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LEGAL DISCOURSE RECONSIDERED: GENRES OF LEGAL TEXTS

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Abstract: Being a complex type of discourse, legal discourse is realized through legal texts written in legal language, which are regarded as special-purpose texts different from other kinds of texts in respect of their text-internal and text-external properties. A great variety of legal texts reflects the diversity of law itself. As different legal texts tend to have different functional, structural and linguistic features, they are classified into genres on the basis of different criteria. The analysis of genres of legal texts contributes to the overall understanding and construction of legal discourse in general and legal texts in particular. This paper aims at the overview and discussion of genres of legal texts focusing on specific features of legal texts and criteria of the classification of legal texts into genres.

Keywords: legal discourse, legal language, legal texts, genres, specific features, classification.

EWALUACJA DYSKURSU PRAWNEGO: GATUNKI TEKSTÓW PRAWNYCH.

Abstrakt:Dyskurs prawny jest jednym z bardziej złożonych typów dyskursu. jest on realizowany przez teksty prawne sformułowane w języku prawa. Teksty prawne są tekstami specjalistycznymi różniącymi się od innych tego typu tekstów swoimi inter i intra tekstowymi relacjami, są wśród nich teksty o specyficznych strukturalnych, funkcjonalnych i lingwistycznych cechach, które mozna sklasyfikować ze względu na różne kryteria. Olbrzymia różnorodność tekstów prawnych odzwierciedla różnorodność dziedziny jaką jest prawo. Mając na uwadze powyższe relacje pomiędzy tekstem prawnycm a samamym prawem, mozna stwierdzić, że analiza gatunków tekstów prawnych przyczynia się do rozwoju prawnego dyskursu w ujęciu całościowym i do zrozummienia istoty tekstu prawnego w ujęciu szczególnym. Niniejszy artykuł ma na celu opis i ocenę cech charakterystycznych istniejących klasyfikacji tekstów prawnych.

Słowa klucze: dyskurs prawny; język prawa; język prawny; cechy; klasyfikacja;

DAR KARTĄ APIE TEISINĮ DISKURSĄ: TEISINIŲ TEKSTŲ ŽANRAI

Santrauka: Kompleksiško teisinio diskurso pagrindas – teisiniai tekstai. Teisiniai tekstai yra laikomi dalykiniais tekstais, kurie dėl savo funkcinių, struktūrinių bei juose vartojamos teisinės kalbos ypatumų skiriasi nuo kitokio pobūdžio tekstų. Teisinių tekstų įvairovė atspindi pačios teisės įvairovę. Kadangi skirtingiems teisiniams tekstams būdingos skirtingos funkcijos, struktūra ir lingvistinės ypatybės, jie pagal įvairius kriterijus yra klasifikuojami į žanrus. Teisinių tekstų žanrų analizė padeda geriau suprasti, kaip yra konstruojamas teisinis diskursas bei atskiri teisiniai tekstai. Šio straipsnio tikslas – apžvelgti teisinių tekstų žanrus, daugiausiai dėmesio skiriant teisinių tekstų ypatumų bei teisinių tekstų klasifikavimo į žanrus kriterijų aptarimui.

Raktažodžiai: teisinis diskursas, teisinė kalba, teisiniai tekstai, žanrai, ypatumai, klasifikacija.

Introduction

Law, which plays a vital role in reinforcing communication between nations and peoples, is expressed mainly through legal language and legal texts (Kirby 2007: x). In order to understand law, it is necessary to perceive the language in which legal texts are created and be aware of different ways in which legal texts are constructed. It should be noted that recently more attention has been paid to the investigation of features of legal language and issues in the translation of legal texts. Researches on particular features of legal texts aim to define differences between legal language and general language, to compare legal language of different countries, to delineate similarities and differences between different genres of legal texts (Goodrich 1992, Trosborg 1997, Tiersma 1999, Schneidereit 2007, Tessuto 2012). Scholarly works on legal translation focus on the analysis of problems faced by translators or interpreters of legal texts as well as translation strategies and methods applied in the translation of different genres of legal texts (Šarčević 2000, Varo and Hughes 2002, Biel and Engberg 2013). Although the issue of genres of legal texts has been touched upon in many works on legal discourse in general and legal translation in particular, there has been no attempt to classify legal texts into genres in an elaborate way (e. g. as it was done with texts of periodical literature by Rūta Petrauskaitė (2007)). This is probably due to the complex nature of law itself and a great variety of different legal texts, which makes it sometimes difficult to attach a particular legal text to a particular genre.

The present paper in its turn does not attempt to give a thorough classification of legal texts into genres; rather its purpose is to review recent research into legal texts. To be more precise, the paper aims to give an overview of functional, structural and lexico-grammatical properties of legal texts as well as criteria used to classify legal texts into genres. As this work is descriptive in nature, the methodological approach taken in this study is a mixed methodology based on descriptive and discourse analysis methods. The overview and analysis of theoretical considerations have been mainly based on the books *Analysing Genre: Language Use in Professional Settings* (1993) by Vijay K. Bhatia, *Legal language* (1999) by Peter M. Tiersma, *New Approach to Legal Translation* (2000) by Susan Šarčevic, *Legal Translation Explained* (2002) by Enrique A. Varo and Brian Hughes, and *Translating Law* (2007) by Deborah Cao.

The concepts of genre, text, text type and discourse

As in this paper the question under discussion is genres of legal texts, it is necessary to give a short description of the notion of 'genre' and other related terms, namely, 'text', 'discourse' and 'text type'. The concept of 'genre' and genre theory itself have a long tradition in literary studies since it was thought that only literary texts could be classified into genres. However, this approach has changed and now genre analysis has become popular in non-fictional texts. Thus, we can speak about different genres of academic discourse, journalistic discourse, political discourse, legal discourse, etc. As noted by Swales, nowadays, the concept of 'genre' is used to refer "to any distinctive category of discourse of any type, spoken or written, with or without literary aspirations" (Swales 1990: 33). Varo and Hughes make an observation that 'genre' is a useful innovation in the theory and practice of specialized translation (Varo and Hughes 2002: 101).

