

Compressed Informativeness in Polish Legal Text

Joanna Kowalczyk

Institute of Literary Studies and Linguistics
Jan Kochanowski University in Kielce
Żeromskiego st. 5, 25-369 Kielce, Poland
Email: joanna.kowalczyk@ujk.edu.pl
ORCID iD: <https://orcid.org/0000-0001-5571-5175>
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Abstract. The present paper focuses on one of the main features of legal communication, namely informativeness. The article presents the informativeness of Polish legislative documents as an inherent but not always clearly understood socially feature of legal discourse, which has been regarded as a distinctive characteristic of normative acts. The study includes several levels of approximate semiotisation in relation to the cognitive criterion. The corpus comprises the most important Polish normative texts, namely the Constitution of the Republic of Poland, Criminal Code, Civil Code, and the Code of Civil Procedure. The analysis also included rulings of Polish common courts. Pragmatic and semantic criterion has been applied as the methodological basis for the analysis. The factor related to the use of legislative metaphors in executive and judicial practice was applied as an additional criterion. The aim of the paper was to determine the form of informativeness of the Polish legal texts and its extra-textual usefulness. Two levels of informativeness of legal texts, surface level and deep level, were established in the analysis. In legal discourse, informativeness took the form of a specific phenomenon. It referred not only to surface structures, but also to the elements of the content, requiring reconstruction from their meaning.

Keywords: normative text; semantics; legal education; legal provisions.

Introduction

Informativeness is one of the elements making up the context of an utterance. It facilitates making references to the contexts fixed in the cultural consciousness of language users (cf.: Buczkowska, 2015). It is also a component of the universal language interpretation, enabling the understanding of deep semantics of legal, specialist or official texts. In this perspective, its functionality is changing and refers mostly to the efficiency of ordering syncretic elements of the actual reality. In the light of official-legal discourse, the understanding of meaning relations enables the categorization of actions and events and granting status to people, things or circumstances. A vague framework of acceptable

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behaviour, actions and interpretations constitutes the basis for analysing legal texts at different levels (cf.: Cabaj, 2014). The awareness of normative structures and understanding them also create the basis for effective legal education of civil society (cf.: Wood, 2013).

Looking at official communication from this perspective, attention can be paid to some generalised components of the system determining the semiotic processes in legal and official discourses. In these types of communication, legal regulations and principles act as reference points. The horizon of conceptualizing the world based on the relation between reality and assumptions has, in fact, been inscribed into the legislative and regulatory apparatus. For this reason, the concepts accumulating conceptual frameworks, which at the same time refer to various fragments of reality (*with particular cruelty, extenuating circumstances*, etc.), operate effectively within the legal sphere. Their importance is primarily related to the potential of recognizing a broad descriptive perspective. In the context of communication it is a common phenomenon occurring at every level of official-legal interaction.

The article presents the informativeness of Polish legislative documents as an inherent but not always clearly understood socially feature of legal discourse, which has been regarded as a distinctive characteristic of normative acts. The analysis was conducted on several levels of approximate semiotisation (generalizations, vagueness) and abstract semiotisation (references made to deep ideas). The corpus included the text of the Constitution of the Republic of Poland and selected extracts of various acts, namely the Criminal Code, the Civil Code and the Code of Civil Procedure. The court rulings were also included in the analysis as an auxiliary corpus.

The aim of the analysis is to describe the informativeness of Polish legal texts, define the function it plays within the normative field, and indicate its cognitive properties in the context of its use.

The methodological basis for the analysis involved a functional-semantic criterion referring to the ability to explain and introduce the real meaning of legal texts by finding their relations with the context and other legal texts. The factor related to legislative metaphors in executive and judicial practice was applied as an additional criterion. The informativeness of legal discourse was looked at through the general perspective of the semantic shift (cf.: Berger, 2004) and the hermeneutical concept of linguistic phenomena interpretation as defined by P. Ricoeur (1989, 2013) with particular emphasis on the hypothesis of a surplus of meaning.

