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LINGUISTIC CONDITIONS OF ACCESS TO LAW AND FAIR PROCESS*

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The following paper is to report a research stream, flowing for nearly two decades at the University of Miskolc. The questions to be answered were raised by two, partly empirical, research projects run by our research group, consisting of lawyers and linguists. The first stage of our research was entitled 'Language use in legal procedures: language translation and the nature of fact in the process of establishing legal statements of facts' and run between 2000 and 2003.[1] Its main task was to examine the requirement that laymen shall not get into subordinated position during the legal procedures just because they do not fully understand the language professionals use during that procedure. The research drew attention to the fact that laymen's opportunity to understand what is going on and what is happening to them during legal procedures is limited because of the gap between the codes of everyday and legal languages. Justification of this claim was served by recordings of police interrogations, court hearings and other procedural acts, together with interviews and questionnaires made with the lay and professional participants of the procedures.[2]

The second research, entitled 'Linguistic Aspects of Fair Trial: The Impact of Legal Language on the Fulfillment of Access to Justice', proceeding with the first, has come to its end in September 2018.[3] It was planned, in part, to continue the previous research referred to, and, in part, to open new directions of research with a (partly) new research personnel background (lawyers, linguists, and experts in informatics to act in cooperation as researchers). Opening new perspectives was made possible by new developments concerning available and researchable databases in the area of law. The digitalized body of rules of Hungarian law is not new;

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1 Hungarian Higher Education Research Project (FKFP) — No. 0653/2000.

2 In the course of this research 18 hours of sound material has been recorded (about 14 hours at police, 4 hours at court hearings) in different types of cases and in different categories (hearings of suspects/defendants, witnesses, victims of crime, confrontation hearings). Transcription of these records has been completed; at present we are going on with making further records and integrating them into a unified body of work *(corpus)*.

3 Hungarian Scientific Research Fund (OTKA) — No. 112172 (2014–2018).

but the digitalized and anonymized body of decisions of Hungarian courts of law is really new. Further possibilities, which have not been utilized for research purposes earlier, are available in our media-world: there are forums on the WEB discussing issues of law; other internet lists, topics, communities. Furthermore archives of radio and television programs on issues of law may serve as sources of linguistic records, as well. Taking into regard these new possibilities we have separated five written language corpora, cca. 200,000 words each, in order to describe and analyze the language(s) of (Hungarian) law. These are: paradigmatic statutes of law (i.e. classical codices, such as codices of penal, civil, labour, procedure etc. law); other enactments of statutory and decretory law; documents of legal praxis (court decisions); study-books for students of law; and texts downloaded from chat-forums on legal issues. They were amended by the sixth, oral language sub-corpus which, after going on with records of court trials, consists also of cca. 200,000 words, together with transcription. The main questions were the following three ones.

1. Where can be the front line drawn between ordinary language of lay participants of the process and technical legal language of professionals?

As it has been mentioned above one of our main efforts was to form a corpus of oral interactions between professional and lay participants of official conversations. This is so, because we suggest the front line between them may be best detected at personal encounters such as police or court hearings and best documented in records made about them. One part of our corpus of sound records has mainly been taken down at police interrogations as a result of our first research. During the ongoing second research we have not been permitted of taking more records at police interrogations but, contrary to the previous stage, we were allowed to record court hearings. We have succeeded with gathering 32 hours of such records, being transcripted in the meantime.

As an example, let us compare one of suspects' statements and the official record of it:

Suspect's utterance:

well well so, well so / I pushed her 'cause she wanted / to hit my son / well eh well eh well well well well / I pushed her / nothing happened / she fell to the wall so drunk / flo-floor, she fell on the floor and / no / well eh / didn't see on her at all / didn't see her that that well that well / 'cause the lights in the stairway is such / that you see almost nothing / then / not either / was she bleeding

Record of utterance:

While quarrelling with Mrs. S, she wanted / to hit my son. / I wanted to take up her quarrel. / I did not hit her, that is / I did not hurt her, nor hit I her with fist / and I did not kick her either. / I pushed her to the wall one time. / Then she fell to the wall. She was quite drunk / as well. / When we started quarrelling / I did not see injury / on Mrs. S, nor did I see after she stood up / neither did she bleed.

