Introduction*

Law, at least positive law, would not exist without language. Legal communication, legal profession and law itself are constituted by, what we call, legal discourse. The same counts for upholding law and resolving disputes, for judgment and adjudication. Law and language have been traditionally treated as two separate areas of expertise and studied from two scientific perspectives: jurisprudence and linguistics. However, law is a highly verbal activity. As a result, both legal theory and legal practice have always been heavily dependent upon the tools of logical-linguistic analyses. Yet, almost no coherent or systematic account of the relationship of law to language has been achieved (*cf*. e.g. Goodrich 1987; Sarkowicz 1995).

Modern jurisprudence has argued for the positivistic view that law is an internally defined 'system' of notional meanings, that it is a technical language univocal in its application. Lawyers and legal theorists, rather than studying the actual development of legal linguistic practice, have asserted formalistic (deductive) models of adjudication (law application) in which language is the system of signs delimited by certain rules. What has been consistently excluded from the ambit of legal studies was the possibility to analyze law in terms of a specific stratification or 'register' of an actually existent language system, and view legal texts in terms of historical products organized according to certain

* The book is partly based on my unpublished doctoral thesis "Legal Discourse as Cross-Cultural Communication" (Jopek-Bosiacka 2003) written under the supervision of Professor Anna Duszak. For many direct and indirect instances of support and encouragement, I am particularly grateful to Prof. Anna Duszak of the University of Warsaw. I would also like here to acknowledge the valuable commentaries provided by two reviewers of my doctoral thesis: Prof. Hubert Izdebski of the University of Warsaw and Prof. Barbara Kryk-Kastovsky of Adam Mickiewicz University. Obviously, I am solely responsible for the final content.

criteria. Despite the common social experience of legal regulation as a profoundly alien linguistic practice, as control by means of an archaic, professionalised, obscure and impenetrable language (see e.g. Mellinkoff 1963; O'Barr 1982), no recognition has been provided of the peculiar and distinctive character of law as a specific social institution, i.e. an institution socio-linguistically defined in terms of speech community and usage.

The traditional agenda of legal 'register' (to use Hallidayan term) was generally dominated by observations and remarks upon the status and concept of the language of the law, its vocabulary and syntax. Particularly the lexis has been of noticeable concern to researchers because of its distinctive features fundamental to the expression of semantic concepts of law in terms of precision and vagueness, specialization of vocabulary and loan, often archaic, words. At the level of grammar, researchers distinguished complexity of syntactic structures, conditionals and conditional reasoning, passivization, nominalization, cohesion, etc. Researchers have also noted the opacity of legislative drafting.

With a few exceptions, the study of pragmatic functions of legal discourse has been for long almost totally neglected. One of the earliest and rare traces of an analysis of the characteristics of legal language/text at the discourse level can be found in Danet (1980). Written legal discourse has been analysed from the perspective of speech act theory, rhetorical and stylistic perspective, or in terms of historical evolution. Some researchers (e.g. Joos 1961; Danet 1980; Kurzon 1984; Trosborg 1995a) characterized written legal discourse predominantly in terms of archaic structures and formulaic expressions and named such style as 'frozen' or 'formal' because, as Anna Trosborg (1995a: 1) puts it, it defies the principles of modern writing. Especially the 'formal' or 'frozen' style seems to account for taking a new approach towards written legal discourse whose development contradicts current trends in linguistic studies. Earlier analyses of the interrelation between law and language show – overtly or covertly – the rhetorical character of language of law.

Most researchers though most frequently use such terms as 'language of law' or 'legal language' in analysing the relationship between language and law, probably for several reasons:

- the prevalence of a traditional structural i.e. formal approach in linguistics, particularly in the description of special purpose texts including legal texts, which lays emphasis on linguistic features;
- the focus on structure rather than use in studies on legal language;
- the prevalence of a traditional i.e. positivist approach in jurisprudence where language and related linguistic interpretation assume a crucial role in legal text analysis.

Numerous developments within linguistics and language-related sciences have recently encouraged the reformulation of the notion of language as discourse. The dominant perspective on language today is that language is

cognitively, socially and culturally anchored behaviour. The new vision encapsulates the development of text as a communicative occurrence, which undermined the distinction between speech and writing and led to the focus on genres and intertextuality. The ongoing developments have triggered changes in how legal communication was approached. New approaches focused on pragmatics of written and oral legal discourse.

Now legal discourse studies entered the territories of pragmatics, text linguistics, discourse studies, and social sciences. This concerns in particular oral discourse. Analyses of oral legal discourse have drifted away from the original philosophical orientation in the traditions of Austin and Searle, from structuralist approach, and from rhetorical stylistics. Two main methodological approaches to the study of oral legal discourse have developed, those of ethnomethodology and conversational analysis on the one hand, and of sociolinguistics and the ethnography of communication, on the other hand. Pragmatics of written legal discourse was hardly investigated. Leading tenets of modern textuality linguistics and discourse analysis in fact led to the redefinition of traditional notions of 'written language of law' *versus* 'spoken legal discourse'.