Broad reference has become the starting point for bipolar reception of the analysed phenomenon, i.e. the interpretation of surface (external) semantics in the text and the search for and interpretation of deep (internal) semantics in the content. The main focus of the present paper is to describe the second process, namely the reconstruction of deep meanings.

Legal discourse as an informative field of communication

Legal communication is a type of interaction that requires the establishment of an official relation between the parties of the discourse. Standardization and conventionality of

this field have been determined by normative, fixed ways of communicating (Kowalczyk, 2017, p. 57). Civilization, political and cultural conditions, co-creating self-sufficient subsystems ordering public life, determine the development of solutions acceptable in every condition. Establishing codified laws, which include common, socially accepted ideas implemented by authorities, involves the promotion and application of generalizations of high regulatory potential as “the law as a product of culture is an abstract phenomenon. It cannot be weighed, measured or seen” (Zalewska, 2016, p. 113).

While characterizing this space, attention should be paid to a limited number of acceptable instruments and means of action as well as to a strict categorization of subjects and objects of law (cf.: Kowalczyk, 2017, pp. 54–56). In the discussed area of activity, each interaction participant and each object of interest obtain a certain status, e.g., the defendant, the plaintiff, the employee, the murder weapon, etc. From the information perspective, the most important fact is that a network of one’s rights and duties is connected with the current role. The status of an active actant enables the execution of rights and performance of duties. The lack of such a status effectively hinders taking actions, cf.:

[lack of student status] on the date of the removal from the students’ list **they did not enjoy student status** (III AUa 734/11);

[status of a disabled person at the intermediate level] the Court (...) changes the contested decision in such a way that **it defines the applicant as a disabled person at the intermediate level** (VII U 928/14).

At the same time, assigning a specific status to things, phenomena and events verifies their procedural and actual usefulness cf.:

[evidence status] Making the present judgement the Court **trusted the documents** submitted by the parties as their accuracy was not disputed by the parties and raised no doubts (I C 2429/16);

[valued object status] (...) to determine the amount of compensation may be problematic as there was the need **to express non-pecuniary value which is pain, physical discomfort and the inability to pursue one’s goals** (...) (I C 762/11).

It could be assumed that legal discourse is subject only to specified standards and imposed norms that establish a clearly defined model procedure. However, the basis for this type of interaction is formed by the general discursive model, which includes fluctuations, variations and some freedom in formulating utterances. The discussed space of experiences is also subject to ‘bottom-up’ impacts and, therefore the sphere of legal communication includes components appropriate for a common style of verbalizing information. Such elements include, among other things, generalizations, vague terms or intentions. They should be regarded as tools for encoding ideas in a broad sense. With their help, the legislator can spread complex information with numerous senses while

using only one nominative unit, e.g., word, term, phrase, etc. (e. g., hard evidence), which refers to an infinite number of events. For this reason, even in a highly ordered area, there are flexible conceptual fields, which provide the opportunity to interpret their current meaning in a relatively freeway.

Informativeness in legal discourse

The awareness of and need to enter into legal relations using conventional, formal (abstract or real) tools enables organized communities to implement a system for ordering the unspecified future reality. In some cases, the complexity of the state system imposes the use of generalizations and the introduction of axiological standards or action paradigms. The conceptualization of formalized reality, embedded in legal structures, requires extensive linguistic, communication and professional competence of the interaction participant. For positive law (defined in normative acts) to be effectively implemented on all levels of its adequacy, it is necessary to use approximate and implicit conceptualization.

