LEGAL COMMUNICATION AND THE IDEA OF PLAIN LANGUAGE: POSSIBILITIES AND LIMITATION

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Abstract. In today’s times, there is increasing attention paid to the recipients of legal texts and legal documents which can be very complex and incomprehensible to laypeople. However, these texts must be correctly understood by them, as these individuals are also subject to the law. It is debated whether it is worth simplifying texts from the law field, what the consequences of doing that are, and if it is worth doing, then by what methods would allow for achieving the most efficient and satisfactory results. Researchers recognize numerous possibilities and limitations arising from the concept of plain legal language, in the spirit of which legal texts are simplified. The purpose of this paper is to examine the solutions proposed by researchers in the field of simplifying legal and juridical texts, to identify the most satisfactory ones among them, and to share observations on why it is necessary, and even essential, to allocate increasing space in legal-linguistic discussions to the concept of plain language. It is also suggested that European countries can serve as an example in the process of striving towards increasingly effective measures aimed at simplifying legal and juridical texts.

Keywords: simple language, law simplification, linguistics, legal communication, law, plain legal language.

INTRODUCTION

The concept of plain language is becoming increasingly common in the context of citizen-state communication when it comes to administrative matters. Governments of many countries (the United Kingdom or Germany as great examples) have decided to use this
simplified model of communication through their official websites, so that any target audience, regardless of their education, background, or level of language proficiency, can gain access to the same information.

The idea of plain language is undoubtedly noble, as it helps promote more effective and ethical communication. For this reason, it has quickly found supporters not only among the authors of administrative texts: the high demand for training on the principles of plain language, which is organized for specialists in various fields, testifies to this (in Poland, such training is provided, for example, by experts operating within Jasnopis, an application that checks the degree of difficulty of the text for the recipient). The problem arises, however, when the solutions of plain language are tried to be applied to highly specialized texts that are characterized by hermetic terminology. Legal texts are one of such more difficult cases.

Many lawyers believe that the idea of plain language cannot be applied to legal documents. This professional group is particularly concerned that by simplifying the language of a given legal text, there will be an unacceptable loss of legal status of the text, as well as a distortion of its meaning. Christiane Maaß wrote about this skeptical attitude in her work on plain language translation in the German language, i.e. *Leichte Sprache*; she observed that lawyers’ fears are sometimes justified, as long as translation into plain language is undertaken by linguists who are not at the same time legal specialists (Maaß, 2018).

However, it should be remembered that these are extreme cases, and, after all, within the entire legal text there are many constructions whose transformation will facilitate the reception of the text while leaving its meaning unchanged. For this reason, we have decided to consider how a legal text can be simplified so that it can be understood by the layman while retaining its legal status. To this end, we will review the research of linguists who have analyzed the possibilities and limitations of plain language and try to highlight the solutions that we believe are acceptable and even desirable for legal texts. To begin with, we assume that while certain principles of plain language are fully acceptable in legal texts, certain formal issues, unlike in other functional texts, cannot be transformed.

**MATERIALS AND METHODS**

In this part of our work, we will recall the observations of various researchers regarding the transformation of specialized texts into plain language texts, which will help us to specify the permissible modifications to the original text.

Our considerations must begin with an attempt to define the status of a text written in plain language. Helpful here is the division of translation proposed by Roman Jakobson, within which we find, among other things, intralingual translation, which is the interpretation of verbal signs using other signs of the same language (Jakobson, 2009). The adaptation of an original text into plain language should be considered an example of such a translation. Each of the translation types distinguished by Jakobson implies different peculiarities, which result from a completely different translation situation. When it comes to translation into plain language, the factor that determines the final shape of the target text is undoubtedly the target audience. It is according to their skills and expectations that the text should be constructed.

Such an attitude brings us closer to the functional approach to translation developed by Christiane Nord. The German researcher pointed out that through a particular situation of
reception, the text receives certain functions, and it is these functions that determine what we emphasize in translation (Nord, 2009).

