

SLOVENIAN LEGAL LANGUAGE FROM THE STANDPOINT OF A SLOVENIAN LANGUAGE EXPERT

The paper draws attention to the current issues of legal language use in one's own language, in this case, Slovenian. I use specific cases to point out additional meanings acquired by terms when used as legal terminology, word-formational variations and their (non-)acceptability, the need to consider grammatical categories such as semantic definiteness in adjectives, perfective and imperfective aspects in verbs and gerunds, as well as the (non-)justification of conversions within multiword legal terms. In this regard it is established that whatever is ambiguous in legal terminology is at the same time also wrong. I comment on the lexico-grammatical response of legal Slovenian to the inclusion of concepts from the transnational legal order, i.e. the legal order of the European Union. The analysis centres on Slovenian legal texts and translated legal texts – both approved by competent legal institutions for linguistic analysis – as well as legal lexis taken from various linguistic papers. The need, or rather impetus, for the introduction of a study course focusing on an update of legal Slovenian within the study of law (i.e. legal norms, legal science and legal practice) is revealed, since it is in this way alone that standard legal Slovenian will have an opportunity to develop as an official working language of the European Union.

1

The study of the Slovenian language is in its essence a national study. The demand for a complex and broad knowledge of standard Slovenian is even more justified than usual in the field of law. The legal profession overlaps with all the other professional fields and cannot afford to suffer from “language-competence invalidity” (Vidovič Muha 2009: 618); for this reason it may function as a mirror of the multi-functional state and, to a certain extent, the functionality of Slovenian.¹ Legal language can also be explained as a projection of legal acts, so that it can also be considered a specific kind of standard language (Kořenský 1997: 84). In law both varieties of standard Slovenian are present – formal and colloquial. The specific nature of the Slovenian legal system allows law to be interpreted as, at least partly, a national profession, and at any rate a

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1 The comment by Toporišič (1991: 393) that the “standard Slovenian language is considered as not having reached full functional saturation” is nowadays seen as a warning. It does not, of course, necessarily point to a certain kind of absence, but may also indicate that Slovenian is not sufficiently utilised in terms of its possibilities.

state-forming profession, which confirms and establishes the Slovenian language as a fully-functional state language. For a precise and unambiguous use of language it is particularly important, especially in law, to be familiar with the sense-forming and word-formational capabilities of Slovenian, as well as its syntactical or text-formational/grammatical features and particularities. A sound and, in particular, a continuous functional development of one's own language may facilitate a productive discussion on the multi-lingual and multi-cultural society. In the last two decades, however, the extensive use of globalized terms has inhibited the full functionality of the standard language and with it the competitive edge of its legal variety.

A precondition for the borrowing of a term is its conceptual and semantic placement in a cultural environment where that legal term can sensibly be used. It has been repeatedly pointed out in discussions on the denominative capabilities of Slovenian that too often incongruity arises between the conceptual base of a term and its expressive use (Vidovič Muha 1986, 2000).

1.1 Legal Slovenian and its denominative capabilities

The essential feature of legal language is its executive power; in the legal profession the communicative power of language is further developed into executive power. If one starts from the basic premise that language is a reflection of the social and cultural world, it should therefore express social processes and orientations in the most reliable fashion possible, where consistent use of terminology is necessary (with textually acceptable or necessary variants); the main guiding principle, however, remains clear – unambiguous communication. Terminological analyses done so far (Novak 2007; Fajfar 2010) have drawn attention to inconsistencies or faults in judgements; in this way the first step towards a more stable legal terminology has already been made. The language of law is particularly sensitive in terms of content, which is why its users (lawyers) should be made acutely aware of accurate usage of terminology. Among others things we should differentiate between set phrases and obsolete lexical items; while the former may be a consensually prescribed necessity within the given profession, the latter are just a case of linguistic and professional carelessness.