Approximate and implicit descriptions and prescriptions performed the function of compressed information (hypertext) in both legislative and meta-legal texts. In legal discourse, informativeness took the form of a specific phenomenon. It referred not only to surface structures (external semantics), where metaphorical meanings of an utterance is decoded but also to the elements of the content (internal semantics), requiring reconstruction from their deep meaning (e.g. *Polish citizenship shall be acquired by birth to parents being Polish citizens* (Constitution of the Republic of Poland, Article 34, Clause 1 – a reconstructed principle of *the law of blood*). The primary example of internally compressed informativeness is the relation between the provisions of law to the legal norm. In this relation, the provision of law is just an editorial unit of an act, whereas the norm is an idea as the metaphor for *the spirit of the law* abstracted from an act. This relationship may be compared to rationalized imagination combining cognitive, interpretation and understanding processes with the possibility to perceive one object through another (cf.: Berger, 2004; Ricoeur, 2013) – *the letter of the law through the spirit of the law*.

For the present paper, compressed information in the context of specialist communication is used as a kind of a conceptual unit (a phrase, word, etc.) with the potential of referring to legal concepts (deep meaning) or other concepts which could be reconstructed.

Referring to the assumption of Ricoeur (2013) and Berger (2004) it was concluded that compressed information enables seeing one thing in another. Developing this point of view, it will be considered from the perspective of “enclosing” deep meanings in literal regulations. It should be stressed that the approach proposed in the paper, the phenomenon of compressed informativeness, is not identified with stylistic means but with the potential of a given text to develop meaning.

Indefiniteness of legal rules as the manifestation of compressed information

Informativeness in legal discourse is shaped, among other things, based on generalizing objects and subjects of regulation. It includes assigning statuses to objects, people, events and circumstances through describing them in the form of generalizations, which may refer to anything/everything through judicial and/or doctrinal interpretation. Using indefinite informativeness, the accumulation of numerous meanings within one language unit (e.g. a word, a phrase, etc.) takes place, cf.:

Whoever destroys, **considerably** damages or **essentially** reduces the natural values of a protected area or an object, causing **considerable** damage shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years (Polish Penal Code, Article 187, Paragraph 1);

If you bring an appeal, if as a result of the enforcement side could be caused **irreparable** damage, the Court of second instance may suspend the execution of the judgment under appeal (...) (Code of Civil procedure, Article 388, Paragraph 1);

In particularly justified cases, the Court may, in its judgment break down the awarded entitlements into instalments, and in the cases concerning the transfer of premises or vacating the premises – designate **a reasonable period** to comply with this provision (Code of Civil procedure, Article 320).

The findings show that compressed information in legal discourse may be textually indefinite, thus making it possible to base judgements on arbitrary decisions of the entity making such an interpretation. From this perspective, the text must be analysed within actual circumstances. At the same time, vague expressions become procedurally important. They combine an abstract horizon with experience and require the pre-defined action and evaluation of facts (Wróbel, 2014, p. 133). The adopted convention of applying indefinite phrases in certain situations is of praxeological nature as “the legislator, making decisions that might have an impact in distant future, must operate between the Scylla of legal certainty and the Charybdis of its flexibility” (Zieliński, 1998, p. 8).

Thus, at this level of cognition, all elements of the context “may be subjected to the processes of de-contextualization (removal from the original context) and re-contextualization, i.e. placing in a new context” (Bielecka-Prus, 2012, p. 21). Compressed information as a component inscribed in a pragmatic structure of legal communication broadens the cognitive horizon by combining various levels of cognition, understanding and perception in one element of the language.

Legal provision of compressed information

Civic communities, subject to codified norms of behaviour, have been organized according to the principles of socially legitimized legislative acts. The idea of state

formation and its effective functioning is based on the actual and formal consolidation of universal values and generally accepted patterns of conduct (Kowalczyk, 2017, pp. 59–62). For legal provisions to affect the widest possible range of individual cases, they should be assigned to compressed information referring to generalized principles. In this way, the statutory provisions organize and settle an infinite number of cases through a finite number of rules.