Genre analysis has been an object of elaborate investigation in the works by Bhatia (1987, 1993, 1996, 1997, 2002, 2004), Swales (1990), Biber (2009). Usually, genres are associated with conventionality and tradition. Genres, generally, are considered as texts of conventional form and content. According to Trosborg, genres may be viewed as "coded and keyed events set within social communicative process …" (Trosborg 1997: 8). Hatim and Mason define genres as "conventional forms of texts associated with particular types of social occasions" (Hatim and Mason 1997: 218), whereas Bhatia offers a broader definition:

> Genre is a recognizable communicative event, characterized by a set of communicative purpose(s) identified and mutually understood by the members of the professional or academic community in which it regularly occurs. Most often it is highly structured and conventionalized with constraints or allowable contributions in terms of their intent, positioning, form and functional value. The constraints are often exploited by the expert members of the discourse communities to achieve private intentions within the framework of socially recognized purpose(s). (Bhatia 1993: 13)

The provided definition implies that the main criterion for delineating boundaries of genre, which depend on a communicative event, is a

communicative purpose. Besides, texts belonging to the same genre should share a similar structure, style, content and the intended reader. A similar explanation is offered by Swales:

> A genre comprises a class of communicative events, the members of which share some set of communicative purposes. These purposes are recognized by the expert members of the parent discourse community and thereby constitute the rationale for the genre. This rationale shapes the schematic structure of the discourse and influences and constrains choice of content and style. <…> In addition to purpose, exemplars of a genre exhibit various patterns of similarity in terms of structure, style, content and intended audience. (Swales 1990: 58)

Couture argues that "genre can only be realized in completed texts that can be projected as complete, for a genre does more than specify kinds of codes extant in a group of related texts; it specifies conditions for beginning, continuing and ending a text" (Couture 1986: 82). It follows that genres are completed and structured texts, "conventional, typical combinations of contextual (situational) or communicative-functional and structural (grammatical and thematic) features" (Schäffner 2002: 4).

In the view of the above, the question arises as to what the relationship between discourse and text, discourse and genre, text type and genre is. Different scholars have different views on this issue; some use 'text' and 'discourse', 'text type' and 'genre' synonymously. According to Trosborg, a strict boundary between text linguistics and discourse analysis could be blurred (Trosborg 1997: 4). In other words, she proposes to use the two separate terms 'text' and 'discourse' interchangeably as text and discourse may refer to any kind or reality or aim of language (ibid.). Some scholars prefer to speak of 'text' having in mind the written mode and of 'discourse' for the spoken mode. In other cases, 'text' is viewed as an individual piece of written or spoken communication and 'discourse' as a sequence of texts belonging together due to a common subject domain or due to a single author (Schäffner 2002: 3). Halliday and Hasan define 'discourse' as a unit of language larger than a sentence which is firmly rooted in a specific context (Halliday and Hasan 1990: 41). Marcinkevičienė claims that 'discourse' may be regarded as text in context (2007: 196) or, in other words, discourse is realized through texts. It follows that 'discourse' is of a higher level and is a broader term involving "regular

patterns in the use of language by social groups in areas of sociocultural activity" (Schäffner 2002: 3), whereas 'text' may be seen as the unit for discourse analysis.

'Text type' and 'genre', the terms used in text typology, are also sometimes used as synonyms or treated as separate entities. For instance, Varo and Hughes, speaking about legal genres, use both terms synonymously (Varo and Hughes 2002: 201), Stubbs also uses these terms interchangeably (Stubbs 1999: 13). As explained by Schäffner, this terminological confusion is related "to attempts to classify texts", since, to arrive at a typology of texts belonging to different discourses, various criteria, e.g. text-external and text-internal, have been applied (Schäffner 2002: 3). Text-external properties include non-linguistic features, i.e. communicative purpose or communicative function and topic of the text, whereas text-internal features are based on linguistic characteristics (formal and semantic) of texts themselves (Biber 1988: 70). Texts are classified into genres on the basis of external criteria such as intended audience, purpose, and activity type; they refer to "a conventional, culturally recognized grouping of texts based on properties other than lexical or grammatical (co-)occurrence features" (Lee 2001: 38). These lexical or grammatical features, i.e. internal (linguistic) criteria, form the basis of text type categories.

Traditionally, according to purposes or functions of texts, basic rhetoric text types are distinguished: description, narration, exposition, and argumentation (Lee 2001: 41) or informative, expressive and operative text types. As noted by Schäffner, these basic text types are then linked to specific genres (Schäffner 2002: 4). One important observation made by Marcinkevičienė is that genre is the property of the whole text, whereas for text types separate parts of text often suffice (Marcinkevičienė 2004: 198).

In general, it seems that discourse is made of texts falling under different text types which are further classified into genres. Genre, to quote Lee, seems to be "the level of text categorization which is theoretically and pedagogically most useful and most practical to work with" (Lee 2001: 37). Referring to Steen (1999), Lee proposes that genres should be treated as basic-level categories characterized by seven attributes: domain (e.g. art, religion, law), medium (e.g. spoken, written, electronic), content (topics, themes), form (e.g. generic superstructures or other text-structural patterns), function (e.g. informative, persuasive, instructive), and language (linguistic characteristics) (Lee 2001: 49).

Specific features of legal texts

Before starting a discussion on how different legal texts representing legal discourse are classified into genres, it is important to define what a legal text is and to provide insights into general characteristics of legal texts as they are referred to when working on the typology of legal texts.

