Languages of the Law Faculty in Osijek will take, will be establishment of an interdisciplinary postgraduate course of study in Legal Linguistics. This course will offer the opportunity to acquire practical knowledge in languages and law not only to Croatian graduate students of law and philology, but also to applicants from the nearby countries Bosnia and Herzegovina and Serbia as future candidates for accession to the EU.

Conclusion

Knowledge of foreign languages is an indispensable pre-requisite for the education of European lawyers. The awareness of the importance of FL proficiency in the legal profession is promoted by FL teachers at four Croatian law faculties in their specific approach to FL teaching: in their scientific research they have proven the importance of teaching both English and German to Croatian law students, introduced new methods and teaching approaches into their teaching process, intensified the contacts of students with native speakers of English and German and improved the excellence of their institutions by developing lifelong education programmes for law students and legal professionals. In our opinion, a step forward in the direction of adopting multilingualism as one of basic values of the modern European knowledge society, as stated by the Bologna Declaration, would be incorporating learning of the three working languages of the EU – English, French and German – into the curricula of Croatian law faculties as well as introducing e-learning as a response to the requirements of new generations of students qualified and equipped to use modern e-technologies in acquiring professional knowledge. Considering the current financial situation in Tertiary Education of the Republic of Croatia and the on-going trends concerning the status of foreign languages, we cannot be very optimistic about the realization of these ideas in near future.

NOTES

[1] http:www//europa.eu/epso/doc/epso-planing_en.pdf, accessed on Dec. 21. 2012.

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MULTILINGUALISM AT THE COURT OF JUSTICE OF THE EUROPEAN UNION: THEORETICAL AND PRACTICAL ASPECTS

Abstract. The paper analyses and evaluates the linguistic policy of the Court of Justice of the European Union against the background of other multilingual courts and in the light of theories of legal interpretation. Multilingualism has a direct impact upon legal interpretation at the Court, displacing traditional approaches (intentionalism, textualism) with a hermeneutic paradigm. It also creates challenges to the acceptance of the Court's case-law in the Member States, which seem to have been adequately tackled by the Court's idiosyncratic translation policy.

Keywords: multilingualism, Court of Justice of the European Union, legal translation, legal interpretation, lawyer linguist, international justice

The importance of language for legal practices cannot be underestimated. Indeed, language is the law's "natural environment, in which all or almost all legal acts are accomplished" (Kozak, 2010:106). For this reason multilingualism – understood as the use of multiple equally authentic languages within one legal system – creates new challenges for legal practices, especially legislation and adjudication. The drafting of normative acts in more than one language, later their interpretation by a multilingual court and finally the translation of that court's own case-law into multiple official languages creates an opportunity for the analysis of fundamental questions regarding the interplay between law and language. The present paper analyses the practice of multilingualism at the Court of Justice of the European Union (CJEU) in Luxembourg, presenting it as a supranational and multilingual court; in particular it enquires about the impact of multilingualism upon legal interpretation and legal translation, with a particular focus upon the new European legal profession of "lawyer linguist".

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The paper is divided into seven sections. Section 2 presents the principles of the use of languages in international courts and tribunals, as well as in multilingual national courts. The analysis conducted in section 3 focuses on the legal framework of multilingualism at the CJEU. Section 4 analyses European multilingualism from the standpoint of theories of interpretation and draws conclusions for the issue of translation at the CJEU. Section 5 presents the central figure of the Court's multilingualism, the lawyer linguist, a new type of professional at the intersection of law and language, entrusted with the delicate task of ensuring that the legal-linguistic conditions of CJEU case-law *effet utile* in the member states are created. Finally, in section 7 we present our concluding remarks.

The Use of Languages in International Courts

Preliminary Remarks

The role of language in international affairs is crucial and undeniable: it is not only a carrier of traditions and intentions of states, but also plays a dominant role in shaping their legal rights and obligations on a supranational level. Over the years, states have developed several approaches towards communication issues. The choice of the language used in mutual relations was based on criteria such as that of a state's power or was the result of application of the principle of sovereign equality of states. Formerly, Latin as the language of the Holy Roman Empire dominated the diplomatic discourse of European states. It was substituted by French in the eighteenth century, but still the option of one official language was considered a good way to overcome any obstacles arising from linguistic miscomprehension (Carvalho, 2011:49; Rotman, 1995–1996:191). The supremacy of the French language lasted until the 19th century, when English became an additional language of international conferences and selected treaties. During the Paris Peace Conference in 1919, after struggle for recognition, English was officially declared a second language of the League of Nations and of the Permanent Court of International Justice (PCIJ) (Tabory, 1980:5). After World War II, in order to satisfy the principle of equality, states present at the San Francisco Conference decided that communication in the United Nations would be based on the principle of multilingualism, albeit of a narrow scope. In that way, multilingualism became a widely applied solution, which remains in compliance with tendencies to protect linguistic diversity and promote national languages on an international level.

Multilingualism of International Courts and Tribunals

When the first international courts were established, it was considered obvious that the question of languages required specific regulation. In the first place, this is due to the fact that all countries in the world are able to submit their disputes to judicial settlement (Stevens, 1967–1968:706) and international courts deal with cases coming from various legal systems, which differ also with regard to languages. The second consideration derives from the fact that the justice system (not only the international one) is a field of particular responsibility, so that proceedings cannot be exposed to any misunderstandings resulting from the linguistic nuances of legal discourse. Lastly, the scope of jurisdiction *ratione personae* of particular international courts has been gradually expanding, covering also individuals, for whom linguistic guarantees are a precondition of full enjoyment of the right to a fair trial. Although the right to use one's preferred language is not recognised as a universal human right, it should be underscored that the right to a fair trial extends to linguistic guarantees with regard to proceedings (Bambust, Kruger & Kruger, 2012:219).

Consequently, in the international justice system, depending on the type of court or tribunal and its particular features, various solutions are applied as regards the usage of languages. The International Court of Justice (ICJ) dealing with disputes between states, operates in two working languages. The proceedings may be conducted in English or French, depending on agreement between the parties or, in absence of such agreement, in both official languages. It is worth noting that the ICJ can authorise, at the request of a party, the use of another language by that party (art. 39 of the Statute of the ICJ). A similar solution was adopted in the Rules of Procedure of the International Tribunal for the Law of the Sea (see art. 43 of the Rules of the Tribunal), although without the option of using another language at a party's request. The system of official languages adopted in the ICJ Statute reflects the nature of international law, in that it is mainly concerned with states' international organisations, and only exceptionally with private parties. It follows that whenever individual rights are not at stake, the efficacy of proceedings takes precedence over the respect for particular personal guarantees resulting from the right to a fair trial (Varennes, 1994). On the contrary, in international criminal courts broader linguistic solutions have been adopted. According to the Charter of the International Military Tribunal (Nuremberg Tribunal), the defendants enjoyed the linguistic guarantees of a fair trial and, although the official languages of the Tribunal were English, French and Russian, they were entitled not only to receive all documents in their own language, but also to the simultaneous translation

of the trial. A similar solution has been adopted in the Rome Statute of the International Criminal Court (see art. 43 of the Statute). Its official languages are Arabic, English, French, Russian and Spanish, although the working languages are English and French.

The European Court of Human Rights (ECHR) dealing mainly with individual claims has adopted several rules which guarantee applicants the right to communicate in their own language, simultaneously respecting the principle that English and French are the Court's only official languages (art. 34 of the Rules of the Court). An application may be brought before the ECHR in one of the official languages of a state-party to the Convention (if it is not brought in English or French) and that language is used in all correspondence between the ECHR and the applicant, but only until the government of a respondent state is notified about the application. After such notification, the proceedings are conducted in English or French, unless the President of a Chamber allows use of the language of a respondent state (Nowicki, 2010:127).

Multilingual National Courts

The choice of the language to be applied before the court is also an issue in plurilingual countries, where several languages are declared official. Such countries may have one legal system (as is the case for Switzerland and Belgium, Russia or South Africa), but there are also plurilingual countries representing two or more legal systems like India, Canada, Israel (Šarčević, 1997:14–15). For example, the Constitution of South Africa declares eleven languages as official and the proceedings before the Constitutional Court may be conducted in any of these languages. Moreover, the state is obliged to provide an interpreter for any judge of the Court, who is not fluent with the language chosen by the party (Cowling, 2007:103). In Belgium, French, Dutch and German are used as court languages. Proceedings before the Belgian Constitutional Court may be instituted in each of the above mentioned languages, although judgments must be pronounced in Dutch and in French, and in German only if the case was brought in that language. An infringment of the linguistic rules may give rise to a sanction of nullity of proceedings (Bambust et al., 2012:225; Gambaro, 2007:5–8). In Canada, which is bilingual and in addition has two legal systems, according to the Official Languages Act in its version of 1988, which declares the juridical equality of both languages, proceedings before a federal court may be conducted in the language of the applicant's choice (English or French) (Scassa, 1994:175). In this context it is worth noting that even in the courts of monolingual countries, there is an emergent tendency to create international chambers,

operating in a language other than the official one. For example there is a bill pending before the German Federal Parliament to allow the use of English in certain commercial proceedings (Bisping, 2012:541).

The Legal Framework of Multilingualism at the Court of Justice

At the very beginning of the European Communities, multilingualism was not so clearly declared by its founders, as it is understood today. The only authentic version of the Treaty of Paris on European Coal and Steel Community (ECSC), signed in 1951, was in French, as that was the language spoken in most part by the member states of the ECSC (Swiss, 2004:89) and reflected the intention to make French the official language of Community (Andrassay, 2001:17). The subsequent treaties of Rome were equally authentic in four languages (Swiss, 2004:89), but French continued to be the main working language of the European Communities. Today, after over 60 years of European integration, the number of official languages of the European Union (EU) has reached 24, following the accession of Croatia.

The legal basis of EU multilingualism is to be found in art. 342 of the Treaty on the functioning of the European Union, in art. 22 of the Charter of Fundamental Rights, which provides for protection of the linguistic diversity, and in Council Regulation no. 1/1958 determining the languages to be used by the EEC, as amended. The general aim of multilingualism in the EU is to reconcile integration with the sovereign equality of Member States, regardless of the extent to which their languages are spoken. The *ratio legis* of multilingualism lies in the direct effect of EU law, which affects not only governments, but also natural and legal persons (Biernat, 2006:I–275) and therefore should be accessible in all official languages.

Article 7 of the above mentioned Regulation no. 1/1958 provides that the languages to be used in the proceedings before the Court of Justice shall be laid down in its rules of procedure. The Statute of the CJEU is silent on the subject, except its art. 64, which obliges the Council to lay down the linguistic arrangements applicable at the Court. As this has not yet been the case, the regime prescribed in the Rules of Procedure of the CJEU should be applied. Consequently, chapter 8 of the Rules of Procedure of the CJEU introduces, not without a reason, the expression "language of the case" and provides that it can be any one of the official languages of the EU. This means that all oral and written submissions should be prepared in

that language and if any document is filed in another, a translation into the language of the case should be provided. The determination of the language of the case in direct actions depends on the applicant. If the defendant is a Member State, the language of that state must be used. If the CJEU deals with an appeal against a decision of the General Court, the language of the proceedings is the language of the contested decision. In the preliminary ruling procedure, the language of the case is the language of the referring court or tribunal. A witness or expert, who is not able to express her opinion in any official language, may be entitled to give evidence in another language, although translation should be provided. The Court of Justice publishes its decisions in all the official languages (with the exception of Irish); however, only the Court's decision in the language of the proceedings is authentic.

The judges and advocates general may use an official language different than the language of the case, while conducting proceedings or delivering opinions, but in such circumstances the Registrar of the CJEU is responsible for providing translations into the language of the case. However, in practice they do not exercise this right, but simply use French (McAuliffe, 2008:808). Therefore, unlike other institutions of the Union which usually use both English and French as their working languages, the Court has consequently maintained the practice of using exclusively French as its internal working language, in which deliberations are held and decisions drafted (McAuliffe, 2008:808; 2012:203).

Although multilingualism reflects many values of the EU and affects its democratic legitimacy (Baaij, 2012), this does not mean that it is also an inherent element of the daily work of all institutions. Approximately 95% of legal texts adopted in co-decision procedures are drafted, scrutinised and revised in English. For practical reasons English has become a primary language used in the daily work of the institutions (Baaij, 2012), except the CJEU, where for the same reasons French dominates. This internal linguistic practice of the institutions is sometimes criticised as standing in opposition to the principles of the European Union, envisaged in its primary and secondary law. According to Baaij, one can even speak of a discrepancy between principles and practicality (Baaij, 2012). The translation of documents into other official languages affects their quality and gives rise to problems of interpretation, which is illustrated by numerous cases brought before the CJEU as a result of diverging versions of legislation (McAuliffe, 2009:100). In fact, the majority of authentic versions of CJEU judgements are also translations, since they were drafted in French (McAuliffe, 2009:101). Divergences could be partly avoided if the texts were drafted in all official languages simultaneously, but such a solution would

obviously not be practical at all. On the other hand, the existing practice of EU institutions of 'internal restricted multilingualism' contributes to striking a delicate balance between the requirements stemming from the principle of multilingualism and the need to operate smoothly in the complex space of EU law.

Interpretation of Multilingual Law at the Court of Justice

Interpretation of Multilingual Law

Multilingual law, characterised by the feature that its texts exist in various equally authentic language versions, creates new challenges for legal interpretation (Paunio & Lindroos-Hovinheimo, 2010:400). In the case of various authentic language versions differences in the shades of meaning are inevitable – contemporary translation studies emphasise that translations are only approximations and a preservation of meaning is not even an objective of translation (Lindroos-Hovinheimo, 2007:371). The inherent indeterminacy of natural language is thus only strengthened by interlingual indeterminacy, which is a consequence of the EU's multilingualism (Paunio & Lindroos-Hovinheimo, 2010:409–410). Furthermore, multilingual EU law has been from the outset drafted in a vague manner, expressing principles and objectives, rather than prescribing in detail concrete modes of action (Arnull, 2006:612). However, this should not be viewed as a negative feature and legal theorists underline the positive value of vagueness as a drafting technique (Endicott, 2011:14–30; Paunio & Lindroos-Hovinheimo, 2010:397).

Furthermore, the drafting of EU legal acts is not only collective, but actually involves hundreds of actors from different EU institutions and national administrations, coming from different cultural backgrounds and usually working in a language foreign to them, showing more concern for reaching a compromise on the text rather than striving for clarity and precision (Guggeis & Robinson, 2012:51–81, 61–62). The inevitable discrepancies between the various language versions, their deliberate vagueness and the impossibility of identifying a psychological "legislator's" intent obviously create challenges for traditional theories of legal interpretation – intentionalism, viewing interpretation as the retrieval of the drafter's actual intent (Fish, 2005:629) and textualism (also known as originalism) which insists on the interpreter's duty of fidelity to the text, perceived an inherent bearer of stable, objectively ascertainable meaning (Paunio & Lindroos-Hovinheimo, 2010:408).

In the absence of any reasonably identifiable collective intent of drafters (Waldron, 1997:329–356) and on the assumption that language itself is not capable of limiting the scope of possible readings of a text, as opposed to extra-linguistic factors (Kozak, 2002:87), it seems plausible to opt for a hermeneutic theory of interpretation, shifting focus from author and/or text to the interpreter and her epistemic community (Kozak, 2002:122–123; Stawecki, 2005:96–97), assuming that the interpreter invests meaning in a text (Paunio & Lindroos-Hovinheimo, 2010:408, 410) rather than second-guessing the intent of the drafter or decoding an "objectively" existing meaning allegedly inherent in the text. Nevertheless, the scope of meanings that a legal interpreter can invest in a text are limited by two factors, internal and external, both linked to the interpreter's membership of an epistemic community. The interpreter is limited internally, in that the scope of her possible reading of a legal text is bound by the limits of her legal imagination, shaped in the process of her secondary socialisation as lawyer (Winter, 2001:210, 258). Secondly, the interpreter is limited externally, due to the fact that legal discourse is based on persuasion, an intersubjective process which is based on commonly shared values and perspectives (Kennedy, 1998:161; Winter, 2001:318; Kozak, 2002:166–169). In other words, an interpreter will not invest *any* meaning into a legal text, but only such meaning as her own cognitive process allows her to imagine (subjective limitation), and such a meaning will gain acceptance only if it is found plausible by the relevant epistemic community, i.e. depending on its persuasive value (objective limitation).

Interpretive practice of the Court of Justice

Confronted with the multilingualism of EU law, the CJEU has adopted a specific practice of interpretation which is well suited to multilingualism and which, we may assume, can be accounted for within the hermeneutic paradigm of interpretation set out above. Although legal interpretation starts with a reading of the text, and in the case of multilingual law, of its various language versions, for the CJEU semantics have never been a decisive factor of interpretation. True, the CJEU has developed in its case-law a number of rules regarding the treatment of various language versions, insisting on their equal footing regardless of the number of population using a given language, adopting from international law the view that the clearest version should be given precedence or rejecting the maximum common content theory (Paunio, 2007:389–390; Paunio & Lindroos-Hovinheimo, 2010:400–401). However, what is most important is that the CJEU has given clear preference to policy-oriented interpretation over linguistic in-

terpretation (Stawecki, 2005:108; Arnull, 2006:612; Paunio, 2007:392; Paunio & Lindroos-Hovinheimo, 2010:399). An underpinning to this approach is the CJEU's view that EU-law concepts have an autonomous meaning, therefore even if all language versions are deemed to be in accord, their exegesis still does not end the interpretive process (Paunio & Lindroos-Hovinheimo, 2010:400). Whereas a traditionally positivist court would look into the words of a statute and only if they are unclear, ambiguous or seem to contradict the basic values of the legal system would the court look into the statute's underlying purpose, the CJEU has taken the opposite approach (Paunio & Lindroos-Hovinheimo, 2010:399–400), stressing that it is always necessary to interpret EU law in light of its purpose and general context, regardless of whether the language of a provision is "clear" or "obscure". In fact, the *acte clair* doctrine has a purely procedural and competence-dividing character and does entail the CJEU's accession to the *clara non sunt interpretanda* doctrine typical for the textualist position (Stawecki, 2005:109). Rejecting the textualist position, the CJEU has rather acceded to the idea of a hermeneutic cycle, whereby a text can only be understood in its context where a pre-understanding of the entirety plays a key role (Stawecki, 2005:99).

Certainly not being guided by textualism, neither can the the CJEU's intepretive practice be described as intentionalist. The CJEU does not subscribe (Stawecki, 2005:108) to the fiction of a "reasonable legislator". Whilst it is true that in the language of its decisions the CJEU frequently mentions the drafters' intent (e.g. Case 29/69 *Stauder*) there are strong arguments against describing the Court's view on interpretation as intentionalism. From the outset the CJEU pursued the objectives of the EU as a "new legal order", rather than looking into the intent of the Treaty drafters. A case in point are Cases 26/62 *Van Gend* and 6/64 *Costa* where the CJEU laid down the cornerstones of EU constitutional law – direct effect and supremacy. The founding states of the Communities intended the EU to be an international organisation within the limits of classical international law and the Court's interpretation was inspired by the Legal Service of the Commission rather than by the actual views of the "founding fathers" (Alter, 2002:37). It can be said that *Van Gend* and *Costa* even "replaced the Member States" blueprint of the [EU] legal system with its own' (Sweet, 2007:924). Such a creative approach to legal interpretation cannot be accounted for either by the paradigm of textualism or that of intentionalism.

It seems that the multilingual character of EU law was one of the factors which enabled the CJEU to free itself from the straight-jacket of traditional theories of interpretation, such as intentionalism and textualism, in favour

of a creative, hermeneutic approach (Stawecki, 2005:110), which allowed it to further socially and politically important policy goals without being constrained by the semantic layer of the law (Paunio, 2007:388).

Translation at the Court of Justice: The Role of Lawyer Linguists

Departing from the assumption that the act of legal interpretation is essentially creative and that constraints on the lawyer's discretional power are to be found rather outside, than inside the interpreted text, one could arrive at a pessimistic conclusion with regard to the effectiveness of CJEU case-law in the member states. Assuming that each national epistemic community of lawyers will understand the CJEU's judgments in a different way, their uniform application across the Union could be seriously hampered. However, it is submitted that the mechanisms for legal translation at the CJEU can be viewed as a response to such risks, in that they are also based on the hermeneutic view of legal interpretation.

The principal audiences of CJEU case-law are national legal communities of the EU member states, comprising of administrators, judges and practising lawyers, as well as academics. Whether CJEU rulings are actually effective (cfr. Alter, 2001:45–46), depends on their persuasive force *vis-à-vis* those audiences (Paunio, 2009:1483–1484). There are strong arguments in favour of identifying epistemic communities of lawyers in Europe primarily within the national legal communities of the EU member states, notwithstanding an emergent, transnational community of EU lawyers. Despite the ongoing Europeanisation of legal cultures across the EU, fundamental differences still persist, fully justifying the identification of four legal families within the EU (e.g. Zweigert & Kötz, 2006) or even five (Mańko, in press) legal families in Europe. Even with the growing opportunities for the free movement of lawyers (Lonbay, 2010), the judicial profession still remains thoroughly national. Indeed, it is asserted that important features of European legal culture include its "national character" and "internal perspective" (Hesselink, 2001:9). For instance in Polish case-law, texts from foreign legal cultures are resorted to only rarely and only if a lacuna exists in the national legal culture (Mańko, 2007–2008:129). For better or for worse, European lawyers still inhabit their own distinct worlds of national law, understood as "intersubjective worlds" in the sense used by Berger and Luckmann (1991:37), even if they communicate between those worlds more than before, and even if limited supra-national subworlds gradually emerge.

Finally, owing to the fact that legal languages are registers of national ethnic languages (Gizbert-Studnicki, 1992:151), it is plausible to claim that as long as distinct European nations exist as socio-cultural realities, the legal languages of Europe will continue to reflect different socio-cultural backgrounds even if legislation were to be completely unified across the continent.

Having clarified our position with regard to epistemic communities of lawyers in the EU – the audiences which the CJEU essentially seeks to persuade in favour of its vision of EU law – we must underline that a precondition for persuasion is communication, that is access to translated ECJ case-law Paunio, 2007:296). Assuming that legal translation is a creative process (Šarčević, 1997:18), in which the transposition of legal ideas is more important than purely linguistic correspondence (Šarčević, 1997:13) the translator's membership of the relevant epistemic community becomes a key feature.

However, the only link between the CJEU judges and the national lawyer belonging to the target audience is the "material substratum of the legal text" (Kozak, 2002:115) of the Court's judgment. The encoding and decoding of meaning occurs in incommensurably different factual contexts and excludes the transmission of psychological meaning as in a one-on-one conversation (Paunio & Lindroos-Hovinheimo, 2010:409). The situation of litigants physically present at the Court, who are bound by the decision *inter partes*, and the situation of national legal communities throughout the EU who are bound by the decision *qua* precedent, is therefore radically different. The lack of a communicative relationship between the national lawyer and the law-making CJEU makes it impossible for the national lawyer to seek cognisance of the European judge's actual intent (cfr. Kozak, 2002:119). The CJEU judge is not physically present to assist the reader (national lawyer) and to correct the national lawyer's interpretation (cfr. Kozak, 2002:117). The lack of a direct communicative relationship does not, however, deprive the CJEU of all control over the meaning invested into its judgments by national lawyers (cfr. Kozak, 2002:130–131). The national lawyer is not free to invest any meaning she wants into the text of the Court's judgment – she is rather a subject "entangled in determined institutional structures and furnished with institutional interpretive tools" (Kozak, 2002:117). This gives the CJEU a real opportunity for controlling the meanings that will be invested into its judgments by *bona fide* national interpreters.

However, ultimately the only control that the CJEU can exert over the understanding of its judgments by national judges is by ensuring the highest persuasive value and quality of all the national language versions. Specifi-

cally, what the CJEU can rely on, is the fact that national lawyers "make use of a relatively stable code and catalogue of interpretive techniques", treating a legal text as "simply an artefact, which is invested with meaning according to determined methods". If the CJEU wants to control this process of investment of meaning by national lawyers, it must understand the national lawyer and not vice versa (cfr. Kozak, 2002:131). And indeed, there is no better way of understanding the national lawyer than by devolving the task of translation to a national lawyer who partakes in the internal perspective of her national legal culture. This is because only a translator who can be described as belonging to the same epistemic community as the target audience can actually anticipate its interpretive habits and ensure that the translated CJEU judgment is actually effective, in the sense that its interpretation by national judges will be as close as possible to what the CJEU judges intended.

The CJEU's policy of translation seems to further these goals. The Court has entrusted the translation of its case-law exclusively to lawyer linguists, who are not professional translators specialising in legal texts but lawyers who perform the act of translation. This differentiates the CJEU from other EU institutions, where legal texts are translated by translators under the supervision of legal revisers or lawyer linguists (Dragone, 2006:99–108; Guggeis, 2006:109–117; Hakkala, 2006:147–166; Ricci, 2006:131–146; Guggeis & Robinson, 2012:51–81). This interinstitutional differentiation of translation policy can be explained by the fact that primary and secondary EU law (translated by the other institutions) is open-textured and subject to policy-focused, rather than linguistic-logical interpretation. Hence, since the linguistic layer has only a superficial character, and its function is merely to hint at the actual, underlying policy considerations, its legally precise translation is not of paramount importance – it can be performed by translators, not necessarily by lawyers. The situation is different with regard to CJEU case-law, which constitutes a source of law in the Member States *qua* binding precedent (cfr. Arnull, 2006:626–628; Sulikowski, 2005:221–232). Hence, there is no room for extensive judicial law-making at the level of following CJEU precedent – "national judges are left with the simple obligation of applying the law in accordance with the interpretation of the Court" (Paunio, 2007:401–402). Therefore, a legally conscious translation, aware of the interpretive habits of national legal communities, is necessary.