The informative and transcendental foundation of legal provisions is created based on legal norms. The laws verbally define systemic and social relations, whereas the norms abstracted from them constitute their actual meaning. Each legal text includes obligatory deep meaning. In this case, the norm is an ideological side of information. From the axiological perspective, it constitutes the content of a legal provision, a principle which is derived from the text and the literal meaning, cf.:

Public authorities **shall ensure** special **health care** to children, pregnant women, handicapped people and persons of advanced age (Constitution of the Republic of Poland, Article 68, Clause 3) [imperative norm – **reference to the idea of welfare state**];

No one shall be compelled to participate or not participate in religious practices (Constitution of the Republic of Poland, Article 53, Clause 6) [prohibition norm – **reference to secular state**].

The above examples show that general and abstract norms, giving legal provisions the dimension of bilateral relation between the surface realization and ideological context, can be reconstructed from detailed compressed information. In this case, the language code becomes a tool for determining boundaries for the subjective and objective reconstruction of norms. The legal provision as an editorial unit of a normative act describes formal reality, whereas a legal provision as compressed information complements the description with the awareness of fundamental assumptions. For this reason, a specific legal provision can be regarded as metalinguistic recognition of potential events, potential participants and fixed ideas. In this case, informativeness constitutes an implicit reference to political and systemic foundations, statuses and legal consequences.

The essence of metatextuality of legal provisions can be explained by separating significant elements enhancing their value in use, i.e., determining norms of behaviour and actions based on specific, literal provisions.

The following examples illustrate the process of pragmatic and semantic deconstructions of legal provisions and their hypertextual nature:

Article 2 of the Penal Code: Penal liability for an offence with criminal consequences committed by omission shall be incurred only by a person who had borne a legal, special duty to prevent such a consequence.

Reference to sanction: Penal liability (...) shall be incurred by

Reference to the type of crime: an offence

Reference to the manner of committing an offence: by omission

Reference to the status of the offender: only by a person who had borne a legal, special duty to prevent such a consequence.

Article 58 clause 2 of the civil Code: An act in law which is inconsistent with the principles of community life shall be null and void.

Reference to the consequences: an act in law is null and void.

Reference to moral principles: inconsistent with the principles of community life.

Viewing the informativeness of legal discourse in its semantic complexity made it possible to determine implicit legal assumptions included in the conceptual network of provisions and their individual segments. In this case, linguistic reconstruction and sense reconceptualization are permanently inscribed in normative descriptions and prescriptions. The awareness of a multilayer structure of codified law enables understanding of the reflexive relationship between the written word and the transmitted content (both updated and deep).

Compressed information and the reconstruction of logical deep meanings

As the nature of legal discourse is in some sense that of mass communication, universal and flexible description tools are inscribed in its pragmatics. In this context, metatextuality and informativeness constitute the inherent characteristic features and generally applicable legal texts and refer both to the level of interpretation of individual facts (specific cases) and to the level of extracting ideas and foundations for the creation of literal legal provisions (deriving the functionality of law from editorial units of the text).

It should be emphasised that the flexibility of law is also based on the formation of paradigm frameworks (networks of relations) used to interpret it rather than syntagmatic structures (including closed catalogues). In addition to the basic division which results directly from the legislative and executive specificities, verbalized material frameworks (*what, when, how, how much/how many*) and verbalized personal frameworks (*who can, who should, who is prohibited*), the intertextuality of legal provisions can be used for reconstructing deep meanings, i.e. internal frameworks for cause, purpose, effect, condition and manner. The frameworks may be referred to as scripts for reconstructing deep logical semantics. In order to fully explain the highlighted categories, let us look at the following examples, which illustrate the functionality of interpretative frameworks.

Logical framework for cause (*why?*)

A occurred because B exists.

[A] A guardian is appointed for a fully legally [B] incapacitated person unless the person is still under parental authority (The Civil Code, Article 13, Clause 2).

Logical framework for purpose (*what for?*)

A occurred in order for B to occur.

Whoever, [B] **with an intent that another person should commit a prohibited act**, [A] **facilitates by his behaviour the commission of the act**, particularly by providing the instrument, means of transport, or giving counsel or information, shall be liable for aiding and abetting (The Penal Code, Article 18, Paragraph 3).