Legal texts are a part of legal discourse. Still, the question may arise as to what texts in particular can be regarded as legal texts. At first sight, any text related to law can be considered to be a legal text. Gémar, for example, defines a legal text as any text which is produced by: (a) a legislator (e.g. constitution, law, decree), (b) the judge (e.g. judgments), and (c) other institutions such as other legally empowered officials, e.g. a notary or an attorney (e.g. contracts) (as quoted in Depraetere 2011: 212). In other words, if the sender or the creator of a text performs legal functions, such text is a legal text. However, in this approach, only specialists of law are taken into account; whereas, non-specialists which also participate in a communicative situation (e.g. the maker of the will) are excluded. According to Asensio (2003), it is the context in which a text is produced that determines whether it is a legal text or not. To be more precise, if a text occurs in a legislative, judicial, contractual or administrative context, it might be regarded as a legal text (ibid.). But from this point of view, it is not clear whether such texts as essays on legal matters should fall under the category of legal texts. Albi and Albir suggest that in order to discern a legal text from other texts, it is necessary to consider the whole discursive situation of the text, i.e. the sender, the receiver, the register and the objective (as quoted in Depraetere 2011: 212). According to the authors, all these criteria allow ascribing prescriptive texts (e.g. constitution, laws, decrees), judicial texts (e.g. judgments, summons), jurisprudence (compilation of judgments), reference works (e.g. encyclopedias, dictionaries), legal doctrine (e.g. essays, legal studies, articles), and texts applicable of the law (e.g. wills, contracts) as legal texts (ibid.) since the sender, the receiver, the register and the objective of these texts are closely related to legal settings. All in all, a legal text can be regarded as any text that is produced in legal language and/or used by specialists in law as well as non-specialists for legal purposes in legal settings.

Any legal text can be regarded as a special-purpose text belonging to legal discourse. Legal texts are different from other kinds

of texts in respect of their text-internal and text-external properties, i.e. their functional, structural, and linguistic features. Legal texts are drafted in legal language, which is defined as a language for specific purposes or special-purpose language (LSP), sub-language, scientific language, specialized language (Šarčevic 2000: 9, Pearson 1998: 28), or legalese (Tiersma 2003). Lehrberger enlists six main features according to which an LSP variety could be characterized:

1. Limited subject matter (law).
2. Lexical, semantic and syntactic restrictions (e.g. the use of terminology).
3. "Deviant" rules of grammar.
4. High frequency of certain constructions (e.g. formalized sentence patterns in statutory texts).
5. Text structure (e.g. legislation or contracts).
6. The use of special symbols. (1986: 22)

From the above considerations, it follows that legal texts are "formulated in a special language…that is subject to special syntactic, semantic and pragmatic rules" (Šarčevic 2000: 8). Along similar lines, Cao argues that legal language covers all communications in a legal setting (Cao 2007).

Legal language, considered as a complex type of discourse, is often hard to understand and incomprehensible for laypeople. Specific properties of legal discourse cause numerous problems to translators and interpreters, too. Due to the obscurity of the legal language, there has been an inconclusive debate about whether the language legal documents are drafted in should be clarified and simplified. The attempt to elucidate and simplify legislature and the judiciary has been made by the "Plain English Campaign" (Varo and Hughes 2002: 5). Works by Bhatia (1987, 1993) and Česnienė (2014) are also an attempt to address the issue of 'easification' of legal documents. However, lawyers tend to disapprove of such simplification. The underlying argument against the above-mentioned process is that it is technical accuracy and linguistic precision that assure legal certainty; without these properties, a detailed specification of legal scope would be lost.

The further discussion attempts to provide an answer to the question as to what particular properties make legal texts legal and exclusive and how language is used in this type of texts. Scholarly investigations related to functional, structural, lexical and grammatical features of legal texts are considered.

Functions of legal texts

Different texts have different functions. Gracia argues that there are five main functions of texts: informative, directive (prescriptive), expressive, evaluative and performative (Gracia 1995: 87). Legal texts being regarded as special-purpose texts have specific aims and functions. There seems to be no compelling reason to argue that a legal text is a "communicative occurrence produced at a given time and place and intended to serve a specific function" (Šarčevic 2000: 9). Šarčevic puts forward the claim that it is the function of legal texts that makes them special (ibid.). Even though the question of what the primary function of legal text is has caused much debate among scholars over the years, the confusion over the function of legal texts still remains.

Šarčevic describes three functions of legal texts: (1) primarily prescriptive, (2) primarily descriptive and also prescriptive and (3) purely descriptive (Šarčevic 2000: 11). For example, laws, regulations, codes, contracts, treaties, and conventions fall under the first category; judicial decisions, actions, pleadings, briefs, appeals, requests, petitions belong to the second category; whereas legal opinions, law textbooks and articles written by legal scholars are purely descriptive in nature (ibid). Other scholars such as Newmark (1982) and Sager (1993) speak about the informative and conative (vocative or directive and imperative) functions of legal texts. Referring to laws and regulations, Sager holds the view that these documents might have different functions for different readers (Sager 1993: 70). In other words, if laws and regulations are read by the ordinary reader, their function might be defined as informative or descriptive, whereas for those affected by these texts, it would be directive or prescriptive. In addition to the above-mentioned functions of legal texts, Newmark defines legal documents as expressive texts (Newmark 1988: 39). This function of legal texts may foster debate since expressive function is usually attributed to literary texts.

