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## CULTURAL CONDITIONING OF LEGAL LANGUAGE AND LEGAL INTERPRETATION

### Introduction

Both the law and the language are elements of culture, a set of facts of social character.<sup>1</sup> Language, as one of the structures serving human existence in public reality, is rooted in culture.<sup>2</sup> Legal language is a manifestation of institutional reality in which certain fixed semantic codes, relative to explaining legal terms and their interpretation are adopted. Understanding the law as a cultural fact and a way of participation in culture<sup>3</sup> assumes comprehension of legal language as a culture construct. It influences the notion of interpretation. Conviction about ontological dependence of language from culture, in which various interpretation objects coexist, causes that human interpretational activity is strongly conditioned by culture.

From the scientific perspective, related to the relationship of language and culture, there is a division into two fundamental trends of adopted ontology. The first one of them supposes the primordiality of language over culture, the second, on the other hand, refers to the conviction that language is a product of culture. Correlation between relationship of language

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<sup>1</sup> The fact that the genesis of the law is connected to consequences of appearance of literate culture in human development manifests about relationship between language and law, and law and culture. According to Claude Lévi-Strauss, observation of first usage of writing convinces that it concerned above all the authorities and its examples are inventories, catalogues, censuses, laws and decrees. See G. Charbonnier, *Entretiens Avec Claude Lévi-Strauss*, Plon 1961.

<sup>2</sup> Cultural rooting of language understood as one of the ways of human existence in the world is defined as 'anthropological perspective'. See more B. Sierocka, *Jedność performatywno-propozycyjnalna a perspektywa antropologiczna*, in: *Przełom komunikacyjny a filozoficzna idea konsensu*, ed. B. Sierocka, Wrocław 2003, pp. 181–182.

<sup>3</sup> See M. Zirk-Sadowski, *Prawo a uczestniczenie w kulturze*, Łódź 1998.

and culture and the way of understanding the language is noticeable. The way to describe the relationship language-culture is determined by the way language is defined. Language can be understood as a creation of culture or as a factor creating it. It is reflected in approach to linguistic analysis in jurisprudence. On the other hand, the way of understanding the law itself may depend from what type of object is legal language recognised as. It causes consequences in adopting a specific understanding of interpretation, essence of the law or a conception of legal norm. The aim of this text is to show that relationship between language and culture influence various levels of legal language analysis (specificity of legal language, interpretation, criteria of establishing the meaning and the role of context and culture).

### From culture to language and from language to culture

Dependences and relationship between legal language and culture may be observed through analysis of key tendencies in linguistic sciences. Concepts of general theory of language are reflected in linguistic research done in the theory of law. Evolution of these tendencies progressed through such trends as structuralism, pragmatolinguistics and scientific concepts based on postmodernist post-Cartesian turning points which can be situated between structuralism and post-structuralism<sup>4</sup> or between such theoretic traditions as Cartesianism and interpretationism.<sup>5</sup> They propose different approaches to language, which may be simply presented as systemic-structural approach, approach accentuating performative character of utterance and finally approach of language as communication and cultural creation.

Contemporary jurisprudential studies in legal language research generally applied the method of systemic study of language of structuralist provenience and communication method which originated from sociolinguistics. Concepts being under influence of structuralist method studied language as a systemic structure composed of signs – elements of this structure and relationship between these elements. Structuralist research approach assumed a possibility to reach the essence of the analysed object through analysis

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<sup>4</sup> On this subject see A. Szahaj, *Teksty na wolności (strukturalizm – poststrukturalizm – postmodernizm)*, „Kultura Współczesna. Teoria. Interpretacje. Krytyka” 1993, No. 2, pp. 5–13, L. Rasiński, „Reguly” i „gry” świata społecznego – Wittgenstein, de Saussure i zwrot lingwistyczny w filozofii społecznej, in: *Język, dyskurs, społeczeństwo*, ed. L. Rasiński, Warsaw 2009, pp. 7–27.

