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Requirement of the Clarity of Law. *Plain Language* or Legal Education

Abstract

The article raises several aspects of the clarity of the texts of legal acts as viewed and understood by different entities (experts and laymen). These two views are at the same time two different perspectives and two supporting proposals, which are to help understand law (the texts of legal acts). The article focuses on the following issues: (1) the meaning of clarity of a legal act text (as a special-purpose text), (2) linguistic competence, communication competence, legal communication competence, (3) legal discourse, (4) the issue of simplification of the language of legal acts as a remedy for the clarity of law, (5) legal text education as a means to develop legal communication competence.

Keywords: clarity of a legal act text, specificity of the language of legal acts texts, legal communication competence, education in the area of knowledge on the language of legal acts texts, law interpretation

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Introduction

The article concerns the requirement of clarity of law understood as linguistic accessibility of the texts of legal acts as raised in the public discourse. The paper covers two perspectives that can be adopted to meet the requirement. A linguistic perspective – viewing the idea of *plain language* as a remedy to the vagueness of law, and a legal perspective – taking the actual features of the text of a legal act into consideration. The latter argues for education in the area of knowledge and skills of interpretation of law as an element of communication competence that makes it possible to read the text of a legal act appropriately, as a text of a certain type, not merely as a text in a given language.

The notion of clarity

The term of "clarity" is used together with its derivatives regardless of whether it refers to the private or the professional sphere of our lives. Clarity is associated with a "lack of doubt" or a "lack of complexity" as well as with "intelligibility" or "precision". Clarity also brings simplicity to mind. All of the mentioned terms, including clarity, refer to some qualities of an object of cognition (someone's statement, someone's behaviour or some item). Another common element of these qualities is that they can be considered present or absent only according to certain criteria, which means they are measurable to some extent, therefore gradable and verifiable. One can, of course, refer to the category of clarity or vagueness remaining in the sphere of certain impressions, but it is irrelevant on account of the subject of the discussion covered in this article, meaning law.

Clarity as a requirement met and arrived at according to criteria relevant to the object of clarity

Speaking of clarity as a quality relevant to the object of cognition, and such an object is certainly the text of a legal act, first requires at least an intuitive determination of the criteria according to which this quality can be considered applicable to a given object. We can speak in this case of two types of criteria: subjective criteria relating

to the cognising subject and objective criteria relating to the object of cognition. Both types of criteria are gradable. Subjective criteria pertain, of course, to the knowledge and skills of the cognising subject. This is to mean both general knowledge and knowledge of and on the object of cognition (or the relationship with the object of cognition). The same applies to particular skills related to cognition. The second group of criteria – objective criteria, concerns the type of the object of cognition. An object of cognition *per se*, given its properties, makes the notion of clarity also gradable, both on account of the object itself and the cognising subject displaying certain attributes in this scope.

We are therefore dealing with the gradability of clarity in terms of the cognising subject and the object of cognition.

The situation at issue does not concern the issue of clarity or vagueness in subjective terms, but pertains to defining a situation as such taking certain criteria relating to both the subject and the object into account. Making the definition of the degree of clarity dependent on relativizing clarity to certain criteria leads to a situation that it will not be a subjective definition, but a definition of clarity based on the degree of fulfilment of the said criteria. The extent to which the criteria will be related to the subject and the object, and whether the criteria are socially known and acceptable determine the degree of intersubjective verifiability of the arrangements made on the basis of these criteria.

Clarity of law – clarity of a legal text

A particularly significant object of cognition is law, especially texts of legal acts, which are the direct means used by the legislator to communicate the enacted law in the Polish legal culture. This significance of law is manifested in that it concerns the most important spheres of human activity in the individual dimension (such as professional activity or legal and family relationships) and, more important in the social dimension, even when the person affected by this law is not aware of being affected thereby.

The texts of legal acts are not general-use texts, for that matter. Their conventionalised nature actually poses a certain challenge in terms of communication. Yet, it is – for some reason, relevant to such type of texts, which will be covered further – an insignificant, or even apparent, obstacle.

Before the "apparent communication-related obstacle" is discussed, we shall first focus on the distinction between the "legibility" of a legal act text and the "clarity" thereof.

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The text of legal acts are, of course, written and edited in Polish as the only official language of the Republic of Poland,[2] but, obviously, it is not always the same Polish we have to deal with in every other type of communication. The language of legal acts[3] is a variation of the official written Polish language.[4] Yet, despite certain appearances, it is not the lexical features of the language of legal acts texts that pose difficulties in the correct interpretation of these texts. The elements relevant to the nature of the problem concern the texts themselves.