Speaking about the main functions of legal texts, Gracia notes that the primary function of legal texts is to formulate, preserve, clarify, and implement the rules according to which relations among members of society are to be regulated" (1995: 89). In this context, the normative nature of legal language may be taken into consideration. It has been widely assumed that the basic function of law in society is to guide human behaviour and regulate human relations (Cao 2007: 13). Thus,

Cao concludes that the function of legal texts is predominantly prescriptive, directive and imperative (ibid.). Along similar lines, Maley argues that:

> In all societies, law is formulated, interpreted and enforced <. . .>. And the greater part of these different legal processes is realised primarily through language. Language is the medium, process and product in the various arenas of the law where legal texts, spoken or written, are generated in the service of regulating social behaviour. (1994: 11)

The prescriptive or, to use Reiss's term, conative function of legal texts manifests itself through the use of modal verbs (e.g. *shall*, *may*, etc.), performative verbs (e.g. *grant*, *undertake*, *declare*, etc.) and declarative sentences.

Structural properties of legal texts

Every legal text has not only a particular function but also the structure which is characteristic of it. The further discussion focuses on structural properties of legal texts in general providing a few examples of the structure of different genres.

The structure of a legal text is understood by the author of the paper as the format of a text, the organizational plan, the arrangement of and relationship between different parts and elements of any legal text. For instance, Varo and Hughes, speaking about the dominant outline, organizational framework of a given genre of legal texts or the layout of its constituent parts, use the term 'macrostructure' of legal texts (Varo and Hughes 2002: 103). Most of genres of legal texts (e.g. legislation, contracts, judgments, last will, the power of attorney) have a standard format which includes not only "the organizational plan and division of a text into parts but also the layout on the page, including spacing, paragraphing, punctuation and even typographic characteristics such as capitalization, typeface, boldface, and underlying" (Varo and Hughes 2002: 117). It may be noted that many of the current research seems to validate the view that the "basic structure of a legal text usually reflects the underlying process of legal reasoning and thus tends to be similar for the same type of instrument"

(Šarčevic 2000: 123). All in all, the structure of a legal text is determined by the genre of a legal text.

Without going into greater detail, it may be stated that one prominent feature typical of the structure of legal texts is their highly formulaic and stereotypical nature. However, the consensus view seems to be that "some texts can be quite elaborate in terms of structure <…> but routine legal documents tend to follow a predetermined structure that changes little over time" (Tiersma 2003). For example, statutes (i.e. laws passed by the legislature), as described by Tiersma, usually include the following parts: long title, enactment clause, substantive provisions, exceptions or provisions, short title or citation (ibid.). Varo and Hughes divide the macrostructure of statutes in a slightly different way. According to them, a statute might be divided into the short title, the long title, the preamble, the enacting words, the parts, articles, and sections of a statute and schedules (Varo and Hughes 2002: 105-108). As far as the structure of, for instance, contracts is concerned, they tend to include commencement or premises, recitals or preamble, the operative provisions, definitions, representation and warranties, applicable law, a testing clause, signatures and schedules (Varo and Hughes 2002: 133). Court judgments, a different type of genre, commonly start with an introduction in which parties and the issue are identified and the legal relationship between the parties are defined; then the facts are presented, the parties' contentions are described, a summary of pleadings given and, finally, the court's conclusions and the final decision expressed.

Looking at the structure of different legal texts, it is noticeable that, usually, a legal text moves from abstract things to particular ones. Mattila observes that "the structure of the text should be consistent: the principal items are presented before secondary items, and general rules before special conditions and exceptions" (Mattila 2013: 81). The above discussion of the structure of several genres of legal texts provides just a few examples which illustrate how the macrostructure of different genres of legal texts differs.

In view of the above, it may be observed that the familiarity with the macrostructure appropriate to a particular genre of legal texts in a given language is especially important for translators since each genre is usually expected to conform to usual conventions. As illustrated above, the structure of, for instance, legislation differs greatly from that of agreements or judgments. Besides, one may find variations between the structure of these documents from jurisdiction

to jurisdiction. The works by Trosborg (1997), Šarčevic (2000), Varo and Hughes (2002), Tiersma (1999, 2003), Vladarskienė (2006), Nielsen (2010), Tessuto (2012), Rudnickaitė (2012), Mattila (2013) illustrate these points clearly. In her article on the form of a legal act and its influence on the language, Vladarskienė makes a statement that the formal representation of a legal text has a direct impact on the choice of language (Vladarskienė 2006: 52), which is, actually, an accurate observation. Analysing legal acts, she points out that this type of legal texts is usually organized in such a way that it would be easier to understand its subject-matter, to discern different parts of a text, and to emphasize particular things (Vladarskienė 2006: 51). Moreover, according to the scholar, graphic means such as fonts, capital letters, numbering, the division of a text into lines and paragraphs play a significant role in helping the reader of a legal text to follow quite long and complicated sentences (ibid.). However, at the same time, these graphic means, which constitute a great part of structural elements of a text, influence the sentence itself. Sometimes, by using graphic means and punctuation, a legal text is organized in such a way that it is quite complicated to identify the boundaries of the sentence.

Lexical features of legal text

Linguistic properties of legal texts, which include lexical and grammatical features, are another significant group of properties which make genres of legal texts legal and different from other genres of special-purpose texts. The study by Balazs has provided ample support for the assertion that "words in legal language represent acts that can lead to facts in real life" (Balazs 2014: 362). Being the core of legal texts, lexical properties have been discussed by different scholars to great extent. Probably none of the books on legal discourse and legal translation has omitted a chapter on lexical characteristics of legal language. These include works by Crystal and Davies (1969), Bhatia (1987), Goodrich (1992), Gibbons (1994), Trosborg (1997), Neumann (1998), Šarčevic (2000), Varo and Hughes (2002), Tiersma (1999, 2003), Paulauskienė (2004), Kniūkšta (2005), and Mattila (2013). The discussion in this part of the paper centers on different lexical features of legal texts. An overview is based on the insights of Varo and Hughes (2002: 5-18), who provide the most detailed account on these issues.

