

# Theoretical and Logical Prerequisites for Legal Translation

*Anna Jopek-Bosiacka\**

## Abstract

The main research aim is to look at how formal principles of legal theory and logic across national jurisdictions affect translation of legislative texts. In the analyzed institutional legal context, official legislative drafting guidelines comprise the canon of good/quality legislation, universal and binding for each legal system. One of my research tasks is to juxtapose Polish legislative drafting guidelines with the European Union drafting guidelines, as well as with selected common law bill drafting manuals to see how certain parameters affect the way we process legislative texts in translation, and how different legal cultures influence the way we interpret legal texts. The qualitative analysis encompasses the legislative recommendations as to the formulation of legal definitions, the use of conjunctions, negation, and the grammatical category of aspect, mood and tense. Attempts are also made to search for any cross-cultural patterns of the analyzed parameters of normative texts. Thus, the comparison of normative texts between legal cultures, first, allows to observe that the legislative guidelines from various legal cultures differ with respect to the compared domains, and secondly, that these differences affect translated texts and the process of legal translation as such, as a result of the global processes of “Europeanization”, standardization, unification and hybridization of the national legal/legislative discourses. The results show that law, as a system of norms, always actualizes in a particular language and a particular culture. The national perspective in legal communication, which also contains many universal elements, conditions the quality assessment of legislative translation. A good legal translation is supposed to reproduce normative patterns vested in national legal culture and system.

## Keywords

legal translation, legislative drafting guidelines, normative text, legal theory, logic, legislative style, legal culture, quality

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\**Anna Jopek-Bosiacka*: University of Warsaw, Institute of Applied Linguistics, [a.jopek-bosiacka@uw.edu.pl](mailto:a.jopek-bosiacka@uw.edu.pl).

## 1. Introduction

Legal communication and legal discourse may be viewed from various research perspectives and studied with different methodological tools such as those of philosophy of law (e.g. Hart, 1961; Dworkin, 1986; Raz, 2009), philosophy of language (e.g. Wittgenstein, 1922; Austin, 1962; Marmor, 2014), sociology of law (Cotterrell, 2006), theory of law (Wróblewski, 1948; Zieliński, 2012; Wronkowska & Zieliński, 1993, 2012), or logic (Ziemiński, 1995; Malinowski, 2006a, 2006b). The methodological framework applied here is that of logic and legal theory. Logic and legal theory are, in my opinion, two very important preconditions for correct construction and interpretation of legal texts. By legal texts I mean here legislative, i.e. normative texts, which are read mainly as prescriptive texts (see Bocquet, 1994; Šarčević, 1997).

Following Carnap's *Logical Syntax of Language* of 1937, I treat logic as a meta-language, i.e. as a syntax of the language of law. Logic, understood here as a system of terms that refer to language, constitutes a frame of reference other than language (see Lovevinger, 1952: 488), thus allowing for cross-cultural and interlingual comparisons. Similar approach may also be found in early works of Carnap's follower, Ludwig Wittgenstein, first of all in *Tractatus logico-philosophicus* (1922). In Wittgenstein's search for a "logically perfect language" (Russell, 1922: 8), (formal) logic may be treated, basically, as the deepest structure of language, and a tool of linguistic analysis.

The other component, theory of law, is an inherent part of a legal system, being the system of norms, the system of knowledge and the system of authority (see Jopek-Bosiacka, 2017: 27). The system as defined above constitutes the most important part of the context – institutionalized context – for legal translation.

My main research aim is to look at theoretical and logical prerequisites of legal translation. No systematic account of this relationship of legal theory and logic to legal translation in the Polish context has been achieved so far.

I hope my research into legislative/normative texts will be able to clarify the following questions:

1. Do formal principles of legal theory and logic affect translation of legislative texts?
2. Does national perspective in legislative translation exist?
3. What does a good legal translation mean in the ideal world of legal norms and rules?

The above issues define the axis of the paper structure.

One of my research tasks was to look at legislative drafting guidelines from selected legal systems and cultures and juxtapose Polish civil law drafting guidelines<sup>1</sup> (amended as of 2016) with the European Union drafting guidelines, specifically *Joint*

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<sup>1</sup> Rozporządzenie Prezesa Rady Ministrów z dnia 20 czerwca 2002 r. w sprawie „Zasad techniki prawodawczej” [Ordinance of the President of the Council of Ministers of 20 June 2002 on “Legislative Drafting Guidelines”], Journal of Laws Dz. U. of 2016, item 283, a uniform text. Available at [prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU2016000283/O/D20160283.pdf](http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU2016000283/O/D20160283.pdf) (accessed 5 October 2017).

*practical guide for EU legislative drafting, Interinstitutional style guide and the Polish in-house style guide for translators (Vademecum tłumacza)*<sup>2</sup> as well as common law bill drafting manuals (in particular American<sup>3</sup>, Australian<sup>4</sup>, and Canadian<sup>5</sup>). I was trying to assess how certain parameters affect the way we process legislative texts in translation, how different legal cultures influence the way we interpret legal texts. The qualitative analysis encompassed the legislative recommendations as to the formulation of legal definitions, negation, theme-rheme structure and the sentence word order, as well as the use of deontic modalities and conjunctions. I also hoped to search for cross-cultural patterns of analyzed parameters of normative texts. For this paper I selected examples concerning the use of conjunctions, negation, the grammatical category of tense, and the formulation of definitions, to signal how some features of legislative texts conditioned by theory of law and logic affect their manifestation in Polish-English/English-Polish translation.

## 2. Do Formal Principles of Legal Theory and Logic Affect Legal Translation?

In the institutional legal context, official legislative drafting guidelines comprise the canon of good/quality legislation, universal and binding for each legal system (see Dickerson, 1977; Kindermann, 1979; Thornton, 1987; Šarčević, 1997). Legislative drafting guidelines represent a national legal doctrine and express the principles of legal theory and logic of the law.

### 2.1. Alternation and Conjunctions

The logical reasoning embodied in the structure of legislative texts implies the usage of logical connectors, or conjunctions which are assigned specific meanings in law. In

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<sup>2</sup> EU drafting guidelines comprise, amongst others, 1) *Joint practical guide of the European Parliament, the Council and the Commission: for persons involved in the drafting of European Union legislation*, 2) *Interinstitutional style guide*, 3) *Vademecum tłumacza – Polish style guide for translators (version 15, 2017)*. All documents are available at [ec.europa.eu/info/resources-partners/translation-and-drafting-resources/guidelines-translation-contractors/guidelines-contractors-translating-polish\\_en](http://ec.europa.eu/info/resources-partners/translation-and-drafting-resources/guidelines-translation-contractors/guidelines-contractors-translating-polish_en) (accessed 15 October 2017).

<sup>3</sup> *Legislative Drafting Guide*, U.S. House of Representatives, Washington 1995, [legcounsel.house.gov/HOLC/DraftingLegislation/draftstyle.pdf](http://legcounsel.house.gov/HOLC/DraftingLegislation/draftstyle.pdf) (accessed 10 November 2017); U.S. Senate Legislative Drafting Manual, [law.yale.edu/system/files/documents/pdf/Faculty/SenateOfficeoftheLegislativeCounsel\\_LegislativeDraftingManual%281997%29.pdf](http://law.yale.edu/system/files/documents/pdf/Faculty/SenateOfficeoftheLegislativeCounsel_LegislativeDraftingManual%281997%29.pdf) (accessed 5 January 2018).

