

CSABA LATORCAI

## ON THE LINGUISTIC AND ETHICAL ASPECTS OF LEGAL NORM FORMATION

*Dear Conference Participants,  
Ladies and Gentleman,*

### I.

I am honoured to participate in this conference. Not only because the process of legislation is part of my daily work, but also because legal regulations are present in our everyday lives, their impacts and requirements affect our social interactions and life situations, and dealing with them runs through the fabric of our daily lives.

Law and legislation share a history with civilisation, and their development is linked to the development of society. Textbooks will tell you that law is the systematic collection of norms and codes of conduct stipulating the interpersonal behaviour of people, and that compliance with them may be enforced by the state. We should however remember that law is also the minimum of *ethics*, and therefore compliance with legal regulations is one of the fundamental requirements of societal existence.

Law, as we see it, is inseparable from the existence of human communities; it is an objective need that individuals must adjust their behaviour to each other, and thereby form a transparent and predictable system of cooperation. The behaviour of individuals coordinated by norms is what lends stability to relations within a community. When creating norms, one should strive to make them enforceable, and it is therefore essential that norms be comprehensible and if possible unambiguous for all members of society, that is they should mean the same to all of us. Norms, as one of the important criteria of sociability have been present since

the birth of human society. Their content, form and mechanism of enforcement mirror the developmental stage of the society. These norms emerge out of the interactive process of societal actions and life situations. Once established they influence human behaviour, but may only meet their goals if those to whom they apply understand their rules and accept them as binding upon themselves.

Attention needs to be given to the persistence, stability and long-term applicability of laws already during the process of legislation, while observing the most important rules and principles for the coherence of both the *substance* of the legal system and the *form* of legal regulations. Related to this, the qualitative aspects of universal comprehensibility also need to be observed during legislation, as well as those aspects that aim to guarantee that requirements for any one behaviour are not stipulated in several different ways at any one time, so that no behaviour may qualify as both legal and illegal at the same time. Law and legislation have both evolved to be able to classify behaviours as either permissible, legally required, or legally prohibited, and thereby maintain, or even improve the unity of society. For this – as evidenced in everyday practice – requirements for substance need to be met, and all rules for form, language and the hierarchy of legal norms need to be observed. As practice has shown in several cases, in addition to the modification of existing regulations and their adjustment to new conditions of life, the creation of new norms is also often necessary. During the formulation of new regulations, the principle of the compatibility of draft legal regulations with the existing legal system needs to be observed. This principle dictates that any new norm should be aligned with existing ones so that their compatibility can be guaranteed, which in turn is a guarantee for the efficiency of the law and provides for legal certainty.

As legal textbooks also state, the most important principle of formulating legal regulations is that they should be precise and universally comprehensible. Both of these requirements are related to the language of legal regulations. As they are aimed at all layers of society and are intended to regulate a wide range of life situations, their requirements may only be observed by those

to whom they apply if their content is understood, for which the conditions of correct language use need to be met. However, defining these conditions is made difficult by the fact that norms in one area of social behaviour need to be defined here by using a system of social behaviour, namely language, whose norms are not laid down in legal texts, but rather in grammar books. In other words, a „hard” set of rules needs to be described using activities defined by a „soft” set of rules. „For this reason (...) beyond the normativity of utterances on law, also the question of the *linguistic normativity of law* arises. This concerns the extent to which law as a system of norms or rules may be limited or its integration into a system determined by the fact that law is of a linguistic nature.”<sup>3</sup>

One approach to correct legal language use sees it as the observation of the most general and socio-culturally least variable norms of language, as these together represent the greatest common denominator of any given language community. We hardly ever think of it, and many even deny it, but the fact still remains that linguistic norms are the rules for the use of language not only as a means of communication, but also as elements of a system determining an essential area of the system of social interaction that furthermore regulates the cohesion of the entire language community. Their role also has the same roots as legal norms: they are intended to ensure the predictability of interpersonal behaviour, in this case people’s behaviour in the linguistic dimension of social interaction. Ultimately linguistic norms may therefore be interpreted as *ethical norms* if regarded as elements of the system of social interaction. They are rules that are not abstract, arising, existing and prevailing independent of us, but rather the linguistic expressions of community-building, community-maintenance and *ritualised*<sup>4</sup> behavioural forms, or in other words products created by the community as a whole.