However, it should be noted that the authors speak only about lexical properties of legal English, though some of them may apply to legal Lithuanian as well.

The first striking feature of legal language is Latinisms which are common in legal use. These include such words and phrases as *de facto* ('actually'), *de jure* ('legally'), *prima facia* ('at first sight'), *restitutio in integrum* ('restoration to the original position'), *onus probandi* ('burden of proof'). When translating legal texts, Latin words and phrases might be rendered or not depending on the "standard practice among the members of the legal community in the target-language system" (Varo and Hughes 2002: 5). For instance, the examples provided above may be left untranslated in Lithuanian legal texts since the same Latinisms are used in legal Lithuanian. Secondly, many of the terms in English legal texts are of French and Norman origin, e.g. *feme sole* ('a woman without a husband, especially one that is divorced'), *lien* ('a right to keep possession of property belonging to another person until a debt owed by that person is discharged'), *damages* ('a sum of money claimed or awarded in compensation for a loss or an injury'), *salvage* ('recovery or preservation from loss').

The lexicon of legal texts is often marked by the stiff formality or downright pedantry (Varo and Hughes 2002: 8). Legal vocabulary is complex and unique, archaic and sometimes difficult to understand. This property may be regarded as a universal feature of legal language; however, different languages have their own unique legal vocabulary. Legal texts tend to abound in so called fossilized language which manifests itself through the use of archaic compound adverbs and prepositional phrases such as *hereinafter*, *thereby*, *thereunto*, *pursuant to*, *without prejudice*, *notwithstanding*, etc. Moreover, there is a tendency to use the forms of reduplication, e.g. doublets and triplets, in legal texts for emphasis. Reduplication usually is comprised of two or three near synonyms. Consider the following examples: *false and untrue*, *null and void*, *request and require*, *have and hold*, *full and complete*, etc. Similar combinations may be sometimes found ready to hand in target languages but in many cases such doublets and triplets will cause difficulty for translators and will, finally, be translated by one word.

One more lexical feature of legal texts is the use of performative verbs, such as *agree*, *admit*, *undertake*, *certify*, and modal verbs, such as *shall*, *must*, *may*. Verbs of these types are frequently used in legal texts and contexts due to a binding nature of legal relationships (Varo

and Hughes 2002: 11). One may come across not only archaic words, performative verbs but also colloquialisms and euphemisms. The examples of euphemisms include such expressions as *Act of God* (referring to a natural disaster or calamity) or *detention during Her Majesty's pleasure* (meaning the detention for an indefinite period), or such euphemisms as *money laundering*, *hacking*. When translating such colloquialisms and euphemisms, the translator needs to avoid misleading suggestions and vagueness.

Varo and Hughes argue that legal vocabulary may be subdivided into three groups: (1) purely technical vocabulary, (2) semi-technical vocabulary (or common terms with uncommon meanings, as proposed by Danet (1985)), and (3) shared, common or unmarked vocabulary (2002: 16). Purely technical terms include terms which are used exclusively in legal context and are not usually applied outside it, e.g. *barrister*, *bring an action*, *solicitor*, *tort*, *serve proceedings*. Varo and Hughes define these terms as monosemic, having remained "stable semantically within their particular field of application", "identified <…> intimately with the system", and "the least troublesome terms for a translator to deal with" (2002: 17).

The second group of vocabulary consists of words and phrases "from the common stock that have acquired additional meanings by a process of analogy in the specialist context of legal activity" (ibid.). However, semi-technical or mixed terms seem to pose more challenges to translators since they tend to be polysemic, semantically more complex, often context dependant, and more difficult to recognize. The example of the term *issue* clearly illustrates the latter point since used as a noun in one context it may mean 'offspring, children' and in the other context – 'a disputed point', whereas as a verb, it may have the meaning of 'to give out' or 'to be served'. When rendering such term, the translator is involved in a greater range of variants to choose from, since "group-one words in one language may be translatable by group two terms in another" (ibid.).

The last third group of vocabulary includes terms in general use which are found in legal texts. This group is the most numerous. However, it should be pointed out that words belonging to common vocabulary "have neither lost their everyday meanings nor acquired others by contacts with the specialist medium" (Varo and Hughes 2002: 18). Such words as *subject-matter*, *paragraph*, *summarize* fall under this category.

The lexicon of legal texts has been subjected to analysis in a number of studies in recent years. For example, Gustaffson (1984) analyses binominal expressions in legal English, T'sou and Kwong (2003) compare legal terms in English and Chinese legal texts, and Cozma (2010) concentrates on semantic peculiarities in legal discourse, Gozdz-Roszkowski (2011, 2013) provides a detailed analysis of patterns of linguistic variation in American legal English and explores near-synonymous terms in legal language, Pogožilskaja (2012) examines the formal structure of terminology of Constitutional law in Lithuanian and English, Macko (2012) studies collocations in the appellate judgments of the European Court of Justice, Bosiacka (2013) speaks about system-bound terms in EU legal translation, Biel (2014) analyses areas of similarity and difference in legal phraseology in Polish and English, Lisina (2013) compares English and Norwegian legal vocabulary, Janulevičenė and Rackevičienė (2014) discuss the formation of criminal law terms in English, Lithuanian and Norwegian, whereas Mockienė and Rackevičienė (2015) devote their study to one-word terms in UK and Lithuanian constitutional law acts. These are but a few studies which confirm the fact that "legal vocabulary exhibits distinctive lexical features particular to expressing the concepts of law" (Trosborg 1997: 13). However, there are still many areas related to lexical properties of legal texts, especially having in mind contrastive linguistics, to be investigated in future research. The consideration should be taken not only of legal terminology, but also of collocations, recurrent word sequences, i.e. lexical bundles, in different genres of legal texts.

