

Behind the Scenes of Legal Discourse

Alenka Kočbek

University of Primorska

Povzetek

Kot je izpostavil Mellinkoff (1963: vi), je pravo disciplina, ki temelji na iminentni moči pravnega jezika. Ta moč izhaja predvsem iz trojne narave pravnega jezika - iz njegove normativne, performativne in strokovne razsežnosti (Cao 2007:13), pa tudi iz nekaterih manj konkretnih lastnosti, kot je na primer občasna nedoločnost, ki lahko zbuja negotovost, in včasih hotena nejasnost, ki vliva strah in spoštovanje. Poleg tega nekatera pravna dejanja obdaja slovesno, skoraj mistično vzdušje, katerega ključna sestavina je pravni jezik. Ta učinek slovesnosti je ustvarjen z rabo diskurza, ki je pogosto delno ali pa povsem nerazumljiv laikom, ki so udeleženi v pravni komunikaciji, dodatno pa ga še podpirajo in krepijo neverbalni elementi, kot je na primer raba značilnih simbolov, ki označujejo pravno okolje, stroga porazdelitev prostora v sodni dvorani in pa uporaba za sodno okolje značilnih pripomočkov in ceremoniala. Le če se v celoti zavedajo teh izrecnih, pa tudi manj očitnih razsežnosti pravnega diskurza, bodo pravni prevajalci in tolmači lahko opravljali svojo vlogo v interesu udeležencev v pravni komunikaciji, še posebej tistih šibkejših in bolj ranljivih.

Ključne besede: pravni diskurz, besedilni kulturem, vizualna slovnica, zgodovinsko in ideološko ozadje

0 INTRODUCTION

In “The Language of Law” Mellinkoff pointed out that “the law is a profession of words” (1963: vi), i.e. a discipline relying on and deriving its force from the intrinsic power of legal language. Legal language as it is used in legal discourse in the form of spoken or written texts with the purpose of realising legal acts, is informed by several factors and produces effects which reach far beyond its merely linguistic dimensions. In order to envisage these extra-textual dimensions, we suggest viewing legal texts in the light of the *text-cultureme model* (Kocbek: 2014), developed on the basis of Oksaar’s concept of *cultureme* (1988). The concept of *text-cultureme* has been designed from a translational perspective and structured to accommodate different textual levels shaped by culturally bound text norms and conventions, as well as the extra-textual factors affecting the text. We thus suggest examining legal texts in spoken and written form by considering their verbal dimension, but also their para-verbal and non-verbal aspects specific to legal communication, as well as their extra-verbal dimension (the legal system and the broader culture underlying the text and providing its communicative framework).

When examining spoken and written texts used in legal discourse in different legal settings, some universal traits come to the fore. The language used to produce legal texts, but also to interpret and enforce them, is marked by some common features, which function as the common denominator of legal languages in general, irrespective of the legal systems in which they are embedded. The most prominent universal characteristics of legal language are its normative, performative and technical nature, but also its inherent indeterminacy and opacity. In legal discourse, these aspects of legal language are often supported and enhanced by para-verbal and non-verbal elements, which are specific to legal communication and legal settings. On the other hand, it also needs to be considered that every legal language is system-bound and that each of its dimensions (lexical, syntactic, stylistic, pragmatic) needs to be viewed in the context of the legal system and the wider legal culture to which it is bound (de Groot 1998: 21).

We will thus first discuss the universal features of legal languages supplemented by the para-verbal and non-verbal aspects involved in legal discourse, which stem from the specific nature of law as a discipline and its function in society.

1 UNIVERSAL FEATURES OF LEGAL LANGUAGES

As noted by Mellinkoff (1963: vi), law is a discipline that relies on and operates through the power of legal language. This power essentially stems from the

threefold nature of legal language – its normative, performative and technical dimension (Cao 2007:13), but also from some of its less palpable features, such as its occasional vagueness that may generate uncertainty, and its at times intentional opacity, which can instil fear and respect. Moreover, certain legal acts are surrounded by a somehow mystic and solemn atmosphere, of which legal language is an essential component. Participants in legal communication, but especially legal translators whose role is to enable legal communication across the boundaries of legal languages and legal systems, need to be aware of all these aspects in order to be able to best render justice to all the explicit and implicit facets of legal discourse.

1.1 The normative, performative and technical character of legal languages

As regards the normative nature of legal language, Cao (2007:13) states that the basic function of law in society is “guiding human behaviour and regulating human relations”. Similarly, Jenkins (1980: 98) sees law as “a set of prescriptions, having the form of imperatives, defining and enforcing the arrangements, relationships, procedures and patterns of behaviour that are to be followed in a society” (Jenkins 1980: 98). In the various arenas of law, legal texts of all kinds, spoken and written, are formulated, interpreted and enforced primarily through language which thus takes the form of medium, process and product (Maley 1994:11). To fulfil these functions, i.e. essentially creating, producing and expressing norms, the language in its normative dimension needs to be highly prescriptive, directive and imperative, and generally uses modals, such as the English *shall*, *must*, full lexical verbs such as *bind*, *obligate*, *undertake*, *forbid*, etc. and nouns, such as *order*, *sentence*, *ruling* (and their equivalents in other languages).

