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LEGAL DISCOURSE MARKERS

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ABSTRACT

The article is concerned with markers of legal texts. Also provided is a classification of legal texts. Markers serving to direct the reader's orientation within a legal document are studied in legislative or statutory writings such as statutes and conventions. In addition, mentioned are rules which regulate division of the text with respect to the publications of the institutions of the European Union.

KEY WORDS:

legal discourse, classification, text division, section, paragraph, convention, statute

CLASSIFICATION OF LEGAL TEXTS

Legal English can be seen as consisting of several kinds of writing, depending on their communicative function. As suggested in R. Hiltunen's book (1990:81), there are three different types of legal writing to be distinguished:

1. *academic texts which consist of academic research journals and legal textbooks;*
2. *juridical texts covering court judgements or law reports and*
3. *legislative or statutory writings consisting of Acts of Parliament, contracts, treaties, etc.*

Bhatia, V. K. (1983), for instance, similarly, divides the written legal language into three subtypes:

1. *academic legal writing;*
2. *juridical writing and*

3. *legislative writing.*

A different classification was provided by Škrlandtová, M. (2005:18) who adopts classification by Mistrík, J. and Škvareninová, O. (1992) who as first, within the Slovak linguistics, brought about the classification of juristic genres from as far as function is concerned. She continues saying that legal texts are classified by subject and form into four basic groups (Mistrík, J., Škvareninová, O., 1992:130):

1. *legislative texts,*
2. *notarial writings,*
3. *forensic speeches and*
4. *administrative and legal writings.*

LEGAL DISCOURSE MARKERS

The subject of our study are the above mentioned *legislative or statutory writings consisting of Acts of Parliament, contracts, treaties, etc or legislative texts* represented by legal texts of Anglo-American and Slovak legal systems in which we studied the hierarchy of text division.

As Bázlik, M., Ambrus, P. (2008:150) put it „expressions, or discourse markers, serving to direct the reader’s orientation within a legal document are relatively few, the lay-out of the text being a good substitute. Individual parts tend to be numbered or marked in letters of the alphabet, or a combination of the two can be used.

According to Chromá, M. (2002:101), statutes are divided into sections, sub-sections, paragraphs and subparagraphs. Sections and sub-sections are denoted by Arabic numerals, paragraphs by letters in alphabetical order and sub-paragraphs by Roman numerals, e.g. Succession Act, 1965, s. 115(2)(a)(ii). Long statutes are often divided into parts. The part is not usually mentioned in formal citation.

In Bázlik, M., Ambrus, P. (2008:150) we find divisions of their study material referred to as Parts, Chapters, Articles, Sections, Subsections, Paragraphs, Sub-Paragraphs, Clauses, Sub-Clauses, sometimes the general term provisions is used. For example, the Texas Business Coporation Act explains the hierarchy of its text division as follows:

“The Division of this Act into Parts, Articles, Sections, Subsections and Paragraphs and the use of captions in connection therewith are solely for

convenience and shall have no legal effect in construing the provisions of this Act.“

As they continue, the Code goes on to explain that Parts and Articles are ordered by cardinal numerals (1,2, etc.), Sections by capital letters (A, B, etc.), Subsections by bracketed cardinal numerals ((1), (2), etc.), Paragraphs by bracketed lower case letters ((a), (b), etc.). When reference is made to the divisions their names are usually capitalized, often abbreviated (Art., Sect.). When the name is followed by a letter or a cardinal numeral there is normally no article used (this practice is not specific for legal English only).

In this connection we studied several legislative or statutory writings with intention to identify the markers used for their organisation and division.

The section sign (§) is a typographical character used mainly to refer to a particular section of a document, such as a legal code. It is also called “double S”, “sectional symbol”, *signum sectiōnis* (Lat.). When duplicated, as §§, it is read as the plural “sections” (§§ 13–21). The likely origin of the section sign is the digraph formed by the combination of two S’es.¹

In our reference material we found three ways of denominating of a section in Anglo- American legal writings one of them being applying the section sign § - the Trademark Act (found in Title 15 of the United States Code, since a code is further divided into titles, chapters and sections denominated using the section sign §, etc.)²:

§1051. Registration of trademarks

(a)

(1)

The owner of a trademark used in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director, and such number of specimens or facsimiles of the mark as used as may be required by the Director.