A certain useful remark on the differentiation between text "legibility" and "clarity" shall be made here.

Text legibility is a quality that refers to its structure and editing outcomes. The legibility of legal acts texts is seemingly disturbed due to schematisation (a given text comes into being based on a text model of a normative act, drawn up using ready wording, which makes such texts copies to some extent), delimitation (both at the level of the global structure of the entire text and at the level of its microstructure – the main editing unit in a given type of a legal act text), and numerous references[5] to other provisions in the same acts, in other acts, or to various other legal acts.

Text clarity, in turn, refers strictly to linguistic aspects of the content of texts, including of legal acts texts (mostly taking on the form of legal regulations). The quality is discussed in literature (legal and linguistic), mainly in relation to the terminology and the specific (stencilled) manner of content editing.

Both legibility and clarity are gradable qualities. And both qualities may be considered from a linguistic and legal point of view. The strictly linguistic point of view is a natural perspective given that the texts in question are texts featuring linguistic expressions. The legal perspective, in turn, just as natural, comes from

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2 According to the Constitution of the Republic of Poland of 2 April 1997: "Article 27. Polish shall be the official language in the Republic of Poland." (Journal of Laws of the Republic of Poland of 1997, no. 78, item 483; of 2001, no. 28, item 319; of 2006, no. 200, item 1471; of 2009, no. 114, item 946).

3 I am using the term of "the language of legal acts texts" I put forward in 2007, and not the term of "the language of the law" as the former specifies that the "language" in question is materialised only in the texts of legal acts. One cannot speak of "the language of the law" not referring to such texts. On the matter – cf. A. Choduń, *Słownictwo tekstów aktów prawnych w zasobie leksykalnym polszczyzny*, Warszawa 2007, p. 161 et seq.

4 This is a conclusion drawn on the basis of the findings of my studies into the texts of legal acts, published in: A. Choduń, *Leksyka tekstów aktów prawnych*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2006, 4; eadem, *Słownictwo tekstów...*

5 On references – cf. A. Malinowski, *Odesłanie jako metoda zwiększania jednoznaczności i spójności tekstu prawnego*, [in:] A. Mróz, A. Niewiadomski, M. Pawelec (eds.), *Prawo, język, media*, Warszawa 2011, pp. 83–93.

the normative text model of legal acts texts,[6] included in the normative act itself in the form of directives regarding the editing of legal acts texts.[7]

These two points of view offer two perspectives for the criteria according to which it will be possible to determine the compliance with the quality of clarity, or the quality of legibility in relation to a given legal act text being the expression of the text model.

The linguistic perspective focuses on issues related to the linguistic correctness of expressions according to the standards of the Polish language. Meanwhile the legal perspective pertains to the concordance of the text expression with its normative model.

Both perspectives may also, which they actually do, not end with the matters of compliance and concordance, but extend the range of view by including the category of competence. The first case is about linguistic competence, and the other – about communication competence, competence of communication in the area of law, to be precise[8] (or legal communication competence).[9]

Linguistic competence and communication competence

When it comes to the understanding of legal acts texts, meaning considering them clear, linguistic competence does not suffice. Not everyone who makes and receives various forms of expression in the Polish language may understand the message included in the text of a legal act correctly. In this case it is not about understanding the language of such texts as expressions in Polish, but to understand it as an expression in the language of the law. For this to be possible, one needs – apart from linguistic competence – knowledge on the characteristics of legal acts texts, the language of such texts, legal knowledge, and finally knowledge on the interpretation of law, which integrates the said areas of knowledge to a great extent.

Linguistic competence is the ability to communicate in a given language; it is a certain sort of subconscious knowledge about the language used. It involves the ability to create and receive expressions in a given language. It does not require any additional special type of education in the area at issue (this is how children learn

6 A genre model of expression as the formal model.

7 At present, it is the Prime Minister's Regulation of 20 June 2002 on the "Principles of Legislation Technique" (Journal of Laws of the Republic of Poland of 2016, item 283).

8 T. Gizbert-Studnicki, *Język prawny z perspektywy socjolingwistycznej*, "Zeszyty Naukowe Uniwersytetu Jagiellońskiego" Prace z Nauk Politycznych, 1986, 26.