This study will follow the evolution of the dominant approaches to legal communication, where the language-of-law perspective is being replaced by legal--discourse perspective. It will be argued that the evolving pragmatic approach is capable of accommodating the interactive nature of legal communication in a discursive environment. A revised interdisciplinary framework for describing and explaining the language of law and its social functions will prove its high potential for such an analysis.

As already indicated, the term 'legal discourse' has been chosen as the most appropriate term that allows to grasp this special interrelation between law, its functions, actors and surrounding legal context, on the one hand, and language use, functions of legal texts, and surrounding socio-cultural context, on the other hand. The notion of discourse stands for complex phenomena related to such concepts as 'language', 'communication', 'interaction', 'society' and 'culture'. Thus, its defining seems to be, as in case of such fundamental concepts, onerous but inevitable if we wish to apply to texts an overall approach, namely analyse them in a socio-cultural context of human communication. For the purposes of this work, I will characterize discourse as a communicative event or a form of verbal interaction, and focus on its functional aspects. Crucial in the description of legal discourse is the question where is 'meaning' located: within the text or do language users construct it during the process of its interpretation. Building up on Bakhtin and his followers, I will opt for the notion of (speech) genres that are schematic types of discourse with specific features grounded in the type of context of use, including the participants, their goal(s), the topic, and the function. The notion of 'speech genre' adopted in this study incorporates the phenomenon of 'intertextuality'.

Legal discourse, as any other language usage, is a social action so it must be marked by the specific nature of its (institutional) contextual embedding. In an attempt to recover the social and cultural dimensions of legal semantics and legal textuality, I will employ pragmalinguistic analysis. I will further argue that legal genres are unique forms of communication. I will show that the importance of expert knowledge required both for a thorough analysis of legal communication and for full participation in legal communication calls for an interdisciplinary approach as postulated in the present study.

One of the major paradoxes of contemporary legal culture is the fact that its social practice is founded upon an ideology of consensus and clarity – *Ignorantia iuris nocet* 'we are all commanded to know the law because its ignorance harms' – and yet legal practice and legal language are structured in such a way as to prevent the acquisition of such knowledge by any other than a highly trained elite of specialists in the various domains of legal study. An interdisciplinary approach to legal texts allows us to understand this paradox, as has been emphasized by Peter Goodrich (1987: 7). This is an approach that analyses law as social discourse understood in terms of a dialogue between legal speakers, legal institutions and the various codes, contexts and audiences of the law.

A second major assumption underlying my research is that legal discourse is an instance of cross-cultural communication. It rests on three corollaries:

(a) Law is a system of general and abstract norms that always actualizes in a particular language of the law and legal culture. This means that various national languages and cultures have their own codes and systems of legal communication. In other words, legal discourse is to be analysed within the legal domain where legal languages epitomize the law and legal culture.
(b) Legal discourse operates within, and is part of, a national (ethnic) discourse system. As a result, legal discourse can be treated as one of the varieties that 'construct' national discourses. Alternatively, legal discourse is a sublanguage within a general language system.
(c) Legal subdiscourse(s) within a national legal discourse domain is/are also implicated in a cross-cultural dialogue. This means that there exist different divisions within a given legal discourse, i.e. local subdiscourses or specific legal genres.

Pancontextual perspective on legal communication can be investigated through discursivity at various levels. It shows different scopes of discursivity and indicates two points of view: global and local. The presence of law in various languages and cultures sets the global parameters of legal discourse that may guide our investigation into legal communication as a worldwide phenomenon. Locally, legal discourse varies both within a general language and in a given legal domain. Global and local viewpoints imply at least two perspectives:

communication within a legal discourse community (intra-group communication) and communication between different legal communities, legal systems, and legal cultures (inter-group communication).

An important corollary of cross-cultural view on legal discourse is the recognition of the phenomenon of intertextuality of legal texts, i.e. interdependence of legal texts that refer to each other, not only *within* the community but also *across* communities. What is essential for the understanding of the complex 'language and law' conjunction is, in the cross-cultural context, the notion of legal culture. Considerable attention will be devoted to the evolution of European legal culture.

The methodological framework applied here is that of genre analysis as associated first of all with Swales (1990). Cross-cultural view is understood in this study as discourse-community view which means the focus on the structure of membership within legal discourse community and the forms of discourse (legal genres). The proposed methodology apparatus, Swales' discourse-community view, has been selected for several reasons. First of all, this framework accumulates recent tendencies in linguistics such as cognitivism, pragmatics, text linguistics, and social constructivism. It also allows links to the central concept of a community, a community of professionalized knowledge and special language, and focuses on common goals to be achieved through the use of shared forms of expressions (genres). Swales' notion of discourse community will serve as a point of departure to the methodology that I shall critically assess and ultimately I shall propose a new model of legal discourse analysis that is more applicable to legal communication. I shall highlight its benefits and show its applicability in its new environment. The revised model will incorporate, *interalia*, elements of institutionalised context, in particular, culture as indicated above, power of context, legal genres and legal knowledge. It is a matter of fact that in a globalized world discourses are being built around communities of professional expertise that cross nation-states' borders.