Grammatical features of legal texts

Grammatical features or, to be more precise, the peculiarities of the morphology and syntax of genres of legal texts has been the object of numerous studies (e.g. Gustaffson 1975, Bhatia 1987, Goodrich 1992, Gibbons 1994, Šarčevic 2000, Varo and Hughes 2002, Tiersma 1999, 2003, Kniūkšta 2005, Schneidereit 2007, Mattila 2013). The topics in this field range from the discussion of cohesive links in statutory texts (Yankova 2006), the syntax of *–ing* forms in legal English (Janigova 2008), the function of conditional structures in legal writing (Duran 2010), linking words in syntactic constructions (Akelaitis 2012) to the

grammatical equivalence in translation (Mažeikienė 2012), the suffix –*imas* (–*ymas*) in Lithuanian administrative language (Pečkuvienė 2012), usage of citations in Finish statutes (Piehl 2013), the compatibility of syntactic features of legal English and plain English (2014).

Cao indicates that a common feature of the syntax of legal language is "the formal and impersonal written style coupled with considerable complexity and length" (2007: 21). In other words, sentences in legal texts tend to be much longer than in other text types. What is more, sentences in this type of texts tend to be declarative. One can also come across many references made to other legal texts in support of legal arguments. Tiersma (2003) defines the language of legal texts as wordy, unclear, pompous, redundant and dull. These peculiarities of legal language may be regarded as one more source of difficulty for the translator and for a lay person.

The study by Varo and Hughes addresses the issue of grammatical features of legal texts in detail (2002: 18-22). The scholars note that due to the all-encompassing and self-contained nature of legal texts, they often are comprised of unusually complex and long sentences and the postponement of the main verb until very late in the sentence. For example, Gustafsson (1975) reports an average of 2.86 clauses per sentence. The abundance of restrictive connectors such as *notwithstanding, subject to, pursuant to, whereas*, in other words, the density of subordination and parenthetic restriction in legal language, makes the syntax of legal texts anfractuous (Varo and Hughes 2002: 19). As expressed by Bhatia, these properties give to legal texts their characteristic air of complexity (1993: 116). Other typical syntactic features of legal texts are the prominent use of nominalizations, impersonal constructions, multiple negation, and an abundant use of passive constructions. According to Varo and Hughes, the use of passive voice in legal texts allows "to keep the stress on the action, rule or decision rather than on the personality of the doer" (2002: 20).

The use of complex conditionals and hypothetical formulations further complicate legal texts. The syntactic indicators of condition and hypothesis used in legal language may be divided into positive (e.g. *if, when, provided that, assuming that, in the event of*, etc.) and negative (e.g. *unless, failing, except if, but for*, etc.) (ibid.). Dealing with conditionals and hypothetical formulations, the translator should be especially cautious since, as specified by Varo and Hughes, these conditions may be complex and include double or triple hypothesis and

mix positive and negative possibilities (ibid.). The scholars also notice one more interesting fact related to morphology: active and passive parties in legal relationships are formed with suffices *-er* (*-or*) and *-ee*. For example, *grantor* and *grantee*, *promisor* and *promisee*, *assignor* and *assignee* (Varo and Hughes 2002: 21-22).

Classification of legal texts into genres

Even though different genres of legal texts have been an object of discussion in many scholarly works, no one all-encompassing classification of legal texts into genres has been proposed. This might be explained by a broad nature of law due to which the specification of the typology of legal texts is an uphill task. Bhatia also adds that "law is less universal than science" (Bhatia 1993: 136). It should be pointed out that literature shows no consensus on what basis legal texts should be classified into genres. Some try to classify legal texts into genres according to their function or the situation of use, while other classifications are based on branches of law or groups of lawyers. The review of these criteria of classification is given below.

Classification based on branches of law

Speaking about genres of legal texts, Varo and Hughes once again remind that texts belonging to a given genre must share at least the following properties:

1. A shared communicative function.
2. A similar macrostructure, i.e. format or organizational outline.
3. A similar discursive mode of developing the macrostructure and similar discourse techniques.
4. A common lexical and syntactic arrangement of the material and a common set of functional units and formal features.
5. Common socio-pragmatic conventions. (2002: 102)

Varo and Hughes remark that different genres of legal texts may be found in each of the areas into which the law is divided, e.g. civil law, criminal law, administrative law, employment law, European Union law, land law, property law, etc., as well as in "various activities in which legal practitioners are involved" (ibid.). Due to diverse activities of legal practitioners (e.g. judges, jurists, attorneys, legal draftsmen) one may expect the diversity of genres of legal texts. Even though Varo and Hughes offer a detailed analysis of different genres such as university degrees and diplomas, certificates, statutes, law reports, judgments, contracts, deeds and indentures, insurance policies, last will and testament, the power of attorney, professional articles, their classification of legal texts into genres seems to be a bit obscure. The authors speak about three classes of genres of legal texts. The first group includes legal texts found in the domains of statute law, public law and judicial decisions; the second group comprises legal texts in private law which sets out legal arrangements by private individuals (e.g. contracts, deeds, last will, etc.); whereas academic writings on the law (e.g. textbooks, professional articles) fall under the third group (Varo and Hughes 2002: 102). Varos and Hughes observe that genres of legal texts which belong to the second and the third group are "more flexible and more open in their subject matter, though they still possess distinctive macrostructural features that make them instantly identifiable as legal genres" (ibid.). On these grounds, it can be pointed out that Varo and Hughes's classification of legal texts into genres is basically based on a legal domain, i.e. a branch of law.