The normative nature of law and legal language basically depends on the performative power of language as described by the speech act theory proposed by Austin (1962) and Searle (1969). In its performative dimension, legal language is used to impose obligations, confer rights, express prohibitions and grant permission. More precisely, by using legal language, people perform acts such as accepting public and private legal responsibilities, assuming legal roles and qualities, obtaining and/or transferring legal rights and imposing or discharging obligations (Jori 1994:2092). Legal texts, such as statutes, contracts, wills are speech acts *per definitionem*, and one of their distinguishing linguistic features is the use of performativity markers, such as the use of the modals *shall* and *may* in English and performative verbs, such as *declare*, *adjudge*, *pronounce*, *undertake*, *bind oneself*,

assume (the obligation/liability), *grant*, *confer* (rights), etc., and their corresponding translations in other languages.

Legal language is also a technical language, which presupposes the existence of a legal system and particular rules of law against the background of which the terminology and lexicon it uses acquire their full meaning. As Jackson (1985:47) points out, the technical nature of legal language is conditioned by the fact that it has “a lexicon constituted in a manner different from that of the ordinary language, and involving terms related to each other in ways different from those of ordinary language”. The words used in a legal text only make sense within the legal system underlying the texts, which is thus critical to their understanding. Accordingly, legal language is likely to be incomprehensible to those who lack the knowledge of the corresponding legal system, although they have a sound knowledge of the natural language concerned (Jackson 1985:47). This feature may be strongly felt by laypersons involved in legal proceedings of any kind who may feel intimidated by the unintelligible nature of certain legal texts. Being aware of and familiar with the technical dimension of legal languages is of particular importance to legal translators who, in order to be able to translate between different legal languages, need to be acquainted with the legal systems involved in a translation, or as stated by de Groot are “obliged to practice comparative law” (1998: 21).

1.2 The indeterminacy and opacity of legal language

A further feature of legal language, which may generate intimidating effects, is the fact that, in contrast to its prescriptive nature, which presupposes absolute exactness and precision, legal language in general is characterised by a certain amount of indeterminacy, or as described in Cao (2007: 19), some of its expressions have “a core of settled meaning” surrounded by “a penumbra of uncertainty”. Legal languages often contain terms, such as the English terms “in due course” (*pravočasno/v ustreznem času; a tempo debito; rechtzeitig, zu gegebener Zeit*), “reasonable” in all its collocations, such as e.g. “reasonable compensation /doubt/ endeavours” (*ustrezno plačilo / upravičen dvom/ razumna prizadevanja, po najboljši moči; compensol/indennizzo ragionevole /congruo, dubbio/sforzo ragionevole; angemessene Entschädigung/ berechtigter Zweifel / angemessene Anstrengung*), “diligence of a prudent businessman” (*skrbnost dobrega gospodarja; diligenza di un buon commerciante/di un operatore prudente; Sorgfalt eines ordentlichen Kaufmanns*), “in good faith” (*v dobri veri; in buona fede; nach Treu und Glauben*), the interpretation of which is often uncertain and ambiguous.

An area of language use which may generate indeterminacy and opacity is the area of evocative language. There are some metaphorically generated terms, which are

universal to legal language, and are found in the vocabulary of different legal cultures, prevailingly with the same meaning (e.g. *small print*/ *Kleindruck* / *drobni tisk*; *third parties*/ *Drittel* *tretje stranke*/ *terzi*; *force majeure*/ *höhere Gewalt*/ *višja sila* / *forza maggiore*), and are thus less likely to create uncertainty, especially with participants in communication who have some knowledge of law. Others, however, are highly culture-bound, such as *lifting/piercing the corporate veil*, *yellow dog clause/contract*, transactions *made at arm's length*, *Faustpfandrecht* (dead pledge), *po črki zakona* / *secondo lo spirito e la lettera del regolamento* (following the letter of law), *offerta sottobanco* (private offer, offer given underhand); *dare/ricevere il nulla osta* (grant/receive a permit, approval), and might give rise to doubts as to their exact meaning, especially when they need to be translated. When rendering evocative language, literal translations are, as a rule, to be avoided as they would create novel metaphors which are contrary to the static nature of legal language.

A further manifestation of the hermetic nature of legal language, as it is perceived by participants in legal communication, especially in court proceedings, is the use of a language which is strange and partly or totally incomprehensible to the laypersons involved in the proceedings. Legal language in its most status-bound and hermetic form, i.e. *legalese*, is often used by court officials, practising lawyers, and legal scholars, to display their professional knowledge, distinguish themselves from other professionals and non-initiated laypersons, and strengthen their professional authority. Latin terms and phrases, archaisms, acronyms, jargon elements are some of the most obvious components of the various national varieties of *legalese*.