Thus, if we proceed from the assumption that the function of the legal text that we are simplifying should be to provide a clear message to laypeople, we should theoretically use less complicated structures or terminology in it. Such an approach, on the other hand, may stand in opposition to Olgiert Wojtasiewicz’s definition of translation, in which he proclaimed that the target text should evoke the same reaction in the recipient as the initial text does in its audience (Wojtasiewicz, 2013). In the case of legal texts, the original audience consists of the lawyers who use the document in their daily work. We must remember that for some purpose they choose to use complicated constructions or terms: sometimes it is a matter of tradition, sometimes it is a matter of preserving the legal status of the text. For this reason, although Wojtasiewicz explains that it is difficult to speak of a reaction that is identical in every aspect, it seems that it would be extremely difficult to create a legal text whose reception by laypeople and specialists would be at least slightly similar.

Some researchers propose general principles for simplifying specialized texts which can become a bridge between the specialist and the average citizen. A well-thought-out set of text simplification techniques is the so-called model wrocławski, developed based on the principles of plain language, which are used in the process of simplifying texts in various languages, and which are also applicable to Polish language. As Tomasz Piekot, Grzegorz Zarzeczny, and Ewelina Moroń note, they involve four levels. These include compositional transformations, lexical transformations, syntactic transformations, and interpersonal transformations (Piekot, Zarzeczny and Moroń, 2015). To some extent, they can also be used in legal texts, which we will examine in the next part of our text.

Over the years, there have also been conducted numerous studies to assess whether the idea of simplifying legal language is functional and whether it is reflected in practice. Among such studies was the one performed by Natalia Zych in which selected techniques were implemented into the “Consumer Rights Act” currently in force in Poland (the Act from the 30th of May 2014). We will discuss the solutions implemented in this study as well as the resulting conclusions later in our work.

RESULTS AND DISCUSSION

Taking into account the aforementioned observations of various researchers, let us now try to formulate general guidelines for the simplification of legal texts, keeping in mind the special peculiarities of this type of text. Let’s start with a review of the possibilities offered by the solutions collected within the model wrocławski (Piekot, Zarzeczny and Moroń, 2015).

Compositional transformations can be applied to legal texts if they do not require interference with the norms of the genre of the translated text and if any compositional changes are allowed by the commissioning party. Likewise, lexical transformations can be used in legal texts, but only with extreme caution. It is always advisable to avoid borrowings or nominalizations, and instead use simpler and shorter equivalents of words from the original text. In the case of legal texts, however, it is unacceptable to abandon terminology, as it could hinder communication between lawyers. Avoiding terms would lead to a disruption of the clarity of the message, thus causing a slowdown in work that requires quick action or introducing ambiguity where the fate of an individual is at stake.
The greatest transformational possibilities for legal texts are undoubtedly offered by syntactic transformations. If we see that the author of the original text used multiple complex sentences, we can split them into several shorter ones with identical meanings. It is also worth using the active voice instead of the passive, and avoiding complicated forms such as participles. These solutions will make the text more comprehensible to a layman, while still valuable to a specialist. However, when dealing with syntactic transformations, it is important to keep in mind the special logic that legal texts follow: some transformations could unintentionally lead to a change in the meaning of the text according to the lawyers, so it is always advisable to consult one’s transformation proposal with a person specialized in this field.

It seems, however, that interpersonal transformations are not among the repertoire of means that could be used by those simplifying legal texts. Legal documents are not an information leaflet in which the degree of textual formality can be adjusted to the needs of the commissioner. In our case, we are talking about texts with a predetermined tone and degree of formalization that cannot be changed in any way.

A further significant issue that must not be forgotten in the discussion concerning legal language simplification is the question of the use of Latin terms and phrases in legal and juridical texts that are not intelligible to laymen. Phrases such as “a priori,” “ad personam” or “ad rem” could be replaced by their simpler and common equivalents in the language of the text concerned, without any loss of their precise meaning. Although there have been suggestions over the years to give Latin the status of lingua franca in European legislation (Ristikivi, 2005), we do not consider this to be the right direction, given the low level of familiarity with Latin among Europeans and, above all, among people without a legal education, for whom it is also essential to understand legal and juridical documents correctly.