Legal language validates the importance of the word-formational process – the co-dependence of language and text – which is vital for the appropriate communicative and executive end-effect, is most expressively seen in legal texts. What is required is analysis and elaboration, including from the standpoint of language and linguistic appropriateness, the established textual patterns that apply to normative legal texts and also to the texts of legal practice written by non-legal professionals. An analysis of civil lawsuits and judgements has shown that the precision and unambiguity of information and acts stated is also dependent on the cohesion of the established textual pattern, i.e. on the manner and degree of cohesive resources used; cohesion is always a consequence of the better or worse coherence of the text. Generally, the prescribed textual structure of judgements contains overly complex sentence structures, which prevent the addressee from sufficiently understanding what was written and at the same

time reduce the effect of the text (Novak 2007: 174–185);² essential textual features are clarity, unambiguity, unity, consistence, clarity, logic, specificity, appropriateness and the possibility of verifying what was written, including appropriate inclusion of intertextuality.

1.1.1

Many features of legal Slovenian explicitly described by Toporišič (1991: 191–205) as belonging to the so-called political “self-governing” Slovenian are still present in today’s legal language, e.g. too many multiword denominations, which are a consequence of the socio-political system, for example the syntagm *neporočena oseba ženskega spola* ‘unmarried person of female gender’ instead of *neporočena ženska* ‘unmarried woman’ or *dekle* ‘girl’; in some other cases there is now a clear semantic differentiation between the use of the terms *prekinitev dela* ‘termination of work’ and *stavka* ‘strike’; there are too many of the so-called internationalisms, although certain terms have become systemically established, e.g. *konferenca* ‘conference’, and there are still double terms such as *načrtovanje/planiranje* ‘planning’, and there are certain terms that are disappearing due to a predominant secondary semantic use, e.g. *partija* instead of *stranka* ‘political party’; there are still too many abbreviations, though they cannot be avoided since they have been brought about by the changing political reality; there are too many nominal expressions, and here one needs to reject in particular the ambiguous accumulation of genitive nominalisations. A permanent shortcoming is the inability to master neutral word syntax and in particular the understanding that the so-called free word order in Slovenian is based on functional sentence perspective.

1.2

Due to the markedly inter-disciplinary scope of legal texts one could also claim that terminological variations are a consequence of intensive processes of terminologization and partial de-terminologization, which results in more general lexis. Here from the standpoint of legal Slovenian, and perhaps even preferentially from the standpoint of law, we stipulate that the compilation of a Slovenian general terminological dictionary is a terminological necessity for the future; such a dictionary should in the context of broader terminologization of Slovenian lexis highlight generally used terms, which acquired semantically narrow and specialised roles of professional terms within specific professional fields.

Legal terminologization of general lexis is a reasonably well-established process in Slovenian that necessitates that legal terms be precisely defined; narrowing down or specifying the meaning of the general lexeme requires a more precise definition,

2 From the standpoint of relevance and reference of the analysed legal texts, Novak (2007) presented a research text corpus of thirty judgements issued by Slovenian courts between 1997 and 2004. According to the author’s opinion it is precisely the judgement that is a sufficiently representative textual type with peculiarities that in her estimation are also contained in other legal texts. In modern legal texts it is sensible to pose a question regarding the degree of linguistic competence in co-dependence with the degree of communicative capability.

and here unmarked standard lexis has an advantage. In this way, it is general lexis that provides conceptual and semantic differentiation between terms such as *zavrnuti* ‘turn down’ and *zavreči* ‘reject’, which must be very precisely defined as legal terms. General lexis also includes examples such as *mnenje* ‘opinion’ in contrast to *sklepni predlog* ‘submission’, as well as *korist* ‘benefit’ in contrast to *ugodnost* ‘advantage’, which of course are not interchangeable. Similarly *lastnik* ‘owner’ does not mean the same as *imetnik* ‘proprietor’, and *proizvod* ‘product’ and *izdelek* ‘article’ also belong to two different legal categories. The term *stalno prebivališče* ‘permanent residence’ in contrast to *sedež* ‘head office’ clearly draws on the specifics of a given text, *amandma* combines ‘supplementary or changed proposal to an act’, *razlikovalni značaj* ‘distinctive character’ can neither lexically nor syntactically and semantically be equated with *razlikovalni učinek* ‘distinctive character’, whereas, for example, *dejavnost* ‘activity’ may be perfectly equivalent to *aktivnost* ‘activity’, and similarly also *izvedenec* ‘expert’ and *ekspert* ‘expert’, and so on. It should be pointed out that the semantic and grammatical differences are not interchangeable between phrases such as *pravica obrambe* ‘defense right’ and *pravica do obrambe* ‘right of defense’, *postopek za ugotovitev ničnosti* ‘declaration of invalidity proceedings’ and *postopek za ugotavljanje ničnosti* ‘invalidity proceedings’, *razlikovalen element* ‘distinctive element’ and *razlikovalni element* ‘distinctive element’, *nasprotna stranka* ‘counterparty’ and *ugovarjajoča stranka* ‘opposing party’, which has further confirmation in terms of transformation: terms such as *postopek z ugovorom* versus *postopek ugovora* ‘opposition proceedings’, *postopek s pritožbo* versus *pritožbeni postopek* ‘appellate procedure’, and so on.³