Criminal procedure code prescribes that an interrogated person shall be allowed to present her statement with her own words, without being interrupted. The exam-

ple shows one real life obstacle to obeying that rule, namely that a layperson is unable to present a story her own self. (Another obstacle is when she is able to speak continually, but unable to select relevant elements.) In the record a fragmented, gappy and incomplete utterance of the layperson turns into and looks like an elaborated, well formed story. This is characteristic to the beginning of the procedure. Later on, advancing during the stages of procedure, telling and recording the narration again and again, the layperson learns the well formed version of her story by heart, and recognizes it as her own story.

Naturally, the complete narration is not the interrogator's version, either. In fact it is the lawmaker's story. Criteria of relevance are fixed in the norms of law. In the Universe of Law that can only happen which has an official pattern, a narrative scheme, authoritatively fixed in some valid norm of law.[4] The procedure ends up when the facts of the case become determined so that they fit the decision-scheme of one of the norms.

2. What is the nature of the clash between the two sides of front line?

The sides of front line are occupied by (lay and professional) users of different registers of their common language. The connection between them can be understood as intra-lingual translation between two registers of language: those of ordinary language and legal language.[5] The goal of legal procedure is to turn the open, loose and fractured lay discourse into professional language with closed lexicon, accurate expressions and highly organized texts. In terms of linguistics the process can be explained as translation between linguistic codes: transformation one into the other. The chain of transformations consists of *linguistic events* — verbal expressions and recapitulations of former events. The relation between the elements (loops) of the chain is a relation of linguistic expressions. Transformation of one linguistic expression into another is called *translation* in the broad sense — in the sense of *code-switching*. Following R. Jakobson three types of translation can be distinguished:[6]

(1) *Interlingual translation* is translation *sensu stricto:* interpretation of linguistic signs with the help of another language. We have expression(s) or text(s) in one language (code) and translate them into another, e.g. from English into German.

(2) *Intersemiotic translation* or transformation is translation *sensu largo:* interpretation of linguistic signs with the help of a non-linguistic system of signs. We

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4 It has always been so, which becomes quite clear when reading the text of an archaic norm of law. See e.g. the Code of Hammurabi, 25.: "If fire break out in a house, and some one who comes to put it out cast his eye upon the property of the owner of the house, and take the property of the master of the house, he shall be thrown into that self-same fire." It sounds like the script of a crime story and/or a criminal case. From the other side the legally relevant content of e.g. Dostoyevsky's *Crime and Punishment* is that "a person intentionally causes the death of more than one individual in the course of committing or attempting to commit robbery".

5 In details see SZABÓ, M: Law as Translation. In: *Archiv für Rechts- und Sozialphilosophie.* (ARSP Beiheft Nr. 91: *Pluralism and Law. vol. 4: Legal Reasoning.* Ed by SOETEMAN, A.) 2004, pp. 60–68.

6 JAKOBSON, Roman: On Linguistic Aspects of Translation. In: BROWER, R. A. (ed.): *On Translation.* Cambridge, Mass., Harvard U.P., 1959.

have expression(s) or text(s) in a language and translate them into a non-verbal code, e.g. into pictures (like in comics or films).

(3) *Intralingual translation* or rewording is translation *sensu specifico:* interpretation of linguistic signs with the help of the same language. We have expression(s) or text(s) in one language and translate them into diferent expression(s) or text(s) — different register — of the same language, e.g. from (lay) English into (technical) English.

We take intralingual translation as the core model of human linguistic praxis. Narratives or texts expressed in the same language are transformed into one another, surrounding events (acts) or being events themselves. In one central dimension human praxis is a "struggle for words" (or "language war" as R. T. Lakoff calls it).[7] To act (as an event) is to make others accept one narrative (or version or interpretation or translation) of other events or narratives. This is evident in cases of law. Legal activity is linguistic activity; it is a series of transformations of linguistic expressions and texts ending up in the final event of court judgement.

If we understand legal activity as a series of translations, we can separate two — otherwise intertwined — chains of translations. The first runs along the *question of law*, with the texts of norms in the centre. This chain is divided into two phases. The first phase is called *legislation*, i.e. creation of legal norms. Legislation can be understood as translation, too. Legislation's initial event is a state of social reality (e.g. a certain rate of traffic accidents or thefts), which is described in initial (lay) code of newspaper articles, parliamantery speeches, statistical reports etc. It is this text then which goes trough linguistic processing by evaluation of existing state of affairs, by positing desirable state of affairs and by pointing at the instruments which could lead from existing to desirable state of affairs. These instruments are norms of law, supposed to be able to cause the possible (and desirable) world as an effect. The second phase of the first chain is called *adjudication.* Implementation of laws by judiciary starts from the text of a legal norm (with legislator's intent behind it), as an initial event. This turns into a norm-proposition, as initial code, which is transformed into a concrete reading of the norm[8] fitting the case and ends up in the text of a court decision, as a final event.