9 A. Choduń, *Aspekty językowe derywacyjnej koncepcji wykładni prawa*, Szczecin 2018, p. 160.

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how to communicate using language). It is thus common that people speaking a given language 'consume' the messages formulated in that language somewhat automatically.

But this is not the case with every type of text. In particular, the correct understanding of a legal act text may not take place without utilising a pre-acquired knowledge on the understanding of legal acts texts, which is not limited to linguistic competence, no matter how proficient the user of the language may be.

Competence in the field of law – legal communication competence

Legal acts texts bear certain traits that make it impossible to understand them correctly as legal acts texts that they are without sufficient knowledge required to this end (legal communication competence). Such a trait is e.g. the manner of expressing certain content that can be expressed by way of omission of certain elements, as defined by the directives of the principles of legislation technique (hereinafter: "PLT"). One of PLT directives (§ 25[10]) provides for a possibility not to define the subject to which an order (or prohibition) of acting in a certain way is addressed, or not to indicate when a given conduct is ordered (or prohibited) directly in a given provision. Another directive applied in the same area goes even further by expressly instructing the editor not to name the subject to a given order if this subject is to be anyone.

The solution described above refers to the division of a normative expression in legal provisions. The idea is that not all elements making a complete expression regarding the ordered or prohibited behaviour and the subjects and the circumstances of such orders and prohibitions can be included in a single provision. As already mentioned, such way of drawing up and editing legal provisions is governed by PLT directives. Following these directives leads to stripping the text of elements that are common to a group of provisions. This way it is possible to avoid the

[10] "§ 25. 1. A provision of substantive law should define – as directly and clearly as possible – a given behaviour together with those who should follow such behaviour and the circumstances in which this behaviour should be followed (cardinal provision).
2. A cardinal provision may, by exception, define only the ordered or prohibited behaviour of the subject of this behaviour if:
1) the subject or the circumstances of the order or prohibition are defined clearly and unambiguously in another act;
2) it is advisable that the determination of the subject or the circumstances be included in the general provisions of the same act;
3) the universality of the scope of subjects and circumstances shall be obvious."

continuous repetition of those text fragments which are already expressed but the knowledge of it is not common. This is knowledge on legal acts texts and the relationships between the fragments of norms, as expressed in legal regulations, which need to be reconstructed to produce a complete expression composed of all elements forming a given norm. The second form of incomplete normative expression in legal regulations is its incompleteness in terms of its content. There is a range of elements modifying the range of obligations of the subject in different provisions (content modifiers), which are not always included in the same text of a legal act. The awareness that such modifiers exist and that they need to be taken into consideration to be able to read a legal act text correctly belongs to the field of knowledge on editing legal acts texts, which is also the area of appropriate reading of such texts.[11]

A certain solution that can be useful to interpreters, taken advantage of by editors of legal acts texts, is to make legal regulations feature expressions suggesting the need to take provisions containing the missing elements of the normative expression, or expressions implying the existence of modifying provisions into consideration. The problem is that the absence of such 'hints' does not mean that there are not such modifying provisions. It is simply necessary to know that such modifiers may exist.

The case with both issues discussed above is that the legal acts texts being normative texts are composed of two levels, which means that apart from the level of provisions (descriptive level) they feature one more level – the proper level of their reading – **the normative level**.

Understanding a text at the descriptive level, meaning at the level of a text drawn up in a language known to the reader, does not equal understanding of this text as a text of a normative act, which would be the level that should be known to the interpreter of the legal act text in question.

Such an appropriate understanding of a legal act text also depends on the familiarity of the ways to express normativity in the discussed texts, the knowledge of the ways to express the generality of subjects and the abstractness of obligations, understood differently in legal acts texts than in other texts (this concerns e.g. using the indicative in legal acts texts, which always implies an obligation to act in a certain way, whereas in other types of texts this is a description of the reality).

A very important aspect of knowledge on legal acts texts is also the knowledge on the contexts in which such texts are interpreted. This is especially about the con-

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11 The techniques of encoding norms in legal regulations have been included in the content of interpretative directives of the derivative concept of interpretation of law by Maciej Zieliński. See: M. Zieliński, *Interpretacja jako proces dekodowania tekstu prawnego*, Poznań 1972; idem, *Wykładnia prawa. Zasady – reguły – wskazówki*, Warszawa (ed. 1 of 2002 to 7 of 2017). Also on the matter – cf. A. Choduń, *Maciej Zieliński's (derivative) concept of legal interpretation*, "Studia Prawa Publicznego" 2015, 2, pp. 111–125.