<sup>5</sup> A. Kozak, *Trzy modele praktyki prawniczej*, in: *Studia z filozofii prawa 2*, ed. J. Stelmach, Cracow 2003, pp. 143–148.

of the structure which is the system of which this object is constituted (element). Structuralism understood language as an abstract system of rules and signs. Through analysis of language production (*parole*) we learn, reconstruct the properties of the system (*langue*). From such a perspective, language understood as a potential, abstract system of signs reflects then the state of culture and society. On the other hand, speech acts theory provoked drawing special attention to communication. It is done through linguistic utterances with regard to their force (locutionary, illocutionary, perlocutionary). From the perspective of speech acts theory, language is a substance which constitutes a source shaping public relationship. Legal language utterances fulfilling a performative (causative) function change the reality creating new legal states. Not a language understood as a structure but language production became the subject of the study. Language understood this way, becomes a tool used by a subject creating reality. It is not a subject (like in structuralism) situated in a network of relationship and a systemic structure accepting imposed conditions, cultural schemes and rituals. Language does not symbolise social phenomena but creates them, modifies and cancels. It is an object which influences the society. Language may be therefore understood as a created product (creation) reflecting reality and culture (structuralism) as well as a productive creation, designing the reality (pragmalinguistics) *ergo* created or creating, determined or determining, in relation to reality and culture. On the other hand, postmodernist tendencies in opposition to structuralism brought about an approach to analyse language not as a closed structure but as a part of a larger entity, context. Noticing this fact allows to perceive language as a communications object, differently than shown by the research on language as a structure out of context done by Ferdinand de Saussure or Noam Chomsky who comprehended language as a generative system.

Therefore, there are two directions in which the relationship between language and culture may proceed. Structuralist point of view of a studied object (language) can be described as directed from culture (also social reality and context) towards language. Taking into account the pragmalinguistic perspective allows for presentation of a direction of analysis of reverse order than in structuralism. It goes from language to social reality (culture, context). Third possibility is justified in poststructuralist trends, what was particularly exposed in the philosophy of pragmatism. We deal here with a turning-point in the situation of subject-sender (author). He becomes an administer of a text (work) creating sense and determining interpretation. There are changes that appear in understanding interpretation which consist in passing to interpretation determined not by the originator, creator of

the text but by context of its creation. Language is entangled into context and culture.

Evolution of concepts which allowed for observation of problems of legal language show that each one of them was marked by influence of culture on language, but oriented in a different way (from culture towards language, from language to culture, entanglement of the language into culture). In view of the presented concepts, the role of subject being a creator of the text is modified. It may be rooted in cultural conditioning, taking up a passive position regarding semantic relationship in a language as a system (structuralism). In the second case (speech acts theory) it is the subject formulating utterances, speech acts who decides about their sense and consequences. On the other hand, context is created by cultural conditionings 'external' to language or conventions fixed by the users of language. It refers to two dimensions of functioning of language emphasised both by structuralists and pragmatologists, treating language as a universal and individual creation. Indicated tendencies are inscribed in the trend which abandons in linguistic research the Cartesian method of subject study from a dualist position, in favour of taking into account the context of the analysed object.<sup>6</sup> It is a consequence of a typical conviction of post-structuralism that a legal text constitutes an element of culture just as other creations of human thought. Turns which took place in human sciences (linguistic, cultural) showed that different texts may be studied in a similar way. The most influential trends of linguistic and literary science are also reflected in theory and philosophy of law noticing the role of 'cultural foundations of language'.<sup>7</sup> Moving these concepts to the area of jurisprudence convinces that there are two different approaches to the language of law and consequently two different outlooks on legal interpretation.

### **From language to culture and from culture to language**

Normative references of the law, in case of utterances of legal language, their causative, persuasive character cause that language influences the reality. Speech acts theory allows to look at the law and legal language as

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<sup>6</sup> It significantly influences the modern humanities. As Keith Devlin claims, researches of the context are symptomatic of modern analysis of language, communication and reasoning, *idem*, *Goodbye Descartes. The End of Logic and the Search for a New Cosmology of the Mind*, John Wiley 1997, p. 359.