Below are some examples originating in general vocabulary and used in legal language (labeled as legal in the *Standard Slovenian Dictionary*); the most typical are examples when the general sense lexeme is terminologized into a phrasal term: *korist* ‘which is or represents a certain value as a consequence of some sort of work, action’ in contrast to the legal phrase *premoženjska korist* ‘proceeds’; *knjiga* ‘a large number of printed sheets bound together’ in contrast to *zemljiška knjiga* ‘land registry’; *breme* ‘a heavy object usually carried on one’s shoulders’ in contrast to *dokazno breme* ‘burden of proof’; *čas* ‘limited duration with conditions, circumstances, including the accompanying reality’ in contrast to *čakalni čas* ‘waiting time’, *čas zastaranja* ‘limitation period’; *dokaz* ‘which substantiates or supports a claim’, *obremenilni dokaz* ‘incriminating evidence’, *razbremenilni dokaz* ‘exculpatory evidence’, *nasprotni dokaz* ‘opposing evidence’; *pregon* in the phrase *kazenski pregon* ‘criminal prosecution’; *požig* in the phrase *naklepni požig* ‘arson’; *prednik* ‘a relative in a straight line going backwards’ in contrast to *pravni prednik* ‘legal predecessor’; *predmet* ‘which exists independently from human consciousness, thinking and can be perceived by the senses, mind, particularly as a whole of certain features’ in contrast to *dokazni predmet* ‘material evidence’; *razlog* ‘which substantiates or supports a given action, decision’ in contrast to *oprostilni razlog* ‘reason for acquittal’, *sodbeni razlog* ‘reason for trial’;

3 Specific words or word combinations that may be used as legal terms in Slovenian are not directly translatable as legal expressions in English.

zavod ‘a work organization for carrying out a particular activity whose purpose is not to make a profit’ in contrast to *kazenski poboljševalni zavod* ‘correctional facility’, and so on. The terminologized meaning is more conceivable due to its semantic specialization, which in turn guarantees greater legal protection.

What needs to prevail is consensual, unambiguous terminology with clear definitions; it is important to precisely define the term in advance, as far as this is objectively possible, as well as within each legal text. Despite the fact that legal texts are structurally fixed and formulaic, it is further confirmed that the actual context enables the recognition of all, or most of, the variations of terminologically relevant lexemes, and in continuation their justification or non-justification; for example, the appropriate selection of a newly emerging globalized word or term such as *notranji/skupni/enotni trg* ‘domestic/common/single market’ or *trgovski izvor/poreklo* ‘commercial origin’ is defined by the actual text and the overall context (Fajfar 2010: 42–46, 142) because it is the manner of translating these global variants that reveals different aspects of the approach towards the existing socioeconomic reality. This indirectly demonstrates the need to develop a Slovenian terminological portal, which would contribute, in particular, to the unification and increased appropriateness of Slovenian terminology.

Another question arises: can we, even marginally, assess the degree of terminologization of legal terms (based on the following relations: general lexis in contrast to general terminology, and the appropriate terminological lexis in contrast to inappropriate terminological lexis) and among the terminological options draw out a selection of preferential terms?