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text of other legal acts texts, which is the natural environment of the interpretation of such texts on account of the formal ties between legal acts, the content-related links, and the directives regarding editing legal acts texts. This is about e.g. the formal prohibition to repeat the provisions of one act in another legal act, and the semantic relationship expressed in the range of the impact of meanings defined in one legal act on the meanings of terms used in other legal acts, which does not have to be expressed explicitly using certain phrases implying such a relationship, but may actually be applied based on the assumption that the one who interprets a given texts has the required knowledge.

In order to understand legal acts texts, it is obviously necessary to have the right knowledge of the law. A person without at least an awareness of the difference between the meaning of certain terms used in legal acts texts and their meaning as used in the Polish language may be under the illusion of having the knowledge of these terms. But it is not about knowing certain words or expressions, but about knowing their meanings in relation to a given legal act text. And this cognitive challenge is gradable on top of that. Meanings are sometimes expressed directly in the text of a given legal act in the form of legal definitions. But they may be not expressed directly in the form of definitions given in a given legal act text, although the legal definition for a given term exists – in a different legal act, though. However, it is important to know when it is possible to use such a definition – and when it is not. In this case it is not only the knowledge of meanings, but also the knowledge of the procedure of interpretation. Moreover, the meanings of terms (known as the terms of the Polish language) found in the text of a legal act may have their fixed meanings in the language of scientific law or case law, which also makes them special-purpose vocabulary.[12] Finally, there are terms that appear in the text of a legal act in the meaning assigned to them in the Polish language (i.e. one of their meanings). Such a range of sources of meanings does not translate into a pool of freely selectable meanings. The status of each such source differs, after all. Plus, the meanings provided by such sources may differ between one another as well. When choosing the source of meaning (interpretation in the apragmatic sense), it is necessary to first have the knowledge on the sources of the possible meanings of the terms at issue, and on the possible order of precedence of the application of these sources (interpretation in the pragmatic sense).[13] Moreover, expressions reconstructed based on legal regulations, whose meaning is determined later on, are

[12] These are, after all, names that have been assigned one strict meaning in a given sphere of science or knowledge.

[13] On apragmatic and pragmatic interpretation: M. Zieliński, *Wykładnia prawa*..., ed. 1, Warszawa 2002, current ed. 7, Warszawa 2017, pp. 43–44.

legal norms, not sentences of certain meaning. As legal norms, they form a system of law, which is assumed to be composed of elements that are not inconsistent with one another. This aspect is also taken into account in the interpretation of legal acts texts when determining the meanings of particular words and expressions. Given the fact that creation of law is a purposeful act, related not only to serving a function having an impact on human behaviour, but also to promoting (including protecting) values that are socially acceptable in a given legal culture, the determination of the meaning of a legal act text needs to take this aspect into consideration as well. The consequence is that the linguistic meaning may be modified (in certain special circumstances) precisely on account of the protection of the said values.

The knowledge in this field is not common knowledge. If we take a closer look at the object of cognition in the form of the text of a legal act, at its properties, and especially at the exceptional status and social significance it entails, and at the level of complexity of the matter it regulates, the issue of uncommonness of knowledge in this area should not come as a surprise. One can gain this knowledge, but it is a knowledge not learnt in a subconscious way, as is the case with linguistic competence in one's native speech. Hence the claim for legal acts texts to be understandable to all Polish language speakers is impossible to be fulfilled to the extent it is possible in the case of general-use, functional texts. Legal acts texts are not general-use texts (!). The ability to formulate and understand messages in a given language is developed unknowingly through one's participation in the process of communication involving the use of a given language (each one of us "has learnt" e.g. to speak their native language this way). Linguistic competence is, however, not the same as communication competence, and even much less the same as legal communication competence.

The following two questions arise therefore naturally: (1) when can we say that legal acts texts are communicative as texts of this type, and (2) who considers legal acts texts communicative? The issues will be discussed in the following part of the paper, devoted to legal discourse and its participants.

Participants of legal discourse

Anyone with a sufficient linguistic competence may familiarise themselves with the content of the text of a legal act. But this will be a 'cognition' of the content of a given text as a text in the Polish language, not as a legal act text as a text of this particular type. To interpret texts other than general-use texts or everyday communication texts one needs not only the ability to use the language of a given text but also the knowledge on the particular type of text and the knowledge of the substance of

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a given area. Thus, apart from linguistic competence, one needs general communication competence or communication competence in the area of a given field.