In the Middle Ages, court proceedings throughout Europe were often conducted in Latin and judgements were pronounced in Latin until the beginning of modern times, although in most of the cases this language could not be understood by the parties to the proceedings (Mattila 2006:48). Nowadays, Latin still maintains this estranging and status-conferring role, as Latin terms and phrases, including the so-called brocards (e.g. *in dubio pro reo*, *pacta sunt servanda*, etc.) are still an important part of the vocabulary of legal languages. Learning Latin thus continues to be an obligatory requirement for law students worldwide. Contemporary English, German, Italian and Slovene legal texts still show influences of Latin as the legal lingua franca of the past. Some Latin terms are universal, i.e. used in different legal systems with (prevailingly) the same meaning (e.g. *bona fides*, *pro bono*, *ex officio*, *onus probandi*), while others are strictly system-bound, as is the case with a number of Latin expressions used in Legal English (e.g. *affidavit*, *stare decisis*, *subpoena*) which are not genuine Roman legal terms and are only used in the context of Common Law.

Other languages have been used in legal settings with a similar role to that of Latin. As discussed in section 4.4 below, Law French was used in the English courts not only during Norman rule, but also long after French disappeared from

other walks of life. In what is now the territory of Slovenia, German was the official language used in courts throughout the Middle Ages until the middle of the 19th century, when communication started to be partly conducted also in Slovene (Kocbek 2011: 140). The German language used in court not only inspired respect in the Slovene parties involved in the proceedings, but had a clearly intimidating effect on them.

As noted by Lemmens (2011: 88), in the era of globalisation English is replacing Latin not only as the legal *lingua franca*, but also in its status-bound and status-conferring role. Thus, new generations of Slovene, Italian and German lawyers are extremely fond of using English “buzz words”, e.g. *deal*, *due diligence*, *merger*, *takeover*, etc. emblematically as role markers to demonstrate their skills and underline the international dimension of their activities.

Cao (2007: 19) points out that the ambiguity, generality and vagueness of certain terms generates both intralingual uncertainty (within a given legal language), but also interlingual uncertainty arising from the necessity to translate them into another legal language.

The normative, performative and technical dimensions of legal language and its status-conferring role are often supplemented and enhanced by para-verbal, non-verbal and extra-verbal aspects, and circumstances that confer an aura of solemnity and mystical nature to legal discourse and thus turn it into an extraordinary instrument of power.

1.3 Solemnity and rituality of legal language

Legal language has an important role in creating the atmosphere of solemnity, which surrounds certain legal acts and is meant to strengthen the authority of law and of those who exercise it, while at the same time generating respect or even fear in those to whom law is administered. As shown by Mattila (2006: 45 – 46), in the past, but in some parts of the world even today, law has been attributed a sacred character and this aspect is reflected in language where in preambles to some significant laws and very often to Constitutions, reference is made to the fact that the legislator has been empowered by a deity. Similarly, witnesses in some countries (the USA, the UK), and also persons appointed to an office, still swear on the Bible. In this respect it needs to be mentioned that in Legal Italian some of the verbs typically used in legal proceedings are actually called “*verbi liturgici*” (liturgical verbs) as they are typically used either in the context of religious ceremonies or in legal communication (e.g. *adire*, *celebrare un processo*, *dedurre*, *lamentare*, *escutere*, *presentare ricorso /istanza*, *pronunciare*).

A feature illustrating the solemn character of legal language is also the fact that in texts, such as judgements, rulings, court orders, etc., through which legislative power is exercised, the institutions issuing them declare to act on behalf of the people (i.e. personifying the nation), or the highest authority (e.g. in United Kingdom, but also in some of the Commonwealth countries, in the name of H.M. the Queen). When studying legal documents of this kind from the period of the Austrian-Hungarian rule in Slovenia, references to the Emperor and King as the highest authority exercising its power are frequently found.

Another aspect through which the solemnity of legal language is achieved is its ritual character. As described by Mattila (2006:47), in the past the power of legal language was also based on the hypnotic rhythm and on the performing of established rites which, apart from language, involved specific gestures, clothing and special settings, all of which strengthened the authority of law and were meant to inspire fear in those inclined to break it. Archaic law was thus often expressed in ritual formulas which relied on para-verbal aspects such as an expressly rhythmic and melodious structure, with an extensive use of repetition, alliteration, binary formulas, strings of synonyms or quasi synonyms (some of these structures are still used at present in Legal English as discussed in section 3.4 hereof).

In Slovene legal history an example of such ritual use of language for legal purposes is provided by the ceremony of the enthronement of the Dukes of Carantania. Carantania is considered the first state formation of the Slovenes and was located in the present-day Austrian province of Carinthia. Until the 13th century, its inhabitants were called Karantanci (Carantanians). They elected their dukes at a special ceremony, during which the duke had to swear to all the assembled free people that he would respect the people's will and defend their rights. Only after having heard this oath, a peasant sitting on the Duke's Stone (*knežji kamen*), acting as a representative of the Kosezi, a particular social class, originally the military escort of the princes, abandoned his seat and delivered it to the duke, for which he received a horse and a specked bull from the duke. The striking feature of this rite is that it was conducted in Slovene, following a strictly prescribed formula, and it was preserved into the late Middle Ages, even at times when the Slovenes had lost their political independence and the Dukes enthroned were representatives of the German ruling aristocracy. These rulers did not speak Slovene, but nevertheless had to learn and pronounce the ritual formula in a language that thus acquired a mystical force. The ceremony was deemed so interesting and unique that Pope Pius the Second mentioned it in his writing in 1509, and the French lawyer and philosopher, Jean Bodin, described it in his *Treatise on Republican Government* (1576) as a unique democratic act of inaugurating a ruler. Bodin's work was followed by Thomas Jefferson, third president of the USA and Father of the American Constitution, who is thus believed to have known of this ceremony (Prunk et al.: 2000).