<sup>4</sup> Drafting Directions issued by the Australian Government Office of Parliamentary Counsel, [opc.gov.au/about/docs/drafting\\_series](http://opc.gov.au/about/docs/drafting_series) (accessed 15 October 2017); see also footnote 10.

<sup>5</sup> Federal Canadian English drafting online guidelines *Legistics* [canada.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/p3p2.html](http://canada.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/p3p2.html) (accessed 8 January 2018).

Polish theory and logic the distinction between an exclusive “albo” / “or” (as in “either-or”) and non-exclusive “lub” / “or” was once introduced, following the Polish philosopher of law, Tadeusz Kotarbiński, to indicate two types of alternation: non-exclusive and exclusive (Wronkowska & Zieliński, 1993: 147–148). This distinction is an inherent part of the Polish legal culture, subject to the socialization process during university law studies in the sense of Swales (1990), not recognized, however, in ordinary usage where the two connectors are used interchangeably. Logically, in broad terms, in non-exclusive alternation the compound is true so long as at least one of the components is true. By contrast, the exclusive alternation construes the compound as true only in cases exactly one of the components is true (Quine, 1982: 11ff; Ziemiński, 1995: 86–88).

In English this linguistic distinction is lost, contrary to e.g. Latin’s exclusive “aut” and non-exclusive “vel”, which basically means that “or” can operate as either an exclusive or non-exclusive disjunction. Thus, if the “or” is non-exclusive, it can logically have an implicit conjunctive function with the meaning “A or B, or possibly both”. Therefore, the legal meaning of this ambiguous conjunction may only be worked out from the context, and in many cases is subject to judicial discretion (see also Holland & Webb, 2016: 144–146; Adams & Kaye, 2007: 1181–1191). The context is mostly understood as the sense of the legislation, and the structure in which the conjunctions appear (see, e.g., the U.S. Senate *Legislative Drafting Manual* 1997: 64, cited in footnote 3 above).

Let us take an example of a retranslated Polish Criminal Code provision on bigamy, taken from a reply by U.S. authorities to the Polish court request for legal aid when I was serving in the capacity of a sworn translator:

“A person who contracts marriage in spite of remaining in a marital union is subject to a fine, penalty of restriction of liberty *or* imprisonment for up to two years.” (Article 206, Polish Criminal Code)

The only possible translation, when enumerating penal sanctions, is to use the Polish disjunctive coordinator “albo”, especially if we consult Polish legislative guidelines:

„Kto zawiera małżeństwo, pomimo że pozostaje w związku małżeńskim, podlega grzywnie, karze ograniczenia wolności *albo* pozbawienia wolności do lat 2.”

Under § 79.1 and § 79.2 of the Polish Legislative Drafting Guidelines<sup>6</sup>, in the criminal law context, the punishments may be applied alternatively or cumulatively. The alter-

<sup>6</sup> § 79.1. The provision specifying a criminal sanction, allowing alternatively several types of penalties, is given the following wording:

1) „... is subject to penalty ... or [albo] penalty ...” (if only one of the penalties is allowed);  
2) „... is subject to penalty ... or [albo] penalty ... or [albo] both of these penalties cumulatively” (if even both of these penalties are allowed).

§ 79.2. The provision specifying a criminal sanction, allowing cumulatively several types of penalties, is given the following wording: :

1) „... is subject to penalty ... and penalty ...” (if cumulation is obligatory);  
2) „... is subject to penalty ..., besides penalty [...] penalty [...] may be imposed ...” (if cumulation is optional). [translation – A]B]

(Rozporządzenie Prezesa Rady Ministrów z dnia 20 czerwca 2002 r. w sprawie „Zasad techniki prawodawczej”, Dz. U. 2016, poz. 283).

nation under § 79.1 may be either exclusive or non-exclusive; nevertheless, the exclusive conjunction “albo” is used, with additional formula in the case when both punishments are imposed jointly. No non-exclusive “lub” is allowed to use in criminal law provisions.

The cumulation of punishments under § 79.2 of the Polish Legislative Drafting Guidelines may be either mandatory or supplementary. In the former case, the conjunctive connector “i” (“and”) is used, the latter case requires a separate formula with no conjunctions of alternation mentioned above.

To be even more accurate, the Polish theorists of law (Wronkowska & Zieliński, 2012: 70, 180–182, 290–291) recommend the following pattern for criminal provisions:

„podlega karze A *albo* karze B *albo* karze C” (POLISH LEGAL THEORY)

– “is subject to A *or* B *or* C”.

Legislative practice opts for a simplified version, with a comma replacing or substituting one of the conjunctions:

„podlega karze A, karze B, *albo* karze C” (LEGISLATIVE PRACTICE)

– “is subject to A, B *or* C”, provided the comma is disjunctive.

Thus, the combination of non-exclusive “lub” and exclusive “albo” in criminal provisions would be logically incorrect. The following formula is wrong:

„podlega karze A *albo* karze B *lub* karze C”

– “is subject to either A *or* B, *or* C”.

Multiple punishments under the Polish Criminal Code (e.g. Article 33 § 2) would be possible only in the case of fine and another punishment assigned such as imprisonment but only in situations strictly prescribed in legal provisions (see also Šarčević, 1997: 151–152 on how important an accurate translation of logical connectors is in law). This solution is common to many jurisdictions (see for example Rule 146 of the Rules of Procedure and Evidence of the International Criminal Code<sup>7</sup>). In addition to punishments that are defined in Article 32 of the Polish Criminal Code, the court may order other “penalties” enumerated elsewhere in the Code (e.g. Articles 39, 44, 44a) such as forfeiture of proceeds, property or assets derived directly or indirectly from the crime (under the Polish law: “przepadek”, “środki karne”, “środki kompensacyjne”), but these are not mentioned in the Polish Drafting Legislative Guidelines. In the case of multiple penalties in common criminal law legislative drafting, to avoid ambiguity, the drafter is recommended by Martineau (1991: 109) to use the conjunction “or” rather than “and” before the last listed penalty, if each penalty is exclusive:

“a fine of \$500 *or* a sentence of 6 months”.

<sup>7</sup> Available at [icc-cpi.int/iccdocs/PIDS/legal-texts/RulesProcedureEvidenceEng.pdf](http://icc-cpi.int/iccdocs/PIDS/legal-texts/RulesProcedureEvidenceEng.pdf) (accessed 5 January 2018).

If the penalties are not intended to be mutually exclusive, the listing should be followed by “or both” if there are only two penalties:

“a fine of \$500, a sentence of 6 months, or both”.

If there are more than two penalties, the phrase “or a combination of them” should be used as in Martineau’s example:

“a fine of \$100, a sentence of 6 months, community service of 500 hours, or a combination of them”.

Such common legislative solutions seem to coincide to some extent with the Polish drafting guidelines. Logic in many aspects seems to be the universal language of law, following Wittgenstein’s (1922) and Carnap’s (1937) propositions.