Both linguistic competence and communication competence are gradable. If the level of competence of both types (i.e. related to language and communication skills) is similar among discourse participants, the risk of incomprehension or misunderstanding is much smaller than in situations in which this level varies greatly among interlocutors.

People tend to naturally demand and expect clarity of texts written in their native languages. It is therefore a claim addressed at texts, but verified by those who make such a claim, based on criteria they set themselves. These criteria are thus subjective ("The text is unclear because I don't understand it"). In the case of general-use or other texts, however, such a claim may be objectivised by adopting certain measures of text clarity, formulated by different tools used to measure the degree of text clarity (*index fog*, Jasnopis) as the criteria of its fulfilment, resorting to such a solution in the case of legal acts texts is risky. This is mainly because the main text feature that distinguishes legal acts texts from other texts is their two-level structure: the level of description (the level of legal provisions) and the normative level (the level of legal norms). Legal acts texts are not perceived in the same way by everyone at both of these levels.

Any Polish language speaker is potentially capable of reception of a legal act text at the level of provisions. But this will not be a proper reception of such a text. The proper way to construe such a text – i.e. appropriate in terms of the kind of the text – is to construe it at the normative level, not noticed at first sight. One simply has to know about this level. The consequence of such texts being formed of two levels is that any potential interference with the text of a legal act at the level of provisions may translate into a normative alteration of the text.

With time, the standpoint of lawyers claiming that legal acts texts require a certain special background to be able to read them correctly has been supported by linguists, who have noticed a major difference between the texts of normative acts and other texts in Polish.[14]

Different levels of communication competence of those determining the content of a legal act may potentially translate into different – in the aspect of adequacy – levels of reading the text in question. Surely the knowledge on legal acts texts,

[14] "[...] since two texts of law concern – to a different extent – matters of huge importance to all of us (employment contracts, tax system, rules of inheritance, traffic rules) [we expect] them to be something of an absolute, universal accessibility, simplicity, clarity, etc. And what do we expect of ourselves as their audience (readers)? Nothing. But we do expect to be satisfied with reading", H. Jadacka, *Dlaczego nie wszyscy mogą zrozumieć teksty prawne*, [in:] A. Mróz, A. Niewiadomski, A. Pawelec (eds.), *Prawo, język, etyka*, Warszawa 2010, pp. 27–28.

on their properties, on the actual qualities of the language of legal acts texts, the general legal knowledge, the familiarity with interpretation directives and the ability to use them place experts[15] on a different level than laymen[16] in this area.

Legal discourse (related to the interpretation of a legal act text) involves the participation of both experts (with different levels of knowledge and skills in the area at issue) and laymen (also with different levels of knowledge regarding the matter under discussion). Let us notice that expert opinions on the clarity/vagueness of legal acts texts are (or should be in any case) a manifested expression in relation to the extent to which a given legal act text embodies or fails to embody the normative model for a given type of text, according to which a given legal act text is drawn up and edited. This is therefore to mean not someone's impressions related to the degree of intellectual and practical background, but the verification of a text's fulfilment of criteria imposed by the model. In the case of legal acts texts, the question is not about a model reconstructed based on studies of many texts of such type, but about a normative model given the form of directives expressed in legal provisions.[17]

In the case of laymen speaking of the clarity of legal act texts, there are no arguments referring to the normative text model because the knowledge on the matter is included in the area of legal communication competence, which laymen, by definition, do not have at all or if they do, the level is insufficient. The main difference between experts and laymen in looking a legal act text is mainly about the former treating the text as a normative text, which laymen do not know or are not aware of to a sufficient degree.

Therefore, the goals of the participants of a legal discourse are different. Experts aim at establishing the content of a law, and so to make arrangements at the normative level of the text of a legal act. Laymen, in turn, without the awareness of the two-level structure of a legal act text, will focus on the meaning of the text as a text in the Polish language. As with any other text. The potential difficulties with understanding a legal act text will be different to both groups of participants of a legal discourse because of the different levels of their communication competence.

Laymen will make efforts to simplify the language of the expressions included in the legal act text and to improve its legibility, considering these factors as the reasons behind the text's vagueness. Experts, in turn, will concentrate on making specific

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15 Experts – people with specialist knowledge (expert's competence, which includes knowledge of an object and the ability to use this knowledge in practice).

16 Laymen – people without specialist knowledge (without expert's competence in the area of legal discourse). One the matter – cf. *discourse competence*: J.M. Swales, *Genre Analysis. English in academic and research settings*, Cambridge 1990, pp. 23–27.