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3 Szabó Miklós: Normatív nyelv – jogi nyelv; *Glossa Iuridica* 2014/2. 19.

4 On ritualisation as a cultural phenomenon see the foreword of Konrad Lorenz: Vorwort für die Einführung der Kulturethologie; Otto Koenig: Kultur und Verhaltensforschung (Deutscher Taschenbuch Verlag, München, 1970. 7–13.)

It is when we bear all this in mind that we understand best why one of the outstanding figures of 20<sup>th</sup> century Hungarian literature, Gyula Illyés wrote in his volume of essays entitled *Compass* that „(...) the teaching of good Hungarian writing and speech should actually start with the teaching of correct thinking. Who thinks correctly? Those seeking the truth. The manner of writing and speech will show anyone’s true colours. To write and to speak well in Hungarian is therefore truly a matter of character.” We can conclude from this thought that by guarding, caring for and developing the traditions of their mother-tongue individuals have a responsibility through their choice of language use to the whole language community – not only of that day and age, but also to all generations that created and passed this language on to them and those who will use it in the future,. „One cannot sufficiently stress that preserving what has already been achieved is almost more important for any kind of development, be it of evolutionary or cultural nature, than to achieve anything new.”<sup>5</sup>

## II.

One source of legal and linguistic norms is therefore ethics. Today, however, there is a huge difference between the way new legal and new linguistic norms are created. In the history of organising societal existence, the institutionalisation of the creation of norms for a portion of social interactions, that is legal norms, emerged at a relatively early stage. Altering linguistic norms, creating new ones or filtering out linguistic changes either through acceptance or rejection has been, however, for a long time a shared activity of the entire language community. There has never been a single institution of social existence, unless we count the neology movement during the Enlightenment, which either in a normative way or through its impact has been able to change the

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5 Konrad Lorenz, cited literature 9. „Es kann gar nicht genügend betont werden, daß das Festhalten des einmal Erreichten für jede Entwicklung, sei es nun eine stammesgeschichtliche oder eine kulturelle, fast noch wichtiger ist als das Hinzuerwerben von Neuem!

language use of society as a whole significantly. For many years the language of education and public administration in Hungary used to be Latin, and the effects of this are still easily identified in Hungarian language use today. Despite this, the wave of Latin influence reached almost the entirety of the Hungarian language with a delay, indirectly and somewhat dampened, and since the filter of the language community worked well, Latin has only survived in our language in the form of rigid linguistic inclusions in individual set phrases, mostly preserved through the influence of German. To take just three examples: in the Hungarian set phrases *minden idők legnagyobb alakja* (“the greatest figure of all times”), *xy összes művei* (“the complete works of xy”), and *többek között* (“among other things”), the indicated plurals reflect the influence of Latin and German, as the same phrases would normally use singular forms in standard Hungarian: *minden idő legnagyobb alakja*, *xy összes műve*, and *több között*, respectively. The filtering of the language community removed most Latin words and Latinisms from everyday language use.

The education in Hungarian as the mother-tongue at schools started at the turn of the 18th century, and together with language standardisation that started a hundred years later, kept the filtering function of the language community alive more or less successfully until radio and television became widely used, and media became a powerful factor. In the process of the media and education merging into an industry of consciousness, however, all this changed radically. In the age of mass societies, almost all language communities have – quasi unknowingly – conceded their direct right to the control over changing their own linguistic norms and creating new ones to broadcasting (or mass communication and the media), and even though they had the opportunity to establish an institutional system controlling, supervising and if necessary sanctioning language use in the media, they have not done so. Law could here „seek satisfaction” from language in a manner of speaking for inevitably imposing normative boundaries on law, namely by imposing normative boundaries on language – but solely for the protection of national culture. A good example for this is the extraordinary language policy of Iceland, whose effectiveness is best evidenced