(2)

The application shall include specification of the applicant’s domicile and citizenship, the date of the applicant’s first use of the mark, the date of the

applicant's first use of the mark in commerce, the goods in connection with which the mark is used, and a drawing of the mark.

(3)

The statement shall be verified by the applicant and specify that--

(A)

the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be the owner of the mark sought to be registered;

(B)

to the best of the verifier's knowledge and belief, the facts recited in the application are accurate;

(C)

the mark is in use in commerce; and

(D)

to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive, except that, in the case of every application claiming concurrent use, the applicant shall--

(i)

state exceptions to the claim of exclusive use; and

(ii)

shall specify, to the extent of the verifier's knowledge--

(I) any concurrent use by others; (II) the goods on or in connection with which and the areas in which each concurrent use exists; (III) the periods of each use; and (IV) the goods and area for which the applicant desires registration.

Here is an example of the division of another US statute where a section is denominated in two ways depending of the source. In the statute found on the web site³, the section was denominated as Section 2 and in the paper version of the identical statute we found the name abbreviated and in capital letters, i.e. SEC. 2. The text of this statute is divided into sections ordered by cardinal numerals (1, 2, etc.), subsections by bracketed

lower case letters ((a), (b), etc.), paragraphs by bracketed cardinal numerals ((1), (2), etc.), clauses by bracketed upper case letters ((A), (B), etc.) and further division is denominated by lower case and upper case Roman numerals ((i), (ii), etc. and (I), (II), etc.) as provided in the above statute citation.

In the Slovak legal writings the symbol § is a frequent marker of certain sections. However, in translations into the English language we found differing ways of rendering this symbol in translations. Comparing English translation of 1992⁴, the translation of the Commercial Code No. 513/1991 Coll. of 5 November (Czech and Slovak Federal Republic) we found that the Slovak original was divided as follows:

DRUHÁ ČASŤ
OBCHODNÉ SPOLOČNOSTI A DRUŽSTVO

Hlava I

OBCHODNÉ SPOLOČNOSTI

Diel I

Všeobecné ustanovenia

§ 56

(1) Obchodná spoločnosť (ďalej len “spoločnosť”) je právnickou osobou...

Diel II

Verejná obchodná spoločnosť

Oddiel 1

Základné ustanovenia

...

§ 78

- a. Spoločenská zmluva musí obsahovať:
 - i. obchodné meno a sídlo spoločnosti,
 - ii. určenie spoločníkov...

- b. ...

and this is how the Slovak version was translated into English:

CHAPTER TWO
BUSINESS COMPANIES, PARTNERSHIPS AND CO-OPERATIVES
PART ONE
BUSINESS COMPANIES, PARTNERSHIPS

I

General provisions

§ 56

(1) A business company (hereinafter referred to as a “company”) shall be a juristic person...

...

II

General Commercial Partnerships

1

Fundamental provisions

...

§ 78

- (1) The partnership contract shall include the following:
- i. the business name and the seat of the general commercial partnership;
 - ii. details of the partners...

(2) ...

The Slovak *Druhá časť* was translated as Chapter two, Slovak *Hlava I* as Part I, *Diel I* was omitted and replaced by a Roman numeral I only, symbol § 56 was kept in the translation but the Slovak *Oddiel 1* was omitted again and only replaced by an Arabic numeral 1.

In a similar kind of document, a statute – the Civil Code of the Czech Republic the situation is different in that that unlike the translation of the Slovak statute, here the *HLAVA DRUHÁ* is translated as Chapter II, *Oddíl první* is translated with a name not usually used in the division of legal

texts, i.e. Division 1 and as for the symbol § 420 (read as “*paragraph*” in both the Czech and Slovak), frequently used in both the Slovak and Czech legal tradition, this is unlike the Slovak statute rendered as Section 420⁵.