17 This is a very important difference between the model text of a legal act text and the genre model of other linguistic expressions.

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texts of legal acts as close to their normative act as possible, considering it to be a guarantee of their clarity (not for everyone, though).

Simplification – a remedy to the fulfilment of the demand for the clarity of law?

In the context of the remarks made in previous section of this paper, we can see that two different perspectives – that of laymen and that of experts – lead to different conclusions regarding the implementation of measures to address the potential vagueness of legal acts texts.

The point of view of experts is about referring to the normative model. The point of view of laymen is about referring to linguistic correctness and general communicativeness. Different perspectives involve different suggestions of remedies. But these remedies are not equivalent, or possible to be applied to the same extent with respect to legal acts texts. Linguists speaking of a language of the law mean not only the language of legal acts texts but also semi-legal languages.[18] It is common to mention "language of the law", "legal language" or "official language" in one category in such cases, failing to see that the language of legal acts texts is not a descriptive language, but a normative one. Changes in the surface structure as regards legal acts texts translate into the deep structure of such texts. As for lexical changes, it is necessary to bear in mind that the language of legal acts texts is composed of: (a) common vocabulary (common to different variants of the Polish language, neutral in terms of style) and (b) specific vocabulary, where terminology plays a major part (it is a vocabulary that takes lexical variants of the Polish language into account).[19] Substituting so-called difficult words with simple ones is not a safe solution in the case of the texts at issue – exactly because in the case of the layer formed of specific vocabulary we are dealing with terminology (resulting, among others, from legal definitions, which makes it connected with the content of the law in terms of the

[18] Semi-legal language as languages closest to the language of legal acts texts have been listed by M. Zieliński in: *Języki prawne i prawnicze*, [in:] W. Pisarek (ed.), *Polszczyzna 2000. Orędzie o stanie języka na przełomie tysiącleci*, Kraków 1999, pp. 50–74.

[19] The proposal to distinguish common vocabulary and specific (distinguishing) vocabulary as part of the lexical variants of the Polish language has been formulated by A. Markowski [in:] idem, *Leksyka wspólna różnym odmianom polszczyzny*, Warszawa 1992, pp. 7–21. I have used this differentiation to carry out studies on the vocabulary of legal acts texts, which has shown how rich such texts are in terms of terminology. I have presented the findings in publications mentioned in footnotes 2 and 3 of this article.

meaning).[20] Specific vocabulary as a distinguishing layer is untranslatable into a different specific vocabulary. Otherwise we would be dealing with synonymy, and it is not about synonyms, but about meanings.

Meanwhile, the ideas to increase the degree of clarity of legal acts texts (often embodied with their legibility and intelligibility alike) often refer to the idea of *plain language* or directly to *plain legal language.*

It seems reasonable to offer a brief introduction to or revision of the idea in question, very useful actually. The plain language movement was initiated in the 1980s as a response to a number of discussions on language simplification, leading to broader access to information (consumer, official, legal, and other information).[21] The movement for simplifying the language of the law – *plain legal language* – came to being as an answer to claims for simplifying the language of legal regulations in the area of tax law and consumer law. These initiatives concern both the aspect of legibility of legal acts texts, meaning the internal structure of such texts: delimitation, crossheads, graphic typeface, sentence shortening, featuring legal definitions at the beginning of an act, resigning from featuring technical fragments (e.g. the address of an act) in the main body of a text, etc. and the linguistic comprehensibility of such texts (which involves, among others, using difficult words in the text), using the passive, analytic structures, or nominalisation.

Of course, whether a given text is difficult and therefore "requires simplification" is not a matter of someone's impression but is determined on the basis of the application of a selected tool designed to measure the complexity of texts (e.g. index fog, but there are more such tools).[22] They can help us examine the difficulty and complexity of a text taking the length of sentences and the frequency of occurrence of

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20 Apart from legal definitions, the specific vocabulary of legal acts texts is formed of terms defined by the science of law (or the judgements passed by supreme court authorities). It is also good to bear in mind that the terms used in a different type of communication as specific vocabulary may have different meanings.