Some very interesting and valuable conclusions regarding whether it is worth simplifying legal texts and legal documents, and if so, using what methods, are offered by the study conducted by Natalia Zych. The decision was made to select passages from the “Consumer Rights Act” for the study because it came into force on the 25th of December 2014 and can represent an example of the application of current legislative techniques. Furthermore, it can be assumed that the group of recipients and potential readers of such an act is large and simply diverse. The Act, amended this way in the spirit of plain legal language, was submitted to the evaluation of both lawyers and non-legal trained recipients. The study was therefore conducted on passages from the “Consumer Rights Act” from the 30 of May 2014 and on an alternative, amended version of this Act. This research not only provides information about the reaction of lawyers and laypeople to simplification changes in legal texts but also what kind of techniques in general can be used when simplifying legal texts.

The first of the interventions applied was the change of the title of the Act from the “Consumer Rights Act” (“Ustawa o prawach konsumenta”) to the “Customer Rights Act” (“Ustawa o prawach klienta”). A series of changes have also been made to the structure of the Act itself, which is not an instance of the principles of plain language application but may constitute an additional proposal for the simplification of legal and juridical texts, going hand in hand with language simplification. One such change in Zych’s study was the inclusion of a front page in the “Customer Rights Act” paper, with its name as a central element. The front page of the amended Act included information regarding the date of the
Act’s enactment, the number of the Journal of Laws of the Republic of Poland (Dziennik Ustaw) as well as information regarding directives, amended and repealed acts redacted and presented in a changed form. The original Act does not include a front page. Empirical research carried out in a group of people who did not have a legal background confirmed that those respondents who made use of the “Customer Rights Act” found it much easier to determine what the document was about, in contrast to respondents who used the original Act, which was influenced in particular by the addition of the front page to the act in the described form. The next solutions that were decided to be implemented in the “Consumer Rights Act”, alongside the changes concerning the language layer, were the addition of a table of contents at the beginning of the Act and appropriately large margins, headers, and sections that separate the text as well as icons and tables that served an organizing function. According to the results of the conducted study, in the opinion of the majority of respondents (both individuals with legal education and laypeople), the redesigned version of the Act was more transparent and contained more useful elements that facilitated the navigation through the document when compared to the original version of the Act.

For the study, it was also decided to implement changes regarding the language layer of the document, following the guidelines offered by the plain legal language concept. The modifications implemented by Zych in the Act as a part of the study align with the solutions proposed in this work. The dominant changes were those at the lexical and syntactic levels. The principle of avoiding multiple complex sentences, which can hinder the reader’s comprehension of the text, was implemented as well and complex and difficult phrases were replaced with simpler, more natural equivalents for the recipient. For example, the word “consumer” (“konsument”) was replaced with the word “client” (“client”), the phrase “has an obligation” (“ma obowiązek”) with a simple verb “must” (“musi”) and the phrase “contact by phone” (“kontaktować się przez telefon”) was replaced with a short verb “call” (“dzwonić”). All the mentioned actions carried the risk of “losing” precision and distorting the legislator’s intentions, which is why any changes made to the study were implemented with exceptional caution, and this should always be kept in mind in the process of simplifying legal language (Zych, 2019). The modifications made in the language layer of the “Consumer Rights Act” as a part of the study serve as an example of the intralingual translation described by Jakobson. Just like any other translation process, this one also always requires precision and a high level of focus on the part of the translator.