In order to assure this goal, lawyer linguists are recruited in open competitions from among persons having a full legal education, with a diploma obtained in the Member State into the language of which they will translate.

Acknowledging that legal translation is a creative, and not mechanical process (Lindroos-Hovinheimo, 2007:372), the CJEU has not implemented any forms of automated, mechanical translation (Gallo, 2006:190–191), leaving the choice of terminology, style and outlook to the lawyer linguists. The translating activity of a lawyer linguist can be described as a constant switch between the internal and external perspective (cfr. Kozak, 2002:60). Indeed, her task is one of incessantly transacting between the two symbolic universes (cfr. Berger & Luckmann, 1991:110) – that of the CJEU (and its French-drafted judge-made law) and national law. In order to achieve a fully persuasive translation she must commence from the internal perspective of the CJEU, then switch to the internal perspective of a national lawyer thereby adopting a cognitively external perspective on EU law, but maintaining an emotively internal one (cfr. Kozak, 2002:66) in order to make the best possible choices of terminology and style, and finally switch back to the internal perspective of EU law, not losing sight of the national perspective, in order to verify the consistency of the expected reading by the target audience with the perceived intent of the CJEU judges. The task is both delicate and extremely demanding: intellectually, legally, linguistically but also ethically (cfr. McAuliffe, 2008:806–818). Not only does it exceed the competence of any translator specialised in legal matters, but also not every multilingual lawyer would be capable of accomplishing it. Only a highly qualified CJEU lawyer linguist, combining a thorough knowledge of EU law and national law (McAuliffe, 2010:239–263) with membership of the relevant national epistemic community and loyalty towards the "new legal order" created by the CJEU can strive towards its accomplishment.

Conclusions

Against the background of multilingual national and international courts and tribunals, the European Union's multilingualism stands out not only quantitatively, but also qualitatively, creating unprecedented challenges in the fields of legal interpretation and legal translation. Multilingualism has eroded traditional positivist approaches to interpretation which either seek to discover the actual intention of the drafter (intentionalism) or to decode a meaning objectively present in a legal text (textualism), allowing the CJEU to move its interpretive emphasis from semantics to politics. A linguistic analysis of the text is only the beginning of the process of interpretation, which focuses more on what is outside the text (policies, purposes, values) than what is inside it.

Simultaneously, the impact of the CJEU's case-law throughout the Union depends on its understanding and acceptance by national legal communities, both practicing lawyers and judges. It seems that the CJEU translation policy is capable of responding to these challenges, owing to the fact that translation is devoted to in-house "lawyer linguists", that is, lawyers from relevant national legal communities who translate CJEU case-law into the language of their legal education. This guarantees that the lawyer linguist combines her internal point of view as an administrator at the Court with membership of the relevant national epistemic community.

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VERSITA

STUDIES IN LOGIC, GRAMMAR
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SCAFFOLDING THE WRITING COMPONENT OF THE ENGLISH FOR LAW SYLLABUS AT UNIVERSITY

Abstract. The present paper is intended to be a practical guide for teachers who need to run writing for law classes for pre-experienced law students with no or little experience of academic or legal writing. It provides the teachers with advice on how to teach students to draft modern documents by sequencing and selecting the content that reflects the needs of practising lawyers. It shows how legal writing stems from academic and general writing. Overlapping or common elements of academic and legal writing are identified and sequenced in order to create an introductory base for writing for legal purposes.
Types of texts that lawyers draft have been selected and used as the scaffolding for writing tasks specially designed to suit the students' proficiency and expertise.

Keywords: Legal English, ESP, academic writing, writing for legal purposes, plain English, syllabus design.

You are not a Romeo, you are a lawyer
Anonymous

Proponents of the plain language movement consider legal drafting to be synonymous with poor writing. One of the first critics of legal English in its pure form, so called legalese, was Lord Broughman who suggested changes not only in the substance of law, but also in its language in the mid XIX century (Law Review, 1845:405). Around the same time, Charles Dickens, who was formerly a law clerk but gave up the profession because he found it dull, in "Bleak House" mocked his character's, Sir Leicester's, *liking for the legal repetitions and prolixities* (2009:14).

However, it is Stuart Chase who is often mentioned as the first promoter of plain English when he complained about "gobbledygook" in his book *The Power of Words* published in 1953 (Redish, 1985; Shriver, 1997). His criticism was well received, since the second half of the twentieth century

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with its developing consumer movement created the need for clear legal language, which would be understood at first reading by everyman, irrespective of his/her education and knowledge. In addition, new means of communication, which emerged and developed during this time, also encouraged the need for plain, precise and comprehensible meaning in texts.

Plain language is a variant of a national language recommended to authors and institutions producing texts for the general public. The idea of the plain language movement is to include into public life, groups of citizens that are excluded due to their inability to comprehend official texts, e.g. administrative, legal, journalistic, corporate, advertising, etc. Martin Cutts (1998), a research director of the Plain Language Commission in the United Kingdom, defines plain English as

> the writing and setting out of essential information in a way that gives a cooperative, motivated person a good chance of understanding the document at the first reading, and in the same sense that the writer meant it to be understood.

In the KISS, i.e. *Keep It Short and Simple* era, lengthy, verbose, loaded with technicalities legalese, resembling Shakespeare's style of writing, would seem to be a thing of the past. However, contemporary legal English still has features, which due to historical influences, derive from French and Latin and reflect the urge of many writers to sound sophisticated and educated by the use of too many unnecessary, empty words. Generations of legal writers educated on legal texts drafted by other lawyers copy the antique style loaded with long sentences, bad punctuation, foreign syntax, archaic words, lists of synonyms, passive voice structures, and technical vocabulary. They obscure the meaning, cause confusion and misunderstandings, are *wordy, unclear, pompous and dull* (Melinkoff, 1963:24). The kind of text cited below, even though produced in 1915 can still be encountered in legal writing:

> And in the outset we may as well be frank enough to confess, and, indeed, in view of the seriousness of the consequences which upon fuller reflection we find would inevitably result to municipalities: in the matter of street improvements from the conclusion reached and announced in the former opinion, we are pleased to declare that the arguments upon rehearing have convinced us that the decision upon the ultimate question involved here formerly rendered by this court, even if not faulty in its reasoning from the premises announced or wholly erroneous in conclusions as to some of the question incidentally arising and necessarily legitimate subjects of discussion in the decision of the main proposition, is, at any rate, one which may, under the peculiar circumstances of this case, the more justly and at the same time, upon reasons of equal

> cogency, be superseded by a conclusion whose effect cannot be to disturb the integrity of the long and well-established system for the improvement of streets in the incorporated cities and towns of California not governed by freeholders' charters. (Chase v. Kalber, 153:397–398 (Cal. 1915))

The above 178-word, one-sentence court decision is the equivalent of a 6-word sentence meaning: *Last time we made a mistake.* Contemporary law students, however still read texts of the above complexity and automatically and subconsciously adopt the same style of intricate, wordy and highly formalized writing. Acquiring that kind of parlance in fact constitutes part of legal education.

The problem of unintelligibility has always been the case with English legal language. With the Roman invasion in 55 BC Latin, a lingua franca of the time, was introduced to Great Britain and legal texts were drafted in it. After the Battle of Hastings (1066) and the Norman invasion, French became the language of legal documents in Britain for 300 years, although the people of Britain still spoke English which was never used in legal matters. The first reform came with the Statute of Pleading (1356) which stipulated that

> all Pleas which shall be pleaded in [any] Courts whatsoever, before any of his Justices whatsoever, or in his other Places, or before any of His other Ministers whatsoever, or in the Courts and Places of any other Lords whatsoever within the Realm, shall be pleaded, shewed, defended, answered, debated, and judged in the English Tongue, and that they be entered and inrolled in Latin.

Since then English gradually started to be adopted for more and more kinds of legal documents, but statutes began to be written in English alone, only after 1489. Legal writing has been criticised ever since.

The plain language standard has already been legally enforced in several countries. In the USA President Obama signed the Plain Writing Act of 2010 on October 13, 2010. According to this law, federal agencies must communicate with the public in a way that the public can understand and use. On January 18, 2011, Obama issued a new Executive Order, "E.O. 13563 – Improving Regulation and Regulatory Review" which obliges the American regulatory system to make sure that their regulations are accessible, consistent, written in plain language, and easy to understand. Other countries where plain language is mandatory include Canada, Australia, New Zealand, Germany and the UK. An interesting case study from Portugal – a country with the highest illiteracy rate in the EU – is presented in Sandra Fisher-Martin's talk entitled "The right to understand" on TED.com (http://blog.ted.com/2011/11/06/the-right-to-under

stand-sandra-fisher-martins-on-ted-com/). The above examples show that plain language is a standard being applied in many countries. In Poland the idea of plain language was popularised in 2012 when the Plain Polish Section (pol. Pracownia Prostej Polszczyzny) was set up at the Faculty of Polish at the University of Wroclaw, Poland with the main aim of preparing a Polish version of plain language – a communication style that is comprehensible to a mass audience.

Plain language and teaching

Writing, or legally speaking – drafting, is considered the most important language skill for lawyers and at the same time their biggest weakness. Good writing is the mark of a good lawyer. Lawyers, who write in a coherent and logical way, improve their credibility and their attractiveness to potential employers, which is an especially important tip for graduates. On the other hand, inability to draft, alongside commercial awareness, is often mentioned as the biggest lack of university graduates.

Legal writing therefore, requires special attention and intensive development during legal English courses. Plain English constitutes the appropriate model, which can be contrasted with the legalese which law students and graduates have to read, understand and work on. In this sense, plain English becomes a sort of lingua franca in the legal English classroom and the guidelines for writing in plain English can form the base of any writing course for legal purposes. The guidelines for writing in plain English (e.g., Butt & Castle, 2006; Garner, 2001; Haigh, 2012; Rylance, 1994) correspond to the rules of effective writing for any special purposes, including legal, academic, business, medical etc.

In *Legal Writing in Plain English. A Text with Exercises* Garner (2001) draws up a comprehensive list of principles for plain English writing including legal writing, analytical and persuasive writing, legal drafting, document design and continued improvement. The exercises accompanying the book can be accessed on http://press-pubs.uchicago.edu/garner/. All these exercises are based on authentic excerpts of legal writing which are used as a basis for paraphrasing, redrafting and editing in plain English.

Most of these principles help develop the transferable abilities typical of writing which might constitute the scaffolding for the future development of the writing skill, irrespective of the purpose. Plain English is considered the equivalent of good English writing. Therefore, the guidelines for writing in plain English should be included in each writing course, since

they comprise the rules for producing well structured, comprehensible and concise texts.

According to Garner (2001) the skills which law students and graduates need to develop if they wish to draft texts in plain English include:

I. Planning:
   a. using a nonlinear, whirlybird (i.e. resembling the mind map) approach is recommended for lawyers;
   b. arranging the material in a logical sequence, e.g. using chronology when presenting facts;
   c. dividing the documents into sections, and sections into smaller parts;
   d. adding headings for the sections and subsections.

II. Paragraphing and organizing writing:
   a. beginning each paragraph with a topic sentence;
   b. linking paragraphs and signposting within paragraphs;
   c. limiting the length of paragraphs to 3–8 sentences/150 words;
   d. knowing the reader – an ordinary person and not a sophisticated lawyer;
   e. applying correct punctuation.

III. Phrasing and paraphrasing (legalese into plain English):
   a. avoiding verbosity; reducing the average length of a sentence to 20 words;
   b. relying on S-V-O word order;
   c. favouring active over passive voice;
   d. creating lists with parallel phrasing for parallel ideas;
   e. avoiding multiple negatives;
   f. understanding legalese but replacing it with plain English alternatives, e.g. "hereinafter Seller" with "the Seller", "prior to" with "before", "in the event that" with "if";
   g. minimizing the use of „to be", e.g. court is in agreement, fines are dependent, judge is of the opinion...;
   h. avoiding nouns created from verbs, e.g. conduct an examination of, make provision for, take into consideration...;
   i. shortening wordy phrases, e.g. "a number of" to "many", "at the time when" to "when", "subsequent to" to "after", "the majority of" to "most".

The model for writing that is usually cited by supporters of the Plain English Movement is George Orwell, whose simple style and text structure may serve as an excellent example as in the sample below from 1984 (Orwell, 1949:123):

> A Party member lives from birth to death under the eye of the Thought Police. Even when he is alone he can never be sure that he is alone. Wherever he may be, asleep or awake, working or resting, in his bath or in bed, he can be inspected without warning and without knowing that he is being inspected. Nothing that he does is indifferent. His friendships, his relaxations, his behaviour towards his wife and children, the expression of his face when he is alone, the words he mutters in sleep, even the characteristic movements of his body, are all jealously scrutinized. Not only any actual misdemeanour, but any eccentricity, however small, any change of habits, any nervous mannerism that could possibly be the symptom of an inner struggle, is certain to be detected. He has no freedom of choice in any direction whatever. On the other hand his actions are not regulated by law or by any clearly formulated code of behaviour.

In 1946 in his essay "Why I write", Orwell wrote that *good prose is like a window pane* and a year earlier he published his manifesto entitled "Politics and the English Language" in which he criticised the vague, pretentious, Latinised style used in politics and public speeches and formulated six elementary rules of good writing (Orwell, 1945/2013:19):

a. Never use a metaphor, simile, or other figure of speech which you are used to seeing in print.
b. Never use a long word where a short one will do.
c. If it is possible to cut a word out, always cut it out.
d. Never use the passive where you can use the active.
e. Never use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent.
f. Break any of these rules sooner than say anything outright barbarous.

Since not only law students need writing skills, others following business English courses might find the advice of David Ogilvy – an iconic businessman and original "Mad Man" – convincing:

a. The better you write, the higher you go in Ogilvy & Mather. People who think well, write well.
b. Woolly minded people write woolly memos, woolly letters and woolly speeches.
c. Good writing is not a natural gift. You have to learn to write well. Here are 10 hints:
d. Read the Roman-Raphaelson book on writing. Read it three times.
e. Write the way you talk. Naturally.
f. Use short words, short sentences and short paragraphs.
g. Never use jargon words like reconceptualize, demassification, attitudinally, judgmentally. They are hallmarks of a pretentious ass.

h. Never write more than two pages on any subject.
i. Check your quotations.
j. Never send a letter or a memo on the day you write it. Read it aloud the next morning – and then edit it.
k. If it is something important, get a colleague to improve it.
l. Before you send your letter or your memo, make sure it is crystal clear what you want the recipient to do.
m. If you want ACTION, don't write. Go and tell the guy what you want. (Ogilvy, 2012:70).

Plain language and syllabus design

In the English for Law syllabus design process the most difficult part is the target analysis, i.e. defining the skills that the learners should have gained by the end of the course. In order to identify these skills, the future situation in which the foreign language will be used should be researched, as first described in 1978 by John Munby.

An attempt to identify the target needs of lawyers has been undertaken in a Leonardo da Vinci project, CEF Professional. The project was carried out in 2005/2006 by eleven partners from Finland, Bulgaria, Hungary, Germany, the Netherlands and Poland and aimed to describe the language needs of seven professional groups who were secondary school, vocational college and university graduates, employed in the areas of health care, business, engineering and law (www.cefpro.org, The Teacher, 4, 2007:37).

Research in the area of law was conducted among ten young law professionals who worked for international law firms in Warsaw, Poland, and who described their knowledge of English as good or very good, which on the basis of the researchers' observations was classified as Level B2(+) CEFR. The research produced a list of areas of law, within which young lawyers communicate in English. The list included: commercial law, company law, competition law, banking law, tax law, employment law, real property law, capital law and civil law.

The project aimed at unveiling what professional skills need to be practised with university law students and produced a very detailed list of these skills, classified according to competences which can be summarised under five question-headings dealing with what lawyers **read**, **write**, **listen to**, when lawyers **speak** and what **else** they **do**. For the purposes of this paper, these writing skill findings will be presented in detail. The CEF Pro-

fessional project identified the following documents as those which lawyers draft most often:

a. case-related letters/e-mails;
b. formal letters of advice;
c. memoranda;
d. contracts, contract clauses and agreements (lease, trade, sale, loan);
e. legal opinions;
f. court filings (writs);
g. case briefs and reports for supervisors;
h. corporate documentation.

Other writing related activities identified by CEF Professional comprise translating parts of legal documents and contracts, modern legal correspondence, summarizing various legal texts and switching between formal and informal codes.

The above findings supplement the comments provided by the "Magic Circle", i.e. leading international law firms operating around the world that include: Allen & Overy, Clifford Chance, Linklaters, Freshfields Bruckhaus Deringer and Slaughter and May in research conducted by Catherine Mason from Global Legal English and presented during her workshop for students of Kozminski University on 18 May 2010. "Magic Circle" respondents stressed that the weakest point of law graduates who begin to work for them is the inability to draft legal documents in English.

Similar conclusions were drawn from Ph.D. research conducted by the author of this article among young professionals who use foreign languages at work. They identified their weakest points as speaking and writing. They also stressed the importance of developing specialist terminology, as it greatly facilitates communication in the workplace.

For the purpose of this article the author has conducted several additional interviews with Kozminski employees who used to work for "Magic Circle" firms in the past. Their expertise has allowed the author to draw up a list of documents used and drafted by lawyers on a daily basis which comprises:

a. **e-mails** used in day-to-day correspondence;
b. **legal memoranda** which resemble and fulfil the role of reports, such as the sample available on Clifford Chance website: http://www.cliffordchance.com/publicationviews/publications/2011/09/doing_business_in angola.html. In order to avoid confusion the term "legal memoranda" will be used to refer to reports mentioned in this point as opposed to "memos" denoting standard, internal messages used for communication in companies;

c. **English contracts** for which lawyers use templates, but each firm will have its own templates;
d. **Polish contracts** (e.g. sale or lease contract) translated into English to be presented as models;
e. **briefs** which are in fact short legal memoranda;
f. **letters** (e.g. reminder letter, complaint, motivational);
g. **law suits** which are rarely drafted according to templates as they are case specific, but contain parts which are fixed, e.g. petitum (particulars) or the statement of claim.

Law graduates need very practical linguistic skills. Therefore, language accuracy and ability to draft legal documents in plain English are crucial. One of the skills that recruiters test when screening applications, and at interview, is a candidate's spelling, punctuation and the ability to use correct grammar. *An application littered with mistakes is an immediate turn-off and may not be considered because of this*, advises Matt Bryan, graduate recruitment officer, Trowers & Hamlins on www.targetjobs.co.uk. The most challenging language problems which all law students have and must overcome are: the correct use of **prepositions** and **collocations**. Polish students will also have to concentrate on **articles**, **countable and uncountable nouns** and development of the **plain language writing** skill.

Writing and translation skills can be tested during job interview tasks in order to assess the level of the candidate's language skills and therefore applicants can expect some very practical tasks, e.g.:

a. *Translate an indemnity clause from a commercial contract*;
b. *What is wrong with the sentence: "Thank you for your e-mail from 25 May"*;
c. *What types of business can you set up in Poland and how do you translate their names into English?*

The above findings imply that the development of the writing skill, i.e. drafting should constitute the core of the English for Law syllabus from the very beginning of the course. However, since university teachers usually deal with pre-experienced learners, it is not possible to engage the students in highly specialist writing activities. The early stages of any English for Law course should concentrate on the development of study skills as in the case of any ESP syllabus, since such skills as summarizing, translating or defining are used consistently across disciplines.

A comprehensive list of study skills and activities may be long and detailed (Jordan 1997, Wallace 2004). For the purpose of this paper let us concentrate on and select only those transferable abilities typical of writing, which might constitute the scaffolding for the future development of legal

writing. At the beginning of the English for Law course students may be given practice in the development of purely academic writing with emphasis on:

a. planning, writing drafts, revising;
b. paragraphing and organising writing;
c. the use of linking words;
d. punctuation;
e. paraphrasing;
f. using quotations, footnotes and drawing up bibliography.

The development of the above listed skills will equip learners with the knowledge and practical skills they might need in the future, no matter what careers they decide to follow. Acquiring these skills will facilitate their writing if they decide to sit any international certificate examinations in English, choose to continue their education in an academic institution where English is the medium of instruction or attempt to submit papers for international conferences, since they will help them produce well-organized, adequately developed paragraphs and whole papers written in standard, modern English. The academic writing stage would seem to be a natural and practical stage, leading students to more sophisticated and demanding areas of legal or business writing, for which they need to develop factual knowledge of the discipline they are studying.

Legal English skills and abilities

The most significant skill which students following the English for Law course need to acquire if they are to cope with understanding, and at later stages, drafting legal texts is the skill of **comprehension and interpretation**.

Students have problems with understanding texts written in legalese due to lack of experience and insufficient language proficiency. Therefore, they need to be exposed to such texts in order to train their understanding and interpretation. In order to master these skills, students need to be familiarized with the structure (layout and format) of various legal documents, e.g. contracts, pieces of legislation, law suits, letters, legal memoranda, notices, etc. Samples of these documents can be accessed online or in books of templates such as e.g. "301 Legal Forms, Letters and Agreements" published by Lawpack Publishing (2007). When students are aware of how documents are structured, they can focus on reading and interpretation of their content. Students who come from countries with civil law jurisdiction are probably

used to the purposive or teleological method of interpretation which determines the meaning upon the purpose of the contract, the intentions of the parties to the contract or the intention of the drafter of a piece of legislation.

In common law jurisdictions lawyers use the textual or literal method of text interpretation, i.e. they analyse only the words of the text and not any external evidence. This approach requires a great deal of pedantry, since here even where a comma is placed may make a difference to the interpretation of the text.

Modern English commercial contracts are usually structured on templates and there is a collection of clauses that are commonly found in their texts. These will include operative provisions, e.g. commencement, conditions precedent, payment terms etc. and so called boiler plate clauses including e.g. assignment, force majeure, acceleration etc., a clear overview of which can be found in Haigh (2012). Authentic samples of contract parlance constitute a base for language work that can include mastering the following skills:

I. **Paraphrasing**: the skill of paraphrasing mostly involves contrastive analysis of legalese and plain English and can be developed using the activities presented below in the Teaching Materials section.

II. **Defining**: the students need to be able to explain the meaning of legal terms or clauses contained in legislation or contracts in plain English, e.g. by using their synonyms, opposites, or formulating short and clear plain English definitions. In order to manage the task of defining successfully, students will have to develop extensive knowledge of legal terminology and then be trained in formulating the definitions which can be tested both ways, i.e. from plain English to legalese and vice versa. Legal English is characterised by certain linguistic peculiarities, which law students need to learn to understand:

   a. "terms of art" which are technical words and phrases which have precise and fixed meaning as a legal term of art, but another meaning in ordinary English, e.g. *consideration*, *construction*, *waiver*, *party*, etc.

   b. foreign terminology comprising Latin, e.g. per se, quorum, ultra vires, and French, e.g. *force majeure*, *tenant*, *estoppel*, words and phrases still used in legal English due to historical influences.

   c. doublets, couplets and triplets of synonyms, e.g. *null and void*, *terms and conditions*, *dispute*, *controversy or claim* which illustrate the historic French influence and the shift to English when lawyers started to use both English and French words simultaneously in order to be understood. The modern tendency is to avoid them and

to use one word instead of two or more. A comprehensible checklist of legalese undesirables comes as an appendix in Rylance (1994) together with preferred options for how they should be replaced.

d. here-, there- and where- words fulfilling the role of pronouns, used in legal English to avoid repetition, e.g. *the parties hereto (to this contract) agree as follows, the premises and access thereto (to the premises).* They are characteristic of the written language and their meaning often can be guessed from the context. Less experienced learners however, still need to train their usage and their meaning in the texts.

III. **Translating**: a task which is often assigned to job candidates to check their language proficiency is translation. Translation, even though for some people considered a thing of the past, develops and checks students' knowledge of vocabulary, grammar, the use of appropriate register and tone. Translations can be carried both ways – into English and into the students' native language, the latter usually appearing to be easier. Translations into the native language can accompany paraphrasing tasks for completion, in which students must first understand the exact meaning of the original text. When dealing with complex and highly formal texts, translation into the native language can serve as the first stage of the task.

IV. **Summarising**: this develops students' analytical, comprehension and paraphrasing skills as well as reading and writing skills. Students find it difficult to produce a brief but faithful summary of the original text using their own words. They must be taught how to use linking words to logically combine ideas, not to copy the original text and to include all the vital information in the summary.

V. **Modern legal correspondence**: a lawyer drafting a well laid out and linguistically excellent letter or e-mail builds an image of him/herself or of the law firm he/she is working for. Therefore, it is important to train students in drafting modern correspondence excerpts – and present them with up to date layouts and models of the most often used types of documents. They must also be equipped with the knowledge of standard phrases for letters, e-mails and memos. Before students start drafting full length letters themselves, they can start with writing e-mails and memos, which are usually shorter, less formal and easier to write. Later, the step by step approach can be adopted and students can be prepared for drafting letters by:

a. rearranging mixed up elements of the letters;
b. filling in gaps;

c. replacing excessively informal elements of letters with formal ones and vice versa;
d. drafting a letter following a chain of hints provided by the teacher and then making a comparison with a model provided by the teacher;
e. reducing the body of a letter into a chain of hints, which another student must expand back into a letter, etc.

An important element of any letter writing workshop is the issue of tone and politeness, which teachers should sensitize students to, since rudeness reflects badly on the image of the firm the author represents, as well as on him/her as an individual. Mastering the ability to apply the appropriate tone, depending on the situation and the recipient is crucial. A good writer will know what tone he/she should adopt for standard correspondence between lawyers, for letters to clients, for situations which require being firm, patient, decisive or sometimes tough.

A good writer is never aggressive, rude or disrespectful. Students, who are usually young and inexperienced, need to learn to understand that business correspondence is not a place in which to give vent to their emotions and may need a lot of practice in register/tone switching.