The solemnity of legal discourse is also supported and enhanced by a series of non-verbal aspects which mark the settings where legal communication takes place. For example, in courts and buildings where law is administered, we often find a series of symbols referring to justice, such as the scales (a symbol originating in ancient Egypt and referring to the scales used by Osiris to weigh the souls of the dead), the axe and the sword (going back to Ancient Greece), the lictor's fasces (adopted from Ancient Rome, where it symbolised a magistrate's power and jurisdiction guarded by the lictor, an attendant who accompanied the magistrate and carried the fasces; this symbol also gave origin to the name of the Fascist movement in Italy) and the blindfold (typically worn by Justice represented by a statue) (Mattila 2006: 49). While the aforementioned symbols are used internationally, national symbols, such as a crest, the national flag, and sometimes images of national leaders are also to be found in courtrooms around the world. In Slovenia, for example, the national crest usually appears on the wall above the judge's rostrum, while in the times of ex-Yugoslavia, a photo or a portrait of the then Yugoslav president Tito was an indispensable feature of every courtroom (with all its ideological implications).

The solemnity of legal communication is also evidenced by the requirement for the participants in the courtroom to comply with the established allocation of space (i.e. the judge's rostrum, the prosecution and defence benches placed on opposite sides of the room, the jury box, the witness stand), and the use of the typical courtroom paraphernalia, such as the gowns/robes and in some countries caps worn by the judges and counsels, the wigs worn by English judges, the gavel used by the magistrates and judges to silence the audience. As a rule, having to comply with the rules regarding allocation of space and being aware of the external signs of power displayed by the legal professionals, inspires respect or even fear in the laypersons involved in court proceeding.

In contemporary courtrooms, para-verbal aspects, such as a formal tone of voice used by the judge and the counsels, their use of pauses in discourse to increase the dramatic effect of their utterances or to attract attention, the requirement for the public to remain silent during the proceedings, all significantly contribute to the effectiveness and power of legal discourse.

In written communication, the para-verbal and non-verbal dimensions are expressed by the highly conventional form of legal documents. Legal texts are not only shaped by norms and conventions applying to the use of the legal language, but also by a rather rigid, often very traditional page layout and text format. Moreover, they are often adorned with seals and stamps of the legal institutions issuing them. Sentences, rulings and court orders issued by Slovene courts of all instances, for example, have a special letterhead featuring the Slovene crest, and usually bear the stamp of the institution issuing the document, which, again, has

the Slovene crest at its centre. Even a relatively pragmatic document, such as the extract from the company register, may sometimes bear extremely solemn traits and symbols. In the UK, for example, the certificate issued by the Companies House, which is equivalent to a Slovene or German extract from the company register, bears the royal coat of arms of the UK, with the motto of the English monarchs (i.e. “Dieu at moin droit” /God and my Right) and of the Order of the Garter (i.e. “*Honi soit qui mal y pense*” / Shame on him who thinks evil) in French. In comparison, the functionally equivalent certificates issued by the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES) or by the German company register (*Unternehmensregister*) look indisputably plain and simple, although they fulfil the same communicative purpose.

The above mentioned symbols and objects used in legal settings, together with the typical design of written legal texts with emblems, logos etc. actually form a kind of specialised visual grammar (cf. Kress and van Leeuwen 1996), which underlies and permeates legal discourse and needs to be learned and understood by all those who wish or need to participate in legal communication as fully-fledged interactants.

Having discussed the universal traits of legal language and the para-verbal and non-verbal elements supporting its power, in the following chapter we will look at some aspects of selected legal languages, i.e. Slovene, English, Italian and German. From the point of view of legal professionals, legal translators and court interpreters, but also of parties generally involved in legal interactions of any kind in Slovenia, these are the languages (besides the languages of ex-Yugoslavia) most frequently used in Slovene legal settings. To better grasp their characteristic features, we suggest studying and comparing them by adopting the perspectives of translation studies, comparative law and legal linguistics, which can help us gain a better understanding of each of the legal languages discussed and their roles in legal discourse.

2 TERMINOLOGY MINING IN LEGAL TEXTS

In line with the structure of the *cultureme-model* (Kocbek 2014: 111-132), legal texts are viewed as culture-specific textualisations of legal contexts and relations. Within this model, examining the terminological level of the text from multiple angles, both in mapping the source text, as well as in formulating the target text, is suggested as a crucial stage of the translation process. This stage involves terminology mining, which, when carried out thoroughly, i.e. by extracting, analysing, comparing and structuring the terms used in legal texts, enables the identification of terms which indicate the legal genre, such as for example the terms

“agreement”, “sentence”, “indictment”, etc. Moreover, detailed terminology mining may provide deeper insights into the legal system and the broader culture underlying the text, by revealing legal norms and historical circumstances that led to the creation of certain terms.