The other chain runs from an empirical act (event) to the decision of the court (as an event and as a text). To connect the loops of the second chain — which is not a *par excellence* legal job — is to reconstruct past events, to turn them into facts and to transform the latter into a legal state of affairs. Though both chains can be understood as a series of transformations, it is only the latter which can be understood as a series of translations. It is only the process of establishing legal states of affairs during which lay language use conflicts with professional language. Legal interpretation, which runs from the text of a general norm to the text of the norm as applied *(*the *Fallnorm),* remains within the same code — that of legal lan-

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7 LAKOFF, R. T.: *The Language War.* Berkeley etc., U. of California Press, 2000.

8 This is called a *Fallnorm* as "hermeneutic condensation of norm and case" by FIKENTSCHER, W.: *Methoden des Rechts. IV. Dogmatischer Teil.* Tübingen, J. C. B. Mohr, 1977, p. 198.

guage. The intertwinement of the two chains means that professional legal language is to transform — to translate — everyday language into the text of the laws. The ends of the chains meet within the text of the decision.

Making one further step ahead we have to recognize that inequalities in language use are backed by social inequalities. The first and best known theorist of the connection between the two kinds of inequalities is Basil Bernstein.[9] He distinguished (though later tinted[10]) two registers — for him: two 'codes' — comparable to lay and professional registers: *restricted* and *elaborated* codes.

"The speech is here [in restricted code] refracted through a common cultural identity which reduces the need to verbalize intent so that it becomes explicit, with the consequence that the structure of the speech is simplified, and the lexicon will be drawn from a narrow range. The extra-verbal component of the communication will become a major channel for transmitting individual qualifications and so individual difference. […] The meanings are likely to be concrete, descriptive or narrative rather than analytical or abstract."[11]

"The verbal planning here [in elaborated code], unlike the case of a restricted code, promotes a higher level of syntactic organization and lexical selection. The preparation and delivery of relatively explicit meaning is the major function of this code. This does not mean that these meanings are necessarily abstract, but abstraction inheres in the possibilities. The code will facilitate the *verbal* transmission and elaboration of the individual's unique experience. The condition of the listener, unlike that in the case of a restricted code, will *not* be taken for granted, as the speaker is likely to modify his speech in the light of the special conditions and attributes of the listener."[12]

When referring linguistic to social inequalities Bernstein claims: "Thus we can expect, broadly speaking, to find both modes of an elaborated code within the middle class together with restricted codes. In the lower working class we could expect to find a high proportion of families limited to a restricted code."[13] Taking into regard that half of Hungarian population graduated only in elementary or vocational school we can expect that their linguistic competence is limited to restricted code, but, actually, vast portions of those higher educated are not prepared to cope with texts in technical legal language, either.

3. What are the characteristics of legal language used by professionals?

Following the line prepared by the concept of translation, we can identify distortions stemming from translations in law. They may result from three sources, all of which putting some features of law and legal language in the light.

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9 See: BERNSTEIN, B.: *Class, Codes and Control. Vol. 1–3.* London, Routledge and Kegan Paul [1971–1975] 2003.

10 See *Postscript* to the 2003 edition, Vol. 1, p. 189 ff.

11 Ibid. p. 100.

12 Ibid. p. 101.

13 Ibid. p. 117.

(1) *Features of legal language as technical language.* Being a technical language basically means a limited vocabulary (terminology) and specified meaning. The legal code as a set of technical terms is closed in contrast to the openness of a natural language. One is not allowed to use any word or expression at one's disposal in natural language — in the sense that, in order to be relevant, expressions have to be changed or translated into the elements of the closed legal vocabulary as canonized in legal code(s).[14] Further, legal language tends to be monosemic: it tries to exclude different or vague meanings, metaphors or shades of meanings etc.