<sup>7</sup> Compare A. Kozak, *Myślenie analityczne w nauce prawa i praktyce prawniczej*, Wrocław 2010, p. 104 and the following pages.

a discursive formation revealing itself through linguistic creations (texts) of legislator. The language of legal texts is a specific instrument influencing the receivers, and a peculiar type of linguistic message. In the context of linguistic pragmatics the key aspect of legal language is its 'causative' character achieved through performative function by means of which language modifies reality by developing potential effects (defined by conventional rules). Legal language utterances (as well as religious language) in fact, belong to most distinct examples of performative speech acts. Performative function of these utterances causes that differences between language and social occurrences fade away, since its application brings about constitution of various social institutions through the law.<sup>8</sup> Linguistic context which determines such use of language is defined by social conventions (legal, religious, moral), situation of use of a speech act from which depends the effectiveness of this act (L. Austin's *happy utterance*) as a performative utterance. Performative utterances defined by conventional legal rules elicit changes in legal situation of subjects by legally substantial conventional action. This specific modification of reality stems not only from such a use of language but also from the impact of paralinguistic factors. It is about external (objective) motivation of speech act. It is a paralinguistic and institutional context constituted by fixed conventions. Essential role is fulfilled here by a competence which is vested in the subject to be a sender of performative utterance and to make the utterance binding and effective (*happy utterance*). The conviction is in accordance with the opinion of Leszek Nowak according to whom it is the cultural context that decides about the performative character of an utterance.<sup>9</sup> In legal language, persuasive load of an utterance and illocutive and perlocutive intention of the sender accentuated within the speech acts theory of John L. Austin is particularly noticeable. Crucial determinant of legal language is a persuasive intention expressing the purpose of the sender to influence the behaviour of receivers through a model of conduct expressed in a legal norm inscribed in an utterance. Formulation of utterances fulfilling a creative function in a legal text is to cause a change in situation of legal subjects and achievement of a specific aim desired by a legislator. This fact allows to take into account the aspect of compulsion and authority of the legislator. From the legislative perspective both social conventions conditioning defined functions of an utterance as well as the cultural context fulfil an important role in researching the linguistic aspect of the law.

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<sup>8</sup> M. Zirk-Sadowski, *Wprowadzenie do filozofii prawa*, Cracow 2000, pp. 102, 105.

<sup>9</sup> L. Nowak, *Performatywy a język prawny i etyczny*, „Etyka” 1968, No. 3, p. 149.

Accepting the assumption that the law and legal language are culture objects, brings about definite consequences concerning the ontological status of this language. It concerns the conviction about institutional-normative character of legal language.<sup>10</sup> Reality presented in legal texts consists of institutional facts as understood by John Searle.<sup>11</sup> Dissimilarity of such utterances consists in a specific causative power as well as in employment of fixed methods of their interpretation. It is not non-structural (linguistic) criteria but conventional or paralinguistic, such as concept of origins of the law or the question of validity of the law, that decide about normative value of utterances. It is obviously necessary to agree with the concept of defining the legal language as a register of common language formulated from the perspective of sociolinguistic classifications. Its functions, aims which it is to serve and the range of users decide about the distinctiveness of this language. Persuasive character of an utterance does not directly result from the way the utterance is designed but from fulfilling conventional conditions of its use (among others who, to whom, in what circumstances and with fulfilment of which competences it is formulated). The specificity of legal language causes that interaction occurs on the level of *parole* and not *langue*. It is shown by performative function of an utterance and also textual character of legal language. Reaching for cultural conditioning creates a need to pronounce for conclusions of ontological nature when it comes to the question whether legal language is constructed with real or nominal elements with reference to the classical universalia controversy. In legal language, we deal with utterances of normative character, terms, not real existing entities (reality of institutional facts) which, what is symptomatic, shape subjects' behaviour. It creates a status of legal language composed of notions of which models of behaviour are implied. As Artur Kozak writes, the law works through socially formed institutional structure which generates a particular, professional semantics. Through this semantics it can attribute a specific cultural sense to other elements of social world, and consequently generate inter-institutional reality. According to Kozak, the point of support of reality of the law is thus reality of culture generated by society.<sup>12</sup> On the other hand, on the interpretation level, it is the reality (culture) that influences the language. Conventionality of rules relates to the influence on

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<sup>10</sup> M. Smolak, *Presupozycje ontologiczne tekstu prawnego*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2011, f. 4, 41–51.

<sup>11</sup> J. Searle, *The Construction of Social Reality*, London–New York 1995.