In the EU context, from the very beginnings criminal law was mostly treated as part of the national sovereignty of EU member states. The Treaty on the Functioning of the European Union of 2007 (“TFEU” or “Treaty of Lisbon”), which entered into force in 2009, also limits the Union’s competences in this field, establishing minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crimes with a cross-border dimension (the so-called “Eurocrimes” such as terrorism, trafficking in human beings, money laundering, organized crime, etc., under Article 83(1) of TFEU) (see also Neagu, 2015). Hence, it is very hard to find similar instances in EU legislation illustrating the use of conjunctions in criminal law.

## 2.2. Conjunctions and Negation

The observance of rules of logic in relation to conjunctions is also vital for other normative writing, to use Haggard & Kuney’s distinction (2007: 13), which, besides public documents such as statutes and the like, includes other legal genres, for example contracts, leases, and wills. Using conjunctions with negation further affects the intended meaning. The following example related to the use of conjunctions and negation is taken from my practice as an arbitration court expert. The disputed wording of one of the lease contract clauses reads as follows:

The Landlord undertakes that it will *not*: (a) lease and/or let for use any part of the premises to any competitor of the Tenant *and* (b) operate and/or allow operation of a business in any part of the premises which is in competition with the business activities of the Tenant.

The dispute was about what constituted a breach of contract defined as conducting any competitive business in an office building. No Polish version was provided to the contract in question.

INTERPRETATION NO. 1: The Landlord may not do (a) and may not do (b), i.e., it is not permitted to perform any of these activities. Each of the two activities listed is forbidden and may occur separately in order to breach the contract.

INTERPRETATION NO. 2: The Landlord may not do jointly (a) and (b), i.e., breach of contract will only take place if the Landlord does (a) and (b) simultaneously.

Which interpretation is correct? The common-sensical intuition may be supported with the rules of mathematics that are also used in logic. The British 19<sup>th</sup>-century mathematician Augustus de Morgan (1847) proposed two transformation rules relevant for this case:

1. "The *negation* of a disjunction is the *conjunction* of the *negations*."
2. "The *negation* of a conjunction is the *disjunction* of the *negations*."

The tautologies, i.e., the statements that have the final value of "true" for all possible combinations for the variables, referred to as De Morgan's laws may be illustrated in a simplistic version as follows:

- 1'.  $\text{not}(A \text{ or } B) = (\text{not } A) \text{ and } (\text{not } B)$
- 2'.  $\text{not}(A \text{ and } B) = (\text{not } A) \text{ or } (\text{not } B)$

Therefore, in our case the only reasonable solution was interpretation No. 1, following de Morgan's second rule of inference. Thus, any prohibited activity (a) or (b) was sufficient to speak of a breach of lease contract.

On the margin, better ways to prohibit each item in a list would probably be to re-write the text, and

1. USE "OR" INSTEAD OF "AND": The Landlord undertakes that it will not: (a) lease and/or let for use any part of the premises to any competitor of the Tenant *or* (b) operate and/or allow operation of a business in any part of the premises which is in competition with the business activities of the Tenant.
2. REPEAT THE "NOT", USE "AND": The Landlord undertakes that it will not: (a) lease and/or let for use any part of the premises to any competitor of the Tenant *and* (b) *not* operate and/or allow operation of a business in any part of the premises which is in competition with the business activities of the Tenant.
3. AVOID THE USE OF "AND" OR "OR": The Landlord undertakes it will not *do any of the following*: (a) lease and/or let for use any part of the premises to any competitor of the Tenant, (b) operate and/or allow operation of a business in any part of the premises which is in competition with the business activities of the Tenant.

This logical rule may also be important for drafting legislation to establish the proper logical relationships among paragraphed elements set out as a series of items. The three logical relationships between the list items are commonly expressed with the help of two conjunctions "and" and "or", illustrated as two intersecting sets in a Venn diagram.<sup>8</sup>

Similarly, in the case of paragraphs, using negation before a conjunction affects which conjunction gives the intended meaning. If the opening words negate the paragraphed elements, the appropriate conjunction will be "or":

"A person is not required to pay an admission fee if they are (a) under 18 years of age; or (b) at least 65 years of age."<sup>9</sup>

<sup>8</sup> See the illustrative figure on the Canadian Government's *Legistics* site: [canada.justice.gc.ca/eng/rp-pr/csjsj/legis-redact/legistics/p3p2.html](http://canada.justice.gc.ca/eng/rp-pr/csjsj/legis-redact/legistics/p3p2.html) (accessed 5 January 2018).

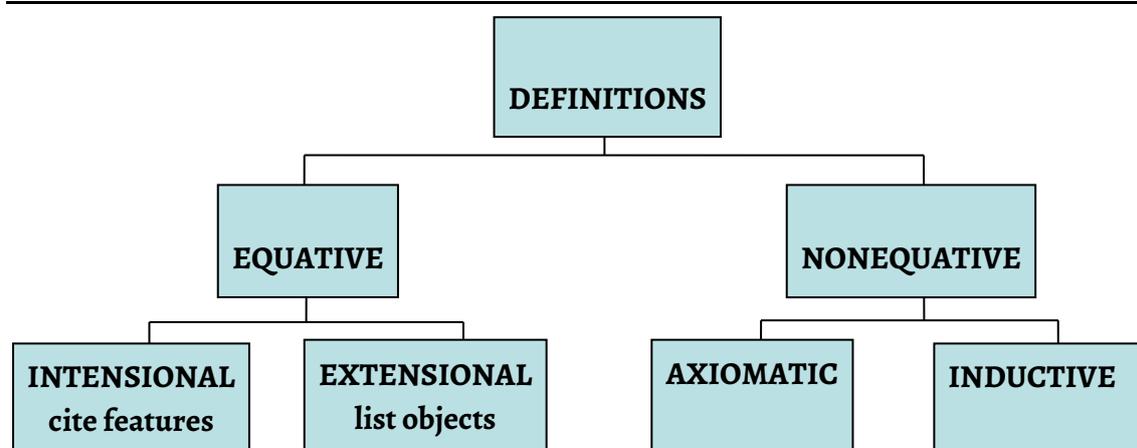
<sup>9</sup> Other examples and detailed recommendations in the federal Canadian English drafting online guidelines *Legistics*, Part 3 – Paragraphing, online source cited in the previous footnote.

### 2.3. Conjunctions and Definitions

Conjunction use in definitions is also subject to some logical constraints. Legal definitions are crucial in legal text interpretation. Interpreting and translating law terms depends, *inter alia*, on the accurate formulation of legal definitions from formal and logical points of view. The formulation of definitions may be determined by factors, such as the legal system, branch of law, position in the legal instrument, type of legal genre, and type of legal definition (see more in Jopek-Bosiacka, 2011). The last two factors are particularly relevant for this discussion.