Anyhow, this is not the whole story. First, a legal lexicon is not so sharply circumscribed, as e.g. a medical vocabulary. Legal language includes a lot of colloquial words, though with meanings specified or biased by norms of law. This kind of semantic takeover by law may be institutionalized as in the "interpretive provisions" or "definitions" of an act or code;[15] may not be institutionalized by legislation, but introduced with authoritative force by courts;[16] or simply by becoming a part of legal vocabulary as a result of professionals' language use.[17]

Second, not each and all enactments of law are written in legal language. Intuitively, apart from the classical codes or acts (such as Civil Code, Penal Code, Labor Code, Juridical Act, Inheritance Act etc.) not much part of a legal system is encoded in legal language. Just think about enactments regulating such diverse areas as supervision of banks, medicament production, mining, public construction, taxation, energetics, children's day care, conservancy of forests etc. Each has her own profession(s) and each profession has her language(s). In fact, even drafts of regulations are prepared by stakeholders of the area concerned. The language of such products of legislation has nothing to do with the language of lawyers, leaving alone that of laypersons.

Third, compared again to other technical languages legal language is not only to serve safe and reliable communication of lawyers among themselves. The aim of laws of a political community is not only to inform the lawyers, but inform their addressees, i.e. all those, whose behavior is to be measured later on by those laws with the ministration of lawyers. Both democracy (the claim for control over the laws enacted in the name of the community) and fairness (the claim for laws being comprehensible for addressees) requires extending the range of the users of that language.

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[14] Something similar is expressed in the warning by Montesquieu: "…though the tribunals ought not to be fixed, the judgments ought; and to such a degree as to be ever conformable to the letter of the law." MONTESQUIEU, Charles-Louis: *The Spirit of Laws*. XI. 6. (Transl. by Thomas Nugent) Kitchener, Batoche Books, 2001, p. 175.

[15] E.g. words like "gang", "threat", "family member" in Section 459 of Hungarian Criminal Code (Act C of 2012).

[16] E.g. words like "signature", "pagination", "foyer" by different court decisions.

[17] E.g. "draft" (of facts) fixed by an advocate proving the list of facts given by her client forth; or certain quasi ritual, idiomatic collocations used when framing contracts (e.g. "fixed in wall or wood" referring to accessories of real estates, or "eternal and indefeasible" as rhetorical ornament of contractual will).

(2) *Features of legal language as basically written language.* Being basically written language gives certain artificial feature to legal language in contrast to other technical languages. Though it is a commonplace that technical languages are parts of their respective natural language, and that natural languages are basically oral languages, another pecularity of legal language is its written character. That is why legal language preserves long traditions, ritual phrases, long and difficult sentence-structures and makes lay people feel it something alien. The difference stemming from having oral/written form is just another dimension of differences specified as being lay/professional and being restricted/elaborated kind of speech. Lay speech uses restricted code and follows patterns of oral utterance, while professional communication with elaborated code follows patterns of written messages — even when it is expressed orally.

"The Law Wishes to Have a Formal Existence."[18] Despite the limits of formality, conveyed by the demands of morality and interpretation, the very existence and autonomy of law can only be imagined as formal and positive. Though thought of as a central problem of modern systems of law, actually it is a permanent dilemma of law. If we regard *regularity* and *generality* the dividing line between law and other systems of human behavior and we want the law work, there seems to be no other way than to manifest standards of law in positive — first of all: written — form. As a creation of man, law is necessarily imperfect; it needs continuous perfection through substantive considerations of legislation and adjudication. However, when considering law as such it cannot be done but by understanding it as positive law and its aim as formal justice/fairness/equity.[19]

However, we often recall Celsus' celebrated proposition according to which law is *ars boni at aequi*.[20] Even though, we have good reason to be cautious when citing Celsus' claim. "That Celsus should use *bonum et aequum* as an argument for granting a remedy of the strict law must have come as a shock to his contemporaries. But Celsus obviously loved to stun his colleagues. […] Ulpian, citing the Celsus definition of law almost one century later as »elegant«, must have still felt some surprise and a sense of paradox in this formula at his time."[21] The paradox lies in the conflict between the concept of law of jurists on one side, and that of philosophers on the other.

Jurists have a view of law embedded in praxis: for them law is that which is applicable *as law* in cases at court. *"Ius finitum et possit esse et debeat"* — "The law

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[18] FISH, Stanley: The Law Wishes to Have a Formal Existence. In: SARAT, A–KEARNS, T. R. (eds.): *The Fate of Law.* Ann Arbor, The University of Michigan Press, 1991, pp. 159–208.

[19] In details see SZABÓ, M.: Formal Justice and Positive Law: The Graeco-Roman Law Heritage. In: PÉTER, O.–SZABÓ, B. (eds.): *A bonis bona discere. Festgabe für János Zlinszky zum 70. Geburtstag*. Miskolc, Bíbor, 1998, pp. 253–267.