21 In the US, Great Britain, New Zealand or Australia, the idea of plain language has been institutionalised in the form of legal regulations that make it mandatory to use e.g. such an official language that increases the effectiveness of communication between officials and the society by, among others, utilising appropriate templates of forms of consumer agreements. More on the subject: http://www.plainlanguage.gov; A. Malinowski, *Komunikatywność polskich kodeksów*, "Zeszyty Naukowe Sądownictwa Administracyjnego" 2016, 1, pp. 24–33; N. Zych, *Idea plain language a teksty prawne*, "Przegląd Legislacyjny" 2016, 3, pp. 65–90. Broadly on the matter of *plain language* in Poland and Pracownia Prostej Polszczyzny (Plain Polish Lab) operating at the University of Wrocław: T. Piekot, *Ruch prostego języka – korzyści i zagrożenia (Standard „plain language" jako język przyjazny obywatelom)*, [in:] *I Kongres Języka Urzędowego*, 30–31 October 2012, Senate Chancellery, Warszawa 2013, pp. 169–197.

22 Broadly on the matter: W. Gruszczyński, M. Ogrodniczuk (eds.), *Jasnopis, czyli mierzenie zrozumiałości polskich tekstów użytkowych*, Warszawa 2015; A. Malinowski, *Komunikatywność*...

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the so-called difficult words into account. And when it comes to the Polish language, a language that can be named quite difficult (according to FOG values) is one that is intelligible to students of bachelor-level studies.[23]

A certain deficiency of these tools, looking at them from the point of view of the issues discussed in this paper, is that they do not take the layered structure of legal acts texts and their normativity into consideration.

The examination, therefore, does not take the specificity of legal acts texts into account. Linguists use tools they are familiar with, which indicate the extent of compliance of the examined text with the Polish linguistic standard – the model norm, but fail to consider the degree of compliance of the text with its normative model of legal acts texts, as expressed in PLT.[24] This is significant in that in the case of non-compliance of a linguistic standard with a PLT directive, the latter shall apply. Breaching a linguistic standard results in social consequences (a language mistake). Breaching a PLT directive, in turn, leads to consequences the gravity of which may affect the law, especially since there is a correspondence between the editing and the interpreting directives, which was raised in the Polish legal science already over 30 years ago.[25] And both the legal acts texts interpreting and the editing directives acknowledge an unquestionable normativity of legal acts texts. This correspondence between the content of interpreting directives and the content of editing directives is a commonly acknowledged fact, also reflected in the content of the substantiations of court judgements.[26]

Simplification of the language of legal acts texts would therefore need to start from a change in the legal provisions regulating the principles of editing legal acts texts, which would surely affect the way in which they are interpreted. The directives of editing legal acts texts have changed several times, but these changes have

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23 Ibidem.

24 Cf. broadly on the matter of linguistic standard and the principles of editing legal acts texts: A. Choduń, *Norma językowa a dyrektywy redagowania tekstów aktów prawnych*, [in:] S. Czepita (ed.), *Konwencjonalne i formalne aspekty prawa*, Szczecin 2006, pp. 47–53.

25 S. Wronkowska, M. Zieliński, *O korespondencji dyrektyw redagowania i interpretowania tekstu prawnego*, "Studia Prawnicze" 1985, 3–4, p. 301 and following. Cf. also O. Bogucki, A. Choduń, *Zasady techniki prawodawczej w orzecznictwie Trybunału Konstytucyjnego w odniesieniu do demokratycznego państwa prawnego*, [in:] M. Aleksandrowicz, A. Jamróz, L. Jamróz (eds.), *Demokratyczne państwo prawa*, Białystok 2014, p. 45 et seq.

26 Cf. e.g. Supreme Administrative Court's judgement of 13 October 2005, ref. no. II FSK 642/05 LEX no. 173121: "In addition, it is necessary to stress that the interpretation of the law needs to respect the commonly adopted principles of legislation technique. Legislation techniques play a particular role in the act of deciphering the standard of conduct in the process of the interpretation of legal regulations. There is an obvious correspondence between the principles of editing texts of law and the principles of interpreting such texts". Cf. also e.g. Constitutional Tribunal's judgement of 2 July 2007, ref. no. K 41/05. OTK 2007/7A/72.

been evolutionary, considering the change of the law and the existing body of legal science and judicial decisions. And, as already raised several times in this paper, the main issue related to legal acts texts (and so to the language of such texts) is the normativity of such texts, which cannot be changed because normative expressions as directival expressions serve the function of affecting human behaviour. It is simply necessary to know about the normativity of these texts – and to take it into consideration. Replacing the phrase of "is obliged to" (Polish: *ma obowiązek*) as lengthy and passive-oriented with another expression (sometimes it is the phrase "has to" (Polish: *musi*), which is a substitution of a direct expression of obligation with an ambiguous term) does not make a text "simpler" at its normative level.