A good manual presenting modern layouts and standard phrases for plain English letters is the coursebook "The Lawyer's English Language Coursebook" by Catherine Mason and Rosemary Atkins (2011).

VI. **Grammar for law**: since excellent English and accuracy are most valued by internationally recognized employers, grammar cannot be undervalued in the English for Law syllabus even at higher levels of proficiency. Areas that are especially sensitive include:
a. questions (both direct and indirect), which can be especially useful in correspondence to add to the polite tone of the letter;
b. passive voice which, as has already been mentioned above, should be avoided, is still preferred by lawyers, as it is indirect and formal and in situations where the agent of the verb is unknown, the object is more important than the subject or when the writer wants to divert attention from the real subject, avoid giving specific information or the impression of being critical;
c. articles, which are a special problem area for Polish speakers;
d. countable and uncountable nouns, which include words often used incorrectly such as e.g. "*informations" or words which can be both countable and uncountable as e.g. paper (for the printer) vs. papers (research papers, newspapers) or liability (legal responsibility) vs. liabilities (financial liabilities);

e. word order, the mastering of which allows for structuring more complex sentences and linking clauses by means of prepositions and relative pronouns;
f. prepositions and their use in prepositional phrases, which amount to 296 as calculated by Mariusz Bęcławski in his Ph.D. research and presented in a paper entitled "The application of prepositions in legal English: theory and practice" delivered at the 3rd International Legal English Conference held in Warsaw on 14 November 2009;
g. collocations and especially legally fixed collocations i.e. expressions, which have been used by generations of lawyers and changing them would create legal uncertainty;
h. negative prefixes (un-, in-, il-, im-, ir-, non- and anti-) and the difference between non- and un- as e.g. in non-statutory meaning "not found in statute" and unstatutory meaning "breaching a statute".

Modelling an English for Law syllabus is an eclectic process which stems from general and academic English experience. University students who follow English for Law courses are pre-experienced lawyers-to-be and will first need to build on transferable writing skills typical of academic writing before they proceed to the development of their future profession specific legal drafting. The art of syllabus design requires the teacher to select skills and activities that will help the students master their overall writer's workshop from the very beginning of the course, since only then will the students be able to move on to highly specialist legal drafting. The modern practical approach to legal writing requires that teachers draw on the experience of the still developing Plain English Movement. Their responsibility is to train their students to write in this modern, standard variety of English which has supplanted legalese. On the other hand, plain language is a style of communication in English that can be successfully transferred to academic or any other kind of writing. It postulates using language that is clear, concise, free of clichés and unnecessary jargon, that can be easily understood by laymen. Contemporary trends and changes that are observed in writing due to plain language postulates diminish the stress which teaching of writing for law brings. Legal writing in plain English is based on very simple rules: short, simple, omitting unnecessary words, favouring active voice over passive voice and verbs over nouns, following the S-V-O pattern, free of legal jargon. Students will learn to use the language to express, not to impress. It may take some time, but the students' prospective clients will appreciate the effort.

Teaching materials

Apart from the textbooks mentioned earlier in this section and included in the references, there are many online resources available which develop the skill of writing in plain English:

a. Plain language course on: http://www.faa.gov/about/initiatives/plain_language/basic_course/ which teaches basic tools to help create plain language;
b. Plain Train on http://www.plainlanguagenetwork.org/plaintrain/ with tips and techniques for improving communication skills with the use of plain language;
c. Free guides on http://www.plainenglish.co.uk/free-guides.html offering advice on design and layout, writing letters, cv's and reports, glossary of alternative terms (or undesirables);
d. 39 rules for writing plain English by W. D. Lutz: http://www.plainlanguagenetwork.org/Resources/lutz.html;
e. A Plain English Handbook: http://www.sec.gov/pdf/handbook.pdf;
f. Free Plain English guides from Plain Language Commission on: http://www.clearest.co.uk/pages/publications/freeguides;
g. Plain English Bibliography: http://www.scotland.gov.uk/Publications/2006/02/17093804/5.
h. Publication on common errors in English: http://public.wsu.edu/~brians/errors/
i. Garble's writing resources for plain English: http://home.comcast.net/~garbl/center/#.Ui8bhYzwHDc
j. List of 75 online legal writing resources: http://goingpaperlessblog.com/2010/04/14/75-online-legal-writing-resources-just-in-time-for-summer-associates/

Examples of activities that can be prepared instantly and adopted into the legal English classroom:

a. Distribute a text written in legal English and ask students to find and replace all legalese "undesirables" with their plain English equivalents.
b. Distribute a text with bolded legalese phrases and ask students to replace all bolded phrases and words with their plain English equivalents.
c. Students paraphrase a contract clause / piece of legislation / etc. in one sentence / 10 words / 5 words / etc.

For homework students can be asked to prepare their version of the above assignments in the form of an e-mail to a friend who has asked for help in interpretation of legal documents.

a. Students read a text, then cover it up and paraphrase using their own words.
b. Students replace all colloquial phrases with legal English equivalents.
c. Students reconstruct a letter from hints, as in the example below:

This is the first letter from the solicitor Mark Odazc to the Client (Vera Boyle) following the initial client interview. In it the solicitor summarizes instructions he has been given by the client, advises on relevant issues, and indicates the steps that are needed to process the matter.

Please draft the letter in which you will:

i. *Thank somebody or the meeting yesterday and for the details about the formation of a limited company under the name PerSe.*
ii. *Summarize the details: objects, authorised share capital (1,000 £1 shares), issued capital (51 shares to Vera, 49 to Elisabeth Carlini), who the company directors and company secretary will be, registered office (16 Torridon Road).*
iii. *Inform somebody what you have done to find out whether the name PerSe is currently registered.*
iv. *Inform somebody what documents you will need to draw up (Memorandum of Association, Articles of Association).*
v. *Explain why Vera will need a shareholders' agreement.*
vi. *Enclose a client care letter in duplicate and ask to sign, date and return it.*

For this task teachers can use any well written letters they have available, e.g. *301 Legal Forms, Letters and Agreements* (2007) or R. Haigh (2010). They should reduce the letter to the form of hints and then, after students have produced their versions, show the original letter as a model. Where there is no model letter, students can compare their versions and provide peer assessment.

Students read two different cases/problems and then one group writes a case brief and another summarizes their text in the form of an e-mail to a friend. Both groups try to give as detailed an account of the case as possible. Then students exchange their texts and for homework rewrite them, changing the register: a brief is now summarised in the form of an e-mail, an e-mail becomes a formal letter.

Students solve a crossword. Student A receives a grid of a crossword and student B a list of down and across entries for the crossword. Student B paraphrases the entries in plain English, student A guesses the legal terms and fills in the crossword. Free online crossword makers can easily be

googled: https://crosswordlabs.com/ or http://www.eclipsecrossword.com/ and many more.

Students create a glossary of legal English terms and their plain English equivalents, that can be published on the university website, e-learning platform or http://issuu.com/ in the form of a pdf booklet available as an open resource. The glossary can also be uploaded to http://www.memrise.com/ – a learning platform at which uploaded content can be practised in a variety of tasks automatically designed by the engine. A legal English vocabulary course has been started by the author of this paper and her students on http://www.memrise.com/user/LegalEnglish/.

Legalese	Plain English synonym or definition	Translation	Remarks
null and void	not valid	nieważny	doublet, choose one: null or void
construction of the contract	interpretation of the contract	interpretacja umowy	

Students develop the Wikipedia list of plain English words and phrases on http://en.wikipedia.org/wiki/List_of_plain_English_words_and_phrases or create a similar resource using another wiki tool, e.g. Wikispaces on http://www.wikispaces.com/

Conclusions

Modelling and developing the writing component of the English for Law syllabus is necessary and beneficial, since the concerns about the deterioration in writing skills among university graduates are omnipresent. Unfortunately, in the case of legal education the coin has two sides. On the one hand, there have been postulates for writing reform and improved education for generations. On the other hand, *lawyers write badly because doing so promotes their economic interests* (...) and *if lawyers stopped writing like lawyers, they might have trouble charging as much for their work* (Stark, 1984:1389).

Language teachers can put aside politics and concentrate on the quality of education solely. Any ESP course will benefit from implementing the elements of plain English writing which can form the core of the syllabus for the development of the writing skill. Writing in plain language is nowadays

perceived as good writing. Plain language resources provide a step by step guidance on how to approach a writing task, structure paragraphs and create first drafts. They stress the need of redrafting, editing and proofreading which are so often neglected by the students.

Developing the skill of writing in plain English will teach the students planning, organization, and logic, as well as developing their analytical skills. It will demand that they use excellent English and have an advanced knowledge of legal English terms. All these elements can be transferred to any other environment in which written English is required, whether it is academic, business, etc.

Plain English writing course will have many beneficiaries. Students will learn how to produce well structured, clear and powerful texts. Their prospective readers will comprehend the texts at first reading and feel comfortable about signing documents they understand. Plain English classes will also be easier to teach by non-lawyer legal English teachers, who tend to declare that they feel intimidated by the complexity of legalese jargon.

The present paper has been an attempt to systematize knowledge about plain English and gather examples of good practice. It comprises a set of easily adopted ideas, which teachers can implement during their writing classes. It is hoped that it will inspire new ideas for teaching writing, including more writing activities in Legal English classes and syllabuses, and convince English teachers that teaching legal drafting is plain.

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FUNCTIONALIST APPROACH TO TEACHING LEGAL TRANSLATION

Abstract. The paper deals with some problems of legal translation with a particular regard to the skopos theory approach, with a special emphasis on the practical implications of these problems to legal translation instruction. The author presents the circumstances in the Republic of Croatia over the preceding several years pertaining to the activities of legal translation for the purpose of accession to the European Union. This particularly refers to the translating of the *acquis communautaire* into the Croatian language. Possible functions of translated legal and legislative texts are analysed from this viewpoint, as well as various possible related approaches to solving translation problems. The author pays special attention to issues in translating cultural elements, considering that they tend to show special sensitivity to the function of a translated text. Finally, practical application of the above considerations regarding legal translation is presented in the last part of the paper. Having taught courses in legal translation to lawyers aspiring to work as legal translators within EU bodies, the author presents the contents of the courses and some methods of teaching which take account of the skopos theory, as well as the reception of such teaching methods and their outcomes.

Keywords: legal translation, teaching legal translation, teaching translation, skopos theory, functionalist approach

ESP course design involves a complex set of activities. It should primarily take account of the purpose of the course and the specific needs of the participants. It is assumed that the purpose of most language and ESP courses is oriented towards some form of communication in a specific context, related to a certain professional area. The challenge becomes even greater when the subject of the course is not the specialized language itself but specialized translation. Translation is a specific kind of communication that takes place over two linguistic codes and where its outcome will depend not only on the competence and skills of the translator, but also on various linguistic and particularly extralinguistic factors.

The course presented in this paper was developed and delivered under very specific circumstances, which at the same time helped and yet constrained the instructor in his choice of teaching content and methods. The

paper will present some theoretical and practical considerations in course design, as well as the results of the feedback survey conducted among the participants of the course in legal translation that took place at the Faculty of Law of the University of Zagreb in 2011 and 2012.

The Background to the Course

The Republic of Croatia started its negotiations for the accession to the European Union in 2005. Over the following several years activities were undertaken at all levels focusing on Croatia's future position as an EU member state. Some of these activities involved the translation of the *acquis communautaire* into the Croatian language. The negotiations process also required for a considerable amount of Croatian legislation to be translated into English, as English was the language chosen by the Republic of Croatia as the language of negotiation. In addition to the legislative texts, a vast amount of supporting texts, such as strategies, action plans, and reports, also had to be translated into English. Demand for skilled legal translators boomed. As the experience of the Ministry of Foreign Affairs and European Integration showed, finding a sufficient number of translators who could successfully tackle the challenges of legal translation was not always an easy task. After the accession, Croatia would have to supply a certain number of translators and lawyer linguists with similar skills to fill the positions in EU institutions. As the experience of the pre-accession period showed, it was to be expected that not many Croatian translators or lawyers would feel ready to take on such challenging positions. Considering that translation is hardly part of a lawyer's everyday practice, of particular concern was finding a sufficient number of lawyers who were skilled enough in two official languages in the EU and, more importantly, in translating from these two languages into Croatian.

The Centre for Language and Law was established within the Zagreb Faculty of Law in 2007. It brings together professionals from the areas of foreign languages and law in order to provide a platform for professional development of both linguists and lawyers. The many activities of the Centre include the organisation of foreign language courses for lawyers. The Centre recognized the need for providing training in translation to potential candidates for the positions of lawyer linguists in EU institutions. It was assumed that any lawyers interested in applying for these positions might be interested in receiving additional training in legal translation for these purposes.

Training Programme for Lawyer Linguists

In 2010, a one-semester multidisciplinary programme of training for lawyer linguists was developed by experts gathered in the Centre for Languages and Law. Advice was taken from lawyer linguists already working in EU institutions who had knowledge not only about the requirements of the position itself but also of the types of entrance tests usually taken by applicants for these positions. The programme featured both theoretical and practical courses, delivered over 15 weeks. Table 1 shows the contents of the programme and the number of hours taught in each course.

Table 1

Training programme for lawyer linguists delivered by the Centre for Language and Law

Course	Number of hours
1. Introduction to legal translation, legal terminology multilingual drafting of EU texts	20
2. Introduction to EU law and institutions	20
3. Sources of EU law, EU databases and online language tools	8
4. Legal translation exercises (English)	30
5. Legal translation exercises (German, French, Italian or Spanish)	20
6. Croatian standard language for lawyers	30
Total	128 hours

The first two courses were theoretical, and the remaining four were practical. With the exception of the courses in EU law and institutions and EU databases and sources of law, the courses were mainly focused on language. The author of the present article designed and delivered the legal translation exercises for English.

Eligible applicants for the training programme were law graduates (or students in the final year), with or without working experience in law and/or legal translation. However, in order to be accepted for the programme, successful applicants had to pass a written translation test. The applicants were given a one-page text on EU institutions, taken from an official EU website. They were expected to demonstrate in their translation that they understood the text, i.e. that they could handle a text of that level of difficulty, dealing with this specific area.

Considerations in course design

In approaching the design of the course in translating legal English texts, multiple considerations were taken into account. First of all, this was to be a specialist course intended for a very specific purpose, delivered to a very specific audience. The course was delivered over 15 weeks, at a dynamic of one 90-minute session a week. As for the contents of the course, the intention was for the participants to translate a page of an English text from the domain of law or EU institutions between sessions and bring their work to class each week.

The selection of texts was made following the advice of working lawyer linguists from the Council of the EU and the European Central Bank who co-operated in the project. Their advice was to include texts pertaining to national law (in this case English), as such texts were typically used in entrance exams taken by applicants. The intention was to cover various areas of law, as well as different types of discourse. Table 2 shows the selection of texts by area.

Table 2

Selection of translation texts

English law	1. constitutional law
	2. alternative dispute resolution
	3. criminal procedure
	4. family law
EU law	5. payment of damages for wrongful acts
	6. public finances (European Fiscal Compact)
	7. community trade marks (ECJ judgment)
	8. competition law (Commission Directive)
	9. environmental law (Commission Decision)
	10. application of EU law in national courts

With the exception of texts 6 to 9, which are legislative texts, i.e. judgments, the texts were taken from university law textbooks.

The more difficult part of designing the course was choosing a method or methods, especially concerning the special features of legal language and, accordingly, legal translation, and due to the fact that the participants were not linguists and had potentially no training or experience in translation whatsoever.

The course design was approached with several key assumptions with regard to the participants. They were thought to be likely to have misconceptions about the translation process, to be prone to literal translation, to

expect ready answers, to expect to find perfect matches and aim at lexical equivalence seeing it as something permanent and unchangeable, and finally to have difficulty with the complicated syntax found in most legal English texts. Another key assumption pertained more specifically to the issue of terminology. As regards EU terminology, particularly the Croatian translations, it is important to note that at the time of course design and delivery there was no comprehensive and consolidated bank of Croatian EU terms available anywhere. It was rather a work in progress and not publicly available. To focus the course on devising the right terms in EU texts would be not only a daunting task, but would also yield questionable results. Terms were obviously to play an important role in learning to translate, but it was thought to be more important to focus on the process of arriving at the best possible terms in a given situation than the actual "final" solutions. Assuming that the participants had little or no experience in translating, the focus was to be on the process of translation, rather than the outcome. The process, naturally, included not only dealing with terminology, but also with all the other strategies used and shifts occurring in translation. This would include questioning whatever solution arrived at and finding arguments to support or reject it.

To conclude, the method sought was to focus on the process of translation and possibly point to multiple possible ways of approaching the translation of the same text. In the pursuit of this goal both theoretical and practical considerations were taken into account, drawn from the experience of the author. The most important of these considerations will be presented in the following part of this paper.

Theoretical considerations

A layman approaching translation is likely to think of it as a process of finding the right equivalents for the source text in the target language. While it is hard to find fault with this basic conception, the idea of equivalence will probably differ from what a good translation would offer as equivalent.

Definitions of equivalence have changed throughout the history of translation theory. The concept of equivalence was even abandoned or put aside as secondary. This was due to the fact that the idea of equivalence slowly transcended the linguistic level. For Catford (1965), translation meant the replacement of text in one language with equivalent text in another language, which is close to the above proposed conception of translation expected from inexperienced translators. Although this is essentially so, it dis-

regards the complexities of arriving at an 'equivalent' solution. And these complexities go beyond the relationship between the source and target texts or languages.

Koller (1989) as cited in Baker (2009) takes this further by distinguishing between several types of equivalence: denotative, connotative, text-normative, pragmatic, and formal. This suggests that it is hardly possible to achieve equivalence at several or all levels at one time. For example, by providing a literal translation and thus preserving denotative equivalence, the connotative or pragmatic equivalence may be impaired or completely lost. The translator is thus forced to choose between these types of equivalence and in doing so should consider which layer of meaning plays the crucial part in the text at hand. In order to find the answer to the question of how to arrive at these decisions, one must look beyond the purely linguistic features of a text.

In the 1970s, the descriptive translation studies by Gideon Toury et al. introduced the social component into the study of translation theory. Translation is observed in the sociocultural context of the target culture and not as a more or less equivalent rendition of the source text in the target language. The descriptive approach also notes the differences in the concept of equivalence and the acceptability of translations and translation methods over time and in different cultures. The process of translation is seen to be guided by socially defined norms. These norms will determine what is considered as an appropriate or equivalent translation in the target culture. Translation is indeed seen as a matter of the target language and target culture, with the crucial role of extralinguistic considerations. According to Baker (2009), 'translator fulfils a function specified by the community and has to do so in a way that is considered appropriate in that community'. Pym argues that the community, i.e. the recipient of the translation, will thus guide the decision-making process in translation, and equivalence will depend on the socially-determined expectation of the relationship between the source and target texts (Pym 1992 and 1995a as cited in Baker, 2009).

At the same time, new horizons in translation studies were discovered by Katharina Reiß and Hans Vermeer with their functionalist approach. Foundations were laid in the early 1970s in the works of Reiß in which she proposes a connection between the choices in translation methods and text types and functions. She distinguishes between informative, expressive, and operative text types. The primary purpose of informative texts, as the name suggests, is to inform the reader about something. In expressive texts, the aesthetic function takes precedence over the informative one. The style of the text is supposed to produce an aesthetic effect on the reader. In operative

texts, both the content and the form are subordinate to the appellative function, which aims at a reaction at the text by the reader (Nord, 1997). All these text characteristics will affect the approach to translation and the selection of methods and strategies. This text typology has undergone several revisions, including one by Nord (1997) who added a phatic function to Reiß's list.

The focus on the function of the text was taken further by Reiß and Vermeer, which resulted in the skopos theory. Vermeer sees translation as a form of action and considers that every action, including translation, should have a purpose. The skopos theory is based on that assumption. Vermeer (1987:29) as cited in Baker (2009) defines translation in the following way: 'To translate means to produce a text in a target setting for a target purpose and target addressees in target circumstances'. According to the skopos theory, the skopos (the purpose) is determined by the translator in negotiations with the commissioner of the translation. The key role is to be played by the recipient/user of the translation, as well. A translation of the same text can be approached in completely different ways, depending on the skopos and the specific requirements of the commissioner, i.e. recipient of the translation.

Nord (1991) as cited in Munday (2001) distinguishes between two principal types of translation determined by their functions: documentary and instrumental. A documentary translation 'serves as a document of a source culture communication between the author and the ST recipient'. An instrumental translation will perform a communicative function in the target culture without the reader being aware that the same text had earlier been used in another communicative situation.

The author found that these theoretical considerations strongly resonated with his seven-year long experience as a translator, and were consequently fundamental to the approach taken to teaching legal translation in the present context. In the following parts of the text, the author will present some other practical and theoretical considerations regarding legal discourse and particularly the discourses of English and EU law, which also strongly affected both course design and delivery.

Specific features of legal discourse

Legal discourse has many interesting features which have been subject to numerous studies. Its peculiar lexis may be hard to comprehend to the average person, but that does not make it very different from most other

ESP discourses. However, one of its distinctive features is the simultaneous need for high terminological precision and ambiguity. One of the key requirements of a legal text is for terms to be clearly defined and precise. At the same time, legal texts are often subject to different interpretations. This can be seen in everyday judicial practice, and the different interpretations can change the way the law functions and vastly affect people's lives. Sometimes multiple interpretations are possible despite the legislator's effort to achieve a high level of precision, and sometimes, the ambiguity is intentional. Indeed, it is sometimes very difficult for the legislator to envisage the extent of the possible meanings of a term in a particular situation, so the burden of interpretation is intentionally shifted to the judiciary. As far as translation is concerned, the question is raised as to the approach to be taken by the translator with such ambiguous terms.

As for the morphosyntactic level of discourse, legal texts which are supposed to have legal effect make special use of the modal verb 'shall'. It has nothing to do with expressing future time, but rather expresses an obligation. In Croatian, on the other hand, either the present tense or phrases like '*dužan je*' (is obliged to) are used instead.

As for the syntactic level, legal discourse is characterised by very long and complex sentences. In his research into sentence length, Gustafsson (1975) as cited in Gotti (2005) found the average number of words per sentence in legal texts to be as many as 55, which is double than those of natural sciences and eight times more than that of spoken English. According to Gotti (2005), this is explained by the need to reduce the possibility of ambiguity and wrong interpretation and to remove the possibility of erroneous identification of the referent. As regards the level of embedding, research by Hiltunen (1984) as cited in Gotti, (2005) suggests that the average level of embedding in legal discourse is 3.09, whereas in other ESP discourses the average number was approximately 2, according to Ellegard (1978) as cited in Gotti (2005).

Some other typical features of legal discourse include a considerable amount of repetition at the expense of anaphoric expressions, and the prevailing use of complex rather than simple conjunctions (Gotti, 2005).

Even though the above features of legal discourse pose a considerable challenge to the translator, another of its distinguishing features is the fact that law does not exist outside language. Legal texts (or at least some of them) produce legal effects, affect human behaviour, the relationship between the state and the individual, and a number of other relations in the society. According to Šarčević (1997), 'translations of legal texts lead to legal effects and may even induce peace or prompt a war.' This particu-

lar function of legal texts is of crucial importance to translation. However, a translation of a legal text need not necessarily retain the same purpose as the original. According to the skopos theory, translation methods and procedures will depend on the function of the translation, i.e. its recipient. A legal, i.e. regulatory text, may be translated for different purposes, and this will reflect in the choice of solutions selected by the translator.

Translating legal texts pertaining to English law

A peculiar problem in translating legal texts from or into English is the fact that English-speaking countries are predominantly common law countries. On the other hand, all other European countries, for instance, have the continental civil law system. Therefore, the problem transcends the linguistic level by a substantial degree. Even the name of the system, common law, illustrates this problem. It has been translated into Croatian in many different ways, most of which are unsatisfactory as they approached the word 'common' from the wrong perspective. Translations such as '*englesko opće pravo*' (general English law – my back-translation), or '*precedentno pravo*' (law of precedent – my back-translation) (Gačić, 2010) are not completely adequate. The term 'general' has little connection to the actual meaning of common law, while the 'law of precedent' is indeed accurate but not comprehensive, as the common law system includes more than just the law of precedent. In fact, the reason it is called common is historical. It goes back to the times after the Norman conquest in 1066, when the Normans introduced a legal system common to the entire territory of England and Wales (Darbyshire, 2008). The actual meaning of the term 'common' is, for obvious reasons, somewhat lost in the present context. For this reason, it is the opinion of the author that the term 'common law' is best left not translated in a Croatian text.

However, this is only the beginning of the problem. There are numerous terms of English law with no or no apparent equivalent in Croatian. Terms like 'equity' or 'life estate' have no conceptual equivalent in the Croatian legal system. In a documentary translation, explication could be used with little regard to practicality of the translation. In an instrumental translation, on the other hand, a concise term easily put through different inflexions and used in different contexts would be more practical.

In the texts used in the course, numerous similar examples appeared that were approached from several different angles, presupposing various possible translating situations, i.e. commissioner's briefs. For example, the

House of Lords was translated as '*Gornji dom*' ('the Upper House'), which speaks more of its function, is more transparent and more likely to be found in an instrumental translation, and '*Dom Lordova*', a more literal, documentary translation, keeping the reference to the Lords, but disregarding its function. In a text about alternative dispute resolution, the term 'conciliator' was translated as '*miritelj*', but also '*izmiritelj*' was suggested. In Croatian, the two terms have the same meaning. While the first is directly derived from the verb, the second one actually appears in the Croatian law on ADR. The latter solution might, therefore, be more appropriate in an instrumental translation. Finally, the translation of 'recorder', which is a type of judge in the British judiciary, was another interesting problem. It is in fact a solicitor or barrister temporarily appointed as a judge within the powers of a circuit judge. In some situations, the kind of judge in question may be completely irrelevant and the term could be only translated as '*sudac*' ('judge'). A completely different approach would be to translate it as '*sudac* recorder' ('judge recorder'), keeping the original English term seeing as there is nothing similar in the Croatian court system, but still adding the word judge before it to facilitate understanding. The former would be an instrumental translation approach, the latter, a documentary one, both suitable depending on contexts, circumstances or briefs.