To laypersons, just as to legal translators, some terms may serve as landmarks allocating a text to the relevant area of law. Terms such as *equitable remedies / rights*, for instance, function as a signpost for *equity* as one of the fundamental areas of Anglo-American Law, while the term *consideration* may mark a text as a contract or agreement and enable its allocation to Contract Law. On the other hand, the term *Prokurist* in a German or Slovene text will help allocate the text to company law (*Gesellschaftsrecht/ statusno pravo*), and e.g. the term *de cuius* (‘the deceased’) in an Italian legal text, to probate law (*diritto ereditario*).

Such landmark terms will also draw the attention to specific legal concepts, (e.g. *cause* in continental law, *estoppel* in English), areas of law (e.g. *Tort Law* in the Anglo-American legal system, the *Law of Obligations* in continental law, etc), which have the status of *memes* (cf. Chesterman 1997), i.e. concepts, ideas, established practices, specific to a given culture, which may only be transferred across the boundaries of languages and cultures with the aid of translation. In order to be able to identify these *memes*, it is fundamental to be acquainted with the findings of comparative law regarding differences and similarities between legal families and systems, and with their impact on legal languages. As pointed out by Zweigert and Kötz (1998: 21), comparative law opens a new dimension from which respect for legal cultures of other nations can be learnt, and a deeper understanding of how rules of law are conditioned by social facts and shaped into different forms gained. This perspective also provides significant insights into the history of legal systems, their development and evolution, and thus sheds light on aspects of legal languages that can only be grasped when viewed against a broader cultural background.

3 HISTORICAL AND IDEOLOGICAL ASPECTS OF LEGAL LANGUAGES

As pointed out by Sandrini (1999a: 104), legal language reflects the moral values predominant in a particular society, and the way in which specific real life situations are managed by regulating the interaction of humans and controlling people’s behaviour at a particular point of time. These extra-linguistic aspects can modify the meaning of terms and add new elements to the knowledge depository accessed through the relevant term. Hence, to fully grasp the evolution of legal terms, they need to be studied in a diachronic perspective

(Temmerman 2000: 230). As shown below, legal language often holds up a mirror to history in a very eloquent way (cf. Kočbek 2013).

3.1 Legal Slovene

When studying the Slovene legal language and its origins, it can be observed that it has, to a large extent, been created through translation, i.e. in the course of so-called secondary term formation (cf. Kočbek 2011: 140-151). Many basic terms are recognizable as calques from German (which in turn were calqued from Latin), e.g. *pravni posel* (from *Rechtsgeschäft* – legal transaction), *izjava volje* (from *Willenserklärung* – declaration of intent), *predpis* (from *Vorschrift* – regulation). Slovene law as an independent legal system has only existed since Slovenia gained its independence in 1991, while in the past, the Slovene legal language was used to express concepts and contexts pertaining to legal systems in which Slovene was not an official legal language, or, as was the case in ex-Yugoslavia, was one of the several official languages. Some basic legal terms, such as *pravo* (law), *soditi* (to judge), *sodba* (judgement) stem from Old Slavonic, but there are no written records of a fully-fledged Slovene legal language, although for centuries the spoken communication in courts did also occur in Slovene, while legal documents were drafted in German. The Slovene legal language was only systematically created when, during the reign of the enlightened Habsburg empress, Maria Therese (1740-1780), after the reformation of the state administration, the so-called patents (statutes and laws) began to be translated into all the languages of the Habsburg empire, including Slovene. Numerous translations of legal acts were also published in the period of the Illyrian provinces (1809-1813), an autonomous province of the Napoleonic French Empire, when official proclamations in French, German and Slovene appeared in the journal *Télégraphe officiel des Provinces Illyriennes*. But it was only in the aftermath of 1848 that codes and statutes (e.g. the Austrian Civil Code – *Allgemeines Bürgerliches Gesetzbuch*) of the Austrian Empire began to be methodically translated into the various languages of the Empire, including Slovene. To systematically address the problems resulting from the lack of a fully-fledged Slavonic legal terminology, the Royal and Imperial Ministry of Justice in Vienna established a special commission and entrusted it with the compilation of a legal dictionary of the juridical and political terminology of all the Slavonic languages of the Austrian-Hungarian monarchy in 1849. Members of this commission were some of the most prominent names in Slavonic linguistics and juridical science, e.g. the Serbian linguist Vuk Stefanović-Karadžić, and the Slovene scholars, Fran Miklošič, Matija Dolenc and Matej Cigale. As a result of their efforts, the first publication dedicated to Slovene and German legal terminology, i.e. *Juridisch-politische Terminologie für die*

slawischen Sprachen Österreiches, appeared in 1853. A significant aspect of the activities referring to legal translation and the creation of a Slovene legal language is the fact that renowned Slovene writers and linguists, such as Anton Tomaž Linhart, Valentin Vodnik, Franc Metelko, and later Ivan Tavčar, participated in them from their very onset. The organized translation activities headed by the commission continued, but specialized law journals (*Pravnik slovenski* published between 1870-1873, and as of 1881 *Slovenski pravnik*) also encouraged Slovene lawyers to use Slovene for their professional work and furthermore published lists of legal terms, inviting their readers to comment on them and suggest improvements. These activities culminated in the publication of the first German-Slovene legal dictionary (*Nemško-slovenska pravna terminologija – Deutsch-slowenische Rechtsterminologie*), authored by Janko Babnik in 1894 (Kocbek: 2002).