The repealed Code of International Trade, Regulation no.101/1963 Coll.⁶ is divided into *Hlava I, Diel I, Oddiel 1, § 1, Odsek (1) a Písmeno a*. This division is translated into English as Title I, Part I, Section 1, § 1 and paragraph (1) and letter a). So here, as it can be seen, the English term section is being used to denote what is in Slovak named *Oddiel* and the symbol § is kept and the names usually used for denoting this sign such as section or paragraph are used to mark different sections of the statute. However, in the text of the statute we found some mistakes such as once referring to the *Hlava* as Head (which is a literal translation) instead of otherwise used Title and in the citation of the paragraph the Arabic numeral failed to be used in the adopted form, i.e. in brackets, which may be misleading in the identification of the appropriate provision.

With reference to the above cited statute, Strážnická V. (1998:686) in her work concerned with the Code of International Trade provides citation of certain provisions in the following form: Section 2 § 1 (j) which means that she uses an English name Section to denote what is in the Slovak original denoted by symbol § and uses symbol § for what is in the Slovak original referred to as the paragraph (and letter (j)). This citation may be misleading for the readers who may use the cited statute for the reference since in the Slovak original we can find this is the form § 2 *ods. 1 písm j*). This may be caused by the fact that in the Slovak language the symbol § is read as “*paragraph*” being a linguistically named “false friend” since an English word *paragraph* is translated into Slovak as *odsek*.

In the translation of the judgments of the Supreme Court of the Slovak Republic Berthotyová, E. (2010:21,33) provides translation of the citation of § 13c/ *ods. 2 písm. d/ a e/* as Section 13c(2)(d)(e), i.e. avoids using the symbol §.

Fico R., Kupcová, Z. (1997) in the judgments of the European Court of Human Rights translate section 12 (4) into the Slovak language as § 12 *ods. 4*.

The symbol § is also used in relation to conventions and treaties. The text of the Treaty of Rome is divided into Parts, Titles, Chapters, Sections, Articles, Paragraphs, Subparagraphs and Letters and we found it translated into the Slovak language as *časť, hlava, kapitola, oddiel, článok, odsek, po-*

dodsek and písmeno.⁷

Despite the fact that the symbol § is not included in the text of the studied treaties and conventions, in the citation of e.g. European Convention on Human Rights in the judgments of the European Court of Human Rights we find the symbol § used for denoting of the paragraph, i.e. Article 6 § 1 of the Convention but also cited as e.g. paragraph 1 (c). However, in the Slovak translation by Fico R., Kupcová, Z. (1997) of the judgments we found translation of article 5 § 1 (c) as *článok 5 ods. 1 písm. c*).

PUBLICATIONS OF THE INSTITUTIONS OF THE EUROPEAN UNION

As regards publications of the institutions of the European Union, the Publications Office of the European Union (Publications Office) as an inter-institutional office developed a guide which represents an achievement in linguistic harmonisation unique in its field. It is intended to serve as a reference tool for written works for all European Union institutions, bodies and organisations. This guide, which serves as a base providing for augmentation of the harmonisation process between all languages and all institutions provides uniform stylistic rules and conventions which must be used by all the institutions, bodies, offices and agencies of the European Union and prevail over any other solution proposed elsewhere or used previously; they must be applied at all stages of the written work.

These rules also regulate division of the text, not necessarily a legal one. As it is provided on their web site⁸, the text of a work must be presented in such a way that a reader finds it easy to follow. In order to present a well-structured work that is not crammed and confusing, the text can be broken down into divisions and subdivisions. These should not exceed seven levels. The headings and subheadings should be followed by amounts of text appropriate to their respective levels. In creation of a legal text various systems may be applied such as

a) complex numbering system

The text can be broken down into parts, titles, chapters, sections, paragraphs, points, etc. by using figures, letters, hyphens and bullets. This numbering system is usually displayed in the following descending order:

- Roman numerals (I, II, III, IV, etc.),
- capital letters (A, B, C, D, etc.),
- Arabic numerals (1, 2, 3, 4, etc.),

- lower case letters in parentheses (a), (b), (c), (d), etc.,
- lower case Roman numerals in parentheses (i), (ii), (iii), (iv), (v), etc.,
- dashes (—),
- bullets in bold (•).⁹