[20] Ulpian, D. 1.1.1: *"...ut eleganter Celsus definit, ius est ars boni et aequi."* ("…in terms of Celsus' elegant definition, the law is the art of goodness and fairness.")

[21] HAUSMANINGER, H.: Publius Iuventus Celsus – The Profile of a Classical Roman Jurist. In: KRAWIETZ, W–MACCORMICK, N.–VON WRIGHT, G. H. (eds.): *Festschrift Summers.* Berlin, Duncker & Humblot, 1994, p. 253.

can and should be definite".[22] The same view was characteristic long before classical Roman law, in Greece. Greek law — the "law without jurisprudence"[23] — was never organized into a system and has never developed any group of professional lawyers. Even though, the concept of law of the Greeks had nothing to do with the concept of law presented by Plato or Aristotle. The laws (of the "living" or "working" law of jurists) "are addressed not to the people at large but to the officials and magistrates who have to apply them. […] Nor are there preambles to the laws, and the tone is not one of persuasion but of blunt command sanctioned by penalties against any defaulting functionary and enforceable by any citizen who thinks it worth to bring him to book. The formula runs: […] Let the magistrate make use of no unwritten law."[24]

Looking back to the origins of law (i.e. separation from morals and customs) we find archaic codes of law — Hammurabi, Draco, Twelve Tables — writing down and bringing to canonic form and authority the laws of coexistence of a community. Human law, from the early centuries, is written and formal.[25] That is why we feel authorized to claim that the demand for the positivity of the law is present from the very beginning of legal solutions to human conflicts, positive law and legal positivism just reflecting to that demand.

Jacques Derrida's claim is that "writing" (in the — very — broad sense) is primer not only to phenomena such as law, but to language or to any kind of signifying;[26] "there is no linguistic sign before writing".[27] For Derrida language is but a species of writing, in the sense that possibilities hiding within language come only unbound after and because of writing. Writing makes us able to use verbal and only verbal communication — without the help of channels of nonverbal communication. Law and legal communication requires exactly that — clear verbal communication – because the eyes of Iustitia are hoodwinked, i.e. the judge ought to set aside all contextual information. What remains is *"sola scriptura"* — only the writing to inform the decision.

(3) *The imperative context of language use in law.* It is evident though not unique (see: Peter Goodrich[28]) that everyday language use confronts legal language

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22 NERATIUS, D. 22. 6. 2.

23 J. W. Jones' expression in the Preface of his *The Law and Legal Theory of the Greeks*. Oxford, Clarendon Press, 1956 (reprint: Aalen: Scientia Verlag, 1977).

24 Ibid. pp. 15–16.

25 "Roman legal science, reflecting at least four hundred years of continuous literary debate, of ever increasing complexity, coped over a long period of time with the problem of formality and the place it occupies in the law. From the beginning there was no doubt that rules and concepts that are structured in such a way as to be socially effective without the aid of substantive (and, as such, necessarily casuistic) arguments, are essential to law." BEHRENDS, O.: Formality and Substance in Classical Roman Law. In: KRAWIETZ, W.–MACCORMICK, N.–VON WRIGHT, G. H. (eds.): *op. cit.*, p. 207.

26 'And thus we say "writing" for all that gives rise to an inscription in general, whether it is literal or not and even if what it distributes in space is alien to the order of the voice: cinematography, choreography, of course, but also pictorial, musical, sculptural "writing."' Jacques Derrida: *Of Grammatology.* (Transl. G. Ch. Spivak) Baltimore, John Hopkins University Press, 1997, p. 9.

27 Ibid. p. 14.

28 E.g. GOODRICH, Peter–BARSHACK, Lior–SCHÝTZ, Anton (eds.): *Law, Text, Terror*. London, Routledge–Cavendish, 2006, but mainly Goodrich's writings from his work's first period.

within an imperative context. From our point of view the main impact of that context is the possibility of linguistic oppression. It is a living experience of laymen at police or court hearings that they are not allowed to set their narratives forth as they would like to. They are interrupted, they are questioned, they are corrected, they are instructed etc. Further, they are not allowed to resist or even to protest against (intralingual) translation of their narratives, even if they realize distorting transformation of their words. Beside this effect the phenomenon of "normative semantics" may be perceived: the abovementioned biasing of meaning by norms.