In addition, there are many false friends between the English and the Croatian system, i.e. terminology, such as 'legal remedy' and '*pravni lijek*', which, although lexical equivalents, are vastly different at the conceptual level. '*Pravni lijek*' refers to legal institutes such as appeal or review, while a legal remedy refers to damages, injunctions and the like. The different role of the judiciary, i.e. their law-making role, can also make a considerable impact on the way law is seen, drafted, and interpreted in common-law countries, namely England. All this has to be borne in mind in the part of the course pertaining to the translation of texts concerning English law.

Translation from English in the context of European integration

As has already been mentioned, at the time of the development of this training programme, Croatia was preparing for its accession to the European Union. The integration of European countries has had an immeasurable impact on the linguistic reality of Europe. European language policy was set forth in the very beginnings of what is now known as the EU, namely in 1958. Regulation No. 1 of the EEC Council determining the languages

to be used by the European Economic Community provided that all four languages of the EEC at the time, French, German, Italian, and Dutch, were to be official and working languages of the Community, and that all its legal acts were to be published in all four official languages. Since those times, only the number of official languages has changed (it is now 24, with Croatian as the latest addition), but the policy has remained the same. All 24 languages have the same equal status, and all citizens of the EU have the right to access legal acts in their own language, which all have the same status.

According to the publication by the European Commission entitled "Translating for a Multilingual Community" (2009), in 2008, the Directorate-General for Translation translated as many as 1.8 million pages, of which 72.5% had originally been drafted in English, 11.8% in French, 2.7% in German, and the remaining 13% in other EU languages. These data speak for the dominance of English today as the working language in the European Commission. However, not so long ago, in 1997, the numbers were quite different. Although English still held the first place with 45.5%, French followed closely behind with 40.4%. Despite the evident dominance of English, EU terminology is still vastly different from that of its home country. The English language entered the Communities nearly 20 years after their formation, which means that a vast number of EU concepts were developed without the influence of the English language, law or administration. Even after the accession of the United Kingdom, EU concepts and texts were developed in co-ordination with a number of other states whose legal system is continental. These factors also need to be considered when approaching the translation of EU texts written in the English language.

In translating EU-related texts, special approach is needed with legislative texts. As was already mentioned above, Croatian EU terminology was still a work in progress. The focus in the course was, therefore, not necessarily on finding the perfect Croatian terms. However, recognizing that something is treated as a term in a legislative text was particularly important. An example for this can be found in anti-dumping legislation, namely *COUNCIL REGULATION (EC) No 1975/2004 of 15 November 2004 extending the definitive anti-dumping duty imposed by Regulation (EC) No 1676/2001 on imports of polyethylene terephthalate (PET) film originating, inter alia, in India to imports of polyethylene terephthalate (PET) film consigned from Brazil and from Israel, whether declared as originating in Brazil or Israel or not.* The regulation makes reference to the 'investigation period', and even replaces it with the abbreviation 'IP' throughout the text. The investigation period is defined in the basic provisions of the Regulation. All this

clearly indicates that this expression is used as a term, and that it should be treated as such in translation, i.e. not be paraphrased or unnecessarily modified. The Croatian lexical equivalent of 'investigation period' would be '*razdoblje istraživanja*'. However, in different contexts the term could be lost. For example, in the English phrase 'during the investigation period', the term is preserved, but a natural-sounding Croatian translation, '*tijekom istraživanja*' loses one of the two components of the term. Awareness of the importance of term preservation, however, will point towards a solution such as '*u razdoblju istraživanja*', which preserves both components and thus unmistakeably refers to the same referent. Both solutions have their advantages and disadvantages. In an instrumental translation, the preferred translation would be the latter, i.e. the one preserving the term. However, in a documentary translation, whose purpose might be to inform the reader of how the matter is regulated in the EU, but the actual translation will not have legal effect and will never be interpreted or applied by the courts, would not have to be so careful about preserving every word of the term if it is certain that there is no reasonable possibility of misconstruction. In addition, a documentary translation would not have to strive to be consolidated with other language versions as is the tendency in translation for the EU.

The feedback survey

The feedback survey was conducted among the participants of both the 2011 and 2012 courses. The selection of texts was changed slightly between the two generations, but the method and approach remained the same. In 2011, the legal translation practice course was attended by 10 participants, and in 2012, it was attended by 12. The questionnaire was sent out to all 22 participants, of which 18 completed it (7 from the 2011 class and 11 from the 2012 class). The purpose of the survey was to find out about their expectations from the course and to what extent they had been fulfilled. Further, they were asked to grade and comment on the selection of texts, and a special question was aimed at grading and commenting on the functionalist approach.

Two introductory questions were asked about their background and reasons for applying for the course. The course was originally intended for law graduates. Indeed, approximately 84% were law graduates, most of whom were employed, while 16% were law students in their final year. As for the motivation for applying for the lawyer linguist training programme, the answers were somewhat surprising. In this question the respondents could give

multiple answers. Only 44.8% said they were planning to apply for the position of lawyer linguist in EU institutions, even though this was the intended and advertised purpose of the programme. 13.8% said they were working as court translators/interpreters, and 20.7% said that they were planning to become court translators/interpreters. In other words, roughly one third of the respondents saw this programme as an opportunity to improve the relevant skills necessary for this profession, whether they were already carrying it out or were only planning to. This suggests that there may also be a considerable need among the lawyer's population to take courses focused on translating legal texts outside the one linked to working in EU institutions. Just over 20% of the respondents also responded that they chose to attend the programme in order to expand their skills and knowledge in order to increase their chances of employment, and one answered that he/she needed legal translation skills in a project he/she was involved in in his/her job.

When asked to evaluate the selection of texts, 61.1% thought it was excellent, 22.2% very good, and 16.7% found it to be good. None of the respondents chose the answers 'satisfactory' or 'poor'. They were also given the possibility to elaborate on their answer. The comments were mostly very positive, but they also included some suggestions. One participant suggested that the selection of texts should be suited exactly to the needs of the participants, namely that for lawyers working with foreign clients, texts from commercial, company, and contract law areas would be more useful as these were the kinds of texts they sometimes have to translate or draft in their jobs.

According to their answers, their expectations from the course were largely fulfilled. As many as 72.2% found them to be completely fulfilled, 22.2% mostly fulfilled, and only one participant could not decide. None of the respondents chose the answer 'mostly unfulfilled' or 'unfulfilled'.

As for the functionalist approach, the results were slightly more divided. Half of the participants found the method to be very useful, 22.2% mostly useful, and 27.8% useful but also problematic. None chose the answers 'mostly not useful' and 'not useful'. The participants were given an opportunity to elaborate on this answer, and, although most were positive, there were some relatively negative comments. The positive comments generally praised the method for expanding their way of thinking, encouraging them to try out different approaches, teaching them that there are no single solutions and that one should be mindful of the context, and for helping them understand how complex a process translation is. Interestingly enough, several participants mentioned that the method helped them build their confidence and feel better about making decisions in translation. The

more critical comments referred to the fact that it was hard to be consistent in translation when multiple choices were accepted as possible, and that the different approaches and solutions selected by each participants made it difficult to work together as a group. Also, one respondent criticized the method for probably being more important for the theory of translation than practice, and for the fact that in a real situation only one solution must be chosen.

To conclude, the positive comments mostly referred to the method helping them learn about and better understand the process of translation, as well as build self-confidence. On the other hand, it was deemed problematic due to the fact that too many possible answers were provided, which had negative implications for the final result. These results are not surprising and are also in line with the assumptions made by the teacher at the beginning of the course and with the focus being on teaching about the process and not the result, i.e. finding perfect solutions.

Finally, 7 of the 18 respondents said that they had not done any legal translation since the course, while 3 said they had done it very often, and 8 occasionally. Of those who continued doing at least some legal translation (11), 7 said the course had helped them to a great extent, 3 considerably, and 1 to a small extent. Overall, the author believes these results to be largely encouraging. Also, they indicate some interesting points, such as the idea to concentrate on other areas of law (commercial, company, and contract) in the selection of texts and offer the course to a different part of the lawyer's population. Even though the aims of the functionalist approach seemed to be largely fulfilled, the answers pointing to problems regarding a too broad selection of final solutions should also be taken into account in any future delivery of similar courses.

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VERSITA

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THE PROBLEM OF LANGUAGE IN THE PROCEDURE FOR GRANTING REFUGEE STATUS

Abstract. Refugees constitute one of the most serious international problems that the world faces today. The problem of guarantee of access to a language that is understood by the applicant in the procedure for granting refugee status, presented in this paper, is strongly associated with this matter. Due to the fact that this is an issue which affects a considerable number of states, both international and domestic regulations concerning the granting of refugee status were selected for examination in the present paper. The provisions of the Convention relating to the Status of Refugees, the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland were considered. The paper focuses on an analysis of the guarantee to make provision for communication in an understandable language, which does not create a barrier for the person applying for refugee status while communicating with administrative agencies that are decisive in granting the aforementioned status.

Keywords: language, refugee, human rights

The United Nations High Commissioner for Refugees considers it necessary to provide information to persons in need of international protection in a language which they understand. As a matter of principle, every effort to do so should be made by host countries. Assumptions, for example, that an asylum – seeker speaks or understands the official language of his or her country of origin, may prove incorrect.

(UNHCR, 2003)

The practice of granting asylum to people fleeing persecution in foreign lands is one of the earliest hallmarks of civilization. References to it have been found in texts written 3,500 years ago, during the blossoming of the great early empires in the Middle East such as the Hittites, Babylonians, Assyrians and ancient Egyptians.

However, Amnesty International claims that, for example, in 2012 rights of millions of people who fled to avoid conflicts and persecution or migrated to find work and a better life for themselves and their families were infringed. The organization accuses governments all over the world of being far more interested in protecting their borders, than the people and human rights attributed to them (Amnesty, 2012). Therefore, it is crucial not only to guarantee that the right to be free from persecution is respected but also to ensure a fair procedure for granting the status of refugee in domestic legal systems.

One should bear in mind that in the case of foreigners who come to Poland and decide to apply for the status of refugee, the procedure itself constitutes a problem. Firstly, it is completely strange to them and the language and cultural barriers may prove an additional hindrance, putting foreigners in an inferior position in their dealings with Polish administrative authorities. There are several stages to the procedure for granting the status of refugee at which a foreigner might feel powerless and lost without professional assistance. Secondly, a particularly thorny issue is that of lack of knowledge of the local language. Even those who have mastered Polish complain that the language used in application forms and other documents which they are required to complete is too formal and hence incomprehensible and unclear. Foreigners declare that they would like to obtain information which is indispensable to their daily lives in their own native language (Peda, 2006).

Thus, the present paper endeavours to analyse international and domestic acts of law concerning the guarantee for the provision of an understandable language for those involved in the procedure for granting refugee status.

The Convention relating to the Status of Refugees

The Convention was approved at a special United Nations conference on 28 July 1951. It entered into force on 22 April 1954 (hereinafter CRSR). It was initially limited to protecting European refugees after World War II, but a 1967 Protocol removed the geographical and time limits, expanding the Convention's scope (UNHCR, 2001). The Convention relating to the Status of Refugees is the key legal document in defining who is a refugee, their rights and the legal obligations of states (Wierzbicki, 1993; Florczak, 2009).

In accordance with Art. 1 (A) (1), a 'refugee' is

> a person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or

> who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Applying for the status of refugee under the CRSR is conditional upon the fact that a refugee has moved between at least two countries either on the same continent or in the world. A foreign national is a person who is not a citizen of the host country in which he or she is residing or temporarily sojourning. S/he frequently does not speak the language of the country in which s/he applies for refugee status, which raises the problem of whether the guarantee of access to the language that is understood by the applicant is provided. Neither the 1951 Geneva Convention nor the 1967 Protocol include the provisions on a language in the procedure for granting the status of refugee, which would guarantee the fairness of the aforesaid procedure.

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights – ECHR)

The Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 is an international act including, *inter alia*, some guarantees in the proceedings. The ECHR comprises a universal catalogue of rights and freedoms granted to every human being but it does not include an *expressis verbis* right which could be broadly named the 'right to a language', hence it does not mention the language of the procedure for granting the status of refugee. The Convention, however, does not remain silent as far as the issue of language is concerned. Its creators realized that a fair trial is a trial which does not raise any doubts among the parties. Therefore, it should be comprehensible for the people involved (like refugees) who do not speak the language of the country in which they are staying. Accordingly, the authors of the present paper decided to examine two legal instruments on language included in the European Convention on Human Rights: Art. 5 (2) of the ECHR guaranteeing the right to liberty and security, and Art. 6 of the ECHR ensuring the right to a fair trial.

> Article 5 ECHR – Right to liberty and security
> (...)
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. (...)

Art. 5 (2) of the ECHR includes an important guarantee provided to all people deprived of liberty (Oleksiewicz, 2006). The right to be informed, which is conferred on every person deprived of liberty regardless of the grounds and the time of his/her detention, is the essence of this guarantee. The requirement to provide such a person with the aforementioned information is grounded in the command to treat every human being in a humanitarian way. A person deprived of liberty should be aware of his/her present status and likely fate. Only a person who has full knowledge of the reasons for his/her detention and of the allegations against him/her may accurately assess whether s/he needs to use the right to challenge this detention in court.

The aforementioned provision states that any information should be provided 'promptly'. This requirement is crucial principally in the context of the guarantees in the proceedings which are provided to the person who has been detained and which cannot be carried on if a detained person does not possess knowledge of why s/he has been detained. Obviously, the term [mentioned in Art. 5 (2) of the ECHR] commences from the moment when the person has *de facto* been detained. Therefore, no obligation arises under Art. 5 (2) to inform the person detained on the grounds and reasons for a person's detention and the charges against him/her if the decision to arrest him/her was made due to, for example, an arrest warrant. This information, which is official confirmation that such a person has been deprived of liberty, must include the reasons for the detention and charges against the person detained. It is noteworthy to say that lack of this confirmation would be a denial of the guarantee of personal freedom and would be the most serious infringement of Art. 5 of the ECHR and a hindrance to control the legality of detention. Therefore, it is required that the information includes the grounds for detention and the content of charges against the detained. The examined Art. 5 (2) of the ECHR does not stipulate any requirements as regards the form this information should take, merely stating that it should be provided in a language which is comprehensible to the detained. This means that the information may be given in any form, either in writing or orally. It is assumed sufficient that the arrested person was served an arrest warrant explaining the reasons for arrest in writing, or even that such a warrant is served and the grounds for the arrest are given orally. It needs to be highlighted here that the guarantee arising from Art. 5 (2) is not infringed if the detained person was familiar with the reasons for his/her arrest due to the fact that they were isseminated widely within international community.

The requirement to provide the detained with information in the language s/he understands does not mean however, that every person who has

been detained and does not understand the language used by the detaining authority has the right to the free assistance of an interpreter. This requirement should be perceived in broad terms i.e. the information should be provided in such a way so that it is understood by the informed party – also in a form or content which is adjusted to the intellectual level of the detained. Hence, it may be assumed that when the detained is not able to understand the message conveyed, her/his legal representative or guardian needs to be informed (Hofmański, 2010).

> Article 6 ECHR – Right to a fair trial
> (...)
> 3. Everyone charged with a criminal offence has the following minimum rights:
> (...)
> e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Before considering the right to free assistance of an interpreter stipulated in Art. 6 (3) (e) of the ECHR it is worth noting that this right is one of the numerous guarantees to a fair trial which are defined in Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. In section 1 of the aforementioned article a general principle (which may be applied widely) is stated, which guarantees the right to a fair i.e. just and public hearing before the court. It occupies a crucial position in any democratic state and is of key importance for democracy to function properly and therefore cannot be interpreted narrowly. This right complements the right to an independent and impartial tribunal, established by law. Moreover, the rights arising from Art. 6 (1) reflect the principle of subsidiarity, according to which national courts and tribunals are primarily obliged to protect the rights and freedoms of individuals whereas Art. 6 (2) of the ECHR includes the principle of presumption of innocence: "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law". The final section of Article 6 lists five fundamental rights (elements of a fair trial) stating that everyone charged with a criminal offence has the following minimum rights:

a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
b) to have adequate time and facilities for the preparation of his defence;
c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Let us concentrate on the right to have the assistance of an interpreter, which is crucial in the context of the present article and which naturally complements lawsuit guarantees arising from Art. 6. The provision of these guarantees would be hindered, or even impossible if the accused did not speak the language of the country in which the proceedings are conducted. It also aims to prevent a situation in which the accused who does not speak the official language of the country, is in an inferior position in comparison to others who may have been accused, who speak the language. It may then be concluded that if the accused has an effective right to take part in criminal proceedings, the participation of an interpreter is indispensable. The right protected by Art. 6 (3) (e) of the ECHR includes the right to the free assistance of an interpreter for any person who cannot speak or understand the language used in court without the need to reimburse the costs of translation and/or interpretation covered by the state (Nowicki, 2001).

The right to the assistance of an interpreter is a simple consequence of the fact that the accused was not provided with the possibility of using either his/her native language or any other language that s/he understands or speaks during hearings and trials or uses in pleadings or writs. It is assumed that such a position is neither feasible nor convenient. One cannot require that all proceedings before any court are conducted in the language that the accused understands or speaks.

The right to have the assistance of an interpreter can be analysed from two different perspectives, depending on the role the interpreter plays in the proceedings. Firstly, the participation of an interpreter may be connected with the process of gathering evidence, or situations in which the evidence cannot be used as it is in a foreign language or while interrogating witnesses who do not speak the language used in court. Secondly, the accused may use lawsuit rights which are stipulated in the code of procedure provided s/he can understand the language used by investigation officers or in court (Hofmański & Wróbel, 2010).

The aforementioned provision guarantees the right to use the assistance of an interpreter in two situations: either when the accused does not understand or speak the language. If the accused has sufficient competence to understand and speak the language used in court, s/he is not provided with this assistance. This does not only require ordinary language competence.

Also those who, due to their physical disability, cannot hear or speak and who cannot participate in the hearings properly without special help from other people, are provided with this assistance.

The obligation to provide the free assistance of an interpreter is not determined by the material status of the accused. Interpreting/translating is one of the measures which states are required to provide in criminal lawsuits to comply with the obligations imposed by Art. 6 of the ECHR. The accused is not obliged to cover the costs of translation/interpreting, even in the case of his/her conviction. Any other interpretation would contradict the objectives set out in Art. 6 of the ECHR, which are to ensure that the right to a fair trial is respected. In other circumstances, the accused may renounce the right to an interpreter for the sole reason of excessive financial burden (Nowicki, 2001:65).

The aforementioned rights are contained in the article which refer to an accused person's rights in criminal proceedings. In the authors' opinion, the right to a fair trial included in Art. 6 of the ECHR also covers the general principle of fair conduct in every procedure, including the procedure for granting refugee status (Wróbel, 2010). It would seem to be sound reasoning, as frequently it is those people who communicate solely with the help of an interpreter, who participate in this procedure.

Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws of 2003, No 128, item 1176, hereinafter Foreigners Protection Act)

The Polish procedure for granting refugee status is of an administrative character. The application, although submitted to the Head of the Office for Foreigners, includes elements of judicial proceedings, as in an appeal procedure or in the procedure to place an applicant in a guarded centre or under arrest for the purpose of expulsion.

A foreigner who wishes to obtain international protection in the Republic of Poland should declare his/her intention to submit this kind of petition to the Border Guard officers during border controls. If a foreigner has already entered the territory of the Republic of Poland and wishes to submit an application for refugee status, s/he has to do so through the commanding officer of the Border Guard division, with authority for the City of Warsaw. The application to grant protection is submitted in person to the Head of the Office for Foreigners through the commanding officer of the Border Guard checkpoint. If a foreigner is accompanied by minor

children his/her petition also applies to them, or may be applied to the applicant's spouse, if he/she grants his/her permission in writing. A person who applies for refugee status has to complete an appropriate form in a language that s/he speaks or understands. This application form includes data relevant to the applicant and/or to the person on whose behalf s/he is applying for this status, indication of the country of origin and important circumstances which have resulted in the application. Simultaneously, the authority to which this application is submitted is obliged to determine the applicant's identity, his/her education and language competences. Additionally, the authority is required to obtain a photograph and fingerprints of the applicant (people over 14), conduct a medical examination and provide indispensable sanitary treatments for the applicant's body and clothes. It is worth mentioning here that when necessary, the authority responsible for the procedure for granting refugee status or asylum, should translate any documents produced in Polish, which are admissible as evidence in this procedure [Art. 11 (1) of the Foreigners Protection Act] (Stachańczyk, 2006).

When submitting an application, an alien is informed about the rights that are granted to him/her and obligations imposed, as well as the legal effects of non-performance of these while staying in the territory of the Republic of Poland. In addition, s/he is also informed about the course of the procedure for granting him/her the status of refugee. All the information is provided in a language which is understandable to the applicant and also refers to the people accompanying him/her (Chlebny, 2011; Mikołajczyk, 2004). The notices in the procedure for granting refugee status, are delivered to the applicant. All correspondence for the person applying for the refugee status, whose place of residence is the centre for foreigners, is delivered by the head of the centre, and receipt must be confirmed in writing [Art. 26 (2) of the Foreigners Protection Act]. The head of the centre is required to announce receipt of correspondence addressed to the foreign national together with information about the time and place at which it may be collected by means of an information board at the centre in a language understandable to the foreigner. The correspondence is considered to have been delivered after 7 days from the day that the announcement is made [Art. 26 (5) of the Foreigners Protection Act]. Moreover, the authority responsible for the proceedings is obliged to ensure the free assistance of an interpreter, who has command of a language understandable to the applicant [Art. 43 (4) of the Foreigners Protection Act].

States use a range of methods to determine identity, drawing, for example, upon state-of-the-art technology (e.g. biometric analyses) and sophisticated databases of identity-related data. Where fingerprints and pho-

tographs fail to identify an applicant, alternative methods may be applied, such as interviews containing knowledge-tests tailored to the presumed country of origin, and language tests conducted by experts (European Migration Network [EMN], 2013).

The Polish legislation includes more detailed provisions concerning the process for establishing identity, by setting out which methods can be applied, as well as the specific steps to be undertaken. Language analysis is an optional method to establish the identity of applicants for international protection in Poland (EMN, 2013).

Language analysis is carried out by a translator/interpreter who is a native speaker of the given language; however, since there is no specialised unit within the Office for Foreigners for carrying out such analyses, this depends on the availability of human and financial resources.

The Office for Foreigners has established cooperation with a Swedish-based company Verified, which provides language analysis services (Ministry of Interior [MI], 2012).

If the person being considered for refugee status holds a foreign passport, it is deposited through the Border Guard at the Head of the Office for Foreigners. A foreign national receives the provisional identity certificate of an alien (PICA) issued by the commanding officer of the unit, which is valid for a 30-day period from the issuance date. It is an identity card which allows the foreigner to travel within the territory of the Republic of Poland. A subsequent PICA is issued by the Head of the Office on request and is valid no longer than 6 months from the issuance date (Rafalik, 2012).

Polish regulations stipulate several kinds of procedures which may be implemented in the proceedings for granting the status of refugee. It is worth mentioning that in accordance with the provisions of the Act, instigating proceedings results in, by virtue of law, cancellation of a visa issued to an alien, expiry of any decision concerning the obligation to leave the territory of the Republic of Poland, suspension of execution of the decision on expulsion – until such date on which a foreigner is delivered a final decision on the granting of refugee status. However, the provisions on suspension of the decision on expulsion are not applicable to foreigners who, after obtaining a decision on expulsion, submit another application for granting of refugee status, unless the Head of the Office for Foreigners suspends its execution (at the foreigner's request). Art. 50 states that the authority rendering decisions in the procedure for granting refugee status is obliged to inform the applicant in writing and in a language understandable to him/her about the result of such proceedings, as well as the course and time limit for submitting any complaints.

In accordance with Art. 80a of the Foreigners Protection Act, a foreigner admitted to the centre for foreigners should be informed about the rights conferred on him/her and any obligations imposed in a language that is understandable to him/her. In addition, s/he should be informed about the provisions on providing assistance to foreigners applying for refugee status and the rules of stay in the centre.

The possibility for lodging complaints and motions by a foreigner to the Head of the Office on the functioning of the centre and conditions of stay, in his/her native language, is an important guarantee provided to foreigners under Art. 82a of the Foreigners Protection Act.

The procedure for granting refugee status is a lengthy process, lasting even up to a year, so the ability to communicate in Polish is crucial to function in Polish society. The legislator has met this need halfway by introducing (within the welfare system) the possibility of learning Polish (with the provision of indispensable learning aids) free of charge. This is extremely important, considering a foreigner's prospective settlement in Poland and his/her further functioning in Polish society.

Conclusions

The problem of guaranteeing access to a language that is understood by the applicant in the procedure for granting refugee status is present in numerous countries which provide protection to people who are persecuted. It is the consequence of a lack of clear and precise international legal solutions, which would oblige states to guarantee the right to provision of communication in an understandable language in the procedure for granting refugee status. Both the Convention relating to the Status of Refugees, and the Convention for the Protection of Human Rights and Fundamental Freedoms remain silent in this respect. Nevertheless, in the authors' opinion, Art. 6 of the ECHR which includes the guarantee of a fair trial and refers to criminal procedures, should have wider application and become the basis for national solutions, relating also to the procedure for granting refugee status.