Logical framework for effect (*what effect?*)

A causes B.

[B] An organizational unit **attains legal personality** [A] **upon its entry** in a relevant register unless specific regulations provide otherwise (The Civil Code, Article 37, Paragraph 1).

Logical framework for condition (*subject to what?*)

A functions if B does not occur.

[A] **Civil cases are resolved by common courts** [B] **insofar as these cases fall under the jurisdiction of specialized courts** (The Code of Civil Procedure, Article 2, Paragraph 1).

Logical framework for circumstances (*what was happening?*)

During A B happened.

The court may apply extraordinary mitigation of punishment with regard to a person co-operating in perpetration, [B] **who voluntarily tried to prevent** [A] **the perpetration thereof**.

Logical framework for manner (*in what form?*)

A was performed in the form of B.

§ 1. Whoever takes or detains a hostage with the purpose of forcing a state or local government authority, an institution or organisation, legal or natural person, or a group of persons to act in a specified manner shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years. § 2. [A] **If the act** specified in § 1 was performed [B] **with particular torment** of the hostage, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of at least 5 years (The Penal Code, Article 252, Paragraph 1-2).

As demonstrated in the above examples, deep class frameworks that constitute the foundation of law, imply the need to employ interpretative processes. A generalizing reference requires an external evaluation, namely adjudication. In this respect, adjudication refers to a gradual act of determining axiological levels (e.g. *in a state of intense emotion justified by the circumstances*), which play a decisive role in determining the conviction or acquittal, sentence, compensation, etc. Evaluating facts in the context of legislative ideas results in merging the interpretation of provision and the evaluation of circumstances.

Conclusion

The assumption that the value of the message is measurable to the current needs and circumstances necessitates the recognition that the cognitive importance of information

depends primarily on the degree of its durability and usefulness (Zajac, 2009, p. 23). The use of compressed expressions (metaphorical, vague, generalised, referring to an idea) makes it possible to locate the surplus of meaning in legal texts. This is a basic advantage over referential conceptualizing, which orders specific fragments of reality. With regard to normative acts, hypertextuality introduces relative flexibility both to designators (people, things, phenomena, events) and to the ways of interpreting them.

Using words and phrases that can be constantly updated, the legislator has created room for interpretation in the context of the fact. Basing the applicable acts on the established, universal concepts (e.g. *acting in the heat of passion*, *legitimate interest*, *active repentance*, *public order*), one can guarantee uninterrupted validity of legal provisions and the possibility to solve an infinite number of cases with the help of the finite number of tools. Such forms of defining reality are characterized by informative productivity, unlimited explicitness and a categorical indication of precise conditions.

The awareness of deep meanings can uncover the spirit of the law, which is the axiological foundation for shaping the law in literal provisions, i.e. in the text, which is vague by nature. It is a particular way of interpreting legislative texts, which in some cases enables the establishment of the factual basis for the provisions. In the analysed text, compressed information referring to internal semantics was related primarily to the general frameworks for determining legal regulations, based on the sequence from a fixed meaning to the reconstruction of abstract meaning.

The conducted analysis showed that the paradigmatic and bipolar structure of legal informativeness contributes to its importance for the processes regulating social relations. Surface semantics shapes symbolic meanings (e.g. *the law is not retroactive*), whereas semantics is reconstructed from the text, i.e. deep references and presupposed meanings (Constitution of the Republic of Poland, Article 31, Clause 2: Everyone shall respect the freedoms and rights of others. No one shall be compelled to do that which is not required by law – presupposition of tolerant society) build general ideas that facilitate the process of creating the text.

Source material and abbreviations

III AUa 734/11 – Judgement of the Court of Appeal in Wrocław of February 1, 2012, reference number III AUa 734/11.

VII U 928/14 – Judgement of the District Court in Lublin-Zachód of May 25, 2015, reference number VII U 928/14.

I C 2429/16 – Judgement of the District Court in Olsztyn of November 22, 2016, reference number I C 2429/16.

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