If we speak of translation, we have to speak about equivalence, too. The central issue of any translation as transformation is the question of equivalence, which means mutual correspondence of different level elements of two systems of language. Taking into regard that translation theorists hold that "back-translation" is methodologically impossible,[29] we have to face the final question if translation is possible at all. Though theoretically we may conclude that translation (in a certain sense) is impossible,[30] practically we know that translators translate a huge amount of texts every day. So the real question is what we should mean by "translation", what sort of "equivalence" we should require when accepting a text as translation of another. In the case of law the central sort of equivalence can be understood as functional equivalence (in general) or institutional equivalence (in specific). Each translation needs a *"tertium medium",* a common denominator, which mediates the content between languages and, this way, guarantees the equivalence (interchangeability) of the expressions.

"Functional equivalence" — as opposed to "formal" or one-to-one equivalence — is well known from the theory of Eugene A. Nida.[31] In the case of functional equivalence the common denominator is the impact, i.e. the impact taken on the target language reader has to be the same as the impact taken on the reader of the source language. "Impact" within law is "legal effect", so terms of law in different languages are equivalent if they have the same legal effect. The connection between an act (either empirical or symbolic) and a legal effect is fixed in institutions of law — so functional equivalence within law can be specified as institutional equivalence. Institutions of law are legal constructions:[32] combinations of rudimental particles — persons, things and actions, as Gaius first presented in his *Institutiones,* laying the foundations of a possible legal taxonomy and terminology. Institutions originating in Roman law form the common foundation of present institutions of law and serve as a specific (conventional) "legal reality" to be referred to by concepts of law. Besides the common legal reality there is another — linguis-

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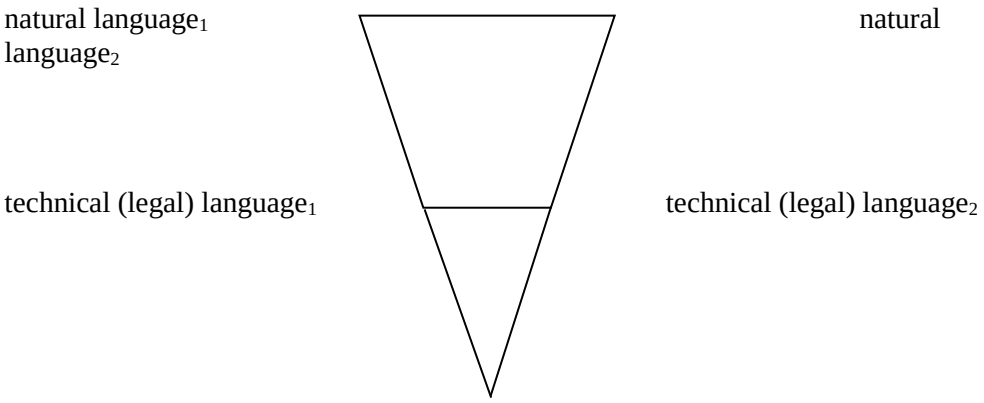
[29] For an experiment on back-translation and its results see KLAUDY, K.: Back-Translation as a Tool for Detecting Explication Strategies in Translation. In: KLAUDY, K.–LAMBERT, J.–SOHÁR, A. (eds.): *Translation Studies in Hungary.* Budapest, Scholastica, 1996, pp. 99–114.

[30] On the views about impossibility of translation see HATIM, B.–MASON, I.: *Discourse and the Translation.* London–New York, Longman, 1990, pp. 29–31.

[31] NIDA, E. A.: *The Theory and Praxis of Translation*. Leiden, E. J. Brill, 1982, p. 22.

[32] See e.g. SMITH, J. C.: The Unique Nature of Concepts of Western Law. 46 *The Canadian Bar Review / La Revue du Barreaun Canadien* (1968/2), pp. 191–225.

tic — common denominator, giving us a hand with translation: Latin language. Partly becoming a part of certain legal lexicons, partly serving as origins of legal termini in natural languages we always can go back to the origins of our concepts.



common original technical language (Latin)
common "perfect" artificial language (logic)