The statutory definitions must be formulated within strict constraints of the national and/or drafting guidelines, being in turn the product of the theory of law and legal doctrine. The use of conjunctions is dependent on the type of legal definitions, especially in the case of “extensional” vs. “intensional” definitions, where certain conventions and logical rules are commonly used. This division is reflected in Figure 1, which presents a typology of definitions based on their structure and which is functionally useful for teaching logic to law students (see Lewandowski *et al.*, 2005), but also important for legislators and legal translators, pertaining to the multilingual drafting of legal instruments. Statutory definitions also seem to be the most difficult provisions to draft (Rylance, 1994: 137) and translate.

**Figure 1:** Types of definitions according to the criterion of „structure”



Note: See Lewandowski *et al.*, 2005.

Taking positions of legal theory and logic (e.g. Stone, 1964; Ziemiński, 1995; Malinowski, 2006b), the definition is understood as the entire “definition-formulation” not the *definiens* alone, i.e. the expressions by means of which a term or concept is being defined.

In my discussion I will only refer to equative definitions and their subtypes (intensional/extensional) where the use of conjunctions is significant (see Figure 1). Equative definitions are used to denote those terms that are central to a given text (Zieliński, 2012: 199). In most equative definitions the *definiendum*, i.e. the term or concept being defined, is placed in the first position which eliminates possible ambiguity (Malinow-

ski, 2006b: 167). Intensional definitions cite the essential features constituting the core sense of the *definiendum*, while extensional definitions list the objects denoted and/or not denoted by the *definiendum*. The most frequent legislative practice nowadays is to use the verb “means” for complete (intensional) definition, “includes” for a stipulated expansion in meaning (extensional definition), and “does not include” for a stipulated contraction of meaning (exclusion) (Garner, 2001: 258).

The Polish legislative guidelines (§§ 146–154) specify which connective forms are used in different types of statutory definitions, how expressions required for correct formulation of a definition are rendered in legislative Polish, or what punctuation marks should be used. No attention is paid to conjunctions in that respect, so legal theory may be helpful here which will be discussed further.

In the EU drafting and translation practice, only intensional definitions are used, judging at least by the style guides for translators (see *Vademecum tłumacza*, Jan 2017: 99; *English Style Guide*, Nov 2017: 49), where the only connective form suggested between the *definiendum* and the *definiens* is “means” (*Vademecum tłumacza*, Jan 2017: 99; the last example – *English Style Guide*, Nov 2017: 49, emphasis AJB):

“Customs office” *means* any office at which all or some of the formalities laid down by customs rules may be completed.

– „Urząd celny” *oznacza* każdy urząd, w którym mogą zostać dokonane, w całości lub w części, formalności przewidziane przepisami celnymi.

“Customs authorities” *means* the authorities responsible inter alia for applying customs rules.

– “Organy celne” *oznaczają* organy uprawnione między innymi do stosowania przepisów prawa celnego.

For the purpose of this Regulation, ‘abnormal loads’ *means* [definition].

The EU drafting and translation policy provides for the structural simplification of the statutory definitions, hence probably the lack of instructions on the use of conjunctions in definitions.

The common law, by contrast, with much more divergence and frequency as regards definitions (see e.g. Driedger, 1976: 45–47; Šarčević, 1997: 153–159), is subject to some authoritative guidance from legislators. Specifically, conjunctions use in definitions is regulated e.g. by the *Australian Drafting Directions* (Drafting Direction 1.5<sup>10</sup>, 2016: 11). The Drafting Direction refers to definitions which are set out in paragraphs; in such a case the use of conjunctions depends on the definition type. In the event of the intensional definition (“x means...”), the conjunction “or” is used, for example:

*domestic animal* means:

- a) a cat; or
- b) a dog; or
- c) an alpaca.

<sup>10</sup> Drafting Direction No. 1.5. Definitions, Document release 3.4, reissued by the Australian Government Office of Parliamentary Counsel, October 2016, available at [opc.gov.au/about/docs/drafting\\_series/DD1.5.pdf](http://opc.gov.au/about/docs/drafting_series/DD1.5.pdf) (accessed 9 January 2018).

Highlighting the defined term in italics and bold is used in Australian Drafting Direction No. 1.5, but other conventions such as capitalization, italics, bold, or not highlighting defined terms are also used in many jurisdictions (see Butt, 2013: 220–221; Garner, 2001: 258).

If the definition is extensional (i.e. in the form “x includes ...”), the use of the conjunction “and” is recommended:

*domestic animal* includes:

- a) a cat; and
- b) a dog; and
- c) an alpaca.

The Australian Drafting Direction of 2016 is in line with modern legal conventions that recommend inserting the linking word (i.e. conjunction) after every item in a list with the purpose to make the definition more accessible to readers unaccustomed to legislative texts (see e.g. Butt, 2013: 169).

Having in mind some fussiness of this new style, both Peter Quiggin, First Parliamentary Counsel and author of Australian Drafting Direction No. 1.5 (2016: 11) quoted above and Peter Butt (2013: 169) suggest alternative wording of the lead-in to avoid the need for the conjunctions:

*domestic animal* [includes / means any of] the following:

- a) a cat;
- b) a dog;
- c) an alpaca.

These principles may also be extrapolated to full definitions not set out in paragraphs, as in the examples taken from Rosenbaum (2007: 27, emphasis added):

“Grain” *means* wheat, barley, *or* rye [intensional or exact definition]

“Grain” *includes* wheat, barley, *and* rye [extensional definition or definition by example]

In English-Polish translation the statutory definitions of both types should follow similar conventions as to the use of conjunctions:

“Grain” *includes* wheat, oats, barley *and* rye (Canadian Wheat Board Act, RSC 1985; as quoted by Šarčević, 1997: 155).

– „Zboże” *oznacza* pszenicę, owies, jęczmień *lub* żyto. (see the definition of “zboże” [“grain”] in Wróńska & Zieliński, 2012: 291).

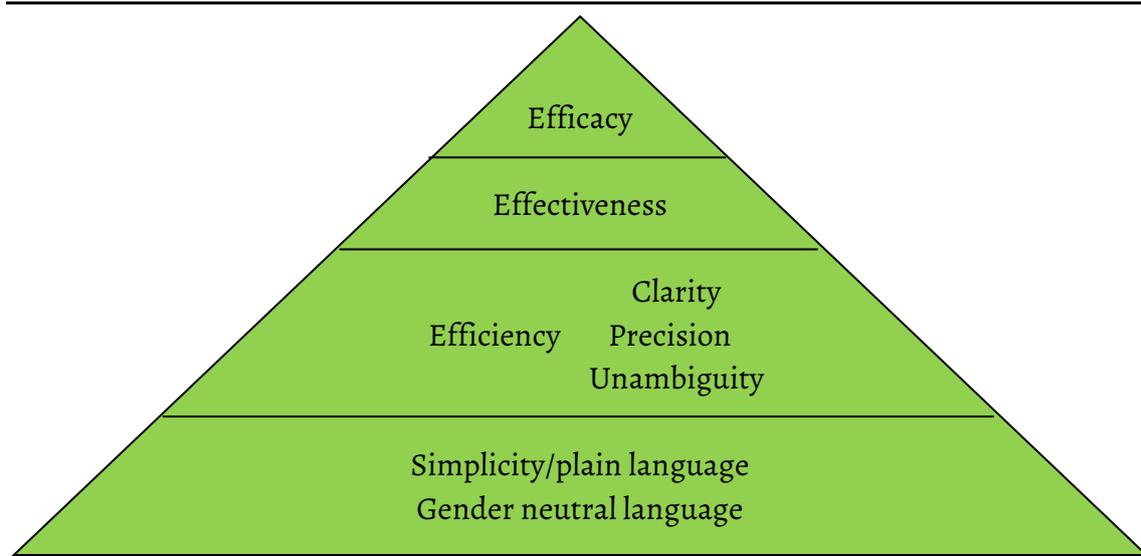
Given the normative nature of legislative texts and logical relations within the text items important for legal interpretation (such as alternation, disjunction, or conjunction), statutory definitions that are normative *per se* are a fine example of interrelations between law, legal theory and logic. Thus the answer to the first question posed in the introduction could be positive: formal principles of legal theory and logic significantly affect legal interpretation and legal translation. Examples may be countless.