by the fact that any Icelander today will have no difficulty in understanding Old German texts from 1100 AD<sup>6</sup>, their language contains hardly any loanwords from English or other languages, yet it can be perfectly used in any walk of life, and all Icelanders speak at least two foreign languages, English as well as Danish, Norwegian or Swedish. Our society today, however, has so far not asserted its right to control this area of its own culture, which plays an invaluable role in the coherence of our society and the preservation of our culture. We have yet to see the significance of this historical turning point, which currently also dictates the direction of changes in our language, and its long-term effects are not entirely foreseeable, although we can anticipate them to a certain extent. A series of surveys have shown that functional illiteracy and functional language incompetence are on the rise in Hungary<sup>7</sup>. Even though these troubling phenomena are currently interpreted by science as primarily sociological and pedagogical problems, it is difficult to imagine that their causes do not include the manner and speed of changes in the language environment, and the decline of the grammatical system in and through everyday language use, primarily in the consciousness industry. This may give many native speakers of Hungarian the feeling that they are increasingly less familiar with their own mother-tongue. There is a rightfully often quoted line in the novel *Ábel in America* by Hungarian novelist Áron Tamási that says „We have come into this world to be at home in it somewhere”. Beyond the ethically determined imperative of staying in one’s own homeland, this thought – in my opinion – also refers to the importance of preserving one’s mother-tongue, one’s linguistic home, and the fact that natural and scientific efforts to preserve, change and renew linguistic norms are always only validated

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6 A. P. Kristinsson: Språkpolitikk og språkrøkt – Isendingenes erfaring. In: Nordisk Kulturpolitisk Tidsskrift 2001–2. 138. As cited by Rácz Katalin: Sziget-e Izland? Az izlandi nyelvpolitika fő fejezetei. Gellérfi Gergő és Hajdú Attila (szerk.) Eötvözet II., Szeged, 2013. 60–66.

7 On the distinction between functional illiteracy and functional incompetence see Benczik Vilmos: Nyelv, írás irodalom, Trezor kiadó, Bp., 2001, 210–211., vagy <http://mek.niif.hu/05100/05153/05153.pdf>

and preserved by the active participation of the given language community.

The other great determining factor for norm-following legal language use takes us from the greatest common denominator of the language community to its lowest common factor, the body of legal terminology. Legal language is special, unlike the terminology of many other professions, in that it has an impact beyond its inherent significance. The knowledge and understanding of legal language, as I mentioned before, broadly affect society and have a significant impact on societal relations. Yet the use of legal language is necessary for the precise formulation of norms, even if legal experts are often criticised for this, because translating legal terminology into general language is a difficult, and often almost impossible undertaking. The Hungarian legal terms for defendant, tax subject, party, client, effect, legal entity and many others cannot be substituted with general expressions, only at best given a complicated description. Even though these expressions are still considered legal terms today, due to the frequency of their use they are now deeply rooted in general language, and through this, we could say that law is exerting an implicit normative pressure on general language.<sup>8</sup> Another reason for this special manner of expression is that precise formulation in law is sometimes literally a matter of life and death. Legal terms may not be replaced with any other, so for example the concept of natural persons may not be construed as a synonym of citizens. Precision is therefore an important factor in legal certainty. For this reason, it is important that legal terminology is used in law with a universal meaning, or else we will face legal uncertainty. At the same time, we should strive for universal comprehensibility in the use of terminology. Our effective laws also consider it essential that the most important rules for life situations, transactions, and everyday life should be formulated in a manner clearly understandable to all, which ensures the greatest possible level of enforcement of norms in society. In the light of all this, it is important to promote the

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8 Szabó Miklós, id. 25.

greatest possible involvement of broad layers of society in the preparation of legal regulations to provide for a framework of good governance, which would help provide legal regulations with a more diverse foundation in the interest of the public good, which in turn would help improve the quality and enforceability of legal regulations. Together these are essential prerequisites for the existence of a good state. As I mentioned earlier, one of the most important areas for implementing this is public education, where norm-following legal language use can be most widely introduced to the public.

Finally, please allow me to cite from the work *Parainesis* by the Hungarian poet Ferenc Kölcsey, in which he bequeathed to us the love of our mother-tongue, pointing out one of the most important ethical aspects of language, its social and national dimension: „*Think of your country’s language with the fondest affection, because country, nation and language are three inseparable things; those without ardour for the latter, will not be willing to sacrifice for the former two.*”

Thank you very much for your attention. I wish you all successful work for the rest of the conference.

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