Latin may help us at the level of semantics: coping with the meaning of legal terms and concepts with reference to the constituents of legal reality. E.g. while the meaning of "dog" may be completely clear, it can be doubtful if a "goat" or a "cow" is a "dog" when interpreting the sign: "No dogs in restaurant." Normative sentences like this are practically or pragmatically ambiguous. But we have another bearer of common understanding at the level of grammar (or syntax in terms of semiotics). To get it we are to distinguish the concepts of "surface structure" and "deep structure" as introduced by Noam Chomsky,[33] expanded by J. R. Searle.[34] The problem to be handled within law — to resolve the problem of Hartian "open texture" — is similar to handling "syntactically ambiguous" sentences; the difficulty comes from the function of a grammatical connective (e.g. the "or"), the nature of a list (conjunctive or disjunctive) etc. Chomsky's solution is that in order to resolve (syntactical) ambiguities at the surface level of linguistic expressions (utterances as they are) one should carve down to their deep structure — I would say to their logical structure. Deep structure and surface structure are connected by transformational rules (e.g. by creating different grammatical structures to express the same possessive relation). This also means that the meaning of (surface) sentences is determined by their deep structures and that surface structures are con-

[33] CHOMSKY, Noam: Deep Structure, Surface Structure, and Semantic Interpretation. In: STEINBERG, D.–JACOBOVITZ, L. (eds.): *Semantics*. Cambridge, University Press, 1971.

[34] SEARLE, John R.: Chomsky's Revolution in Linguistics. *The New York Review of Books,* June 29, 1972, pp. 16–24.

nected with each other by their deep structures. So, both interlingual and intralingual transformation/translation of sentences are made possible by the medium of deep structure. The ideal common language would be a perfect language, in reality some logical language.[35]

4. What is the role of internet in the access to law?

Regarding the hearsay as conveyed by Livy Roman *decemvires* visited Athens in order to study the laws of Solon. Their aim was similar to the Greeks', too, i.e. establishing equality before the law, so that both private and public affairs shall be managed by the laws.[36] However, the very first condition of that is that taking cognizance of the laws would be possible. To refer to the verifiability of the laws Romans used the expression *"ius positum"* in the sense of the law as laid down, and so ascertainable.[37] Regular appearances of "ius positum" can be found in expressions *"ius in causa positum"* (the law ascertainable in the case) and *"ius in civitate positum"* (the law ascertainable in the city).[38] If we derive the expression "positive law" from *"ius positum"*, then it shall mean "the law ascertainable by its being fixed" and this meaning can be traced back to the origins of law. The proper term for "positive law" — *"ius positivum"* — appeared only during the twelfth century, apparently thanks to some misreading.[39]

Looking back to past centuries it seems to be self evident that verifiability of law presupposes ability to read the texts of law — written in technical legal language. However, being dammed in access to legal language does not anymore necessarily mean being dammed in access to law. Beyond general linguistic barriers against access to law the new phenomenon and services of internet bring a radical change in the position of laypersons. Search engines help with finding (comparatively) right answers without proficiency in legal language and with putting (seemingly) proper propositions to courts and other authorities.

This development may change the concept of law itself — a new version of "living law" seems to emerge. In the age of search-engines there is no need to flip through codes of law and study legal language as foreign language: in order to find the answer to your question it is pretty enough to type your keywords, be it ever so

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35 See ECO, Umberto: *The Search for the Perfect Language*. (Transl. by J. Fentress) Oxford, Blackwell, 1995; CHAITIN, Gregory J.: *The Search for the Perfect Language*. [www.cs.auckland.ac.nz/~chaitin/pi.html]

36 See e.g. WATSON, Alan: *Rome of the XII Tables.* Princeton U. P., 1975, p. 178.

37 The origin of *"positum"* is *"positio"* or "positing". 'In a *positio* the "opponent" begins by saying "I posit that *p*." The proposition *p* is called the *"positum"*. The "respondent" then says either "I admit it" or "I deny it," depending on certain conditions.' SPADE, Paul Vincent–YRJÖNSUURI, Mikko: Medieval Theories of *Obligationes. The Stanford Encyclopedia of Philosophy* (Winter 2014 edition). ZALTA, Edward N. (ed.) URL = https://plato.stanford.edu/archives/win2014/entries/obligationes/>.

38 E.g. *Digest*, 9. 2. 52. 2. (Alfenus)

39 KUTTNER, Steven: Sur les origines du terme droit positive. 15 *Revue historique du droit francais et étranger* (1936), pp. 728–30; see also KELLEY, Donald R.: Gaius Noster: Substructures of Western Social Thought. 84 *The American Historical Review*, 1979/3, pp. 619–648.

lay, and you get it within a second. There is a new possibility to collect documents of a new phenomenon, a by-effect of publishing numbers of court decisions: laymen may try to imitate professional (at least they hope so) petitions by assembling pieces of published decisions, a sort of "patchwork" petitions. These may show the way non-professionals believe the professionals communicate. And all that may be the end — at least radical change — of lawyers, as well.[40] Or, the same way, may it be the beginning of the real access to law?