The authors are pleased to note that in the Republic of Poland, it is the Act on granting protection to foreigners within the territory of the Republic of Poland that includes language guarantees provided to people applying for the status of refugee. These rights comprise: informing an alien about the principles and procedures for granting refugee status in a language understandable to him/her, the possibility of submitting an application in an

understandable language, the provision of free assistance from an interpreter or the right to learn Polish, free of charge. It seems that in introducing these provisions, the Polish legislator predicted that language or the need for an interpreter would play a crucial role in the procedure for granting refugee status. Consequently, it can be stated that Polish law includes sufficient guarantees in terms of language guarantees in the procedure for granting refugee status, and hence the fairness of a trial has been preserved.

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LEGAL TRANSLATION COMPETENCE IN THE LIGHT OF TRANSLATIONAL HERMENEUTICS

Abstract. This paper is concerned with the concept of translation competence as seen from the perspective of translational hermeneutics. The first part of the article provides a short survey of how translation competence and its development has been described so far, with a particular focus on the legal translator's skills and abilities. The second part of the paper briefly presents the notion of translational hermeneutics together with its main concepts. The aim of this part of the article is also to show similarities between the translation phenomenon and hermeneutical studies. Finally, building on Stolze's (2011) hermeneutical model of translation, the last part of the paper presents the main features of a hermeneutical model of legal translation competence.

Keywords: translation competence, legal translation competence, translational hermeneutics, legal translation

Translation competence – state of the art

Translation competence has gained increased interest in Translation Studies since the 1990s. It has to be realized, though, that the first attempts at defining the concept were made in the late 1970s (Wills, 1976; Harris, 1977; Harris & Sherwood, 1978; Koller, 1979), and they were very much in line with Applied Linguistics and its language acquisition theory, especially with reference to linguistic competencies and bilingualism. Competence was regarded then as a summation of linguistic competencies. However, the ideas, as Pym explains (2003:483), were short-lived. With some historical changes, namely the separation of Applied Linguistics and Translation Studies, other definitions and multicomponential models of translation competence appeared. It has to be noted that the concept, despite many attempts at determining what it really comprises, is quite vague and abstract. Orozco and Hurtado Albir (2002:376) rightly stress that there are several authors and researchers who mention translation competence in their works and who, probably, have a concrete definition of it in mind, but

they do not make it explicit. It can be said that in the Translation Studies literature there are only a few explicit and clear definitions of translation competence.

One of the first definitions of translation competence is given by Bell (1991:40–41) who proposes both a translator expert system consisting of various types of knowledge and procedures necessary for translational process (source language knowledge, target language knowledge, text-type knowledge, domain knowledge, and contrastive knowledge, as well as an inference mechanism that permits the decoding of texts and the encoding of texts) and a model of communicative competence consisting of four sub-competencies: grammatical, sociolinguistic, discourse, and strategic. Bell (1991:43) defines translation competence as "the knowledge and skills the translator must possess in order to carry it [the translation] out". A similar approach is presented by Hurtado Albir (1996:48) who states that translation competence is "the ability of knowing how to translate", and by PACTE research group (2011:318) who propose the following definition: "the underlying system of knowledge and skills needed to be able to translate". Furthermore, the research group states (2003:55) that in general, translation competence is a construct that is not subject to direct observation, that it is expert knowledge and that it should be defined, taking into consideration both declarative and procedural knowledge (2003:58). The definition of translation competence as "the system of underlying kinds of knowledge, whether declarative or operative, which are needed for translation" is also given by Presas (2000:28) who additionally specifies what types of knowledge are necessary in the process of translation, namely knowledge of both source and target language, knowledge of the real world and use of the material, the ability to use translator's tools (dictionaries, terminological bases, etc.), cognitive abilities such as creativity, or the ability of problem-solving.

From the point of view of translation didactics, translation competence is defined as a construct consisting of knowledge, skills, attitudes, and aptitudes necessary for translation task realization (Kelly, 2005:162). A very interesting suggestion is made by Pym (2003:489) who, in defence of minimalism, redefines the concept of translation competence and regards it as the ability to generate viable target texts and the ability to select only one of those versions with "justified confidence". As Pym emphasizes, the real value of this type of definition lies in the large number of things that it does not even mention (490). This minimalist definition brings to mind the concept of "supercompetence" (Wilss, 1982:58) reflecting the "singular specificity of translation" (Pym, 2003:488).

In the light of this article, it is worth mentioning Bukowski (2012:131–136) who describes a translator's hermeneutical competences: responsibility for one's own interpretation of the message being translated, knowledge of cultural and historical context, knowledge of literature of a given nation, detailed and general erudition, and the ability to converse with a given text.

As has been mentioned, some authors approach the concept of translation competence from a multicomponential perspective. For instance, Neubert (2000:5), apart from describing components of translational competence, which he names parameters, also presents contextual features of translation competence, namely complexity, heterogeneity, approximation, open-endedness, creativity, situationality, and historicity, stating that they are bound up with each other. According to the author (2000:7–10), the parameters of translation competence are as follows: language competence, textual competence, subject competence, cultural competence, and transfer competence.

Other authors who use the component approach to translation competence are, just to name a few, Hurtado (1996) who distinguishes linguistic, extralinguistic, textual, general professional skills, and transfer competences; Shreve (2006) who stresses that translation competence consists of linguistic knowledge, cultural knowledge, textual knowledge, and translation knowledge; or Kelly (2005:33–34) who describes the following competences: communicative and textual, cultural and intercultural, subject area, professional and instrumental, attitudinal (psychophysiological), strategic, and interpersonal. Among Polish scholars, it is mainly Hejwowski (2004:154) who deals with translation competence. He describes the following elements of the concept: source and target language knowledge, the skill of matching various structures on the basis of their relative similarity, knowledge of source and target language cultures, general and specialized knowledge, communicative skills, perseverance in seeking to maintain message sense, knowledge about translation theory, and personality features and predisposition. It is also interesting to note that some authors (see: Kiraly 1995:16–17) suggest that a translator competence approach is preferable to translation competence. In this sense translator competence means more general communicative skills in both source and target languages, which can be seen both in bilinguals and in translators.

Recently, the most famous models of translational competence have been those of the PACTE, TransComp, and EMT research groups. Let us briefly analyze them. According to the PACTE research group (2003:58–59), translation competence can be divided into five sub-competencies. They are as follows: bilingual sub-competence which is mainly procedural knowl-

edge, extra-linguistic sub-competence which is mainly declarative knowledge (both implicit and explicit), knowledge about translation sub-competence which is mainly declarative knowledge (both implicit and explicit), instrumental sub-competence which is mainly procedural knowledge, strategic sub-competence which is predominantly procedural knowledge, and psycho-physiological components which can be described as "different types of cognitive and attitudinal components and psycho-motor mechanisms (memory, perception, attention, emotion, intellectual curiosity, perseverance, rigour, critical spirit, knowledge of and confidence in one's own skills and abilities, motivation, creativity, logical reasoning, etc.). Apart from this holistic model of translation competence, the PACTE research group has developed a dynamic model of translation competence acquisition which is defined as "a dynamic, spiral process that, like all learning processes, evolves from novice knowledge (pre-translation competence) to expert knowledge (translation competence); it requires learning competence (learning strategies) and during the process both declarative and procedural types of knowledge are integrated, developed and restructured" (2003:49).

As mentioned, the other famous model of translation competence was developed by Göpferich (2007) within the framework of a longitudinal study called TransComp. Göpferich (2009:21–23) differentiates between the following sub-competences: communicative competence in at least two languages, domain competence, tools and research competence, translation routine activation competence, psychomotor competence, and strategic competence. It has to be added that the TransComp project is aimed at analyzing translation competence development in its continuity (26) and at the measurement of the following components of the competence: 1) strategic competence, 2) translation routine activation competence, and 3) tools and research competence. The reason for the selection of sub-competences lies in the assumption that the afore-mentioned competences are "the main translation-specific competences in which translation competence differs from the competence of bilingual persons with no specific training in translation" (30).

The EMT translation competence framework consists of six competences: translation service provision, language, intercultural, info mining, technological, and thematic. Competence as such is defined by EMT experts as "combination of aptitudes, knowledge, behaviour and know-how necessary to carry out a given task under given conditions" (2009:3–4).

To the best of my knowledge, apart from the PACTE and TransComp empirical models of translation competence development, Campbell's model (1991), and Alves' and Gonçalves work (2007), generally speaking, there

is a lack of empirical research on translation competence and its acquisition. Despite the fact that there have been few empirical studies concerned with the comparison of performance of translation students and professional translators (see: Krings, 1988; Jääskeläinen, 1989; Tirkkonen-Condit, 1990; Lorenzo, 1999) and with translation competence components (see: Kussmaul, 1991; Fraser, 1993; Schäeffner, 1993; Dancette, 1994, 1995; Alves, 1996; Livbjerg & Mees, 1999), most of these studies present major problems both from the scientific and the theoretical point of view (Orozco & Hurtado Albir, 2002:377–378). Furthermore, as Whyatt rightly concludes (2012:167), nobody has yet researched the process of translation competence development in translation students. To the best of my knowledge, there are also only a few works which examine the concept of translation competence with reference to legal translation. Let us now briefly analyze them.

What does it take to translate legal texts?

It is generally agreed that a professional legal translator should be an expert both in linguistics and, at least to some extent, law. What is more, as Šarčevič states (1997:113–114), legal competence comprises not only thorough knowledge concerned with legal terminology but also in-depth understanding of logical principles, logical reasoning, the ability of problem-solving, the ability of text analysis, and knowledge of the target and source legal system. In her article entitled *Translation and the Law: An interdisciplinary approach* Šarčevič (1994:304) stresses also the importance of knowledge of drafting techniques for different text types and the need of training in legal hermeneutics:

> In particular, the structure of the text and its constituent legal sentences is of vital importance. For example, translators must be able to identify and produce all forms of obligations, prohibitions, statements of permission and authorization in the target legal system. Moreover, translators need training in legal hermeneutics. Although they do not interpret texts as judges do, they must be able to foresee how the text will be interpreted by the competent court. (Šarčevič, 1994:304)

The need for legal hermeneutics training should be of no surprise, because, as Gadamer (2004) repeatedly stresses, every translator is an interpreter. Therefore, I also propose to take a similar stance, and agree fully with Šarčevič, especially when taking into consideration the fact that contem-

porary legal translation teachers, generally speaking, neglect the aspect of interpretation skills in the translation training process.

There are, however, many more skills that a competent legal translator ought to possess. Let us refer to Sofer (2006:107) who states that in order to translate legal texts properly and efficiently, a legal translator must possess good writing skills. It goes without saying that a legal translator without a good command of his own written native language lacks an important aspect of translation competence, namely communicative competence. A legal translator, according to Obenaus (1995:250), should also possess good information brokering skills, which simply means that such a person should be able to find the right information quickly and effectively.

In addition, Sofer (2006:106) emphasizes that a legal translators' task is to pay special attention to legal documents, develop good legal reference resources and awareness of legal systems, both target and source, and different specialties within legal fields, as well as raise consciousness as to the importance of the legal documents which comprise their translations. At the same time, we should not underestimate the role of translation theory in the concept of translation competence, including legal translation. Šarčevič (1997:271) rightly says that in this case [legal translation], a special theory of legal translation is necessary, theory which takes into consideration legal criteria. According to the author, the theory, in order to be effective, must be practice-oriented. It is also interesting to note that in her study, Šarčevič (1997) defines legal translation as "an act of communication in the mechanism of law".

It is not only Šarčevič who discusses legal translation in terms of expertise both in language and law, since almost every author writing about this type of translation emphasizes that a legal translator must be, at least to some extent, an expert not only in translation studies but also in law. However, to the best of my knowledge, nobody specifies the extent of expertise in the law field. It is worth noting what Cao (2007:5) says in this respect:

> The legal translator's skills and tasks are very different from the lawyer's. The legal translator does not read and interpret the law the way a lawyer does. The legal translator does not write the law either. However, the legal translator needs to know how lawyers, including judges and lawmakers, think and write and how they write the way they do, and at the same time, to be sensitive to the intricacy, diversity and creativity of language, as well as its limits and power. (Cao, 2007:5)

It can be argued, though, that it would be enough for legal translators just to know how lawyers think or write law, and to be sensitive to some language

intricacies. Besides, Cao's claim concerning the legal translator's knowledge regarding the way lawyers think poses another problem of an interpretive nature. How can anyone learn or get to know how someone else thinks? It is worth considering if this is indeed ever possible. It seems, then, that we should first and foremost find a different answer to the question concerning legal translators competences. Besides, I believe that more helpful for legal translators would be to know how a lawyer interprets the law (therefore, knowledge of legal hermeneutics is critically important, as Šarčevič emphasizes) than just to know how a lawyer thinks about the law.

Gouadec's view seems very relevant in this respect. He (2007:31) claims that in situations when a legal translator is not himself a lawyer or does not have a solid legal background, it "should always be a joint effort by a translator and a lawyer, the latter having the last say, of course". Wills (1996:73) approaches the question in a similar fashion, stating that, without doubt, translators who are experts in the legal domain do their job better than literary translators, who do not possess the relevant domain-specific knowledge. Similarly, Prieto Ramos (2011:13) underlines the necessity of understanding and producing legal translations with "lawyer-linguist" eyes, which simply means that a legal translator should be familiar with legal reasoning, interpretation rules, legal phraseology, legal sources used by jurists, and legal structures and procedures with reference to particular types of legal systems. It seems, then, that an ideal legal translator should be a lawyer-linguist, a professional able to connect legal and specialized linguistic skills, and, consequently, a person who should possess very good knowledge and skills within the scope of both law and linguistics and, consequently, legal text interpretation abilities. However, again, the question of the scope of expertise in law remains open. If we agree that legal translators should be experts in law and be familiar with at least one field of the domain, be it civil law, criminal law, family law, etc., we should first try to determine the extent of the knowledge that is necessary of both source and target legal systems. This issue, however, is beyond the scope of this paper. In order to evaluate the specificity of legal translation competence within the frame of knowledge of the law and its fields, further research based on professional legal translators' work is needed.

Due to the fact that legal translation is regarded as one type of specialized translation, the majority of authors writing about legal translation competence rightly emphasize that legal translation requires familiarity with legal terminology. As Trosborg (1997:156) emphasizes, the translation competence of a legal translator must comprise the distinctive lexical features of legal vocabulary. The necessity of the knowledge of legal terminology should

be of no surprise, since all legal translators are faced with comparative law during the translational process, and their core activity is the comparison of legal terminology of source and target text systems.

In the light of the possibilities for further research in the field of translation being discussed, also very important is the determination of specific components of legal translation competence, because, to the best of my knowledge, there is only one known model of legal translation competence, which has been developed by Prieto Ramos (2011). Of course, many authors mention legal competence in their writing (see: Cao, 2007), and even try to define it, but they do not propose models that would be helpful in understanding the concept of a legal translator's competence from a holistic perspective. Prieto Ramos' holistic model is based on previous paradigms, especially that of the PACTE research group, and aims at simplifying reference to those skills which are possessed by a professional. According to Prieto Ramos (2011:12), there are five sub-competences comprising declarative and operative knowledge, and they are presented in the Table 1 below.

Table 1

Sub-competences of legal translation competence and their description
(based on Prieto Ramos 2011)

Name of sub-competence of legal translation competence	Description of the sub-competence
Strategic or methodological sub-competence	Controls the application of the other skills; comprises the analysis of translation brief, macrocontextualization and work planning, problem identification, transfer strategies use, self-assessment, quality control
Communicative and textual sub-competence	Linguistic, sociolinguistic, and pragmatic knowledge
Thematic and cultural sub-competence	Legal systems knowledge, branches of law knowledge, awareness of main legal concepts and differences between different legal cultures and systems
Instrumental sub-competence	Specialized sources knowledge, terminology management, parallel texts use, computer tools knowledge
Interpersonal and professional management competence	Teamwork, cooperation with clients and colleagues

Apart from these five sub-competences, Prieto Ramos (2011:13) mentions other elements of legal science and legal linguistic knowledge, which contribute to legal translation competence. They are as follows: the scope of

specialization (the classification of legal genres), comparative legal linguistics (the features of legal discourse in the source and target languages), documentation (specialized legal sources), and professional practice (the knowledge of legal translation market conditions, deontology issues in legal translation). However, to the best of my knowledge, apart from the above model nobody has developed a system of legal translation competence and its acquisition. It is obvious that we need more suggestions and propositions concerning the shape of translation competence with reference to legal professionals dealing with translation or translators being specialized in law. Therefore, in this article, an attempt is made to present a legal translation competence model as seen from the translational hermeneutics perspective. It is hoped that the proposed model will be helpful in the development of a theoretical construct of the professional legal translator and will suggest a practical way of using this theoretical knowledge in legal translation teaching. Firstly, however, let us briefly describe the main concepts of translational hermeneutics.

Translational hermeneutics

Translational hermeneutics is a relatively unknown sub-discipline of translation studies. Its main proponents are German scholars, namely Radegundis Stolze from the Technische Universität of Darmstadt, John W. Stanley from Fachhochschule Köln, and Larisa Cercel from Albert-Ludwigs-Universität Freiburg. The aim of the research group is to develop and exchange ideas concerning the hermeneutical approach to translation studies.

The connection of translation studies and hermeneutics should be of no surprise. Hermeneutics, similarly to translation studies, is concerned mainly with interpretation, explanations, language, understanding, meaning, and finally, translation. As Palmer (1969:33) says, contemporary hermeneutics finds within translation and translation theory a special "reservoir" for exploring hermeneutical issues, and the phenomenon of translation is, in some ways, a key matter for hermeneutical studies. According to Hermans (2009:130), viewing the phenomenon of translation as a discipline closely related to hermeneutics points to "contiguity of intra- and interlingual translating as the negotiation of difference and otherness". Furthermore, translation, considered as interpretive practice, is framed by hermeneutic concepts (Hermans, 2009:130). According to Stolze (2011:141), hermeneutical philosophy is concerned mainly with the individual as a so-

cial and historic person who seeks to orient himself in the world that surrounds him, understand the world and other people, and act together with others in a given society. All these considerations are relevant for translation studies.

The paradigm of translational hermeneutics focuses on the concept of "the translator as a competent person" (Stolze, 2011:45) and on six main aspects of this concept: subjectivity, historicity, process character, holistic nature, phenomenology, and reflection (for detailed analysis of the aspects see Stolze 2013:57–58). The paradigm "reflects on the conditions of comprehension as a human outlook towards the world" (Stolze, 2011:45).

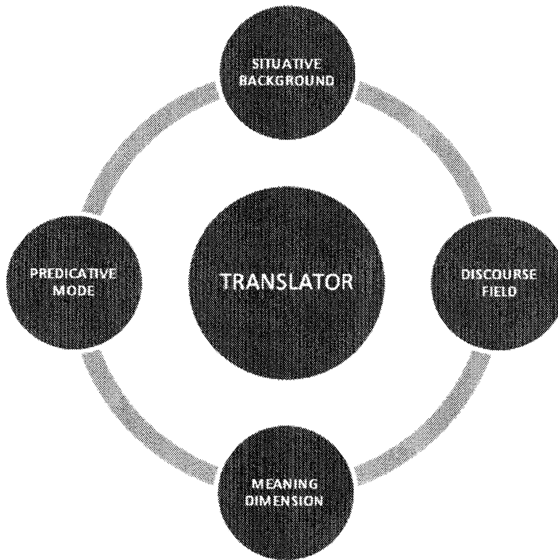
The author of the present paper believes that translational hermeneutics, as a research paradigm in translation studies, can offer new insights into translation theory, especially with reference to the creation of new translational competence models, since, as can be seen from the first and second parts of the article, the majority of authors, for unknown reasons, neglect the importance of understanding and text interpretation as necessary skills in the work of any translator. After all, the core of translational activity, the fundamental elements on which all the above concepts rest, is understanding and interpretation. Without them no translation is possible. Therefore, the model of hermeneutical translation competence of legal translators, as proposed in this paper, is based on the concepts of understanding and interpretation as pivotal elements of all the sub-competences described below. Firstly, however, let us look briefly at what constitutes the hermeneutical act of translation.

Radegundis Stolze's hermeneutical model of the act of translation

As Stolze (2011:177) states, in a hermeneutical model of translation, it is the translator who is the central element in the translational process. Therefore, in the hermeneutical model of legal translator competence, we will focus mainly on the translator and his activities during translation. Translation competence seen from a hermeneutical point of view may be described as a dynamic concept in which procedural knowledge is of paramount importance, integrating as many issues and aspects as possible and ensuring the highest versatility for professional translation activities (Stolze, 2011:179–180). Let us now look closely at a hermeneutical process of translation, namely its two stages: translational reading and translational writing.

Figure 1

Model of a hermeneutical translational reading stage
(based on Stolze, 2011:105–127)



As can be seen from the figure above, the first stage of the translation process, called translational reading, consists of four elements: situative background, discourse field, meaning dimension, and predicative mode (for a detailed explanation of the four elements see: Stolze, 2011). At this point, a legal translator analyzes a source text, taking into consideration the legal system and legal culture to which the text belongs, the domain within specific law disciplines (criminal law, civil law, family law, etc.), the terminology and its conceptualization, and finally, speech acts, passive form, cohesion markers, legal phraseology. In this way a legal translator deepens his pre-grounded understanding of the text and activates his knowledge base concerning the legal domain. All these four elements, as can be seen from the figure above, are interconnected:

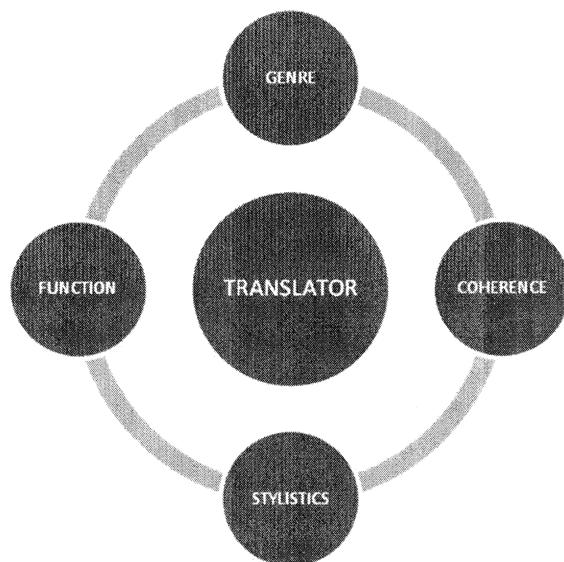
> Hermeneutical understanding, advancing top-down from the situational background over the discourse field and the meaning dimension until the concrete predicative mode, leads to an expansion of the text by added information, which is complementary to the bare linguistic information found on the text's surface structure. (Stolze, 2011:125)

In other words, translational reading leads to global and holistic understanding of the source text seen as a whole message. However, as has been mentioned, this is only the first stage of the translational process. In order

to translate, then, a translator has to use his findings obtained through the translational reading stage and represent them in the form of the target language. Below is a model of a hermeneutical translational writing stage:

Figure 2

Model of a hermeneutical translational writing stage
(based on Stolze, 2011:128–176)



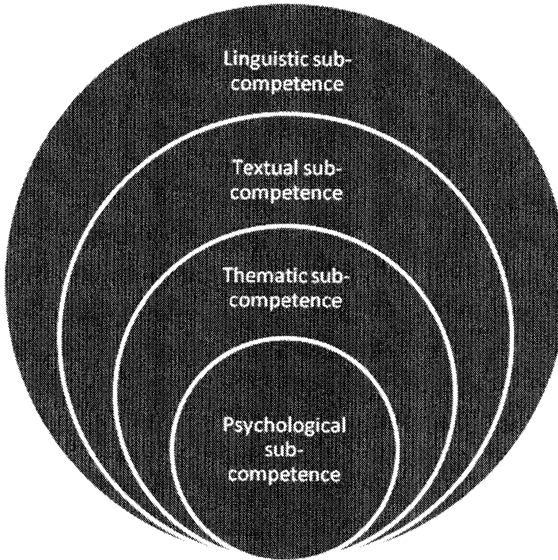
At this stage, a legal translator will usually focus on the analysis of the text type, the logic in the text structure, the functional style, and the communicative aim of the text. Similarly, as in the previous stage, all these four elements are interconnected and each of them leads to the formation of the target text. It should be noted that lack of consideration of any of these elements in the translational writing stage usually results in a disruption of the communicative goal of the text.

As in the two figures above, at the very centre of the whole translational process is the translator with his own competence. The success or failure of a legal translation activity depends on the translator's skills and knowledge concerning translation studies, linguistics, and law. Now let us look closely at our hermeneutical model of legal translation competence.

The hermeneutical model of legal translation competence

Below is a suggested model of the hermeneutical model of legal translation competence:

Figure 3
A suggested hermeneutical model of legal translation competence



The proposed hermeneutical model is of both dynamic and circular character, which means that the specific sub-competences have so-called equal status and interrelate with each other. At the same time, each sub-competence is determined by the others, which simply indicates that they are complementary to each other. All these sub-competences form a global, hermeneutical, legal translation competence which is based on the translator as the central aspect of any translational process. Let us now look closely at each of the sub-competences.

- *Psychological sub-competence*: self-reflection upon one's own skills and knowledge; reflection upon one's own cultural and social position as a legal translator; acceptance of one's own limitations and possible lack of skills or knowledge; acceptance of the subjective nature of the translational process; self-criticism; self-motivation; willingness to develop one's own knowledge; willingness to pursue a career as a legal translator; attitude towards translation work; being a responsible, curious, patient, creative, hard-working, diligent, methodical, devoted, and imaginative person; the ability to identify and solve problems with appropriate strategies and techniques; the ability to analyze and *interpret* texts.
- *Thematic sub-competence*: *understanding* and knowledge of the differences between various legal systems and legal cultures; the ability to compare various foreign legal systems with reference to the specificity of the

translation task; *understanding* and knowledge of different sub-fields of law, such as civil law, criminal law, family law, international law, trade law, etc.; the ability to *interpret* and analyze a legal text.