A thorough semantic and pragmatic analysis of legal discourse will be performed in order to provide evidence that legal discourse possesses features that may qualify it as a cross-cultural phenomenon or form of cross-cultural communication. In contrast to conventional assumptions of linguistic studies and traditional jurisprudence, I will argue for a comprehensive, interdisciplinary and intertextual/cross-cultural approach to the legal text conceived in terms of institutional and discoursive processes. In short, it will be the principal objective of this study to evidence the integrated view of legal discourse as cross-cultural discourse.

In particular, the major goal of my research into legal discourse as cross-cultural communication will be to:

a) review the previous linguistic explanatory frameworks of specialized genres (LSP) with particular reference to the legal domain;

b) examine the presence and function of discoursal patterns as manifested in a variety of legal written texts in order to establish characteristic socio-pragmatic and discoursive features that speak in favour of a pragmalinguistic approach to written legal discourse;
c) argue for the applicability of a discourse-approach (a community-bound approach) to legal communication on the basis of theoretical foundation with special focus on:
   – the structure of the legal community in terms of membership,
   – the structure of the textual domain,
   – the concept of legal power as social power,
   – the concept of legal expertise;
d) apply the discourse model to selected Polish data to show the processes of globalization and regionalization, cultural asymmetry and hybrydisation, legal systems and incompatibility of legal codes, in view of Poland's membership of the European Community.

The examination will rest upon legal texts belonging to the group of prescriptive texts, i.e. normative texts such as statutes, codes, constitutions, treaties, international conventions, etc. These are documentary sources of law, i.e. the primary origins from which the law of a particular system derives its authority and coercive force (Šarčević 1997: 11). In the common law countries, the judicial decisions of superior courts (i.e. the statements of law made in the *rationes decidendi* of such decisions) are also recognized as a source of law. Case law, as it is called, developed as a distinct authoritative source by virtue of the rule of precedent which obliges judges to observe the decisions made by judges of higher courts. This development was much less pronounced in the continental civil law systems derived from Roman law. On the other hand, works of legal scholarship have always been more authoritative in these systems (cf. Vanderlinden 1995: 343-351).

The interdisciplinary cross-cultural examination will provide a theoretical basis for a comparative analysis of some English/American and Polish texts. The complicating factor here is context which may eventually lead to the redefinition of profesional expertise. It will be drawn against a background of contemporary world tendencies of globalization, regionalisation, and 'Europeanisation'. The tendencies highlight a new type of context for analysing legal communication.

The present study is divided into three parts. Part I comprises two chapters which are devoted to constructing the notion of legal discourse. In Chapter 1, I discuss the notion of language of law against various backgrounds: historical, linguistic, pragmatic, sociological and legal, providing evidence that it cannot be successfully analyzed without employing an interdisciplinary approach. The evolution of studies on language of law and legal communication in the West and in Poland reveals the special status the language of law is assigned.

In Chapter 2, I outline the methodological apparatus of my work, namely discourse-community view (Swales 1990). After critically reviewing Jakobson's addresser-addressee model of communication, I opt for Swales' approach as it offers a great potential for investigating variety and multiplicity of participant roles in legal communication and their linguistic expression. An attempt is made to reconstruct the structure of legal discourse community against other communities, in particular specialist discourse communities. Current position of translator against recent changes in legislative drafting is also sketched.

Part II of the study presents a comprehensive pragmalinguistic analysis of legal texts at the level of discourse semantics and pragmatics. With this end in view, Chapter 3 outlines the most salient semantic characteristics of legal discourse and groups them into five main categories, namely precision, indeterminacy, specialization, complexity and conservatism. In Chapter 4, I provide many insights into analysis of legal discourse as a context-sensitive phenomenon. Legal discourse treated as authoritarian discourse is analysed in terms of its two basic functions: conative and prescriptive. The former is viewed against the communicative functions of legal texts, the evolution of legal text typologies and the classification of legal texts. The latter is examined, *inter alia*, at the levels of legal modality, rhetorical stylistics, speech acts and performativity. Finally, the intertextuality of legal discourse supplies one of the foundations for investigating the cross-cultural legal context which is undertaken in Part III.

Part III is concerned with a pragmatic analysis of legal discourse within broadly defined cross-cultural context in which discourse is taking place. Chapter 5 outlines the theoretical foundations of a cross-cultural model of legal communication, defining the notion of context and in particular that of legal culture. In Chapter 6, I examine legal discourse in terms of power as vested in the users, the institutional contexts, or the legal word (text). Chapter 6 ends with the presentation of the main principles of and approaches to legal interpretation from the point of view of linguists and lawyers.

Chapter 7 provides European legal context for presenting Polish legal discourse in a comparative perspective. It is my contention that European legal culture is a hybrid culture which I prove by outlining its historical, cultural and legal evolution. Finally, I address the issue of 'Europeanisation' of Polish legal discourse on the example of textual formats of Polish translations of EU secondary legislation. This tendency is contrasted with world processes of globalization, regionalisation, integration and hybrydization.

Recent changes result in recontextualization of legal discourse, now perceived in terms of cross-cultural communication, with its global and local dimensions.

The findings are thereafter summarized in the concluding section.