In 1918, the Slovene territory became part of the new Kingdom of Serbs, Croats and Slovenes (later renamed Kingdom of Yugoslavia). As the Slovene legal terminology developed in the framework of this monarchy, but also in the period after the Second World War, which saw the emergence of the new Socialist Yugoslavia, it was exposed to the influence of Serbo-Croatian. Some loanwords from Serbo-Croatian were incorporated into Slovene terminology and are still in use, e.g. *zaključek* (conclusion/closure/discharge), *tajnost* (secrecy/confidentiality), while others were later abolished as Serbo-Croatisms (e.g. *glasom* – in line with/pursuant to, *potom* – through/by means of). In a similar way to other European legal languages, Legal Slovene shows influences of Latin, as in some cases it directly uses Latin terms (*bona fides*, *pro bono*, *ex aequo*), along with terms of Latin origin (*kodeks* – ‘code’, *derogacija* – ‘derogation’) or calques (*lastnoročno* – ‘manu propria’). For the contemporary Legal Slovene, the most productive source of new terms of foreign origin is undoubtedly English (including Euro-English). Some terms are maintained in the original form, e.g. *know-how*, *goodwill*, *joint-venture*, *due diligence*, etc. while others are adapted to Slovene morphology and spelling, e.g. *franšiza* (‘franchise’), *lizing* (‘leasing’).

3.2 Legal German

Legal German is of particular importance for the Slovene legal language, because, as mentioned above, Legal Slovene has largely been created through translation from the Austrian variety of German in the period when most of what is now Slovenia was part of the Austrian-Hungarian Empire. When Legal German is studied and its Austrian and Swiss varieties compared to the legal language used in Germany, what comes to the fore is that many terms of foreign (mostly Latin) origin, which are still used in Austria and Switzerland, have been abandoned in

the German variety. As shown by Mattila (2006: 155-173), the reason for this linguistic feature is again historical. Many legal terms of Latin origin entered the German vocabulary in a first wave (mostly in the form of loanwords) as the laws of the German tribes were drafted in Latin after the fall of the Roman empire, and subsequently translated into German, and then again, through a second wave of adopting Latin based terminology at the end of the Middle Ages, in the period of the Reception of Roman law. In the period of the Enlightenment, in line with the belief that legal language should be understandable to common people, they were at first substituted by German equivalents and then underwent a further systematic Germanisation in the process of the so-called *Eindeutschung*, which also involved the creation of new pure German legal terms. A special role in the development of German legal terminology is held by the codifications, especially the Civil Code (*Bürgerliches Gesetzbuch – BGB*, 1900), which laid the foundations for modern German legal language. The language of this Code is characterised by conceptual hierarchisation, and its highly abstract nature, relying on some basic concepts expressed by terms such as *Rechtsgeschäft* (legal transaction), *Willenserklärung* (declaration of intent), *Schuldverhältnis* (obligation), and similar.

In the course of these developments, words of foreign origin were substituted with German terms, such as *Unterhalt* instead of *Alimentation*, or *Ladung* instead of *Citation*, *Abschrift* instead of *Kopie*. The terminology used in the Code was highly abstract and somehow artificial, which earned this language the name of *Papierdeutsch*, but was nevertheless gradually accepted as the standard for legal communication. Nowadays, German terminology is characterised by its lexical richness, the ease of creating terms in the form of sometimes extremely complex compound words, the often highly condensed meaning, and the high level of abstractness of its terms and structures, which makes it extremely difficult to follow for laypersons and might be a source of problems in translation.

Unlike the language variety in use in the German legal system, the variety used in the Austrian Empire did not undergo any systematic linguistic cleansing (*Eindeutschung*), and even nowadays uses a great number of terms of foreign origin (cf. Lohaus 2000). Similarly, the legal German used in Switzerland shows a considerably higher percentage of terms of foreign origin than the German variety (e.g. the Swiss Civil Code is called *Zivilgesetzbuch*). Legal terms of foreign origin may thus serve as a sign for allocating the text to Austrian or Swiss law.

3.3 Legal Italian

Legal Italian has a special role in Slovene legal history, not only because parts of the Slovene territory were under Italian rule (the Primorska region, including

Slovene Istria, and during World War II, the whole southern part of Slovenia), but also because Italian is one of the official languages in the territories where the Italian national minority resides. Thus, since the creation of Socialist Yugoslavia and presently in independent Slovenia, legal texts of all kinds have to be translated into Italian. This process is particularly sensitive from the translational point of view, because these texts, although drafted in Italian, have to be embedded in the Slovene legal system and occasionally terms have to be created which do not have equivalents in the Legal Italian used in Italy, as they refer to institutions and concepts of Slovene law.