5. What could be a test or indicator for evaluating the quality of access to law and fair process?

Legal language used in statutes, administrative decisions, court decisions and during legal procedures usually appears as an inexplicable and unclear mass of texts, while the simplification of legal language in the mass media and internet forums often leads to distortion of the content. The claim for a clear and plain legal language reappears from time to time on the part of both linguists and laymen. On the other hand, international and (in our case) Hungarian researches on professional languages warn us that all types of professional languages (including legal language) serve the interests and goals of a certain profession, therefore simplicity and sightliness shall not be the most important expectations. Legal language, as mentioned above, is in a special status compared to other types of professional language since law has become an integrative part of our lives. Therefore it shall be a respected demand that language should be clear and understandable at least for people with average knowledge and linguistic competence. This expectation should apply to all layers of legal language: statutes, administrative and court decisions as well as language usage in legal procedures, because all of them influence the fulfillment of the requirements of the right to fair trial.

Intuitively, for the purpose of our research we supposed that, within the huge mass of different types of legal discourse, the ways of informing and warning may be characteristic to the (formal) use of legal language. The "paradigmatic case" of warnings is the well-known "Miranda warning".[41] As it comes clear from any American crime movie, the problem with this warning lies in its formal implementation. The officer gabbles out the words of the warning, quickly and mechanically, just to be over the requirement and to turn to the merits of the case. It used to happen in the same way with every warning and informing prescribed by Hungarian procedural codes, as well. Realizing the formality obeying to obligations to warn and inform, these codes are wording now even harsher obligating the authorities to con-

[40] See SUSSKIND, Richard: *The End of Lawyers?* Oxford U. P., 2010.

[41] In the 1966 *Miranda v. Alabama* case the Supreme Court of the USA declared the suspected rights under the 5th Amendment. Section 12. (1) of "Miranda doctrine" declares: "Any person under investigation of the commission of an offense shall have the right to be informed of his right to remain silent and to have a competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel."

vince if the person warned or informed did really understand it. The result is that official records contain the warning or informing word by word, adding to it the declaration by the person involved that she did really understand it. Present days' central issues is the procedure and obligation of authorities in cases of asylum seekers, refugees, immigrants. The extra difficulty in their cases is that all the information and warning should be comprehensible in their native legal languages. This topic, as comparatively new phenomenon, was not searched by our investigations.

The first of our affirmed presuppositions may be summarized as follows: one of the key pre-conditions of *fair process*, albeit one that has been disregarded in prior Hungarian research and analyses, is that the legal process should also be fair from a linguistic point of view. This means, firstly, that non-professionals should have the opportunity to discuss matters they are required to issue statements on in the course of the legal procedure following their own line of thought and in their own words; secondly, that they should be addressed by professional participants of the proceedings (inspectors, judges, even their own lawyers) in a manner that they understand. If these requirements are infringed upon in the course of the process, the fairness thereof becomes questionable, as a result of which it is also doubtful whether the voluntary following of legal rules by non-professionals may be ensured. Of course, there are basic rights and principles concerning language use; such as the right to mother tongue, the use of direct evidences, the right to make statements in one's own words etc. — but no disputes can be found on the meaning of "mother tongue", "one's own words" etc. For example, Hungarian is simply Hungarian, without perceiving the fact that there is no Hungarian language, just Hungarian languages — i.e. sociolects and registers of that language. Of course, the case is the same with any other language. Our claim is that professionals of law speak professional language of law, which is not identical with the language used by non-professionals. Communication among lay and professional participants within a fair process needs intralingual translation, which is not recognized and accepted, even not reflected till now.

The second affirmed hypothesis, referred to by keyword *access to law*, claims that linguistic competence my raise a barrier against instrumental access to law by non-professionals. It is a commonplace of sociolinguistics that two independent variables explain the chances of the use of tools of law to personal purposes: the income and the education. Of course, we know that these variables are closely connected to language skills (as we have referred to Bernstein's findings), but we claim that linguistic competence in professional language of law must be treated as a separate variable. It is not enough to be competent in your mother tongue — you have better to be competent in layers thereof, as well.