The results of the conducted study showed that the modified “Consumer Rights Act” had a positive impact on the interpretation of the legal text among respondents in three cases (increased the number of correct answers in the text comprehension test conducted among the participants) and had a negative impact only in one case (increased the number of incorrect answers). The lawyers also answered two additional questions regarding consumer rights and obligations. Regardless of the source they used, the answers to these questions from the participants with legal education were the same. In addition to analyzing the questions regarding consumer rights, it is also worth paying attention to the comments from respondents regarding the language used in both documents. The comments related to the simplified version of the Act were mostly positive, with a dominant focus on the aspect concerning easy comprehension of the modified text. However, some participants with legal education expressed their concerns. They commented that, in their opinion, “the document
is written in colloquial language” or that they “prefer the original version because they know they have access to its full version and not to a summary for laypeople” (Zych, 2019). The results of this study clearly show that individuals with legal education, who have a better understanding of the required and necessary level of linguistic precision in legal texts, as well as are more proficient in navigating through the content of these texts, are more skeptical towards legal language simplification when compared to laypeople. The described results of the study also represent a crucial voice in the discussion regarding whether it is worth simplifying legal and juridical texts. Since the simplified version of the selected Act was significantly easier and more understandable for laypeople, who are obligated to comply with it, the idea of simplified legal language should be given more space in legal-linguistic discussions, seeking the best possible solutions for simplifying legal language, without abandoning this idea altogether. A good practice in the process of simplifying legal language could be the collaboration between legal experts and linguists. Such collaboration would allow professional precision in the field of law combined with linguistic sensitivity in simplifying language, with the aim of not only preserving the content of the legal or juridical text but also ensuring its proper understanding and reception by the reader.

CONCLUSIONS

The discussion about simplifying legal texts and legal documents raises many controversies which are particularly pronounced among individuals with legal education. Lawyers are concerned that simplifying texts in the spirit of plain legal language will result in conveying distorted meanings. Additionally, there is a fear that texts created through simplification will lose their “legal character”. Despite these concerns, the concept of plain legal language cannot be abandoned; on the contrary, it deserves increasing attention. The researchers we have mentioned propose numerous solutions aimed at achieving the most satisfactory simplifications of legal texts, ensuring that they retain their original meaning while being understandable to everyone, including individuals without legal education. Among these solutions, lexical simplifications stand out (while preserving the integrity of specialized legal terms) as well as syntactic transformations. The study we mentioned also proposes the addition of supplementary information and elements to simplified texts (such as a clear title page and table of contents in the mentioned “Consumer Rights Act”) to further facilitate the reader’s comprehension of the text. The mentioned solutions can lead to truly satisfying results in simplifying legal texts, although there is still much to be explored in this area. It is possible and even highly necessary to simplify legal and juridical texts because it is ethical to do so. Through simplified texts, recipients are not misled and they have access to the same information as lawyers. Being a layperson should not lead to discrimination. Similarly, it applies to individuals dealing with intellectual issues, but here Easy-to-Read (ETR) texts are rather helpful, which constitute an element for possible further legal-linguistic research.

Some countries in Europe have made significant progress in the discussion on plain legal language (such as the United Kingdom and Germany), but other countries (like Poland) are still far behind and should take their example. Using Poland as an instance: despite the publications with recommendations regarding the legal language simplifications that have emerged in recent years1, the language used in legal texts published in recent years, such

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1 A great example of such texts could be the publication released by the Polish Chancellery of Prime Minister in 2017 entitled “Komunikacja pisemna”. It can be found under the following link: KOMUNIKACJA PISEMNA - Gov.plhttps://www.gov.pl › attachment. Accessed 15 June 2023.
as the Polish edition of the Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) published in the Official Journal of the European Union\textsuperscript{2}. One of the sentences appearing in it: “Niniejsze rozporządzenie pozostaje bez uszczerbku dla rozporządzenia (UE) 2016/679, w tym przepisów dotyczących jego egzekwowania, które ma pełne zastosowanie dla roszczeń osób, których dane dotyczą, z tytułu naruszenia ich praw wynikających z tego rozporządzenia” (“This Regulation is without prejudice to Regulation (EU) 2016/679, including its enforcement framework, which remains fully applicable with respect to any claims by data subjects relating to an infringement of their rights under that Regulation”), would certainly not be understandable to every recipient. This only confirms the validity of our thesis that more effort and space should be devoted to discussions on simplifying the language of law.

REFERENCES