More than any other legal language, legal Italian shows influences of Latin, not only at the terminological level, but also in its morphological and syntactic features. For historical (Latin prevailed in Italian legal settings, especially in legal science, and it only became less influential in the period of the codifications, i.e. in the transition from the 18th into the 19th century), as well as for historical-linguistic reasons (i.e. the fact that Italian developed from Vulgar Latin), Legal Italian uses considerably more Latin terms or terms of Latin origin than other legal languages, which makes it hard to comprehend, even for native speakers, and represents an additional difficulty in legal translation into and from Italian.

Many legal terms are actually loanwords of Latin origin (e.g. *contumacia*, *fideiusore*, *erario*, *pena*, *usufrutto*), but there is also a large number of Latin words and phrases (*brevi manu*, *contra legem*, *res judicata*, *de cuius*, etc.), which are commonly used in legal communication. There are some highly specialised terms which are used exclusively in the legal language (*abigeato*, *rogatoria*, *sinallagma*, *usucapione*), and set phrases and collocations which are considered stereotypical of the legal language (e.g. *associazione criminosa*, *reato contravvenzionale*, *udienza dibattimentale*, *prova documentale*, *ai sensi di*, *a titolo di*).

In the period of the codifications in the 19th century, but mostly with the translation of the Napoleonic Code, loanwords from French entered the Italian legal vocabulary (*aggiotaggio*, *emendamento*, *giurato*, *misura*, *prefetto*) and some now commonly used legal terms were actually introduced as loanwords from German (*negozio* / *rapporto giuridico*, *datore di lavoro*, *diritto soggettivo*). Nowadays, the majority of new terms that become part of the Italian legal lexicon, comes from English, including Euro-English (e.g. *impeachment*, *privacy*, *budget*).

3.4 Legal English

As the contemporary legal lingua franca, Legal English is the language in which most of the legal translation in Slovenia presently occurs. As discussed in Kocbek

(2008: 63), however, when English serves as *lingua franca*, the potential problems deriving from the discrepancy between Common Law and Continental Law should be considered. When English is used to describe specific aspects and concepts of the European Law or of the Slovene legal system (belonging to the continental legal family), the terms used might be tainted by the meaning attributed to them within the Anglo-American legal system. It also needs to be considered that in Legal English, there are categories of terms, which are strongly historically-conditioned, and as such require special attention in translation and would better be avoided when using English as a legal *lingua franca*.

Legal English, for example, uses Latin terms which are only used in Anglo-American law, and in spite of the fact that Latin used to be the legal *lingua franca* of the past, have no direct (Latin) equivalents in other legal languages (e.g. *affidavit*, *amicus curiae*, *stare decisis*, *habeas corpus*, *subpoena*). They were actually introduced in the period following the Norman Conquest, when the foundations of Common Law were laid, and legal documents were drafted in Latin as the language used by the Normans in important circumstances. Moreover, there is a large number of legal terms of French origin (e.g. *agreement*, *arrest*, *damage*, *felony*, *bailiff*, *bar*, *judge*, *summons*, *verdict*, etc.), which stem from the period starting at the end of the 13th century, when Latin was gradually ousted by French and Law French prevailed as the language of legal drafting and in the courts, maintaining its position even after French disappeared as a language of communication from other walks of life. Examples of Law French terms, which are still in use today and whose meaning has no relation to modern French, are for example *laches* (a legal doctrine that an unreasonable delay in seeking a remedy for a legal right or claim will prevent it from being enforced or allowed if the delay has prejudiced the opposing party), *metes and bounds* (a surveyor's description of a parcel of real property), *voir dire* (a formal examination of a prospective juror under oath to determine the suitability for jury service or of a prospective witness under oath to determine competence to give testimony).

A further influence of Law French is traceable in terms ending in *-ee* (to denote the person obtaining something or being the object of an action), e.g. *arrestee*, *condemnee*, or in *-or* (denoting the doer), e.g. *vendor*, *trustor*.

An interesting, historically conditioned feature of Legal English are word pairs (e.g. *bind and obligate*, *deemed and consider*) and word strings (e.g. *all taxes, levies, duties, imposts, charges and withholdings of any nature whatsoever*). Word pairs represent a special case of synonymy or semi-synonymy, which originates in ancient Anglo-Saxon legal formulae, and consists of two words with closely related meanings, often alliterative, used in specific legal rituals. In medieval English law this doubling continued as Law French was introduced and it often involved paring an English word with its French equivalent (e.g. *acknowledge and confess*). This

tradition was later expanded into word strings (lists of near-synonyms) which are also a clear manifestation of the striving for *all-inclusiveness*, a prominent feature of Anglo-American legal drafting, i.e. the need to cover every possible situation, every conceivable event, especially in documents of contractual nature. When translated into a target language, which may lack a similar variety of corresponding terms with similar meanings, word pairs /strings are often rendered by a single term or shorter structures.

4 THE POWER OF LEGAL LANGUAGE - POLITICAL AND IDEOLOGICAL IMPLICATIONS

Besides purely historical influences, legal language is characterised by features which stem from the socio-political and/or ideological circumstances in which specific legal text were drafted. Analysing legal language in the light of historical circumstances may sometimes reveal its darker side. Examples of usage of highly ideologically charged legal terms are found in German, in the case of terms used in Nazi Germany by the regime to denote unlawful acts under the Racial Laws, such as *Rassenschande* (racial defilement) or *Rassenverrat* (racial betrayal), used to refer to sexual intercourse or resp. marriage between a citizen of pure German blood and a Jew or a member of any other impure race, under the Nazi laws. Similar terms were also introduced into Legal Italian within the so-called *leggi razziali* (Racial Laws) in the Fascist period.