### 3. Does National Perspective in Legislative Translation Exist?

One of my major assumptions underlying the research is that legal communication is an instance of cross-cultural communication which rests on the corollary that law as a system of norms always actualizes in a particular language and a particular culture. This means that national languages and cultures have their own language codes and systems of legal communication. Each jurisdiction develops its own drafting style, with or without the support of official or institutional drafting guidelines.

Drafting manuals may be functionally useful as, following Xanthaki (2010), a method of harmonization of drafting conventions at the national level, which ultimately leads to certainty in the law. Xanthaki perceives drafting conventions as “compilations of principles of legisprudence” setting the foundations of quality in legislation, which serve its efficacy as the ultimate goal of national laws. Seeking the approachability of laws – beyond the civil versus common law divide – she proposed the following pyramid of regulatory and legislative quality:

**Figure 2.** Hierarchical pyramid of drafting values (Xanthaki, 2008, reproduced in Xanthaki, 2016).



In the hierarchical pyramid (Figure 2), effectiveness is supported by clarity, precision and unambiguity. In turn, clarity, precision and unambiguity are promoted by plain language and gender neutral language (Xanthaki, 2016: 22).

I fully agree that some of the pyramid’s levels or values (in Xanthaki’s nomenclature) seem universal, irrespective of legal system and culture, for example, clarity, precision or unambiguity of language. Some of the labels though, such as “efficacy” or “effectiveness”, resemble that of a neoliberal new public management discourse (see Kjær, 2017). But from the Polish perspective it is perhaps most difficult to agree on gender neutral language as the basis for this hierarchical classification of elements aimed at quality legislation, with certain implications for translation.

### 3.1. Gender Neutral Language and the Polish Legal Acts

In the Polish context, partly due to language constraints, names of professions in most Polish normative acts are mostly denoted by nouns in masculine forms (see Paweł Knut's expert opinion for the Polish Society of Anti-Discrimination Law). Poland's Council for the Polish Language formed by the Presidium of the Polish Academy of Sciences<sup>11</sup> to deal with all matters concerning the use of the Polish language in public communication, in an opinion issued in 2012<sup>12</sup>, concluded as follows:

“Forms of female occupation names and titles are possible in the Polish language system. If most of the names of occupations and titles are not commonly used today, it is because they are causing negative reactions from most Polish native speakers. This, of course, can be changed if the public is convinced that the feminine forms of the names mentioned are needed, and that their use will evidence the equality of women in performing occupations and functions. However, the language cannot be imposed, the adoption of any legal regulation in this regard will not make Poles begin using the feminine forms of engineer [*inżyniera / inżynierka*, [...], minister [*ministra/ministerka*], [...], or state secretary [*sekretarza stanu*].” (translation AJB<sup>13</sup>)

A striking example of a non-neutral gender language may be taken from Article 131(3) of the Polish Act on Higher Education of 27 July 2005 (see Kielkiewicz-Janowiak, 2018: 6), where a possessive pronoun in its masculine third-person form is used in relation to a pregnant (= female) academic teacher:

„Nauczyciela akademickiego w ciąży lub wychowującego dziecko w wieku do jednego roku nie można zatrudniać w godzinach nadwymiarowych bez jego zgody.”

– “An academic teacher who is *pregnant* or raising a child up to one year must not be employed overtime without *his* consent.” (translation and emphasis AJB)

On the one hand, the above example realizes the principle of language economy in law discussed by Polish theorists on the examples of conjunctions and definitions (Wronkowska & Zieliński, 1993), abbreviations (Zieliński, 2012; Malinowski, 2006a; 2006b), syntactic structures and prepositions (Pawelec, 2009). Such forms might be treated as rather neutral when read by the legal audience, but definitely not by the direct or primary addressees of this legal provision (see Kielkiewicz-Janowiak, 2018: 6). On the

<sup>11</sup> The Council for the Polish Language (Rada Języka Polskiego, RJP) was formed by the Presidium of the Polish Academy of Sciences (Polska Akademia Nauk, PAN) by decree No. 17/96 passed on 9 September 1996. The Council's activities are outlined in the Polish Language Act of 1999, see Council's official website: [rjp.pan.pl](http://rjp.pan.pl).

<sup>12</sup> Stanowisko Rady Języka Polskiego w sprawie żeńskich form nazw zawodów i tytułów przyjęte na posiedzeniu plenarnym Rady 19 marca 2012 roku, [rjp.pan.pl/index.php?option=com\\_content&view=article&id=1359](http://rjp.pan.pl/index.php?option=com_content&view=article&id=1359) (accessed 2 September 2017).

<sup>13</sup> In the original: „formy żeńskie nazw zawodów i tytułów są systemowo dopuszczalne. Jeżeli przy większości nazw zawodów i tytułów nie są one dotąd powszechnie używane, to dlatego, że budzą negatywne reakcje większości osób mówiących po polsku. To, oczywiście, można zmienić, jeśli przekona się społeczeństwo, że formy żeńskie wspomnianych nazw są potrzebne, a ich używanie będzie świadczyć o równouprawnieniu kobiet w zakresie wykonywania zawodów i piastowania funkcji. Językowi nie da się jednak niczego narzucić, przyjęcie żadnej regulacji prawnej w tym zakresie nie spowoduje, że Polki i Polacy zaczną masowo używać form *inżyniera* bądź *inżynierka*, *docentka* bądź *docenta*, *ministra* bądź *ministerka*, *maszynistka pociągu*, *sekretarza stanu* czy jakichkolwiek innych tego rodzaju.” (RJP, 19.03.2012, see footnote 12).

other hand, the English translation of legal provisions shows significant discrepancy between the conventions of the Polish language (in original) and the gender neutral language principle mentioned by Xanthaki and present in numerous international institutional recommendations for drafting legislation such as those by UNESCO, the Council of Europe, the International Labour Organization, and the European Union.

In the EU's *Interinstitutional style guide* (version updated on 12 May 2017) we read that

“[m]uch existing EU legislation is not gender neutral and the masculine pronouns “he” etc. are used generically to include women. However, gender-neutral language is nowadays preferred wherever possible” (section 10.6).