<sup>12</sup> A. Kozak, *Myślenie analityczne...*, *op. cit.*, pp. 103–104.

subjects but also interpretation of legal language utterances. Application of legal norm in a definite case is an operation preceded by reconstruction<sup>13</sup> which requires interpretation. Arrangement of the sense of a norm depends on its interpretation. The proof of that is the specificity of situation in which interpretation decision is done, as well as the character of interpretive community. Fixed rules and directives indicating the method and the result of interpretation which we shall describe hereinafter are decisive.

### **From language and culture to interpretation**

Interpretation of the law is rooted on two research areas. The first one of them is a positivistically oriented method of interpretation based on understanding the law as situated on the outside of cognising subject (Cartesian tradition). Notional structure of the law is discovered through induction, just as the structure of natural world is.<sup>14</sup> The content of the law is established on the basis of textual determinants, assuming that it is desirable to aim at synonymy. Analytically oriented methodology employs acceptance of some fictional constructions such as rational legislator as the sender of legal text or presumption of general knowledge of the law. These are ‘kind of’<sup>15</sup> assumptions characteristic of legal practice. The consequence of positivistic thinking based on Cartesian dualism of the subject and object is a conviction about unequivocal predetermining of the decision of a judge and exclusion of creative role of the lawyer.<sup>16</sup> Another tradition is a non-positivist approach which allows to adopt a conviction that the law is not a ready-made object and its interpretation is creative.<sup>17</sup> Necessity to interpret may be part of a phenomenon of open texture.<sup>18</sup> In case of semantic ambiguity of notions, the role of the judge who makes a decision is to ‘close’ the meaning by taking into account the fact that the meaning may depend on the context.<sup>19</sup> The sense of expressions may be decided by factors other than linguistic.

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<sup>13</sup> If we really assume a concept of legal norm as reconstructed from the legal rules.

<sup>14</sup> M. Zirk-Sadowski, *Pozytywizm prawniczy a filozoficzna opozycja podmiotu i przedmiotu poznania*, in: *Studia z filozofii prawa* 1, ed. J. Stelmach, Cracow 2001, p. 85.

<sup>15</sup> A. Kozak, *Myślenie analityczne...*, *op. cit.*, pp. 99–101.

<sup>16</sup> M. Zirk-Sadowski, *Pozytywizm prawniczy...*, *op. cit.*, p. 88.

<sup>17</sup> *Ibidem*, p. 92.

<sup>18</sup> See more B. Bix, *H. L. A. Hart and the „Open Texture” of Language*, „Law and Philosophy” 10 (1991), pp. 51–72.

<sup>19</sup> M. Zirk-Sadowski, *Pozytywizm prawniczy...*, *op. cit.*, p. 87.

The understanding of a meaning is influenced by paralinguistic factors, particularly contextual, which justifies the need to look for other method than analytic. The influence of culture on interpretation practices is taken here into consideration. The presented approaches turned up in different conceptions of understanding the law. Attachment to unambiguity and systemic treatment of language are embedded in intuitions of legal positivism, formalism, analytical trends and formal-dogmatic method. However, accentuating a creative character of interpretation and its situational conditionings corresponds to non-positivistic concepts of the law, hermeneutic methods or neo-pragmatist interpretationism.

The concept of Stanley Fish is an example of an approach to legal interpretation based on contextual and situational criteria. According to Fish, interpretation is contingent upon culture. Legal *interpretive community* is entrenched in the sphere of cultural traditions of interpretation. It is built upon accepted vision of the world, established in tradition, and rules which govern it with fixed repertoire of interpretation and inference rules.<sup>20</sup> It employs its own, distinct interpretation code. The specificity of this community constitutes, at the same time, a limitation of interpretational discretion. One of limitations of interpretation is cultural context and institutional nature of interpretation procedures. Communication is possible by participating in the same institutional structure. Such a community is of institutional character *since every interpretation is greatly dependant on institutional environment, instruments of understanding provided by our culture.*<sup>21</sup> Specificity of legal interpretation is determined by specificity of cultural codes which build the context in which it is made. It is in accordance with Fish's view that it is not the text that limits interpretation but it is interpretation that limits the text.<sup>22</sup>

## Context and the problem of meaning

Fish's approach to the issue of meaning is inspiring from the point of view of the relationship of language and culture. It may be placed on

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<sup>20</sup> About the characteristic of interpretive community see e.g. R. Sarkowicz, *Poziomowa interpretacja tekstu prawnego*, Cracow 1995, p. 45.