- *Textual sub-competence*: knowledge of the typology of legal texts, legal genre conventions, legal terminology conceptualization, legal text register, legal text predicative mode and form; knowledge of formatting conventions; knowledge of legal text function in specialist communication; the ability to *interpret* and analyze a legal text.
- *Linguistic sub-competence*: knowledge of source and target languages in terms of grammar, lexis, stylistics, punctuation, spelling; knowledge of source and target legal language for specific purposes.

The four sub-competences reflect a holistic model of hermeneutical translation competence with reference to legal translation. The model's elements, namely psychological, thematic, textual, and linguistic sub-competences, are integrated, and their configuration makes the legal translation process different from other areas of specialized translation. A legal translator, be it a linguist with a specialization in legal translation or a foreign-language-proficient lawyer, must, first of all, understand a given text and be able to position it within the particular situational context with reference to the source and target legal systems. Hence, comparative law plays a crucial role in the effective realization of a translation task. As can be seen from the description of the four sub-competences of the hermeneutical model of legal translation competence, the knowledge of legal systems, *understanding* of differences between them, and the ability to interpret texts is a must for every legal translator. However, this is only possible, when the other necessary elements of the particular sub-competences are taken into consideration. Thus, it can be said in conclusion that the understanding of a given legal text can be achieved only if a translator possesses good psychological, thematic, textual, and linguistic sub-competences.

Conclusion

Despite an increasing awareness of, and interest in the construct of translation competence both in translation theory and translation didactics, it can be concluded that currently there is a lack of empirical research and theoretical work devoted specifically to particular types of translation: legal, medical, technical, audiovisual, literary, interpreting, etc. As far as legal translation competence is concerned, to the best of my knowledge, so far,

there have only been two studies (mentioned above) devoted to models of legal translation competence. Therefore, more research is needed both in the subject of legal translation competence and legal translation as such. In the light of the relative lack of work concerning the subject of translation competence in the law field, an attempt has been made to fill the research gap and propose a hermeneutical model of legal translation competence, consisting of four sub-competences.

Bukowski's (2012) idea concerning contemporary translation competence models is particularly interesting. He proposes that the definitions and models of general translation competence, despite their endorsement by many authors, focus rather on the final translational product, neglecting the initial stage of every translational act, namely a translator's confrontation with a given source text. We can also refer here to the words of Kautz (2000:66) who writes that didactic practice shows that translation students are not aware of the importance of understanding in the translational process. In the light of the poor quality of many contemporary translations, it can be added that even professional translators are often unaware of how important understanding is in the translational process. Translational hermeneutists agree that proper understanding of a source message leads to the appropriate positioning of a text within the particular context, which often results in more effective translation work. But it is not only understanding that plays an important role in the translational process. The act of interpretation can also be distinguished as having a significant role. Having understood a text, a legal translator's task is to interpret the source message and transpose it into the target message. Thus, any translational act may be described as an activity bearing testimony to the hermeneutical commitment of a competent legal translator.

In spite of much criticism directed toward translation hermeneutics, it has to be realized that this sub-discipline of Translation Studies, as opposed to other translational approaches, emphasizes the paramount importance of the translator as being central to the whole act of creation of the target message and underlines the fact that this would be almost impossible without the initial stage in which the translator must confront a given text, a process requiring understanding and interpretation. Therefore, in this paper, a new holistic model has been proposed – a hermeneutical model of legal translation competence, in which apart from the usual components of sub-competences, such as the knowledge of the source and target languages, additional elements have been added, elements comprising a legal translator's hermeneutical competences, which, unfortunately, are neglected by many authors in their deliberations on translation and translation compe-

tence. It is hoped, therefore, that through this paper, more awareness of the great importance of understanding and interpretation as two complementary and necessary components in the process of legal translation will be raised.

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A FEW NOTES ON THE LANGUAGE OF EU ANTITRUST LAW IN ENGLISH-POLISH TRANSLATION

Abstract. In this paper I would like to present a brief description of the issues in English-Polish translation in the field of antitrust. Ever since Poland became a part of the broadening European integration, the Polish antitrust laws have been strongly "Europeanised". Many new linguistic elements exist in both the Polish language of antitrust law and Polish legal language. Whatever the cause, the result is a decrease in the quality of the language. The issues of concern are divided into two groups. The first relates to producing Polish versions of EU legal documents concerning antitrust (part 2 of the paper). The second is related to translating English language of antitrust for the purposes of drafting national documents concerning antitrust, both legal documents and documents that are not legally binding (part 3 of the paper). I will then (in part 4 of the paper) turn to areas where a change is needed and propose measures that might be helpful in the current circumstances.

Keywords: language of antitrust legislation, legal language, principles of legislative technology, Euro-jargon, linguistic purity

This presentation concerns the language of antitrust legislation which is the language of a category of legal texts. Legal texts are included in the group of special-purpose texts, i.e. texts that can be translated correctly only if the translator possesses excellent knowledge of the particular subject-matter (Šarčević, 2000:6 et seq.). However, it would not be appropriate to place the text of antitrust laws on an equal footing with other legal texts.[1] The reason is that nowadays the language of antitrust legislation, previously rather general, has become more specialised and complicated, as well as technical and furthermore, increasingly involves the vocabulary of economics; this applies in particular to the language of substantive antitrust law since substantive antitrust law is under the influence of the so-called economisation processes. (Inter alia: Piszcz, 2009:206 et seq.). Therefore, in my opinion, the language of antitrust can be seen as developing in the form of a sectoral, "hybrid" (i.e. legal-economic) language due to processes of "economisation" of this language.

In Poland, as a Member State of the European Union, the sources of antitrust laws are both EU law and Polish law. The Polish Act of 16 February 2007 on Competition and Consumer Protection (Ustawa z 16 lutego 2007 r. o ochronie konkurencji i konsumentów (Dz.U. z 2007 Nr 50, poz. 331 z późn. zm.)) remains the core of national antitrust policy. Its provisions can be seen as similar to those in: (1) Articles 101 and 102 of the Treaty on the functioning of the European Union (consolidated version OJ C 326, 26.10.2012); (2) Council Regulation 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003); (3) Council Regulation 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004). There are also numerous regulations concerning the implementation of the Act of 2007, including the so-called block exemption regulations modelled, to a large extent, on the EU block exemption regulations.[2]

Issues of English-Polish translation in the field of antitrust legislation that I propose to focus on may be divided into two groups related to: (1) producing Polish versions of EU legal documents concerning antitrust legislation; (2) translating the English language of antitrust for the purposes of drafting national documents concerning antitrust, both legal documents and documents that are not legally binding.

Problems of producing Polish versions of EU legal documents

The legal status of the Polish language in the territory of the Republic of Poland is defined by the Act of 7 October 1999 on the Polish language (Ustawa z 7 października 1999 r. o języku polskim (Dz.U. 2011 Nr 43, poz. 224 z późn. zm.)). According to Article 5 section 1 of the Act, the Polish language has to be used in the pursuit of public tasks within the territory of the Republic of Poland. This language is the official language (Article 4 of the Act) and the language of law. At the same time, since 1 May 2004 Polish is one of the official languages of the European Union.[3] Polish versions of the Treaty and the EU Regulations mentioned above are not mere translations of the law, but in themselves they constitute the law. They are equal in authenticity to existing versions in the other official EU languages (23 and when Croatia joins the European Union on 1 July 2013 – 24). All of them have the same legal authority and legal value. This is the same rule as in the case of officially multilingual (plurilingual) states. (Turi, 2012:12).

According to the Head of the Polish Unit of the Language Service of the EU Council General Secretariat,[4] many Polish authentic texts of EU documents are produced by translations, usually from English.[5] This is not surprising, since English would appear to be the language that is dominant in EU administration.[6] However, the English used in this context is not free of neologisms, calques (mainly from French) and compound-complex sentences. English versions of documents are quite often written by people for whom English is not their native language. Therefore, these English texts sometimes contain examples of stylistic awkwardness, strange grammatical structures, unfortunate wordings or even misused words. (See also: Janas, 2004:415). It is worth adding that the deadlines for translations are usually tight and translators work under deadline pressure.

These are conditions experienced by the translator when dealing with an EU document to be translated into Polish for the purposes of creating a Polish official version thereof. It appears much easier to translate, e.g., a document established under the law of England and Wales, written in British English by a British legislator and "backgrounded" by the defined (for ages) legal culture of the common law system in the UK, than to translate a piece of EU law, written in EU English (Euro-language) by "cosmopolitan" European legislators and influenced by the specific institutional culture of the EU institutions (including their own idiom of communication).[7] These and other difficulties are understandable, but all combined, they may decrease the quality of translations. When discussing these problems, one may ask how it is possible to prepare a perfect translation under existing conditions. However, these problems cannot in themselves be treated as objectively justifying some of the troublesome tendencies that I intend to criticise here.

First, despite the difficulties mentioned previously, translators of texts which are identical to previously translated ones seem to forget that it would be reasonable to produce similar translations unless the previous ones are incorrect. Failure on the part of translators to take this into account, results in chaotic translations of EU antitrust legislation (see also: Lipowicz, 2007:41). Provisions that are identical in English versions differ from each other considerably in Polish versions of documents. Excellent examples of the above can be found in some provisions of Regulations 1/2003 and 139/2004 regarding, in particular, the powers of investigation of the EU Commission, penalties, hearings and professional secrecy. In table 1, there are eighteen examples of the English concepts or phrases used in the same context in both Regulations that have been expressed using "double" or even "triple" terms in Polish versions of the Regulations.

Table 1
Examples of different Polish equivalents of the same English phrase

No.	English text	Polish text A [Reg. 1/2003]	Polish text B [Reg. 139/2004]	Is either A or B better?[8]
1	*simple request*	*zwykłe żądanie informacji* [Art. 18.1]	*prosty wniosek* [Art. 11.1]	A
2	*incorrect information*	*nieprawdziwe informacje* [Art. 18.2]	*informacje nieprawidłowe* [Art. 11.2] *informacje niewłaściwe* [Art. 11.4]	A
3	*in the case of associations having no legal personality*	*w przypadku stowarzyszenia nieposiadające osobowości prawnej* [Art. 18.4]	*w przypadku związków nieposiadających osobowości prawnej* [Art. 11.4]	B
4	*Interview*	*przesłuchiwać* [Art. 19.1]	*przeprowadzić rozmowę* [Art. 11.7]	–
5	*Inspections*	*inspekcje* [Art. 20.1]	*kontrole* [Art. 13.1]	B
6	*means of transport*	*środki transportu* [Art. 20.2.a]	*środki* [Art. 13.2.a]	A
7	*are empowered to record the answers*	*mają prawo do rejestrowania odpowiedzi* [Art. 20.2.e]	*są uprawnione do notowania ich wypowiedzi* [Art. 13.2.e]	A
8	*right to have the decision reviewed by the Court of Justice*	*prawo do wniesienia odwołania od decyzji do Trybunału Sprawiedliwości* [Art. 18.3]	*prawo poddania decyzji kontroli przez Trybunał Sprawiedliwości* [Art. 11.3] *możliwość poddania decyzji przeglądowi przez Trybunał Sprawiedliwości* [Art. 13.4]	–
9	*such authorisation shall be applied for*	*zostanie złożony wniosek o wydanie takiej zgody* [Art. 20.7 sentence 1]	*zatwierdzenie takie ma zastosowanie* [Art. 13.7 sentence 1]	A
10	*Such authorisation may also be applied for*	*O zgodę taką można wystąpić* [Art. 20.7 sentence 2]	*Takie zatwierdzenie ma również zastosowanie* [Art. 13.7 sentence 2]	A
11	*demand that it be provided with the information*	*żądać dostarczenia im informacji* [Art. 20.8]	*żądać dostępu do informacji* [Art. 13.8]	A
12	*a member of staff*	*pracownik* [Art. 23.1.d]	*członek personelu* [Art. 14.1.e]	B
13	*either intentionally or negligently*	*umyślnie lub w wyniku zaniedbania* [Art. 23.2]	*umyślnie lub nieumyślnie* [Art. 14.2]	–
14	*Decisions (...) shall not be of a criminal law nature.*	*Decyzje (...) nie mają charakteru sankcji karnych.* [Art. 23.5]	*Decyzje (...) nie mają charakteru karnoprawnego.* [Art. 14.4]	B
15	*The Commission shall base its decisions only on objections*	*Podstawą decyzji wydanej przez Komisję mogą być wyłącznie zarzuty* [Art. 27.1]	*Komisja opiera swoją decyzję jedynie na zastrzeżeniach* [Art. 18.3]	A

No.	English text	Polish text A [Reg. 1/2003]	Polish text B [Reg. 139/2004]	Is either A or B better?[8]
16	*the Commission shall give (...) the opportunity*	*Komisja może* [Art. 27.1]	*Komisja umożliwia* [Art. 18.1]	B
17	*professional secrecy*	*tajemnica służbowa* [Art. 28.1]	*tajemnica zawodowa* [Art. 17.2]	A
18	*jurisdiction to review decisions*	*jurysdykcja do rozpatrywania odwołań od decyzji* [Art. 31]	*jurysdykcja w odniesieniu do kontroli decyzji* [Art. 16]	B

Source: *own study*

Analysing the above table, we find that in almost each pair of Polish phrases one is burdened with an error. Errors made in translations may be classified into various kinds, e.g. grammatical, terminological, phraseological, stylistic, etc. (See e.g.: Matulewska, 2009:206 et seq.). Examples shown in table 1 include a relatively wide spectrum of errors including the omission of some words (example 6B), adding unnecessary words (example 14A – the word *sankcji*[9]) or errors in adjectival declension (example 3A – instead of *nieposiadające* the text should read *nieposiadającego* or *nieposiadających* depending on whether the translator chooses the plural or singular form, which is not clear here).

The most interesting point to notice about these errors, however, is not so much the presence of common errors in Polish official versions of EU Regulations, but rather the fact that there are also errors that may have resulted from too "literal" translation,[10] contrary to the characteristics of the traditional (pre-EU) Polish language of law and its vocabulary (example 5A, 17B). For instance, introducing to the legal text the word *inspekcje* as the Polish equivalent of English *inspections* (example 5A) is contrary to the linguistic purity of the Polish language of law. In the traditional Polish language of law, the word *inspekcje* means rather English *inspectorates* (as entities) and the word *kontrole* means English *inspections* (as activities). An example of such errors can also be found in motive 12 in the preamble and article 7(1) of the Regulation 1/2003. The word *remedies* is translated as *środki zaradcze* and this phrase traditionally has not been part of the language of Polish law. (Piszcz, 2012b:11–12).

Errors that lead to broadening can also be identified (e.g. example 11B) or "in the opposite direction", i.e. to narrowing of the Polish phrase in comparison to the English form (e.g. example 7B, 12A). For instance, in the Polish language of law, we use the word *pracownik* (*employee*) in a particular sense, to refer to a person who has entered into an employment contract,

while *członek personelu* (example 12B) is used in phrases such as *członek personelu dyplomatycznego* (*members of the diplomatic staff*) and not to denote persons who are members of the staff of an undertaking (company, etc.). However, the second proposal (12B) would appear more acceptable, as it also includes members of the staff of an undertaking, who have entered into contracts other than employment contracts with the undertaking.

Similar considerations may be applied to example 4. Translation of the verb *to interview* (example 4) as *przesłuchiwać* is against the traditional usage of the word *przesłuchiwać* in the Polish language of law (*przesłuchiwać strony, świadków*, that is *examine parties, witnesses* which is referring to a hearing). On the other hand, *to interview* translated as *przeprowadzić rozmowę* is not an appropriate choice on the part of the translator, since this phrase has never been part of legal terminology, legal language or quasi-legal language but, in my opinion, belongs to more colloquial language.[11] The preferred form would be *odbierać wyjaśnienia.*

Some errors can easily be corrected by means of interpretation, but some are more serious, because they are more likely to be misleading and to have consequences for undertakings which may identify the scope of their rights – substantive[12] or procedural on the basis of the most readily available text (i.e. in their national language). In such cases the burden of interpretation lies with the undertakings. For most of them there is little easily available information about the interpretation of EU law.

For instance, the phrase *the Commission shall give* (...) *the opportunity*, which should be understood more as "the Commission does give the opportunity" (obligatory activity of the Commission) than "the Commission may give opportunity" (voluntary activity of the Commission), in the Polish version of Regulation 1/2003 is expressed using the word *może* which suggests the voluntary nature of the Commission's activities.

The remaining part of this paper, including this section is not going to be about the analysis of the other half of Table 1. My intention here has been to show that some errors could have been avoided if translators had carefully analysed the corresponding provisions of other (earlier) Regulations and their Polish official versions.

At the end of this section I would like to add a few comments concerning certain other difficulties with translation. Some errors in translation seem to result from the fact that from time to time translators forget or ignore the fact that the law is divided into specialist branches. An institution of law (a legal concept) which is referred to by a given English word may be described in a variety of different terms in Polish depending on which branch of law it refers to. English-Polish dictionaries state that *fine* means *grzy-*

wna or *kara*. The authors of the translations of both Regulations mentioned above chose to translate *fine* as *grzywna* in Polish, but this viewpoint does not take into account the fact that *grzywna* may be the result of a breach of substantive criminal law and *kara* (*pieniężna*, i.e. financial) may be the result of a so-called administrative tort (breach of substantive administrative law). Under EU law, cartels, dominance abuses, illegal concentrations of undertakings, etc. are not criminal acts and qualify as administrative torts. This must not be overlooked by translators, otherwise the distinction between *grzywna* and *kara* is blurred.

Translators are professionals with special responsibility for the language. Are the above problems the "fault" of the translators? I think it is rather the "system" that is to be blamed. The efficiency of language services also seem to depend upon formal professional bonds drawn upon to work together to make translations more acceptable to professional audiences (scholars, practising lawyers, etc.) and at the same time more responsive to the needs of the addressees. It would appear that these bonds are not effective enough. Whatever the cause, the result is a decrease in the quality of the language. The task ahead is to recognise the problems associated with the Polish language in antitrust legislation, propose solutions and implement them.

Problems in translation for the purposes of drafting national documents concerning antitrust

Ever since Poland became a part of the broadening European integration, the Polish antitrust law, both the Act of 2007 on Competition and Consumer Protection and numerous additional regulations, have been strongly "Europeanised". After a lapse of over two decades, during which time Polish antitrust law underwent profound changes, many new linguistic elements have entered both the Polish language of antitrust law and Polish legal language (other communications in legal settings).

It seems that an increasing degree of harmonisation is being achieved in the field of antitrust. Although the concepts of Polish antitrust law have changed in a pattern similar to that of the EU or its Member States, at the same time a certain degree of disharmony may be observed in the Polish language of law and Polish legal or quasi-legal language. Some interesting observations can be made regarding documents drafted in the course of the legislative process. An excellent example of this is the process of drafting the Act amending the Act of 2007 on competition and consumer protection.

The draft amending the Act[13] is preceded by the assumptions for the draft amending the Act and before publication of the assumptions, the draft assumptions were published and submitted for public consultation. It is worth noting that these assumptions are the basis for the draft explanatory notes accompanying the draft amending the Act.[14]

The language of the assumptions and draft explanatory notes, unlike the language of the draft amending the Act, is characterised by the presence of anglicisms (borrowings or calques).[15] Let me demonstrate some examples from the assumptions (version of 19 October 2012)[16] listed in Table 2.

Table 2

Examples of anglicisms in the assumptions for the draft amending the Act of 2007 on competition and consumer protection

No.	Phrase used in the assumptions	Equivalent phrase used in EU documents (if any)	
		in English version	in Polish version
1	***leniency** dla przedsiębiorców* (p. 26) *procedura **leniency*** (p. 28) *program **leniency*** (p. 17–19, 21, 26, 34, 35) *program łagodzenia kar (**leniency**)* (p. 17, 25) *przepisy dotyczące **leniency*** (p. 1) *system **leniency***[17] (p. 1) *system łagodzenia kar (**leniency**)* (p. 2)	***leniency** programme* (section 6, Commission Notice on immunity from fines and reduction of fines in cartel cases, 2006/C 298/11)	*program łagodzenia sankcji*
	*wniosek **leniency*** (p. 18–21, 35) *wniosek o **leniency*** (p. 19)	***leniency** applications* (section 15, Notice)	*wnioski dotyczące złagodzenia sankcji*
	*instytucja **leniency plus*** (p. 2, 17, 18, 20) *program **leniency plus*** (p. 20)	–[18]	–
2	*dobrowolne poddanie się karze (ang. **settlements**)* (p. 13) *instytucja **settlements*** (p. 14) *procedura **settlements*** (p. 13, 14)	***settlement*** ***settlement** procedure* (Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases, 2008/C 167/01)	*ugoda* *postępowanie ugodowe*

Source: *own study*

It can be seen from Table 2 that the authors of the assumptions were not so much inspired by Polish versions of EU documents that contain the corresponding phrases, as determined to use their own translations of the

presented phrases. However, at the same time, they seem to have preferred "mixed phrases" or "semi-translations" that include Polish word(s) together with English word(s).

Combinations with the word *leniency* seem to have become increasingly assimilated into the language of Polish legal literature. This is partly due to the fact that they help to shorten some expressions, especially in the case of *leniency*, for which the best equivalent in legal Polish is *odstąpienie od nałożenia kary albo jej obniżenie.*

Is the same possible in the case of combinations with the word *settlement(s)*? It is doubtful. The word *ugoda* which is correct in Polish versions of the EU document would be incorrect when talking about the assumptions for the draft amending the Act, since Polish antitrust law (as in the case of all Polish administrative law) does not recognise the possibility of settlement (*ugoda*) between an authority and a party to the proceedings. But the phrase *dobrowolne poddanie się karze* used in the assumptions is totally incorrect, since this legal concept belongs to Polish criminal law. (Piszcz, 2012b:13). According to § 8 section 1 of the Regulation of the Prime Minister of 20 June 2002 concerning the principles of legislative technology (Rozporządzenie Prezesa Rady Ministrów z 20 czerwca 2002 r. w sprawie "Zasad techniki prawodawczej" (Dz.U. z 2002 Nr 100, poz. 908)), "a statute shall use linguistically correct phrases (expressions) in their basic and generally accepted meaning". Pursuant to § 8 section 2, "a statute shall avoid the use of:

1) specialized terms (professional jargon), as long as such terms have their common-language equivalents;
2) expressions or borrowings from foreign languages, unless they do not have their exact equivalent in the Polish language;
3) newly formed linguistic terms or structures (neologisms), unless there is no relevant term in the existing Polish vocabulary".

The authors of the draft amending the Act have not used words like *leniency* or *settlements.* However, they used the phrase *dobrowolne poddanie się karze*, criticised above. Furthermore, they wanted to include *remedies* in the Act so strongly that they introduced a "slimmed" version of the above-criticised phrase *środki zaradcze* in the form of the word *środki* to the draft amending the Act.

It is the "signum temporis" of the present stage in development of legal Polish, including the language of antitrust law, that it is being transformed into legal EU-Polish. Legislators have added some terms of Euro-jargon to the Polish vocabulary (see also: Pawłowicz, 2008:186). Current legal Polish is not quite a plain language, but it appears to be a compromise between

Polish and EU (non-British) English. Legal EU-Polish is very difficult. The so-called FOG factor for the chapter of the assumptions for the draft amending the Act concerning "settlements", is 18–21, suggesting that in order to understand the documentation it is necessary to have an education of no less than 18 years i.e. that of a doctoral student.[19] It is worth noting that the assumptions are submitted for public consultation. At the same time it is recommended[20] that public language should be at the level of not more than FOG 9–10. As a result, only antitrust experts can be interested parties able to respond or comment on public consultations in Poland.

Conclusions

Some at least give lip-service to the need for reforming the language framework but genuine energy seems to be missing. However, policy inertia should be avoided since the problem is not only difficult but also cumulative. Every year that we continue previous practices, we add to a cumulative "store" consisting of prior translations, thereby aggravating the problem. It would be unwise to underestimate the importance of the fact that legal inflation or the inflation of law is actually occurring and that the scope for problems is greater than has ever occurred before at such a rapid rate. As we have seen, the flood of new legal EU provisions is likely to be drawn up in Polish in the form of Polish official versions, not free of errors and ambiguities caused by quick and careless translation from English. Therefore, I conclude with some suggestions concerning future directions the language of antitrust law might take in terms of its reform. In my view, they are not just futuristic ideas.

First, translators should analyse previous official translations of the same phrases used in EU documents. Consistency with previous correct versions is as much important as fidelity of the translation (equivalence between source and target texts).

Second, translators must not ignore the division of law into specialist branches. They should not use, e.g., the language of criminal law in order to describe legal concepts that belong to administrative law (including antitrust law).

Third, advanced English-Polish dictionaries concerning particular branches of law, including antitrust, should be developed by experts.[21]

Fourth, I recommend avoiding anglicisms in preparatory documents such as assumptions. They are not pieces of legislation, so the principles of legislative technology are not applied to assumptions. However, applica-

tion thereof to preparatory documents would be important in terms of best practices.

And last, a universal suggestion – we need linguistic purity in the Polish language of law. In particular in such complicated fields as antitrust legislation there should appear a tendency for purification or simplification ("easification") of terminology deployed in legal texts. As a rule, maximising linguistic purity should be a top priority. However, this priority is not so apparent in the case of texts where legal concepts foreign to the Polish legal system come into play and there are no functional equivalents in the target language. On the other hand, this exception should not lead to the automaticity of "borrowing" techniques which can produce translations quickly, but to the detriment of purity. Each situation must be carefully considered on a case-by-case basis and new terminologies should only be developed with very good reason.