Traditionally, a work is subdivided as follows:

Part One
THE WORK OF THE UNION
 Chapter I
 DEVELOPMENT OF THE UNION
Section I — General political situation
 A — Budgetary powers

1. Main developments

(a) *Directives adopted*

b) Non-numbered system

Another way of indicating the subdivisions of a text is to use different typeface values to give an exact value to each heading and subheading, without breaking down the text into sections, chapters, etc.:

THE WORK OF THE UNION
 DEVELOPMENT OF THE UNION
General political situation
 Budgetary powers

Main developments

Directives adopted

c) Decimal numbering system

A decimal numbering system can also be used:

Part I — THE WORK OF THE UNION
Chapter I — *DEVELOPMENT OF THE UNION*

1. General political situation

1.1. Budgetary powers

1.1.1. Main developments

It is advisable to limit the levels of subheadings.

d) Continuous numbering system

When a publication has many references to other parts of the same publication, it is often more practical to number the paragraphs continuously, as the references can then be inserted before the final pagination is known.

Continuous numbering can be combined with one of the other numbering systems.¹⁰

CONCLUSION

As provided above, legislative or statutory writings do not follow a uniform practice in dealing with denominating their divisions and more subtle distinctions can be made and the same applies as far as their translation is concerned. The ways of translating division of a legal text depend on the author of the target text, however, certain patterns should be followed since it concerns a text in which a strict accuracy must be respected.

As for the names used to refer to the divisions these are either capitalised (Section) or lower case letters are used (section) and are often abbreviated (Sect.). The terms roughly corresponding to the English divisions in Slovak are *časť/čiastka, hlava, kapitola, paragraph (§), oddiel, článok, odsek, pododsek, písmeno, poznámka*. Here we agree with Bázlik, M., Ambrus, P. (2008:151) that in translating we are relatively free to choose matching items from these sets, but obviously **we have to be consistent and bear in mind the choice and hierarchy once established** (e.g. once we have translated §, i.e. 'paragraph', as *article*, we cannot use the term *paragraph* as its synonym in the same text).

From the above used examples it is obvious that such mistakes in translations do appear and therefore we consider it very important to make our students aware of it. In our Legal English lessons the students learn about different legal systems and legal discourse represents the reflection of those

systems as well as of the culture of the given country in which the legal system is applied. Therefore the students should be taught about the intercultural differences between the countries from which the source or target language comes which would enable the students to identify the phenomena which are common for both languages and in which they differ and then apply those differences also in translation. Zelenková, A. (2010) provides several very useful interactive methods for the strengthening of intercultural competence in teaching of foreign languages.

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(Endnotes)

- 1 http://en.wikipedia.org/wiki/Section_sign
- 2 <http://www.bitlaw.com/source/15usc/1051.html>
- 3 <http://www.labtrain.noaa.gov/osha600/refer/menu01b.pdf>
- 4 The Commercial Code No. 513/ 1991 Coll. in effect as of 1 January 1992, published by Trade Links, Prague, translated by Z. Pošoustová, M Koubová, D. Foulds, J. Zoubková, H. Holubová, R. Lloyd
- 5 CHROMÁ, M., COATS, T. (2002:270) Introduction to Legal English
- 6 <http://www.zakonypreludi.sk/zz/1963-101#f4533438>
- 7 http://ec.europa.eu/economy_finance/emu_history/documents/treaties/rometreaty2.pdf; <http://www.ecb.int/ecb/legal/pdf/ce32120061229sk00010331.pdf>
- 8 <http://publications.europa.eu/code/en/en-250600.htm>
- 9 Note: Lower case Roman numerals are used mainly in the Official Journal (for subdivisions of points (a), (b), etc.) Bold bullet points should be avoided when editing acts. Roman numerals and capital letters should be separated from the text of the title by an em rule (dash); arabic numerals should be followed by a full point; lower-case letters and lower-case Roman numerals should be enclosed by two parentheses: never omit the opening parenthesis in English texts.
- 10 <http://publications.europa.eu/code/en/en-250600.htm>