The so-called general terminology (i.e. the use of identical terms in different professional fields) in law is generally a consequence of a conceptual-semantic shift within the same term used in different legal systems; as we continue we also deal with the problems of ‘acceptable terminological variation’ – it is precisely this terminological parallelism that largely reflects the process of translating EU legal terms.

1.2.1

The question of adjectival derivatives used in collocations remains open. Adjectival derivatives are an essential part of the phrase; Fajfar (2010: 133–134) addresses the issue of formational variants of the type *diskriminatorni/diskriminatorski ukrep* in contrast to *diskriminacijski ukrep*. A permanent feature of adjectives in terminological phrases is their classifying quality, e.g. *razbremenilni dokaz, nasprotni dokaz*.

It has been demonstrated numerous times that it is useless to avoid internationalisms in various professional fields, since it is the semantic complexity of these terms that makes them internationally established; it is difficult to substitute them with semantically simpler terms from the native language. In this manner it is semantically inadequate to change the international term *kohezija* ‘cohesion’ in the phrase *gospodarska kohezija* ‘economic cohesion’ with *povezanost* ‘connectedness’ as in *gospodarska povezanost* ‘economic connectedness’; in certain other cases the term *transparentnost* ‘transparency’ could be adequately substituted with *preglednost*.

1.2.2

In terms of part-of-speech classification, we could expect a higher percentage of verbal terms in legal terminology. Due to the process nature of the legal profession, a high frequency of verbal derivatives is noticeable, e.g. *izdati potrdilo o obračunu, izdati spričevalo o hrupu, izdati vizum in dovoljenje za bivanje za daljši čas, izdelati načrt na podlagi ugotovitev in evidenc, izmikati se dolžnosti plačevanja preživitnine, nasprotovati dodelitvi pooblastila, oblikovati mnenje na prošnjo*, etc. Due to their organisational power verbs function in a word-formational manner. Legal verbal terms could be *apelirati, ažurirati, deponirati, evidentirati, izterjati, iztožiti, komunicirati, lastniniti, posedovati, prejudicirati, ratificirati, kandidirati, likvidirati, prakticirati, suspendirati, tožiti (se)*; general sense or broad sense is a precondition for terminologized verbs because it enables greater syntactic-semantic adaptation of the verb and at the same time its textual type adaptation within individual legal texts, e.g. *izreči, izvrševati, nasprotovati, obdelati, obvezovati, omogočati, ostati, podpirati, pospešiti, predložiti, sklicevati se, uporabljati, upoštevati, veljati, vplivati na, znižati*. The terminologization of a verb also includes established terminological phrases of the type *opravljati dejavnost, ovirati preiskavo, podati uradno mnenje, pristopiti k sporazumu*, etc.

General and heavy-duty verbs are used in multiword phrases or formulae of the type *imeti občuten vpliv na upravljanje podjetja, izreči kazen za prekršek, izvrševati lastninsko pravico, obdelati dane informacije, ostati pri predlogu, ostati v priporu, predložiti sporazum v ratifikacijo, uporabljati (kaj) za notranji prevoz blaga, utegniti škodovati, znižati predujme na vknjižbe v računovodske izkaze kmetijskih izdatkov*, etc. (Jemec Tomazin 2010: 195–224).

The executive power in law is of central importance, which is why perfective verbs take precedence over imperfective ones (Jemec Tomazin 2010: 212), and two-aspect verbs are not permitted due to potential ambiguity. It is precisely from the standpoint of executiveness that the following two terms are fundamentally different: *postopek za ugotovitev ničnosti* and *postopek za ugotavljanje ničnosti*; also, it is more acceptable to use **vložnik** *ugovora* (why not *vložitelj*, 4 examples in Gigafida⁴) than **vlagatelj** *ugovora*. An analysis of judgements confirms the predominance of the perfective verbal aspect; the imperfective aspect is, as one would expect, tied to the present tense and the perfective aspect to the past tense, e.g. the verb *navajati* in contrast to *navesti* ‘cite’. Lawyers as language users should be aware of the semantic and grammatical power of the verb as well as other parts-of-speech. Apart from aspect, two other important categories are also manner and mood.