This discussion presumes, perhaps somewhat optimistically, that these measures, if used in their entirety, in some way will be adequate to the problems discussed above.

NOTES

[1] It is worth noting that vocabularies of various branches of the law differ considerably from each other; (see: Grzelak, 2010:298).

[2] The Polish block exemption regulations, i.e. the Regulation of the Council of Ministers of 30 March 2011 on the exemption of certain types of vertical agreements from the prohibition on competition restricting agreements (Rozporządzenie Rady Ministrów z 30 marca 2011 r. w sprawie wyłączenia niektórych rodzajów porozumień wertykalnych spod zakazu porozumień ograniczających konkurencję (Dz.U. z 2011 Nr 81, poz. 441 z późn. zm.)), the Regulation of the Council of Ministers of 30 July 2007 on the exemption of certain types of technology transfer agreements from the prohibition on competition restricting agreements (Rozporządzenie Rady Ministrów z 30 lipca 2007 r. w sprawie wyłączenia niektórych rodzajów porozumień dotyczących transferu technologii spod zakazu porozumień ograniczających konkurencję (Dz.U. z 2007 Nr 137, poz. 963)), the Regulation of the Council of Ministers of 22 March 2011 on the exemption of certain types of agreements between undertakings in the insurance sector from the prohibition on competition restricting agreements (Rozporządzenie Rady Ministrów z 22 marca 2011 r. w sprawie wyłączenia niektórych rodzajów porozumień, zawieranych między przedsiębiorcami prowadzącymi działalność ubezpieczeniową, spod zakazu porozumień ograniczających konkurencję (Dz.U. z 2011 Nr 67, poz. 355)) and the Regulation of the Council of Ministers of 13 December 2011 on the exemption of certain types of specialization agreements and research and development agreements from the prohibition on competition restricting agreements (Rozporządzenie Rady Ministrów z 13 grudnia 2011 r. w sprawie wyłączenia określonych porozumień specjalizacyjnych i badawczo-rozwojowych spod zakazu porozumień ograniczających konkurencję (Dz.U. z 2011 Nr 288, poz. 1691)), do not result from our national experiences but inspiration is drawn from the EU regulations. More (Piszcz, 2012a:339).

[3] See Article 342 of the Treaty on the functioning of the European Union, as well as Article 1 of the Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community, OJ L 17, 06.10.1958, as amended.

[4] Agata Kłopotowska in her presentation (*Meandry pracy unijnego tłumacza. Jak powstają polskie wersje tekstów urzędowych Unii Europejskiej?*) to the First Congress on the Official Language (30–31 October 2012, Warsaw, Poland).

[5] Contrary to the viewpoint that translation from a multilingual document ought to reflect the terms used in all the existing authentic versions rather than follow any one of them in an over-precise manner and, therefore, it should be less technical; see (Tabory, 1980:143).

[6] A related point has been well made by Laura Ervo who pointed to this tendency in her question: "Do we have to confess that bad English is the most spoken language?"; see (Ervo & Rasia, 2012:66).

[7] On the EU tendency to develop a culture of its own see (Mason, 2012: 399 et seq.).

[8] In the author's view.

[9] *To be of a criminal law nature* should not be translated as *mieć charakter sankcji karnych* especially since decisions are not "sanctions" but only decisions on sanctions to be imposed on someone may be taken.

[10] On this tendency see (Koźmiński, 2010:73).

[11] However, it is worth remembering that there are various types of colloquial language (less or more colloquial languages), including even the language of tabloids (which is researched in Poland by, i.a., M. Bugajski; see his presentation titled *Kultura tabloidów a język* to the Conference on the Language and Culture of Tabloids, 29–30 June 2009, Wrocław, Poland).

[12] For instance, in Polish version of Article 4(2)(a) of the Commission Regulation (EC) No 772/2004 of 7 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements (OJ L 123, 27.04.2004) words *wskazywania ceny sprzedaży* stand for the English phrase *recommending a sale price* which is obviously incorrect (there should be *rekomendowania ceny sprzedaży*) and make undertakings believe that they have more rights than they actually have.

[13] Polish version at http://legislacja.rcl.gov.pl/docs//2/85314/85367/dokument74279.pdf?lastUpdateDay=10.07.13&lastUpdateHour=15%3A36&userLogged=false&date=%C5%9Broda%2C+10+lipiec+2013 (accessed June 10, 2013).

[14] Polish version at http://legislacja.rcl.gov.pl/docs//2/85314/85367/dokument74277.pdf?lastUpdateDay=10.07.13&lastUpdateHour=15%3A36&userLogged=false&date=%C5%9Broda%2C+10+lipiec+2013 (accessed June 10, 2013).

[15] Which is not surprising in the case of colloquial language – see e.g. Hemmert, 2008, *passim* – but it certainly is so in the case of legal language.

[16] Polish version at www.uokik.gov.pl/download.php?plik=12486 (accessed June 10, 2013).

[17] All emphases added by the author.

[18] "Leniency plus" is not known in EU legislation but see, for instance, UK documents: *Applications for leniency and no-action in cartel cases. OFT's detailed guidance on the principles and process. A consultation on OFT guidance*, October 2011, No OFT803con, p. 27, English version at http://www.oft.gov.uk/shared_oft/consultations/oft803con.pdf (accessed June 10, 2013).

[19] See http://www.logios.pl/result/4592e784-79f3-428e-8cbd-a3aff643d12a (accessed June 10, 2013).

[20] See also: Giętki, ale prosty. (2012, October 29 – November 6). *Polityka*, p. 75.

[21] A.D. Kubacki suggested the same with regard to German and Polish language of tax law; (see: Kubacki, 2002:71).

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VERSITA

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THE ESP TEACHER AS RESEARCHER

Abstract. The field of language teaching, both TESOL and ESP, is undergoing rapid changes. It is responding to new educational trends and paradigms and institutions face new challenges connected with changes in the curriculum, national tests and student needs. As a result, language teachers need to update their professional knowledge by taking on new roles, such as those of teacher-researcher. The purpose of this paper is to present new developments in the area of general language teaching research, with a particular focus on methods of qualitative research that might be found useful while examining certain aspects of teaching in the field of ESP, such as case studies, action research, interviews or observations. The presentation of research methods is followed by a review of research practice focused on pedagogical issues published in recent years in ESP journals, such as *English for Specific Purposes*, *The Asian ESP Journal* or *Journal of English for Academic Purposes*. Of major interest are articles on Legal English. The article concludes with suggestions for further study.

Keywords: research, English for Specific Purposes, teacher-researcher, Legal English

There are rapid changes taking place in the field of both English Language Teaching (ELT) and English for Specific Purposes (ESP). These changes have occurred as a result of changing curricula, evaluation procedures, teaching materials and a re-evaluation of students' needs. To meet these demands English teachers, whether they are general English or ESP teachers, need to update their knowledge base and engage themselves in various professional development activities. To do this, teachers need to adopt different roles, in order to take a broader perspective on teaching as involving not only the act of teaching in the classroom. The new roles may involve engaging in self-reflection, becoming a teacher mentor, a materials writer or taking on the role of teacher-researcher. Carrying out individual research would appear to be a very powerful way of developing teachers' skills. When teachers engage in research and make their pedagogical choices

based on the evidence they have gathered in the process of the research this would be expected to bring beneficial results to their teaching and their students' learning, irrespective of whether they are general English or ESP teachers. For teachers, a primary reason for doing research is to become more effective teachers. Research contributes to more effective teaching, not by offering definitive answers to pedagogical questions, but rather by providing new insights into the teaching and learning process. (McKay, 2006:1)

Doing research is not an activity reserved for the so-called 'experts', that is academics with European grants who carry out large-scale projects, or university teachers who do research as part of their doctoral dissertations. Every teacher can become a researcher with respect to his/her own students provided that s/he achieves a certain threshold of research expertise, that is key components of research methodology that are necessary "to become a 'good enough researcher'" (Dörnyei, 2007:10). In the present paper the main paradigms for research methods in applied linguistics will be presented and a selected number of research methods will be described in detail. The theoretical part of the paper will be followed by a review of research practice focused on pedagogical issues published in recent years in ESP journals, with a special focus on legal English.

Characteristics of a good researcher

In Dörnyei's opinion, there are certain characteristics that a 'good enough researcher' should be able to identify in him/herself. A good researcher should "have a genuine and strong curiosity about their topic" (Dörnyei, 2007:17). Thus, if a teacher has always been interested in the topic of motivation, s/he might make an attempt to investigate the relationship between interesting teaching materials and the rise of motivation in his/her law students. Another characteristic of a good researcher mentioned by Dörnyei is common sense, which helps researchers "to keep their feet firmly on the ground" (Dörnyei, 2007:17). Other indispensable features include: having good ideas and being disciplined and responsible (Dörnyei, 2007:17).

Research traditions

One of the very first challenges faced by a researcher, is the selection of a research method, which is closely connected with the research questions

posed. The two main paradigms of research methodology, include quantitative and qualitative research. Recent years have witnessed the emergence of a third tradition in educational research, which is the mixed methods approach to research.

The quantitative paradigm

Quantitative research is an inquiry into an identified problem, based on testing a theory, measured with numbers, and analyzed using statistical techniques. The goal of quantitative methods is to determine whether the predictive generalizations of a theory hold true. Quantitative research is considered to be generalizable and objective since it "assumes the existence of 'facts' which are somehow external to and independent of the observer or researcher" (Nunan, 1992:3). A typical example of a quantitative method is survey research using a questionnaire, as is the case with most needs analysis research in the field of ESP.

The main characteristic features of quantitative research, according to Dörnyei (2007:32–34) are the following:

- Using numerical data
- A priori categorization – the preparation of a questionnaire requires a great deal of time and precision and piloting before it can be administered. The researcher needs to be very precise and clear about what s/he wishes to study, that is, what questions s/he wants to find answers to before the whole study begins.
- Variables rather than cases
- The use of statistics
- A search for generalizability
- The researcher starts with a hypothesis

The qualitative paradigm

Qualitative research is, by contrast, a process of inquiry whose goal is to understand a problem from multiple perspectives. Richards (2009:149) characterizes qualitative research as being locally situated, participant-oriented, holistic and inductive. Dörnyei (2007:37–39) describes the main features of qualitative research as follows:

- In contrast to quantitative research, qualitative research does not use a priori categorization, but its design is emergent; research questions may change or evolve during the study, different codes may be added when necessary
- It is less systematic and standardized in its data collection than quantitative methodology

- Data should contain rich and complex details; it has a tendency to become increasingly long
- It uses much smaller sampling than quantitative research, and very often it may be based on studying one individual
- Its nature is rather unfocused and heterogeneous
- The result of qualitative research is almost always a researcher's subjective interpretation of the data
- The researcher observes and formulates questions.

Miles and Huberman (1994:10) emphasize the longitudinal nature of qualitative data and its usefulness when one needs "to supplement, validate, explain, illuminate, or reinterpret quantitative data gathered from the same setting".

Mixed methods research

Mixed methods research combines both quantitative and qualitative methods for both data collection and analysis. A study may consist, for example, of a questionnaire survey to produce a large amount of data followed by an interview study of a selected and small group of teachers.

Examples of qualitative research methods

The focus of this part of the paper is to briefly describe some qualitative methods of research with the aim of encouraging prospective researchers (ESP teachers) to undertake inquiry into problems that are of interest to them. Our assumption is that most ESP teachers, including legal English teachers, are familiar with quantitative methodology since most of them have had, at some point in their teaching career, to carry out a needs analysis for the purpose of the course they were teaching, but they may need some guidance and advice on how to pursue qualitative research.

Qualitative research in the field of language teaching is now increasingly accepted as an important way of generating new knowledge. According to Duff (2007:974–5), reasons for the shift towards this research perspective might include the following:

- An acceptance of the value and power of well-presented case studies and ethnographic descriptions in shedding light on educational issues as well as providing solutions to socio-educational problems
- A growing awareness that conducting a limited number of detailed small-scale studies can provide as much insight as larger studies carried out in the quantitative tradition

- A recognition of the value of teachers' and learners' perceptions of their educational experiences.

In his overview of qualitative research trends since 2000 based on an analysis of leading journals in the field of language teaching, Richards (2009) states that qualitative research in language teaching has secured a position for itself and some journals have shown a noticeable increase in qualitative research contributions over the last few years. The area of research that has benefitted particularly from the strengths of qualitative research is, what Richards (2009:153) calls, "approaches to teaching" – studies of teachers' and students' perceptions of communicative language teaching, research on student writing and feedback on it, conversation analysis, classroom interaction and teacher collaboration. The surveyed studies used different methods of qualitative research, of which the most widely represented are discussed below.

Case studies

The case study is a study of what is particular and complex of a single case. What can constitute 'a case'? It can be a particular teacher or a group of teachers either working in the same institution, or teaching the same subject – e.g., legal English teachers. One can also research a teaching programme as a case study, or a given institution. Case studies are considered part of qualitative paradigm because they are not generalizable, as are quantitative studies. A case study is not a specific technique, it combines various qualitative techniques, such as interviews, observations, document archives and is recommended to be combined with other research approaches in mixed method studies.

Case study methodology has been used widely in applied linguistics to study the development of first and second language learners. Duff 1990 (in Nunan, 1992:79) gives examples of research questions addressed in case studies in the field of SLA:

- Why do some learners fossilize in the acquisition of a second language while others continue to progress?
- What are the characteristic features of a good language learner?
- How do learners benefit from different methods of instruction?

According to Van Lier (2005) (in Dörnyei, 2007:154), an area that could be investigated using case study methodology is the role of technology in language learning, for example CALL. The biggest strength of case studies is the in-depth insights they offer into the complicated nature of the language acquisition process or the social world in which the learners function.

Interviews

Interview is the most often used method in qualitative research. There are different types of interviews, depending on the degree of structure in the process of creating it.

Structured interviews are very similar to a questionnaire survey – they consist of a number of pre-prepared questions, so there is very little room for flexibility both on the part of the interviewer and the interviewee. The advantage of the structured interview is, though, comparability of answers among the sample.

On the other extreme there is the unstructured interview, which allows a great degree of flexibility, both for the interviewer and the interviewee. No detailed questions are prepared, making the unstructured interview an open situation. This does not mean, however, that it does not have to be carefully planned. Such an interview allows the respondent to feel relaxed. Unstructured interviews are most appropriate when a study focuses on the deep meaning of a given phenomenon or if the focus is on a personal history of how a phenomenon developed (Cohen & Manion, 1994:273; Dörnyei, 2007:135).

A semi-structured interview is the form most often used in the field of applied linguistics. It consists of a set of pre-prepared questions, but the format is open-ended, allowing the interviewee to elaborate on certain issues. This form of semi-structured interview is most suitable in situations when a researcher has a sufficient overview of the studied phenomenon, but does not want to limit the depth of the respondent's answers (Dörnyei, 2007:136).

Interviews yield a large amount of in-depth data, but they require good communication skills on the part of the interviewer. The main weakness of the interview, however, is that it is time-consuming to set up and conduct. Another problem is that it is not anonymous and thus the respondent may want to show himself in better than real light.

Classroom research

Classroom research is a term that covers empirical investigation which uses the classroom as the main research site. Classroom research may be a combination of different research paradigms – we can use quantitative methods (questionnaires or quasi-experiments) as well as qualitative ones (ethnographic observations, interviews or diary studies). The aim of classroom research is "to identify and better understand the roles of the different participants in classroom interaction, the impact that certain type of instruction may have on FL/SL learning, and the factors which promote or inhibit learning."(Lightbown, 2000:438)

One of the domains of classroom research is discourse analysis of classroom interaction – this area, however, is not within the scope of this paper.

Classroom observation

One of the most prominent research methods in classroom research is classroom observation. It differs from other research methods, such as questionnaires or interviews, because it provides direct information. It is more objective than second-hand, self-report data.

Classroom observation may be structured or unstructured, which corresponds to the quantitative/qualitative distinction. In a structured form of observation, the researcher goes into the classroom with a specific aim and focus and with a concrete set of observation categories, the so-called observation schemes. A researcher may make use of a number of readily available instruments (e.g. COLT), may adapt them, or may make his/her own observation instrument. The use of observation schemes makes the process of data gathering more reliable and produces results that are comparable across different classrooms.

Problems:

- You can observe only what can be observed – many phenomena taking place in the classroom are mental and thus unobservable
- Observing and recording something does not lead to understanding *why* it has happened – other forms of inquiry are needed
- Observer's paradox – the observation of an event is influenced by the presence of the observer
- Highly structured observations miss some other important features of classroom interaction

Action research

Action-research is teacher-conducted classroom research whose purpose is to clarify and resolve practical teaching issues and problems. The main characteristics of action research are that it is carried out by classroom teachers rather than outside researchers, it is collaborative, and it is aimed at changing things (Nunan, 1992:17). It takes place in the teacher's own classroom and involves a cycle of activities:

- Planning
- Action
- Observation
- Reflection

The teacher:

1. Selects an issue to examine in more detail (e.g. the teacher's use of questions)

2. Selects a method of collecting data (e.g. recording classroom lessons)
3. Collects data, analyzes it and decides what changes to introduce
4. Develops an action plan for how to introduce the changes
5. Observes the effects of the plan on teaching behaviour
6. Initiates a second action cycle, if necessary

(Richards & Farrell, 2005:175).

McKay (2006:31) maintains that the biggest value of action research is that "if undertaken with rigor, it can supply local knowledge regarding problems in L2 teaching and learning and suggest ways for addressing these problems".

Review of research practice

The part of the paper that follows is a review of research practice focused on pedagogical issues published in recent years in the three leading ESP journals i.e. *English for Specific Purposes, the Asian ESP Journal* and *the Journal of English for Academic Purposes.* The purpose of the review was to see what research had been carried out in the field of ESP, with special attention being paid to the field of legal English.

The journal ***English for Specific Purposes*** and ***the Asian ESP Journal*** are international peer-reviewed journals which focus on topics relevant to the teaching and learning of discourse for academic, occupational or otherwise specialized communities. Topics included refer to different issues such as needs assessment, curriculum development and evaluation, materials preparations, discourse analysis, as well as descriptions of specialized varieties of English, teaching and testing techniques, the effectiveness of various approaches to language learning and language teaching, and the training or retraining of teachers for the teaching of ESP – all of these from the perspective of English for specific purposes. *English for Specific Purposes* has been issued since 1995 whereas *The Asian ESP Journal* since 2005.

The Journal of English for Academic Purposes, on the other hand, is concerned with the dissemination of information and views in the area of English for Specific Purposes i.e. English for Academic Purposes (EAP) and its content includes current developments in classroom language, teaching methodology, teacher education, assessment of language, needs analysis, materials development and evaluation, discourse analysis, acquisition studies in EAP contexts. The journal has been issued since 2002.

The present review focuses on articles which have been published in the last 10 years (except for the Asian ESP Journal which has been issued for only the last 8 years) and examines exclusively those articles which concerned pedagogical and methodological issues. Research methods related to discourse and genre analysis were not taken into consideration while reviewing the papers from the aforementioned journals. Only **69** (12%) out of **583** papers in these three scientific journals referred to research on pedagogical issues – out of which **32** – were published in the *English for Specific Purposes* journal, **19** in *the Journal of English for Academic Purposes* and **18** in *the Asian Journal of English for Specific Purposes.*

Research methods

The scientific papers reviewed exploited a variety of research methods, both qualitative and quantitative, such as questionnaires, interviews, observations, documents and records, case studies as well as action research. It needs to be noted that some papers included research where more than one research method was used. The data gathered on the basis of the reviewed papers from the three aforementioned journals showed that:

- 39 questionnaires were used;
- 36 interviews were conducted;
- 15 case studies were undertaken;
- 12 observations were carried out;
- 7 types of documents or records were collected;
- 3 types of action research were done.

The questionnaires, for example, were used to investigate cognitive processes in the domain of L2 acquisition (Akbari, 2011) or to gather information on important communication skills and communicative events faced by engineers (Kassim & Ali, 2010). Interviews were utilized to learn about students' perception of business lectures (Camiciottoli, 2010) and to document the needs of students of nursing and midwifery in Iran (Mazdayasna & Tahririan, 2008). Observations were carried out, for example, while preparing novice history teachers to teach English learners (Schall-Leckrone & McQuillan, 2012) whereas extensive documentation and records were collected at Central Taiwan University of Science and Technology to examine the extent to which Taiwanese educators in one particular school perceived their English language study group as a form of staff development and professional learning community that contributes to their professional growth or learning (Akbari, 2011). A case study was carried out, for example, to assess the effectiveness of role play against an educational computer-based game during a communication course in a Singaporean university

(Pathak & Cavallaro, 2006). The action research method was exploited to explore the use of innovative pedagogy known as *Scaffolding Academic Literacy* among undergraduate health science students at the University of Sydney (Rose, Rose, Farrington & Page, 2008).

Having examined the research methods, it can be stated that the most popular ones include questionnaires and interviews, whereas action research was found to be the least common instrument, which probably reflects the ease, practicability and cost-effectiveness of the research tools used.

The fields of research

The reviewed papers which refer to pedagogical and methodological issues concern a variety of academic and occupational areas such as: science, technology, engineering, maritime, aviation, medicine, professional and staff development, business, skiing and mountaineering, mathematics, economics and humanities (including law), the latter being underrepresented:

1. professional and staff development (but not law) 23×
2. business 11×
3. technology 8×
4. medicine (including dentistry and pharmacy) 8×
5. engineering 5×
6. science 4×
7. aviation 2×
8. economics & banking 2×
9. history 2×
10. skiing & mountaineering 1×
11. mathematics 1×
12. theology 1×
13. law 1×

The ranking list of the most popular areas provided above shows that papers on professional development (in general), science, business and medicine clearly outnumber papers on the humanities: 65:4. The observed lack of interest may not be surprising in the case of skiing and mountaineering or theology as they are quite specialized areas of research. What is quite astonishing, however, (taking into consideration the enormous discourse community of legal professionals) only ONE paper out of 69 (which is equivalent to 1%) was devoted to research on pedagogical issues in law.

Research on Legal English

The only paper that could be found in the three scientific journals on ESP or EAP was *Needs Analysis for Academic Legal English Courses*

in Israel: a Model of Setting Priorities published by Yocheved Deutch in the *Journal of English for Academic Purposes* in 2003 i.e. 10 years ago. The author in his research attempted to determine the needs of Israeli law students studying English as a foreign language, considering at the same time the deficiencies and constraints of the needs analysis process which could have led to misinterpretation of the data gathered.

The aim of the research

The author carried out target situation analysis (TSA) which examined two kinds of needs of Israeli students: their global target needs "stemming from the historical and current indebtedness of the Israeli legal system to foreign legal systems" Deutch (2003:126) and individual target needs which reflect either the demands of the academic institution or needs of legal practitioners.

Methods of research

The data for the research were collected through interviews with law lecturers and questionnaires given to practising lawyers. Some of the lawyers were also interviewed. The author endeavoured to collect the data with a high degree of explicitness; therefore formal and structured types of questions were formulated in advance. The methods exploited in the research were both quantitative and qualitative. T-Tests and Pearson's and Spearman's correlation coefficients were calculated for the questionnaire data in order to exame the correlation between the lecturers' and the lawyers' responses, and also for examining the correlations within the questionnaire data. Any contradicting responses by the same respondent or surprising and exceptional views were then discussed with both the lecturers and the lawyers.

Participants

Target Needs Analysis (TSA) concerning law students' language needs was carried out among law lecturers and lawyers. Twenty seven (27) lecturers (who worked at universities and law colleges) were interviewed. Most of them were interviewed personally by the author of the paper, which allowed for discussions of unanticipated issues that arose during the interview. 113 lawyers (two-thirds of whom were from the Tel Aviv area, while the others were from different parts of the country) completed the questionnaire. The law students' (first year students) opinions were not examined as in the author's belief they "were obviously unable to assess their needs, neither as students nor as future professionals" Deutch (2013:129).

Results

The results of the study concern **five areas**:

- the extent of English language use,
- the importance of the English language,
- the necessary linguistic skills,
- the required genres,
- the sources of the required material.

As far as **the extent of English language use** is concerned the outcomes of the questionnaire revealed that several respondents could only point to some fields of law where English appeared to be particularly important as regards the demands of the English language.

Examining **the importance of the English language**, the opinions expressed in the questionnaires showed that lecturers almost unanimously considered English to be extremely important or even indispensable for research purposes. Lawyers' responses, on the other hand, revealed that they rarely used English in practice (62.8%), which was later explained in the interviews, as being a result of their insufficient language competence rather than being of their choice.

The research indicated that as far as **necessary linguistic skills** are concerned, reading was evaluated as the most important skill, both for law lecturers and legal practitioners, far greater than that of listening, speaking or writing. Surprisingly, writing was considered to be the least relevant skill. This problem was later raised in the interviews. The respondents explained their gradation of linguistics skills as resulting from the significance that language itself has for the legal profession. Legal professionals feel that a great responsibility rests on their shoulders in order to use language in a clear and unambiguous way, following Maley's observation (1994:1) that "language is medium, process and product". Since they often lacked necessary writing skills in English, they therefore preferred to rely on professional translators' work and/or to consult a native speaker specialist. Interestingly enough, the vast majority of the interviewed lawyers (87%) also pointed out that even in their native language i.e. Hebrew, their drafting skills improved only with practice.

The required genres differed among the interviewees depending on their profession. For legal practice, legal documents were the most important whereas, not surprisingly, for law lecturers, books and articles were of the highest priority.

As far as **sources of the required reading material** are concerned, the research demonstrated the increasing predominance of American law over Israeli law. The interviews with the lecturers gave a deeper insight

into this issue. The predominance of American law resulted not only from its growing influence, but also from the fact that the American law system is more advanced than other legal systems and therefore lecturers frequently made reference to American legal solutions. In addition, many lecturers had completed their doctoral theses or other advanced degrees in the USA and thus they were more familiar with American instructional legal material.