<sup>21</sup> A. Szahaj, *Zniewalająca moc kultury. Przedmowa*, in: S. Fish, *Interpretacja, retoryka, polityka. Eseje wybrane*, ed. A. Szahaj, various translators, Cracow 2002, pp. 14–15.

<sup>22</sup> P. Wójtowicz, *Wprowadzenie. Postmodernizm w obronie tradycyjnego literaturoznawstwa*, in: S. Fish, *Profesjonalna poprawność. Badania literackie a polityczna zmiana*, transl. P. Wójtowicz, Poznań 2012, p. 9.

the background of two traditions in the theory of law. With regard to the above-mentioned directions in current language-culture relationship research, the subject of interest of which are meaning and interpretation, there are two fundamental trends. The first one, inspired by analytic philosophy (and structuralist methodology) is based on the conviction that there is a possibility to reach the objective sense of the text and on attachment to unambiguity. The second one, emphasising discursive and creative nature of language, assumes that meaning is being discovered by an interpreter through creative interpretation. It is based on the assumption that we cannot attribute a unique defined meaning or even none to a text. On the one hand, in positivist tradition of interpretation accepted methods of establishing the meaning of a legal text are functioning, binding on interpreter and limiting his creativity in explaining the sense of the text. On the other hand, concepts which refer to post-structuralism and deconstructionism fall within this tradition. A special place among these extreme approaches is held by hermeneutic trends which assume that an important role in discovering the meaning is fulfilled by context and every interpretation is related to previous interpretations according to the concept of hermeneutic circle.<sup>23</sup>

Fish's views on the meaning are applicable in the analysis of law interpretation based on paralinguistic (or not only linguistic) criteria. According to Fish, it is not possible to reduce any sense or meaning only to a theoretic construction.<sup>24</sup> It is not however, a semantic nihilism or deconstruction of the sense since there exist two different ways to read the sense of a text, literal sense and functionally justified sense; literal sense and the sense revealing the intention of the sender. It allows to read differently one determined literal meaning with regard to different goals. Thus, one may say that there is no literal sense but literal sense understood as the only sense. Different literal senses of the same text in different situations may be literal.<sup>25</sup> As Fish would say, sense may be literal but for a purpose *ergo* situationally literal. As Fish writes, every reading of a text may be literal in the light of the assumed goal but no reading is literal in the sense that

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<sup>23</sup> Indicated national oppositions in the sphere of the theory of law may be referred to analytical, hermeneutical, discursive and communicative trend.

<sup>24</sup> S. Fish, *Almost Pragmatism: The Jurisprudence of Richard Posner, Richard Rorty and Ronald Dworkin*, in: *idem, There's No Such Things as Free Speech and It's a Good Thing Too*, New York–Oxford 1994, p. 225.

<sup>25</sup> S. Fish, *Normal Circumstances, Literal Language, Direct Speech Acts, the Ordinary, the Everyday, the Obvious, What Goes without Saying, and Other Special Cases*, in: *idem, Interpretacja...*, *op. cit.*, p. 39.

it is attainable in isolation from a goal.<sup>26</sup> Meanings seem to be literal since it stems from effective acts of interpretation and not from the characteristics of a language.<sup>27</sup> According to Fish, meanings are subject to different kinds of limitations to which belongs also 'the letter of the law' as well as characteristics of an interpretive community. He claims that meaning and some interpretative assumptions are always inscribed in the text, they do not have to always be the same. They do not result however, from the traits of the language but from discourse situation.<sup>28</sup> The sense of the text is arranged for a given situation of its reading. Fish writes that *a horizon of understanding is not a monolithic unity*.<sup>29</sup> The law is a continuously read interpretation object with the result that in a number of situations of interpretation, the sense of a given text is continuously revealed (even if literal reading does not apparently meet desired requirements). Therefore, reading of a text is carried out through context. The higher the frequency of a context accompanying a given content the less it is noticeable, which may cause an illusion of obvious or literal meaning. In the light of Fish's claims, assumptions adopted during interpretation which concern the method of reading the intentions in the text understood as added, may constitute a context, the text is read as their justification (confirmation) and extraction.<sup>30</sup> It may be reduced to a conviction that interpreters of legal texts referring to other previous solutions and taking into account the entirety of jurisprudence are inscribed in the mechanism of constant 'reinterpretation' of a legal text.