1.3

The syntax used in judgements – which are typical legal texts with an established cohesive pattern – was analysed in terms of sentence complexity. Judgements were statistically processed in parts (1st part: head/pronouncement; 2nd part: explanation; 3rd

4 <http://www.gigafida.net/> (2 February 2013, 4 examples): “To kar je predlagatelj amandmaja, kot *vložitelj* povedal na prvi pogled seveda drži in tudi sami smo tako razmišljali, ko smo razmišljali o vložitvi amandmaja” (2010, Internet).

part: legal precept); the statistical analysis reflects the (syntactical) state of Slovenian legal texts. It is probable that the 1st part will contain a sentence with 14 clauses, the 2nd part a sentence with 12 clauses and the 3rd part a sentence with 6 clauses (Novak 2007: 52–78). The analysed judgements were dominated by compound sentences; among complex compound sentences, subordinate complex sentences were the most frequent. The first part predominantly consisted of subordinate relations; when coordination is present, it is only the copulative coordination that is used. According to the statistics (Novak 2007: 61–66), object clauses were the most numerous, followed by modifying clauses; in terms of coordination the most frequently represented was copulative coordination. The type of the predominating subordinate and coordinate relations used (i.e. object and modifying clauses as well as the copulative coordination) suggests that connectives and conjunctions are underused, which of course does not contribute to greater clarity and unambiguity, with intelligibility being rendered even more difficult by the frequent use of appositions and embedded clauses.

1.3.1

The predicate in judgements typically contains verbal phrases with a marked semantic hierarchy of verbs, ranging from semantically broad or fundamental to semantically specialised verbs; these do not only testify to the essential role of the verb aspect, but also point out the typical use of manner and mood in legal texts, e.g. in judgements. In the following examples aspect performs a dominant role: *zavriniti tožnikov tožbeni zahtevek, izstaviti za zemljiškoknjžni vpis sposobno listino za vknjižbo lastninske pravice na nepremičnini, pristopiti k sodni poravnavi, Odločitev o revizijskih stroških je zajeta z zavrnilnim izrekom te odločbe, Tožnik tako predlaga, da se ugotovi obstoj njegove terjatve iz naslova premalo izplačanih plač, osem dni po vročitvi prepisa sodbe, pogodba o poravnavi pravnega razmerja z določitvijo vzajemnih pravic in obveznosti.*

When emphasis is laid on execution, the person in question is not in the forefront and so the passive is used. Voice is reflected in examples such as:

Sodna obravnava dovoli, da se izvrši geometrska odmera parcele, Revizija se zavrne, Pritožba se zavrne in se potrди sodba in sklep sodišča prve stopnje, Tožba za objavo odgovora se zavrze, Ta postopek teče zgolj v zvezi s plombo o predlogu, da se v zemljiško knjigo vpiše zaznambo spora.

Here are some examples of mood:

Zoper to sodbo je dopustna pritožba, Zoper to sodbo je dovoljena pritožba, Tožena stranka je dolžna izplačati tožeči stranki odškodnino v znesku [...], Zoper to sodbo je dovoljena pritožba, Pravilno stališče slednjega je, da je treba urediti razmerja med solastniki, V zvezi s tem je potrebno pojasniti [...], Zoper to sodbo se lahko vložijo pritožba pri tem sodišču, Zoper to sodbo je dopustno vložiti pritožbo v roku [...], Tožeča stranka je gotovo opravila vsaj minimum storitev

2 THE RESPONSE OF LEGAL SLOVENIAN TO THE INTRODUCTION OF CONCEPTS OF THE SUPRA-NATIONAL LEGAL ORDER, I.E. THE LEGAL ORDER OF THE EU

In the last two decades the lexico-grammatical response of legal Slovenian to the adoption of concepts of the transnational legal order, i.e. the legal order of the EU, has been in the forefront. According to information provided by some Slovenian legal experts “the European legal order shows great concern for the linguistic interests of the Member States” (cf. Accetto 2010: 35), which certainly is a good opportunity for the Slovenian legal language, but which requires continual professional engagement by Slovenian legal experts and Slovenian linguists. In the forefront is the question of how to translate terms without “harming the meaning” if it holds true that the legal supranational language of the EU is “in its essence a translational language” (Fajfar 2010: 39).⁵ Translation in its final version should strive to have all the lexico-syntactic properties of Slovenian, i.e. Slovenian word-formational and text-formational properties.