Conclusions

The review of research practice with a pedagogical focus presented above has shown that there is very little research in the field of legal English. There is therefore an urgent need for studies in legal English that might be focused on the pedagogical aspects of teaching. As a result, teachers would be able to develop their teaching competences and deepen their understanding of the processes underlying teaching, which would eventually lead to greater student satisfaction with their courses. The list below presents selected pedagogical aspects of the teaching of legal English that could be researched in order to gain a deeper insight into the understanding of the topic/process itself:

- syllabus design
- teaching materials development
- evaluation and assessment
- skill development
- management of teaching (group and pair work)
- student autonomy
- the use of technology
- teacher's role

There is agreement among teachers that doing research requires intensive involvement, good organization skills and time. Some teachers may feel discouraged even before they take up the challenge. Our position is that we should try to do research in order to become better teachers, but also because conducting research provides a sense of purpose and satisfaction.

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INTERNATIONAL COMPETITIONS FOR LAW STUDENTS: THE DEVELOPMENT OF COMMUNICATIVE AND PROFESSIONAL COMPETENCES

Abstract. The paper deals with a practical approach to developing of law students' communicative and professional competences within a one-term, optional, cross-curricular course. The author, whose principal occupation is teaching Legal English, was offered the opportunity to train a team of law students to take part in the national rounds of the International Client Consultation Competition. Since then, the author has been involved in coaching teams for law students' competitions and the author's three year work has resulted in framing an experimental cross-curricular course "Client Consultation in English". The background and necessity for the development of the course are outlined in the paper, along with a brief overview of teaching legal skills in Russia and general information about international competitions for law students. The basic elements of the course are described, as well as the methods used by the author for training students' teams. A similar framework is being used now for creating another cross-curricular course "Legal Negotiations in English".

Keywords: legal English, communicative competence, professional communication, interviewing skills, client consultation

The Longman dictionary of contemporary English defines a lawyer as "someone whose job is to advise people about laws, write formal agreements, or represent people in court" (2001:796) and it also gives references to such entries as advocate, attorney, barrister, and solicitor. The latter terms are used to name representatives of the legal profession in diverse legal systems underlining differences in their duties and obligations. To avoid ambiguities, the following definition of the word *lawyer* will be used in this paper: a "person who has studied law and can act for people on legal business" (Collin, 1992:136).

Over the past twenty years, the legal profession has become extremely prestigious and very popular in Russia and one of the reasons for this is the continuing growth of the legal services market (Muranov, 2009; Mura-

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nov, Chernyakov & Partners, 2012). But this growth does not guarantee employment to law school graduates, because their number increases every year, too. According to data presented by Academica.ru (2013) about five hundred institutions of higher education offer legal education and *Enrollee-2013 Navigator* (2013) gives an estimate of 20,000 places available for future law-students.

To become competitive, future lawyers should clearly realise what their professional duties and obligations will be and what knowledge and skills they will need. Zhalinskii (1997) states that a lawyer's professional activity is carried out through interaction with other people, i.e. through the process of interpersonal communication. So communication skills are crucial for lawyers, whether it be when they are talking to a client, giving a speech in court or negotiating. Thus future lawyers should get to know how to present their point of view in an impressive and effective way. Moreover, if they want to be successful in the international field they should be able to do so, not only using their native language, but in English as well.

How can communicative competence be acquired by law students? What subjects develop such professional skills as interviewing, questioning, analysing, and negotiating? Is it possible to develop and master all these skills within one course? If yes, what kind of course should it be?

Some Facts about Teaching Legal Skills in Russia

Legal education in Russia differs greatly from the Anglo-American pattern. Firstly, there are two types of Law Schools in Russia: the first is a Law School / Department / Faculty within a university; the second is a specialised institution of higher legal education usually called either "Law Institute" or "Law Academy". Both types of institutions used to award a specialist degree after 5 years of undergraduate studies, and today they award both a specialist degree (5 years) and a Bachelor's degree (4 years). Thus legal education is available at the undergraduate level. It exists at a postgraduate level as well, and Law School graduates can pursue a 'kandidat nauk' degree (a Russian intermediate degree between a Specialist and a Doctor) or a Master's degree. The highest academic degree in legal education is the Doctor of Law.

Secondly, Law Schools' curricula used to be uniform all over the country until recently and, still, there is a federal compulsory core for the legal education curriculum with a smaller regional/institutional part (Or-

der, 2010). In general, Law Schools' curricula are knowledge-oriented, and little time is assigned to developing practical skills (actions at the scene of a crime, e.g., a one-term course Criminal Investigation Technique) or public speaking skills (e.g., a one-term course on the Russian Language and Speech Culture). The basic skills of lawyer-client intercourse are mastered by students when they study the Lawyer's Code of Ethics within a one-term course devoted to the legal profession / bar / advocacy (because of great differences in legal systems, sometimes it is easier to describe a concept than to find a one-word equivalent); and there are no courses teaching legal negotiations as a separate discipline in most Law Schools in Russia.

As for foreign languages, and English in particular, it should be noted that although the subject is compulsory, the number of academic hours for the course has been reduced from about 300 to 100 in recent years. One of the reasons is a general reduction in academic hours after the transition to the Western tradition of education and the elimination of the specialist degree in training lawyers. Five years ago, students had English classes twice a week for 5 terms; today, they learn English only during their first year of study. There is no doubt that students' independent work should be intensified significantly, but it is very difficult to persuade first-year law students to pay more attention to a foreign language, because they have just entered a new stage of their lives, and studying subjects directly connected with their major, jurisprudence, seems much more important to them.

For those who want to improve their knowledge of English, there is an opportunity to take extra English classes for fees within the framework of extracurricular activities. In Russia many institutions of higher education provide an additional qualification programme "Translator in the sphere of professional communication" (Order, 1997). Students who choose this kind programme have from 6 to 10 academic hours of additional training every week.

The programme includes theoretical courses such as Lexicology, Grammar, Stylistics, Theory of Translation, etc., in addition to practical classes in everyday and legal English (Syllabus, 2011). The students involved in the programme are usually highly motivated, although, sometimes they need additional incentives. One of the ways of supporting students' motivation to continue acquiring and developing English language communication skills is to "put the language they are learning into practice instantaneously" (European language policy and CLIL, p. 2). This is possible by engaging them in participation in international competitions for law students.

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International Competitions for Law Students

Dr. Larry Teply, Professor of Law at Creighton University Law School and the chair of the International Negotiation Competition executive committee, in his book *Law School Competitions in a Nutshell* (2003) names three types of competitions: moot courts, negotiation, and client counseling. All these competitions are used in Law Schools as extracurricular activities and are launched to increase students' interest in practical vocational skills. Participation in any competition, at any level, is greatly beneficial for law students. In these simulations they get a grasp of real professional experience and can learn much from practicing lawyers who are involved in the competitions as arbiters of the events.

Moot courts are the most traditional type of competitions for law students. Not surprisingly, Wikipedia gives a list of more than 20 notable competitions covering different branches of law with Jessup and public international law in first place. (Table 1).

Table 1

The most popular competitions for law students
(an extract from the List of notable competitions
http://en.wikipedia.org/wiki/Moot_court)

Competition	Subject matter	Annual participation	National or regional rounds
Jessup	Public international law	600–650 teams	Yes
Willem C. Vis Moot	International commercial arbitration	280–300 teams	No
Price Media Law Moot	International media law	115 teams	Yes
International Maritime Law Arbitration Moot	International maritime law	15–20 teams	No
Sir Manfred Lachs Space Law Moot	Space law	60–70 teams	Yes
ELSA World Trade Organisation (European Law Students' Association)	World Trade Organisation	50–70 teams	Yes
European Law Moot Court Competition	European law	80–100 teams	Yes Yes
International Environmental Moot Court Competition	International environmental law	20 teams	Yes
Frederick Douglass Moot Court Competition	Domestic/International law	100–125 teams	Yes
ICC Trial Competition	International criminal law	12–19 teams	Yes

Jessup, which dates back to 1960, is one of the most prestigious moot court competitions (Philip C. Jessup, 2013). It is a simulation of a dispute between imaginary countries before the International Court of Justice. Jessup national rounds have been organised in more than 90 countries in recent years. International public law is also dealt with at the Telders International Law Moot Court Competition that originated in 1977 and is held at the Peace Palace in The Hague (Telders International Law Moot Court Competition 2014, 2013). Besides international public law, students participating in other competitions deal with international commercial arbitration, international humanitarian law, space law, international criminal law, international human rights law, etc. To take part in these competitions, teams must either be the winners of national rounds, or pay the registration fee which is high, or both.

Law schools use moot courts as an extracurricular activity, aimed at developing research, writing and oral argument skills. It is important to stress that a moot court is different from a mock trial, which is also used to elaborate public speaking experience. The former relates to an appellate court or arbitration, while the latter simulates a jury trial. In moot courts the focus is on applying the law to established facts which are given to teams of law students. The students act as defenders, prosecutors, and counsels. They write memorials and speak in front of a panel of judges. Therefore, in order to succeed, the participants must show highly developed communication skills. Moreover, more than half of the participants should have a good command of foreign language (English) communication skills.

In Russia, Jessup national rounds have been held since 2002 (The Philip C. Jessup International Law Moot Court Competition, 2013) and our institution sends a team there every year. The best result achieved was second place and this was mostly due to the great work of the team coach for the year in question. In fact, coaching a team for a moot court competition is work for a law teacher, because a particular branch of law is dealt with, and legal knowledge and understanding are crucial for success. A language teacher can only assist in training a team for a moot court competition.

But there are some other communication oriented competitions where a language teacher can play a key role, applying to law teachers for support when necessary. The International Chamber of Commerce mediation competition brings together more than sixty teams from all over the globe (What is the Mediation Week, 2013). It is held in Paris annually. There are no national rounds, but the registration fee is somewhat high. Moreover, this is not a "pure" law students' competition, because business students are involved in it as well.

The International Negotiation Competition (INC) dates back to 1998, when four teams from the USA, Canada, England, and Australia met in Pepperdine University, Malibu, CA (International Negotiation Competition, 2013). The competition is modeled on the American Bar Association Negotiation competition. It is a simulation of legal negotiations aimed at resolving a dispute or contracting an international transaction. The INC is held annually in July in different countries. Winners of the INC national rounds are admitted to participation and no entrance fee is charged. In 2013, twenty teams from all over the world visited Chapman University, Orange, CA, to take part in this competition. There were nine teams from English speaking countries; continental Europe was represented by three teams; five teams came from Asia; and Africa and Latin America each sent one team. A team from our institution also participated in the INC 2013, representing Russia: this coincides with the fact that our institution has been selected to organise national rounds in the 2013–14 academic year. According to the INC rules an institution can send a team if it offers prospects of organising national rounds in the following academic year. It is noteworthy that more than half of the teams were not native speakers of English, and it was a non-native speaking team – the team from Germany – who won the first prize.

The International Client Consultation Competition (ICCC) is sponsored by the Law Student Division of the American Bar Association and, like the INC, is held annually in different countries, in April (About ICCC, 2011). It is also necessary to have won national rounds to participate in the ICCC and about 20 teams come to the contest every year. Geographical representation is very wide. The students of our institution have participated in the ICCC national rounds since 2010.

The author has trained students for both the ICCC and the INC and has worked out a practical approach to developing the communicative and professional skills necessary for the participants to succeed. The development of this new course represents the first experience of using a somewhat new and very popular methodology in Europe – Content and language integrated learning (CLIL).

Cross-Curricular Course "Client Consultation in English"

Background

The International Client Consultation Competition is a simulation of an initial lawyer-client interview so the participants must demonstrate a high

level of professional communication along with the skills of analysis and knowledge of law. An actor performs the client's role and law students play the roles of lawyers. In Russia one of several possibilities for developing professional skills such as interviewing a client or analysing case facts is available in law clinics but, for instance, in our institution not many law students are involved in this process, due to the fact that such internships are not compulsory. Moreover, the ways and manner of client counseling, which the students acquire while working in a law clinic, differ from those used in an international firm. For instance, legal aid provided in a law clinic is intended for low-income clients and that is why it is free. Thus, fee issues are not discussed with clients, even though they are required to provide evidence of their financial status.

The competition format is similar at national and international levels: preliminary rounds, semifinals, and finals. The only difference is that at the national level (in Russia) there are two teams competing in the semifinals and final, while at the international level three teams strive for victory. About two to three weeks before the competition, each team receives three short secretary's memos indicating the problems that the participants will have to deal with in each round. But these memos are less than hints. For example, in 2011 when the topic was Professional Responsibility and Ethics in the Law Office, one of the memos read: "John/Joanne Jones has made an appointment. He/she wants to discuss a dispute between his/her company, Envirosupport, and a company who purchased some antifreeze from Envirosupport."

The branch of law to be used during the consultation is announced in advance (usually after the international competition for a current academic year has ended). It is a somewhat broad indication: family law, white-collar crimes, lawyers' ethics, employment law, etc. According to the ICCC rules, the law students acting as lawyers use national law within the competition at both the national and international levels.

The ICCC was introduced to Russia in 2007, when the Russian team from Kazan Federal University took part in the International Client Consultation competition held in Sydney (History of Competition in Russia, 2013). In 2008, national rounds were organized for the first time in Kazan. Starting with eight teams in 2008 the ICCC-Russia has grown to twenty teams in 2012, and Russia has won second place at the international level in both 2008 and 2009.

Interest in the competition among law students is very high, because they realise the importance of the professional skills acquired while preparing for the competition and the significance of indicating in their CVs, the

fact that they have been participants, or semifinalists, or winners, for a future professional placement. It is no wonder that two students initiated the participation of our institution in the national rounds of the competition in 2010. They found the Call for Participants on the Internet and asked the author to become their coach, as the competition registration form had a requirement of this kind; they had been members of the author's Legal English class in the previous academic year.

The general description of the upcoming event given in the Call for Participants did not provide much information about the competition or its format, nor was there enough coverage of the ICCC on the Internet at that moment. Thus, most of the preparation consisted of training topical vocabulary – that year it was white-collar crimes – and brainstorming the case facts from the received memos.

In terms of results, this first experience was not successful, but it was very effective and useful for understanding the essence of the competition. Usually there is a workshop held on the first day of the event. That year it was a lecture by Selene Mize, a coach from New Zealand, whose teams participated in the international finals, winning the second and third places several times and finally the ICCC in 2012. Unfortunately, a visa issue prevented her from coming to Kazan in person, but she used Skype to tell the participants about the basic principles of an initial lawyer-client interview. Moreover, a meeting for coaches was organized. It is interesting to note that half of the coaches were law teachers, mostly law clinic directors, and the other half were teachers of English. The National ICCC representative provided a generous amount of materials: a DVD with the Kazan team's presentation at the 2008 international competition, video records of other teams' presentations, notes and suggestions of the previous year's participants. So it was a busy night when our team reorganised its drafts. The team was not among semifinalists but a plan of preparation for the competition in the coming academic year was reached.

Course Outline

It is obvious that a good command of English is not enough to succeed in the competition and that professional communication skills are also very important. As mentioned before, Russian law schools curricula contain mostly theoretical courses. Therefore, when starting to train law students for professional contests, teachers should cover general aspects of lawyer-client communication and issues of intercultural contacts along with appropriate English language skills.

Strictly speaking, the course of preparation for the ICCC started as an extracurricular activity for volunteer students. But after getting some experience of training students for the competition and participating in the national rounds, the set of activities turned into a planned syllabus with the following objectives put forward:

- to introduce the goal and structure of the competition;
- to explain the main idea of the initial lawyer-client interview;
- to teach specific language patterns of the interview, opening and closing structures;
- to develop listening skills;
- to master skills of eliciting information; and
- to elaborate critical thinking.

According to the objectives, the course is divided into four unequal parts: an introduction, specific language training, interview practice and brainstorming of national rounds memos.

Introduction. At the first meeting of a group which usually consists of 8–10 students, the students are told about the competition, a syllabus is introduced, and a list of links and literature is given (see Appendix). As a rule, the previous year's team members come and share their experiences. They remain involved in the preparation process helping with the composition of scenarios and acting as clients.

There are several videos devoted to client counseling which can be found on the Internet (see Appendix). Their duration is from five to ten minutes and they are worth watching in class with further discussion. As a home assignment, the students are asked to watch some records of the ICCC final rounds: the ICCC 2007 video is on the competition website, consultations of the U.S., England and Wales, New Zealand teams – the ICCC 2010 finalists – are uploaded on YouTube, and the Cambodian Team presentation at the ICCC 2012 can also be found on YouTube. Another home assignment is to review the federal law "On Advocacy and the Bar in the Russian Federation", the Lawyer's Professional Code of Ethics and to prepare a summary (in English) of basic principles of an initial lawyer-client interview in Russia.

Specific language training. At the beginning of this stage the first five to seven minute long opening episodes of interviews are watched by the whole group in class. The students are encouraged to compare these fragments and to list the points to be covered at the beginning of an interview. These compulsory points are ice-breaking/small talk, timing, confidentiality, presence of two lawyers, conflict of interests, fees. Most of the students are in their third or fourth year of study and some of them have an internship in a law clinic. Having reviewed the documents mentioned above as their

home assignment and relying on their experience, the students compare the pattern for opening the interview followed at the competition with the one used in real life in Russia, which enables them to highlight and comment on any differences. An activity of this kind promotes critical thinking and speaking skills.

Several language patterns characteristic of the opening stages of the interview are given to the class: students' handouts are composed of Internet video scripts recorded by the author. The students have different variants of wording for the issues to be covered in the opening stages of the interview and can choose what they like most and add something themselves. A couple of lessons are devoted to practicing this part of the interview. The students work in groups of three, changing roles as lawyers and as clients.

Not only the handouts prepared by the teacher can be used at this stage. Nowadays the list of Legal English textbooks available in Russia has become rather long and these books offer not only reading and topical vocabulary tasks, but deal with developing listening and language use skills as well. In the Cambridge *Introduction to International Legal English* (Krois-Linder, Firth & TransLegal, 2008) there are exercises devoted to: a) conducting an initial lawyer-client interview; b) asking for clarification and giving explanations; c) giving advice; d) explaining law terms to non-lawyers. These exercises are scattered through different units, but it is not a problem to extract them and use them when necessary. At the same time, topical vocabulary can be reviewed.

Listening skills and skills for eliciting information are trained together. At first such communication techniques as active listening are introduced to the students. They are offered practice in re-stating and paraphrasing. These exercises are also useful for clarifying the information gained during an interview. Parallel to paraphrasing language patterns for showing interest and empathy are trained. Then types of questions are reviewed and the students are asked to explain the difference in the purposes of asking open/closed questions during the interview. Usually they do not have any problems with indicating in their answers that open questions are used to get information and closed questions are aimed at checking understanding of what has been said.

Students are given the task to prepare stories connected with the branch of law to be used at the competition. Working in pairs or groups of three, the students use these stories in class. While considering their stories, they are asked to put the facts into three groups: general facts are told to the students acting as lawyers at the beginning of an interview when a student acting as the client presents his or her case, some specific information is

disclosed if the client is asked direct questions, and the third part is shared with the lawyers only if the client feels that the lawyers are trustworthy. In fact the third stage of preparation begins here.

Interview practice. At the beginning of the practice stage interviews are not complicated by psychological elements, but it is necessary to teach students to deal with difficult clients at this stage as well. Although most characters presented at the attended competitions were average 'normal' people, students should know what to do if a client does not proceed in an expected way. The students are asked to brainstorm and enumerate the types of difficult clients they can imagine. Students easily state that clients can be emotionally distraught, reluctant, talkative or angry. Those who work in a law clinic also mention aged or infirm clients. Usually it is the teacher who tells the students that a client can be lying. It is interesting to note that sometimes the students may even ask why a client would lie. Thus after general patterns have been trained, the students are given the task of attempting to make their clients' characters more complex. The students are good actors and are very imaginative. They create very interesting and funny situations: once a client was an elderly book-keeper fired from a bank, another time a jealous officer broke into the lawyers' office, etc.

Another language and critical thinking skill to be trained is summarising. It is very important to get a clear picture of a client's case. That is why the lawyers should elicit pure facts from a client's story and check that their understanding is correct. They should use simple and clear language while giving this summary to the client. Exercises from *Introduction to International Legal English* (Krois-Linder et al., 2008) and *International Legal English* (Krois-Linder & TransLegal, 2006) directed at paraphrasing legal English into plain language are very helpful.

From a language teacher's point of view the most difficult aspect of coaching a team for a law student competition is scenario drafting/composition. There are several ways of overcoming this difficulty. The first thing to do is to apply to colleagues from law departments for advice. They are usually ready to help and suggest a couple of books. To translate problems into English is not a problem for a language teacher. The disadvantage of this approach is that the problems are usually very short and devoted to one article or section of the branch of law studied, while the scenarios offered at the competition are sophisticated and can involve several legal issues.

Another way out of this difficulty was prompted by the Ulyanovsk University team coach during last year's national rounds. She is the head of a university law clinic and it is not a problem for her to compose a case.

But what she usually does in the course of preparation for the national rounds is to tell students to write a scenario as a part of their home assignment. It should be mentioned that the students solve legal problems at seminars while studying various branches of law and have an idea as to what is supposed to be in a scenario. This method promotes critical thinking and enhances students' legal knowledge. The last but not the least source of ideas is common sense and the life experience of the coach. Moreover, the collection of cases has been growing constantly and even if they are not consistent with the topic of a given year, they are very helpful in interview practice and for the purposes of training critical thinking.

Brainstorming of the national rounds memos. At the final stage of preparation when 'secretary memos' are received, the brainstorming of possible cases begins. Both the English and Russian languages are used while trying to identify what has happened to a potential client. Ideally the discussion should be carried out only in English. All ideas, even unrealistic ones, are taken into consideration. It is worth mentioning that in 2012 our team managed to predict almost all the scenarios offered later at the national rounds. Key points were highlighted in a somewhat different way, but in general the students were well prepared. Using previously thought-out sets of facts, the coach plays the role of the client and the students practice the competition format.

Selecting an institution team for the national rounds. In the academic years 2010–2011 and 2011–2012 the teams were composed informally. The training group in the 2010–11 academic year was small; in 2011–12 it was not numerous either. So there were only two pairs of students to choose from. They were asked to perform the opening stages of an interview and teachers not involved in coaching acted as the jury. As a rule, the team selection process takes place in December as the national rounds application deadline is usually at the end of December. Both in 2011 and 2012 our institution team reached the semifinals and received very positive feedback from the judges.

In the 2012–13 academic year, the group of students involved in the preparatory work was more numerous and it was decided to carry out qualifying rounds at our institution. A date for the intra-institution competition was announced formally on our website. A panel of judges was specially chosen and consisted of both law and language teachers. An international student from Saratov Medical University who spoke English as a second, not foreign, language was invited to act as a client. Three teams were registered and took part in the competition. The students who came to watch the competition were really interested in this form of extracurricular activity

and expressed a wish to join in with it in the next academic year. The winning team was very good. But unfortunately, there were no national rounds in 2013. Kazan Federal University held national rounds for 5 years, and the announcement of the 6th competition was made, but in a couple of days it was recalled. The national representative told us that at the last moment the university authorities refused to support the organising committee and it was too late to move the rounds to another institution.

Conclusion

The teaching of highly qualified specialists in law is a complicated educational process where acquiring legal knowledge and mastering professional skills should be balanced. If the curriculum does not include specialised courses aimed at developing specific skills providing high levels of professional communication, then extracurricular activities such as preparation for, and participation in, international competitions for law students can be recommended.

Different competitions require diverse types of communicative professional competence such as oral argument, negotiating, or client counseling. Although there is much in common in the methods for developing and improving these skills, it is better to focus on one sphere of professional performance.

On the matter of client counseling in English, it is necessary to note that developing this form of communicative professional competence can be carried out either within a Legal English course or in a separate one-term course structured in the following way:

- Introduction to the topic: general information on the lawyer-client initial interview in the Anglo-American culture and in Russia; an overview of the ICCC format;
- Language training: language patterns at the beginning of an interview and in the final stages; language for acquiring information, asking for clarification, giving explanations, summarising;
- Counseling practice: preparing case scenarios; conducting interviews, analysis of the interviews;
- Straightforward preparation for the competition: brainstorming memos sent by the organising committee of the competition.

Developing a cross-curricular course is difficult and challenging work. But a 'can do' attitude, colleagues' support, and students' great desire to succeed in studying, in the competition, and, finally, in their careers help

a teacher to meet the challenge. Training students to participate in professional contests at different levels is a complex and time-consuming, but rewarding task.

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Appendix

Websites and YouTube Video Links

UTS Law Students' Society: Client Interview Tutorial http://www.youtube.com/watch?v=LoD1xOVFMgQ&feature=related

ICCC 2011 http://www.maastrichtuniversity.nl/web/Faculties/FL/Theme/Education/MootCourts/ClientConsultationCompetition/ICCC.htm

ICCC 2007 Video (Sidney, Australia) http://www.usyd.edu.au/lec/ICCC2007/video.shtml OR http://sydney.edu.au/lec/ICCC2007/video.shtml

Louis M Brown Client Counselling Competition 2010 – United States team (Part 1) http://www.youtube.com/watch?v=5l-RxAO0nDE

International Client Counseling Competition 2012 in Dublin, Ireland – Cambodian Team http://www.youtube.com/watch?v=mkbLS4Sfkl8

Client Interviewing Competition 2011 http://www.youtube.com/watch?v=F2FXvyR2MgA

ICCC home page http://www.brownmosten.com/

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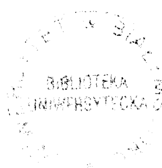

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