The same basis for the classification of legal texts into genres, i.e. branches of law, is suggested by Mattila (2013). He explains that when classifying legal texts into genres according to branches of law, "the main distinguishing criterion then becomes the specialist terminology of each branch" (2013: 3). Thus, this kind of typology of legal texts would be based on text-internal features. The scholar makes a remark that a great part of legal terminology of various branches of law is universal although, for example, criminal law employs terms which are never used in property law (ibid.). Further, in other branches of law (e.g. tax law, land law), legal terminology is sometimes mixed with non-legal technical vocabulary. The typology of legal texts based on branches of law is one of the possible solutions to the classification of legal texts into genres, however, taking terminology as the main criterion for distinction seems to be insufficient as it may be misleading and lead to a great confusion.

Classification based on text function

A different basis for classification of legal texts is suggested by Šarčevic (2000). She introduces a bipartite system of classifying legal texts into genres (Šarčevic 2000: 11). Her classification is based on two primary functions of language: regulatory (prescriptive) and informative (descriptive). Respectively, the scholar divides legal texts into genres according to their function (i.e. text external properties): (1) primarily prescriptive, (2) primarily descriptive but also prescriptive, and (3) purely descriptive.

Primarily prescriptive texts are "normative texts which prescribe a specific course of action that an individual ought to confirm to" (ibid.). Such texts are regulatory in nature and usually they contain rules of conduct and norm, commands, prohibitions, permissions or authorization (ibid.). Laws and regulations, codes, contracts, treaties and conventions are assigned to this group of genres of legal texts. As explained by Šarčevic, these genres of legal texts are regarded as "documentary sources of law, i.e. the primary origins from which the law of a particular system derives its authority and coercive force" (2000: 11-12). The second group of genres includes hybrid legal texts that are primarily descriptive but contain prescriptive parts as well. Judicial decisions, actions, pleadings, briefs, appeals, requests, petitions, etc. fall under this category. Lastly, the third group includes legal texts, which "constitute what is known as legal scholarship or doctrine, the authority of which varies in different legal systems" (ibid.). In other words, legal texts belonging to this group are not regarded as legal instruments, they are written by legal scholars and they are purely descriptive in nature. Examples of such legal texts are as follows: legal opinions, law textbooks, articles, etc. It may be observed that the third group of legal texts in Šarčevic's classification includes the same type of texts as the third group of legal texts in the typology suggested by Varo and Hughes.

Along similar lines, in his book on legal language, Tiersma posits the view that "there is great variation in legal language, depending on geographical location, degree of formality, speaking versus writing, and related factors" (1999: 139). He refers to genre as to a category of composition indicating that the members of the category tend to share a particular level of formality and structure. Similarly to Šarčevic's suggestion, Tiersma also supports the view that

legal texts may be classified into genres according to their function. He distinguishes three types of legal texts: (1) operative legal documents which create and modify legal relations (e.g. pleadings, petitions, orders, statutes, contracts and wills); (2) expository documents which "delve into one or more points of law with a relatively objective tone" (e.g. judicial opinions, lawyer-client correspondence, textbooks), and (3) persuasive documents (e.g. briefs submitted to courts, memoranda of points and authorities) (Tiersma 1999: 139-141). According to the scholar, genres of operative legal texts usually are drafted in very formal and formulaic legal language – legalese – and have a very rigid structure, whereas genres of expository legal texts do not adhere to a very rigid structure though they tend to conform to the traditional structure. Finally, genres of persuasive legal texts are not so formulaic in respect of form and language. Tiersma makes an interesting observation stating that legal documents such as contracts, wills, deeds and statutes, which are intended for clients and directly affect their interests, are characterized by the most legalese, whereas genres of legal texts (e.g. opinions, briefs, memoranda) which are to be read by judges and other lawyers have least legalese (1999: 141).

Classification based on the situation of use

Both spoken and written legal texts are taken into account in the classification suggested by Maley (1994). However, the primary criterion in his typology of legal texts is a discourse situation (it corresponds to Trosborg's 'situation of use', which will be described below). According to the situation in which legal texts are used, Maley distinguishes between the following groups:

1. Sources of law and originating points of legal process (legislature, regulations, by-laws, precedents, wills, contracts, etc.) – written texts.
2. Pre-trial processes (police/video interview, pleadings, consultations, jury summons) – spoken and written texts.
3. Trial processes (court proceedings examination, cross-examination, intervention, rules and procedures, jury summation, decision) – spoken texts.
4. Recording of judgment in law reports – written texts.

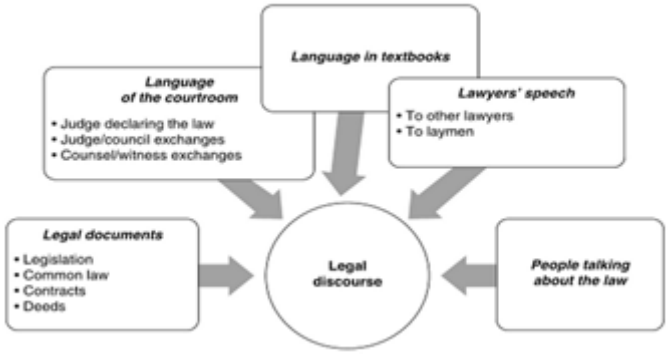

Figure 1. Trosborg's classification of l 1

The last three categories seem to cover legal texts related to court proceedings, whereas the first group includes all the remaining legal texts. A somewhat similar grouping based on external factors pertaining the situation of use is examined by Trosborg (1997:20):

However, Trosborg does not speak about legal texts in particular but applies the classification to legal discourse in general. Having in mind that discourses are realized through texts, this grouping of legal language would perfectly suit for the classification of legal texts into genres, both written and spoken.