The current state of standard legal Slovenian both in Slovenia and within the EU requires in particular the timely, systematic gathering, editing and verification of terminology (Erbič 2009: 110). Since Slovenia entered the EU there have been three linguistic dissertations dealing with the state of legal terminology (Novak 2007; Jemec Tomazin 2010; Fajfar 2010). We have seen the emergence of glossaries and thesauruses of existing terms and terminological phrases as “language reproductions of the conceptual world worded in judgements”, and with a tendency to reflect or present the actual state in terminology. Public and non-public terminological collections such as *Evroterm* and *CuriaTerm* have been in operation; in the pipeline (at the Fran Ramovš Institute for the Slovenian Language, SRC SASA) are legal dictionaries such as a modern legal terminological dictionary and a European legal dictionary; a potential source for revitalising certain Slovenian legal terms may come from the legal-historic dictionary (up to the year 1848) which is in the making.

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5 Based on this discussion one could say that Slovenian is also, to a limited degree, an official working language, since it was used as such to a limited extent during Slovenia’s EU presidency in the first half of 2008.

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The paper draws attention to the current issues of legal language use within one's own language, in this case-Slovenian. We use specific cases to point out the additional semantic stress on legal terminology, word-formatational variations and their (non-)acceptability, the need to take into consideration grammatical categories such as semantic definiteness in adjectives, and perfective and imperfective aspects in verbs and gerunds, as well as the (non-)justification of conversions within multiword legal terms. In this regard it is established that whatever is ambiguous in legal terminology is at the

same time also wrong. Comment is made on the lexico-grammatical response of legal Slovenian to the inclusion of concepts of the transnational legal order, i.e. the legal order of the European Union. The analysis uses Slovenian legal texts and translated legal texts – all approved by the competent legal institutions for linguistic analysis – and the legal lexis which had already been included in language-oriented discussions. According to the issues presented, the study of law (i.e. legal norms, legal science and legal practice) reveals a constant need, or rather impetus, to introduce a parallel study course dealing with regular language based and linguistic updates of legal Slovenian.

Key words: legal language, legal terminology, ambiguous in legal terminology, lexico-grammatical response of legal Slovenian.

Povzetek

SLOVENSKI PRAVNIŠKI JEZIK Z VIDIKA SLOVENISTA

Prispevek opozarja na aktualna vprašanja rabe pravnega jezika znotraj lastnega jezika, v tem primeru slovenščine; na konkretnih primerih je opozorjeno na dodatne pomenske obremenitve pravne terminologije, na besedotvorne različice in na njihovo (ne)sprejemljivost, na nujnost upoštevanja slovničnih kategorij, kot sta pomenska določnost pri pridevnikih in dovršnost oz. nedovršnost pri glagolih in glagolnikih, ter na (ne)upravičenost pretvorb znotraj večbesednih pravnih terminov. V zvezi s tem se potrjuje, da je tisto, kar je v pravni terminologiji dvoumno, hkrati tudi napačno. Pokomentiran je leksikogramatični odziv pravne slovenščine na vključitev pojmov nadnacionalnega pravnega reda oz. pravnega reda Evropske unije. Pri analizi so uporabljena slovenska pravniška besedila, prevedena pravniška besedila (oboja so bila od pristojnih pravnih inštitucij odobrena za jeziko(slo)vno obravnavo) in pravniška leksika, ki je bila že vključena v jeziko(slo)vne razprave. Glede na obravnavano se pri študiju prava (tj. pravne norme, znanosti in prakse) stalno potrjuje potreba ali kar nujna po uvedbi vzporednega študijskega predmeta za sprotno jezikovno in jezikoslovno ažuriranje pravne slovenščine.

Ključne besede: pravniški jezik, pravna terminologija, dvoumno v pravni terminologiji, leksikogramatični odziv pravne slovenščine.