Specific tips then follow, e.g. use gender-neutral nouns, avoid gender-specific pronouns, draft in the plural where possible, etc. This part on gender neutral language of the *Interinstitutional style guide* (2017) has no corresponding Polish version.

Similar examples of incongruence between gender and language may be found in the Polish Police Act of 6 April 1990, amended as of 2017 (Journal of Laws Dz. U. 2017, item 2067), where different types of third person pronouns in the masculine forms are used, for example “on” / “he”) in Article 121b (5)(4):

„5. Jeżeli zwolnienie lekarskie obejmuje okres, w którym policjant jest zwolniony od zajęć służbowych z powodu:

- 1) wypadku pozostającego w związku z pełnieniem służby,
- 2) choroby powstałej w związku ze szczególnymi właściwościami lub warunkami służby,
- 3) wypadku w drodze do miejsca pełnienia służby lub w drodze powrotnej ze służby,
- 4) choroby przypadającej w czasie ciąży,

[...] – zachowuje *on* prawo do 100% uposażenia.”

(art. 121b ust. 5 pkt 4 ustawy o policji z 6 kwietnia 1990 r.)

– “5. If the sick leave covers the period during which the policeman is dismissed from the duties due to

- 1) an accident remaining in connection with the service,
- 2) illness resulting from special properties or conditions of service,
- 3) an accident on the way to the place of serving or on the way back,
- 4) *illness during pregnancy*,

[...] – *he* retains the right to 100% of the salary.” (translation and emphasis AJB)

See also Article 44(1) and Article 44(2) of the Police Act, which refer to the rights of retaining salary by the police officer being dismissed from service until the end of periods of pregnancy and maternity leave by using the pronoun “he” (“on”), which in the third person form inflects for gender, in the dative form indicates the masculine gender after declension is used (“mu”), e.g.:

„Art. 44.2. W razie zwolnienia policjanta ze służby na podstawie art. 41 ust. 2 pkt 5 i 6 w okresie ciąży, w czasie urlopu macierzyńskiego, urlopu na warunkach urlopu macierzyńskiego, urlopu ojcowskiego lub urlopu rodzicielskiego przysługuje *mu* uposażenie do końca okresu ciąży oraz trwania wymienionego urlopu.”

– “Art. 44.2. In the event a police officer is exempted from service pursuant to Art. 1 para. 2 subpara. 5 and 6 during *pregnancy*, *maternity leave*, adoption leave on terms of maternity leave, paternity leave or

parental leave, *he* is entitled to a salary up to the end of the *pregnancy* or the duration of the leave.” (translation and emphasis AJB)

Other Polish acts which use non-neutral gender language to be mentioned are, for instance, The Court System Law (Prawo o ustroju sądów powszechnych, Journal of Laws Dz. U. 2001, No. 98 item 1070 in Article 94 § 1a (2)), or The Prosecutor’s Office Law (Prawo o prokuraturze, Dz. U. 2016, item 177) in Article 115 § 2 (2), where similar contexts are evoked.

Irrespective of a number of bizarre examples in the Polish law, most professions in Polish, such as a judge, or a prosecutor have only a masculine form, or a masculine form is considered to be official and the only one to be used in normative contexts. Contexts such as those of pregnancy in law magnify certain difficulties posed by the grammatical system of the Polish language in realizing international recommendations on gender neutral language by international organizations and institutions (see also Kielkiewicz-Janowiak, 2018; Mattila, 2013: 53–54 on the current state of affairs in Germany or Spain which undermines the gender-neutral language policies when proposing artificial solutions in some legal and public contexts).

Also, following Kielkiewicz-Janowiak (2018), a question may be raised whether is it important for a prime minister, for example, to indicate gender? Paprzycka in her manifesto text (2008) argues against the significance of a gender in talking about professional roles in society. The paper analyzes various possible linguistic norms that could govern the feminine forms, which slowly appear in the Polish language, and which correspond to the masculine names of professions. Adopting a basically feminist standpoint leads the author to reject those proposals, which would legislate that the masculine forms ought to be applied to men while the feminine forms ought to be applied to women. Paprzycka considers in particular the inferential roles of concepts to argue for a gender-neutral rendition of the historically masculine forms, which I fully support.

Underlining a female gender in the context of, for example, official positions such as a prime minister or a minister may even be treated as offensive (see Kielkiewicz-Janowiak, 2018). Such doubts may be supported with a view expressed by a famous Polish linguist, professor Witold Doroszewski, who in 1948 wrote: “The gender of a minister is equally unrelated to his/her social and state functions as the color of his/her eyes”<sup>14</sup> (Doroszewski, 1948: 69; quoted after Kielkiewicz-Janowiak, 2018).

All in all, gender-neutral language is not always possible to use in legislation, such as Polish (see 3.1. above), Greek, or Albanian, where most nouns are classified as masculine or feminine (see *Law Drafting Manual: A guide to the Legislative Process in Albania*, 1996: 67). It is generally accepted though that in such languages of laws the use of the masculine implies the feminine too (and vice versa). This approach is also widely ac-

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<sup>14</sup> Translated by AJB, in original: „W zasadzie sprawa płci ministra jest tak samo pozbawiona związku z jego funkcją społeczno-państwową jak i kolor jego oczu.” (Doroszewski, 1948: 69)

cepted in many common law drafting manuals, e.g. the *Arizona Legislative Bill Drafting Manual* (2011–2012: 90)<sup>15</sup>. This trend presented in the Albanian law drafting manual published with the help of the European Assistance Mission to the Albanian Justice System (EURALIUS, 1996<sup>16</sup>) is in line with the principle of language economy discussed in legal contexts. Hence, the uncompromising statements by Xanthaki (2008, 2016) on gender neutral language as the foundation for the legislative quality can neither be treated as unconditional nor as absolute.

### 3.2. Tense, Mood and Aspect: A Comparative Approach

If we look at legal provisions, we may observe that norms of law are expressed in accordance with the rules of syntax specific to a given language. In the *Joint practical guide of the European Parliament, the Council and the Commission: for persons involved in the drafting of European Union legislation* (2015), under the general principles, we read that:

“2.3.1. The choice of verb and tense varies between different types of act and the different languages, and also between the recitals and the enacting terms (see Guidelines 10 and 12).

2.3.2. In the enacting terms of binding acts, other languages, such as French, use the present tense, whilst English generally uses the auxiliary ‘shall’. In both languages, the use of the future tense should be avoided wherever possible.”

In the Polish version of the *Joint practical guide*, i.e. *Wspólny przewodnik praktyczny* (2017), one sentence is added to subsection 2.3.2. that Polish [in normative parts of binding acts] uses the present tense.

Polish legal norms are formulated as descriptive statements in the indicative mood, following the Polish legal theory (Zieliński, 2012: 101). This requirement is not mentioned though in the Polish legislative drafting guidelines. However, if we assume the normative nature of legislative texts, the grammatical category of tense does not matter. Let us consider two examples from the Polish Code of Administrative Procedure, with their respective English translations,<sup>17</sup> one in present and one in future tense:

„Art. 123. § 1. W toku postępowania organ administracji publicznej wydaje postanowienia.”

– “Art. 123. § 1. A public administration body may make a ruling during proceedings.”