The case is similar when it comes the actual qualities of legal acts texts related to the said normativity, which one has to be aware of too. Even if someone would not want to break the norms contained in legal provisions down in terms of their syntax or content, choosing to edit the texts immediately in the form of normatively complete expressions instead (composed of the addressee – subject – of the norm, the circumstances in which the norm is applied, and the behaviour ordered or prohibited by the norm), this would not make such texts simpler. On the contrary – it would make them less legible. Such expressions would be excessively long as each time they would copy and repeat elements common to many norms included in legal provisions, which are now omitted as shared, as ones that would have been contained in other provisions already.

Education in the field of law – developing communication competence

Since simplifying the language of legal acts texts according to the concept of *plain language* is not a universal tool that could improve the intelligibility of such texts among the subjects reading their meaning properly, what can become a guarantee of such an intelligibility?

It seems that it is not easy to suggest a single universal solution. It is reasonable to work on the minimisation of the level of difficulty of reception of legal acts texts in the area in which it is possible and which takes the layered nature these texts into account. The area to be subject to such modification may be the legibility of such texts in the field of the topography of a given text, which appears to be noticed by editors of legal acts texts. This is mainly about such editorial measures as the increasingly frequent use of so-called aggregate definitions (footnotes being an aggregate of legal definitions) featured usually at the beginning of a given legal act in the general substantive provisions. Another measure to improve the legibility of legal

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acts texts is using abbreviations (shortening compound names to simpler forms or acronyms), which make the entire text become shorter. A text can also become more legible if there are column lists within the contained provisions, which involves using references that ensure the coherence of the main legal act text and help it 'stay intact' by providing technical information in the main body of the text.

The linguistic competence highlighted in studies concerning plain language is not enough when it comes to the capability of correct reading of legal acts texts. It is necessary to develop communication competence in this area, preferably at an early stage of schooling. This will not translate into an ability to interpret legal acts texts on one's own, of course (which is what law studies and education in the field of interpretation of texts of legal acts are for). But it will increase the level of the general awareness of the difference of legal acts texts from other texts. After all, these are not general-use texts, but normative texts that are the source of law, not a source of knowledge of law.

Conclusion

An important element of communication competence is knowledge of legal acts texts, which is why it is good to make it more popular. The efforts to popularise the knowledge about the language of legal acts texts through school education have been made for many years by members of the Group for the Language of the Law of the Polish Language Council at the Polish Academy of Sciences (both lawyers and linguists).[27]

It appears that such efforts shall be made also in the area of academic education offered as part of law studies. Not many law faculties in Poland offer programmes that include a mandatorily-pursued subject that would focus directly on education in the field of the interpretation of law. After all, someone could say that "every

[27] On the history of these efforts: A. Choduń. M. Zieliński, *Język urzędowy a język urzędników. Precyzja, adekwatność, komunikatywność*, [in:] *I Kongres Języka Urzędowego...*, p. 67. Maciej Zieliński's (Deputy Chair of the Polish Language Council at PAS, and Deputy Chair of the Group for the Language of the Law of PLC a PAS) statement made in this context is especially notable: "It might be unrealistic, I've been promoting this thesis for about ten years, but it would be good if schools taught, say, matura-takers not only to arrive at the limit of an infinite sequence of fractions – which is usually not something they'll come across too often in their lives – but to teach them at least only the essential knowledge of what abilities they need to be able to read texts of law" in: M. Zieliński, *Wiedza o tekstach prawnych jako warunek ich rozumienia*, [in:] *Język polskiej legislacji, czyli zrozumiałość przekazu a stosowanie prawa*, Materials developed for a conference organised by the Culture and Media Committee and the Legislation Committee, Senate Chancellery, Warszawa 2007, p. 30; idem, *O potrzebie nauczania języka prawa*, [in:] W. Miodunka (ed.), *Edukacja językowa Polaków*, Kraków 1998, pp. 103–111.

lawyer knows how to interpret law", which could make the issue an element of education offered and pursued as part of individual university subjects. But then there is the question of who teaches a certain subject and says "by the way" and "additionally" about the interpretation of texts of law. Is the knowledge passed contemporary, or perhaps a knowledge that they had been taught as a student themselves (e.g. a few dozen years ago)? Academic textbooks provide us with insights on the condition of the up-to-dateness of knowledge on the interpretation of law. But this is a topic to be covered and discussed separately.

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