Similarly, Cao (2007) chooses situation of use as the basic criterion for the classification of legal texts. Nonetheless, she excludes genres of spoken legal discourse and identifies four major groups of legal texts: (1) legislative texts (domestic statutes and subordinate laws, international treaties and multilingual laws, other laws produced by lawmaking authorities; (2) judicial texts produced in the judicial process by judicial officers and other legal authorities; (3) legal scholarly texts produced by academic lawyers or legal scholars in scholarly works and commentaries whose legal status depends on the legal systems in different jurisdictions; and (4) private legal texts that include texts written by lawyers, e.g. contracts, leases, wills and litigation documents, private agreements, witness statements, other documents produced by non-lawyers (Cao 2007: 9-10). Cao emphasizes that different genres have their own peculiarities which should be taken into consideration by translators (ibid.)

Other criteria for the classification of legal texts

Beside classification based on branches of law, text function and situation of use, there are other criteria used when classifying legal texts into genres. Danet (1980) offers a different classification of genres of legal texts taking into consideration their formality of style and their form of media (written or spoken). With regard to formality of legal texts, he distinguishes between frozen, formal, consultative, casual, and intimate type of texts and provides the following typology of legal texts based on the register and medium (written and spoken: composed and spontaneous) used in different legal texts:

1. Frozen written: insurance policies, contracts, leases, wills.
2. Frozen spoken-composed: marriage ceremonies, indictments, witnesses' oaths, verdicts.
3. Formal written: statutes, briefs, appellate opinions.
4. Formal spoken-composed: lawyers' examination of witnesses in trials, lawyers' motions.
5. Consultative spoken composed: lay witnesses' testimony.
6. Consultative spoken-spontaneous: lawyer-client interaction, bench conferences.
7. Casual spoken spontaneous: lobby conferences, lawyer-lawyer conversations. (Danet 1980: 471)

It is apparent that Danet's classification is broader than the typologies discussed above since it includes not only written but also spoken genres of legal texts. However, at first sight, such detailed way of classifying legal texts into genres seems a bit perplexing. To put legal texts under the categories of written or spoken texts probably would cause no difficulties but then the question might be asked how to discern, for example, frozen legal texts from formal ones? Also, it is not clear to what category legal scholarly texts belong.

Mattila (2013) offers the fifth criterion which could be applied to the classification of legal texts though he speaks particularly about the application of this criterion for the division of legal language. In his opinion, legal discourse may be classified according to the various sub-groups of lawyers (Mattila 2013: 4). This he explains by the fact that each sub-group of lawyers uses legal language which has particular characteristics, e.g. vocabulary and style (ibid.). Thus, we may speak

about the discourse of and legal texts drafted and used by legal authors, legislators, judges, administrators and advocates. It is obvious that some of the categories correspond to groups of genres of legal texts in other classifications. To illustrate, legal texts related to authors may fall under the category of descriptive legal texts or discourse in textbooks; legal texts drafted by legislators belong to the group of highly prescriptive, legislative texts, sources of law or operative legal texts in other classifications.

Bhatia distinguishes two major kinds of variation in legal genres. First of all, he speaks about different legal systems dividing them into the common law, the civil law and the Shariat law (Bhatia 1993: 136). Much of the law written and practiced in the countries of Commonwealth is based on the common law; the civil law provides basis for many of the European countries, except UK; and the Sharial law is rooted in most of the Muslim countries (ibid.). According to Bhatia, such diversity of legal systems accounts for the first kind of variation "in the way legal discourse is written and used" (ibid.). Another kind of variation is related to the way legal discourse is realized in different countries within the same legal systems. This points to the fact that the same legal texts may have different properties in different countries of different or the same legal systems.

Conclusions

The present paper was designed to overview specific properties of legal texts and criteria of the classification of legal texts into genres. The findings of this paper have significant implications for the understanding of how legal discourse is constructed. In reviewing the theoretical sources, it has been found that there is a rapidly growing literature on issues related to genre and discourse analysis, which indicates that genre has become an inseparable category of our everyday life reflecting needs and traditions of the society.

Being a separate type of discourse, legal discourse is comprised of a great variety of different legal texts which are further classified into genres. In order to understand the criteria of the classification of legal texts, it is necessary to be aware of specific features of legal texts. On the question of properties characteristic of legal texts, this study has found that these texts have particular functional, structural and

linguistic features. The main functions of legal texts are not only to convey information (informative function) and to regulate public and private affairs (regulative function) but also prescribe and impose obligation, set out prohibition and permission (prescriptive function). All the functions of legal texts are expressed through the specific language they are drafted in. Structural properties are also a significant attribute of legal texts determining the choice of the language. The structure of legal texts is marked by careful elaboration and formalism. Structural properties of legal texts should be carefully taken into consideration, for example, by the translator so as not to disarrange a logical progression in legal texts. The review of different theoretical works on linguistic properties of legal texts has provided confirmatory evidence that legal texts are characterized by formal archaic diction, syntactic oddities, stiffness and formality, technical terminology, unusual prepositional phrases, which differs greatly from ordinary language, and that legal texts are drafted unlike other special-purpose texts belonging to other discourses.

A substantial variation between different legal texts in their functions, structure and linguistic properties discussed in the paper proves the fact that legal discourse is not monolithic. For this reason, legal texts are classified into genres. Even though researchers propose different bases for the classification of legal texts, they all share the same view that for legal texts to belong to a particular genre, they need to share text-external or text-internal properties. However, there is no consensus about which criterion is the best one for the classification of legal texts into genres. The classifications are based either on text-external or text-internal factors, for example, on branches of law, text function, situation of use, subgroups of lawyers or formality of style and form of media. Some of the classifications include only written legal texts, other typologies take into consideration both written and spoken legal texts. One thing is clear: it is necessary to classify and investigate genres of legal texts as it sheds light not only on general features of legal discourse but also on the nature of law itself. Further, the identification of genres of legal texts is one of the ways to produce a successful translation of any legal document as the choice of the appropriate translation strategies is often conditioned by the recognition of the given genre.

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