„Art. 226. Rada Ministrów wyda, w drodze rozporządzenia, przepisy o organizacji przyjmowania i rozpatrywania skarg i wniosków.”

– “Art. 226. The Council of Ministers shall make regulations regarding the receipt and handling of complaints and proposals.”

<sup>15</sup> [www.azleg.gov/alisPDFs/council/2011-2012%20Bill%20Drafting%20Manual.pdf](http://www.azleg.gov/alisPDFs/council/2011-2012%20Bill%20Drafting%20Manual.pdf) (accessed 29 December 2017).

<sup>16</sup> See [www.euralius.eu/en/archive-2?download=74:law-drafting-manual](http://www.euralius.eu/en/archive-2?download=74:law-drafting-manual) (accessed 5 January 2018).

<sup>17</sup> Source of the English translation: [www.asylumlawdatabase.eu/en/content/en-act-14-june-1960-code-administrative-procedure-poland-ustawa-z-dnia-14-czerwca-1960](http://www.asylumlawdatabase.eu/en/content/en-act-14-june-1960-code-administrative-procedure-poland-ustawa-z-dnia-14-czerwca-1960) (accessed 31 August 2017).

The illocutionary force of these examples of the Code of Administrative Procedure remains essentially unchanged regardless of the use present or future tense: both formulate the obligation to issue certain acts by the authorities specified in the legislation/Code. It is important to point out, however, that the forms of future tense are much rarer in the legal texts and are rather an exception to the rule that the laws are formulated in the present tense. This seems to be a universal element of formulating legal text, present in many legislative drafting guidelines, for example in the American Federal *Legislative Drafting Guide* (1995: 60):

“(f) TENSE. –

(1) GENERAL RULE. Whenever possible, use the present tense and avoid the future and past tense.

(2) EXCEPTION. When expressing time relationships, there may be cases in which it may be appropriate to use the present tense for facts contemporary with the law’s operation and then the past (or future) tense for facts that must precede (or follow) its operation. However, even in such cases, *it is preferable to remain in the present tense throughout* and express the temporal relationships explicitly rather than by means of the verb tense.”

In Canada, the basis for using the present tense in legislation is expressed in section 10 of the *Interpretation Act* (R.S.C. 1985):

“10. The law shall be considered as always speaking, and where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to the enactment according to its true spirit, intent and meaning.”

Subsection 24(1) of the Legislative Drafting Conventions of the Uniform Law Conference of Canada provides that:

“24. (1) Verbs should appear in the present tense and indicative mood unless the context requires an exception.”

Other tenses, such as the future tense or the past tense could only be used in subordinate clauses expressing actions that take place either before or after the action in the principal clause (*Legistics*).

The *present indicative* has been advocated by many authorities on drafting such as Driedger (1976: 13) and George Coode (1845) (see also Šarčević, 1997: 138–140). It is used for provisions that state particular elements of an obligation, power or how the legislation operates. They are sometimes referred to as “rules of law”, as opposed to “rules of conduct”. Canadian *Legistics* presents some common examples of using the present indicative to express rules of that are at the same time components of rules of conduct:

A licence is valid for one year after the day it is issued.

The Clear Language Agency is (hereby) *established* for the purpose of promoting clear writing.

The Agency *consists* of 10 members to be appointed by the Governor in Council.

Some examples of rules about how legislation operates are as follows:

This Act *comes* into force on January 1, 1999.

This Act *applies* to ships registered after January 1, 1999.

This Act *prevails* over any other inconsistent Act.

It is sometimes difficult to determine whether a provision states an ancillary or subordinate rule of law, as opposed to a rule of conduct. It is not certain if in the following example given by Šarčević (1997: 138) the particular requirement is mandatory or directory:

The candidate *signs* the application.

The indicative mood in legislative texts fulfils the pragmatic function of the imperative mood. Therefore, such Polish expressions as *sąd orzeka* (“the court holds that”), *sąd odsyła* (“the court refers to”) are not descriptive, but function as directives or commands, and often correspond to the so-called normative indicative (Šarčević, 1997: 138 ff). The prevailing constructions in Polish legislative texts are indicative sentences, mostly of categoric and obligatory nature.

Similarly, the *imperfective* or *perfective aspect* has no direct link with the interpretation of legal provisions, i.e. whether the provisions express multiple or single activities. The legal effects are equal. Below there are some excerpts (Articles 385 and 897) of the Polish Code of Civil Procedure of 17 November 1964 as translated by Rucińska, Świerkot & Tatar (2016, C. H. Beck text edition).

Art. 385. Sąd drugiej instancji *oddala* apelację, jeżeli jest ona bezzasadna. [imperfective]

– Art. 385. The court of second instance *shall dismiss* an appeal which is considered groundless.

Art. 897 § 3. zd. 1 Po bezskutecznym upływie wyznaczonego terminu sąd *oddali* wniosek komornika, a komornik umorzy egzekucję. [perfective]

– Art. 897 § 3, s. 1. If obstacles are not removed within the stipulated time limit, the court *shall dismiss* the court enforcement officer’s application whereupon the court enforcement officer shall discontinue enforcement.

In the above examples it is interesting to see how translators into English reflect on the Polish legal syntax and accurately interpret the aspect of verbs by using identical modal verbs to express the imperative character of the provisions.

Thus, in legal translation it is also important to comply with the national and/or institutional drafting guidelines. In legal translation into Polish, irrespective of the deontic modality used, due to the assumption of normativity, the best translation option to be used in Polish is the so-called normative indicative mood (see Zieliński, 2012: 170–171). Here are some examples:

Przewodniczący *ustala* porządek obrad i *przedkłada* go komitetowi.

– The Chairman *shall draw up* the agenda and *submit* it to the committee.

Grupy robocze *składają* sprawozdania komitetowi.

– The groups *must report* back to the committee.

The next example, taken from the preamble of an EU legislative act (Council Decision 1999/468/EC), also emphasizes the necessity to follow the established (institutional) rules in legal translation:

THE (NAME) COMMITTEE,  
 Having regard to (reference to the Council Act that created the committee),  
*has drawn up* its rules of procedure based on the standard rules of procedure adopted by the commission on: [present perfect tense]

KOMITET (NAZWA)  
 Uwzględniając (odniesienie do aktu Rady, na mocy którego utworzono komitet)  
*sporządza* regulamin wewnętrzny na podstawie wzoru regulaminu wewnętrznego przyjętego przez komisję (data przyjęcia) [present tense]

The correctness of the above translation is imposed by *Vademecum tłumacza* (2017: 75) how to render the enacting formula of an EU legislative act in the Polish translation:

EN: has adopted this Regulation/Directive

PL: przyjmuje niniejsze/-ą rozporządzenie/dyrektywę

Naturally, when we talk about the interpretation and translation of a legal text, it is also fundamental to ask what is normative in a legislative text. In Polish legal culture, in addition to legal provisions expressing norms of law which are normative, the titles and headings, legal definitions and preambles are also normative because they are important for restoring the norm, and thus for the interpretation of the text (Zieliński, 2012: 105–106).