A similarly negatively charged term is *verbal delict*, which was used in ex-Yugoslavia to denote written or spoken criticism of the authorities, the system, of individual politicians or of the Yugoslav army and was prosecuted under criminal law. In Slovenian legal history, an example of a highly ideologically tainted term is *the Dachau trials* (*Dachauski procesi*), which refers to 10 political processes held between 1948 and 1949 in Slovenia against former prisoners of concentration camps (of which thirty-one were prisoners of the Dachau concentration camp), who had been unjustly accused of being Gestapo agents, of collaboration in war crimes, and of underground acts of sabotage against the new people's authorities. Eleven of these defendants were sentenced to death and shot, while twenty were sentenced to long-term imprisonment in the then Yugoslav internment camps, especially on the infamous island of Goli otok. The sentences were reversed in April 1986 at the Tenth Congress of the then League of Communists of Slovenia, but the term maintained its dark and menacing power (Nečak: 2009).

Sometimes a single term can shed a different light on the text as a whole and lead to a different understanding and interpretation of it, i.e. it can function as a clue to hidden or obliterated facts and events in the background of the text.

For example, in the preamble to a real estate sales contract that the author of this chapter translated from Italian in the context of a civil case heard in one of the courts of Slovene Istria (which at the time of the making of the contract was part of Italy), one of the parties to the contract (i.e. the Vendor) is defined as non-Aryan (*di razza non-ariana*). This term, together with the date of the contract, which was indicated as ...*giorno dell'era fascista* (...day of the Fascist era), was interpreted by the court as a sign that the content of the contract was conditioned by the Racial Laws (*Leggi razziali*) then in force in (Fascist) Italy, and that the party concerned might have been forced to enter the contract under duress, a fact which could make the contract voidable.

A less drastic and dramatic example of politically conditioned terminology can be noticed when consulting and/or translating extracts from company registers in Slovenia, in which terms can be found, which point back to the times of Socialist Yugoslavia when the Slovene economy was organised according to the system of self-management (*samoupravljanje*), which developed its own terminology. This terminology was originally generated in the languages of the SFRY and later translated for the purpose of international legal and business communication. For example, the most common organisational form of economic enterprises in that period was the *TOZD – Temeljna organizacija združenega dela*, translated into English as *BOAL, i.e. Basic Organisation of Associated Labour*, into German as *SOAA, Stammorganisation der assoziierten Arbeit* and into Italian as *OBLA Organizzazione di base di lavoro associato*. All English and German terms were actually neologisms which could only be understood by receivers who were familiar with the socio-economic and political context underlying the terminology, while the Italian terms were actually used in the bilingual areas of the then Yugoslavia. As the self-management system was abolished and modern company law was introduced, the terms referring to concepts and structures of the self-management system also disappeared from the Slovene legal lexicon. In order to name the newly introduced company forms the terminology, which had been in use in the interwar period when Slovenia was part of the Kingdom of Serbs, Croats and Slovenes, was resuscitated, with minor changes (e.g. *družba z omejenim jamstvom* – a limited liability company – was changed to *družba z omejeno odgovornostjo*).

In order to fully understand the information implied in such ideologically tainted terms, members of younger generations in Slovenia, and especially non-Slovenians who may not be familiar with the historical and political circumstances underlying such terms, will need additional explanations or comments, which, in the case of intercultural legal communication, may be provided by legal translators or interpreters.

5 CONCLUSION

In this chapter we have suggested using the structure of the the *text-cultureme model* to gain a full picture of the complex and multifaceted nature of legal discourse, as well as of the para-verbal, non-verbal and extra-verbal aspects supporting and boosting its power. Such a holistic view of legal discourse reveals that the features which confer spoken and written legal texts a special, at times intimidating power, are often the result of a unique interplay of a targeted use of the legal language, combined with para-verbal and non-verbal elements, such as the use of symbols, status-bound objects and a rigid division of space in legal settings, which build up a special visual grammar characterising legal texts. Besides these universal traits of legal texts, we showed how individual legal languages, i.e. those which are of particular relevance to legal communication in Slovenia, developed their extra-verbal dimension – how they evolved through history, by absorbing influences of other languages and cultures and being moulded by historical events until reaching their contemporary status. In this way, we tried to provide explanations to why legal discourse is often perceived as estranged and hermetic, as if it was not meant to be understood by non-initiated parties, and also why spoken and written legal texts generate uneasiness and even fear in their receivers, especially in those who lack specialised legal knowledge. We believe that the aspects envisaged by the *text-cultureme model* reflect the competences and knowledge needed by participants in intercultural legal communication, but mostly by legal translators and interpreters in their work, who, in order to successful function as mediators in legal settings, need to develop an awareness of the legal language as an instrument of power, as well as of the ethical issues and responsibility implied in legal translation.

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