Thus, the comparison of the legislative guidelines from various legal cultures and systems, first, allows us to observe to what extent normative texts differ with respect to the compared domains (grammatical category of tense/mood/aspect, conjunctions, definitions), and secondly, how these differences might affect translated texts and the process of legal interpretation and translation. Clearly, although many elements of legislative drafting are universal, e.g. logical relations reflected in the use of conjunctions and negation in statutory definitions, the linguistic manifestations of alternation in the use of conjunctions, formulation of definitions, and particularly gender neutrality and syntax of legislative provisions expressing rights or powers prove the necessity to consider the national dimension for legal translation. The assumption of normativity of legal texts predefines the conventional forms of legal syntax and imposes specific rules of interpretation. This knowledge of rigid rules of the use of tenses or conjunctions in national legal languages is a prerequisite for accurate and adequate legal translation. Thus, the national perspective of a given legal system and culture, referred to in question number 2, seems to be an inherent component of translating normative texts.

### 3.3. Legislative Styles and Statutory Definitions

The appropriate style of legislative drafting is dictated by the function of laws and their diversity. The existence of various legislative styles, both fussy (for common law) and fuzzy (for civil law style), to use Lisbeth Campbell's well known comparison (1996), should raise awareness that a good legal translation is not possible without the

knowledge of what a normative text should be like in a particular language, culture and system, to answer question number 3 posed in the introduction. To use Kenneth L. Rosenbaum's (2007: 8) words: "[t]radition is the main source of style". The comparative investigation of institutional, legal and theoretical rules reveals, on the one hand, substantial cross-cultural differences in drafting practices and modes of expressions affecting the translation standards, but on the other hand, a common core of legal reasoning that arises from the very nature of law.

The global picture is being blurred though through the processes of globalization and "Europeanization" of laws, which lead to the standardization, unification and hybridization, and finally simplification of its national legal/legislative discourses. The European Union drafting guidelines use very simple formulae for creating statutory definitions, due to obvious reasons, I assume, not to complicate the already complex definitions in multilingual legislation.

The EU legislation is marked by a strong preference for equative intensional definitions with the definiendum and the definiens that cite essential features of the defined concept. The terms are always distinguished with quotation marks and there is only one form of a defining connective regardless whether the defined term is in singular or in plural form (Vademecum tłumacza 2017: 2.1.3.7):

"Customs office" *means* any office at which all or some of the formalities laid down by customs rules may be completed.

– „Urząd celny" *oznacza* każdy urząd, w którym mogą zostać dokonane, w całości lub w części, formalności przewidziane przepisami celnymi.

"Customs authorities" *means* the authorities responsible inter alia for applying customs rules.

– „Organy celne" *oznaczają* organy uprawnione między innymi do stosowania przepisów prawa.

Polish theory of law recommends at least eight ways of formulating definitions, depending on a logical type of definition, position in the instrument, branch of law and legal/legislative genre, such as full, partial, linear, aggregate or mixed, single, and paranthetical. There are three stylistic formulations in logic, called stylizations (Ziemiński, 1995: 49–50; Wronkowska & Zieliński, 2012: 289–290):

DICTIONARY (term "A" means expression "B"),

SEMANTIC (term "A" means B), and

SUBJECTIVE, i.e. a definition based on the object (A is B).

The Polish legislative guidelines (§ 151(1) ZTP) suggest that legislation prefers semantic or dictionary formulations in legal definitions.

§ 151 ZTP „1. The definition is formulated in such a way as to indicate in a certain way that it refers to the meaning of the terms, in particular its form are as follows: "The expression "a" means b." or "The expression "a" means the same as the expression "b".

2. If stylistic considerations speak in favour of another form of definition, then the connecting form "is"["jest to"] is used."<sup>18</sup> (translation AJB)

But practically, most legal definitions in the Polish law are semantic (preferred by theorists, such as Ziemiński (1995: 50)) or subjective (Ziemiński, 1995: 50; Zieliński, 2012: 211), which is confirmed by empirical observations (see Malinowski, 2006b: 155–181). It is worth noting that the conventions of formulating legal definitions are not important for their functions in the legislative texts. They are always nominal definitions, defining meanings of concepts, not features of things (Malinowski, 2006a: 49, fn 6).

The European Union style guide for Polish translators (*Vademecum tłumacza* quoted above) provides only for a semantic formulation, typical also for common law guidelines where the defined terms are marked with quotation marks (see e.g. Canadian *Legistics*):

"In this Act, 'institution' means any international financial institution named in the schedule."

Hence, the defining connective in English has always the verb form of the third person singular. It makes EU legal definitions (nominal in nature) very easy to read, at least at the surface, formal level.

Such emphasis on the standardization of statutory definitions, irrespective of cross-cultural differences between definition types, show the striving of legislators for their communicativeness through various plain language methods, such as explicitness and simplification of structure (in definitions) or repetition (of conjunctions), or the technique of paragraphing. In Poland, long before the emergence of the plain language research, some Polish legal theorists, first of all Wronkowska and Zieliński (1993), advocated the communicativeness in legislative drafting and the clarification of rules related to conjunctions, definitions, syntax or modalities.

## 4. Conclusion

To address the issue of a good legal translation in the "ideal" world of legal norms and rules (question number 3), it is important to evoke a legal context in the assessment of legal translation. All in all, the quality assessment of legal translation depends, among others, on such parameters as:

- the compliance with the norms of target text users;
- the compliance with the institutional norms; and
- the preservation of the hierarchy of norms.

<sup>18</sup> § 151 ZTP „1. Definicję formułuje się tak, aby wskazywała w sposób niebudzący wątpliwości, że odnosi się do znaczenia określeń, w szczególności nadaje się jej postać: „Określenie „a” oznacza b.” albo „Określenie „a” znaczy tyle co wyrażenie „b”.

2. Jeżeli względy stylistyczne przemawiają za inną formą definicji, używa się zwrotu łączącego "jest to"."

Naturally, the norms are motivated by a particular genre or text type, the legislative text being the most susceptible to the application of norms. The role of the national drafting guidelines in assessing the quality of legal texts and their translations in institutional contexts is pivotal. To conform to diverse systems of law, the multilingualism in the European Union leads to results similar to those produced by the localization industry. Conversely, today's statutes in many aspects are subject to the processes of hybridization, "Europeanization", but also standardization and simplification operating upon contemporary legal systems (see Biel, 2014). The EU law functions as *tertium comparationis* juxtaposing and combining very different legal systems, cultures and styles (see also Jopek-Bosiacka, 2011).

Nevertheless, the supremacy of legislative drafting guidelines comprising legal theory and logic peculiar to a given legal system and culture seems to be uncontested in assessing the quality of a legislative text and its translation (see also Jopek-Bosiacka, 2017).

Coherence is one of the cardinal values and a key principle guiding the assessment of translation quality in law. Cohesion of legal thinking implies coherence of a legislative/legal text functioning within the hierarchical framework of a given legal system (see also Zieliński, 2012: 299–304; Dickson, 2016). The translator should be the guardian of the logic of the legal system and be able to produce a target legal text that is coherent both horizontally and vertically.

Meeting all the national, institutional and genre requirements should lead to an accurate, consistent and unambiguous target legal text.

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