A subject studying a legal text (as well as the law itself) is always situated in a given social practice. Various types of practices and convictions fall within its scope. Such a perspective is defined by some determinants, fixed by a set of convictions creating an 'interpretation position'. The fact that interpretation and application of the law increasingly demand making axiological choices is a sign of such situation in a system of interpretation convictions. Interpretation practice is based on values accepted in a given culture and as such becomes *an axiological activity having the task to confirm/question a defined set of convictions of ethical or even political charac-*

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<sup>26</sup> S. Fish, *Normal Circumstances ...*, in: *idem, Interpretacja...*, *op. cit.*, p. 43.

<sup>27</sup> S. Fish, *Introduction: Going Down the Anti-Formalist Road*, in: *idem, Doing What Comes Naturally. Change, Rhetoric and the Practice of Theory in Literary and Legal Studies*, Dyrham-London 1989, p. 150.

<sup>28</sup> S. Fish, *Normal Circumstances...*, in: *idem, Interpretacja...*, *op. cit.*, p. 57.

<sup>29</sup> S. Fish, *Play of Surfaces: Theory and the Law*, w: *idem, There's No Such Things...*, *op. cit.*, p. 190 and the following pages.

<sup>30</sup> S. Fish, *Normal Circumstances...*, in: *idem, Interpretacja...*, *op. cit.*, pp. 31-37.

ter.<sup>31</sup> In many cases interpretation problems coincide with questions going beyond the positive law. It is the case of interpreter facing ethical or moral issues (settlement of cases relating to artificial reproductive techniques, euthanasia, cremation etc.). Making decisions related to the meaning of utterances of a legislator is not only referring to systemic criteria of language but also to the sphere of paralinguistic and even extralegal and cultural justification, as well as accuracy or goal which justifies the interpretation decision in hard cases. On the other hand, it is in controversial questions from the axiological point of view, that open texture notions appear more frequently and clarity is difficult to reach. Reaching clarity as Herbert L. A. Hart emphasizes, is equally hard for a judge as realisation of the *Noble Dream*.<sup>32</sup> According to Hart, clarity may be understood solely as a regulative idea, point of reference in interpretation in the form of a common rule of a justified and sensible decision. Observation of the decision-making practice of courts convinces that in many cases a judge adopts such an understanding of the meaning which he finds the most appropriate for a given decision. This operation may be preceded by disclosure of rules or methods of interpretation leading to the decision. In such cases an interpreter creates and not discovers the meaning of a legal text. Such interpretation of the law finds its application more and more frequently with regard to the tendency of approaching different legal systems due to integration process. The specificity of application of law and interpretation of the European Union law convinces about this fact. Jurisdiction of the Court of Justice of the European Union which applies mostly purposeful directives in interpretation of the law is an example of such interpretation. The European Union law order which is a compound, multilingual creation demands a creative approach to interpretation the aim of which is not only seizing the literal text readings but realisation of the postulate of a homogenous interpretation of the law as well as effective law application. It is clear that the reason for such a decision-making practice is the diversity of legal cultures and legal systems of particular Member States. The phenomenon of progressing convergence of genetically and historically distant legal orders like Anglo-Saxon

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<sup>31</sup> A. Szahaj, *Zwrot antypozytywistyczny dopełniony (zamiast wstępu)*, in: *Filozofia i etyka interpretacji*, eds. A. F. Kola, A. Szahaj, Cracow 2007, *op. cit.*, p. 9.

<sup>32</sup> H. L. A. Hart, *Essays in Jurisprudence and Philosophy*, Oxford 1983, p. 123–144. Referring to the conviction of this author about the impossibility to reach clarity it may be stated that Fish's concept may constitute an explication of Hart's theory on open texture of notions and legal rules. See M. Andruszkiewicz, *O związkach teorii prawa i teorii literatury (refleksje w kontekście tendencji ponowoczesnych)*, in: *Teoria prawa między nowoczesnością a ponowoczesnością*, ed. A. Samonek, Cracow, Jagiellonian University Press, at the printer's.

and Continental legal systems should also be noticed. Formation of multicentricity of the law is the evidence of that.<sup>33</sup> The above show that the answer to complications consisting in diversification of settlement of proceedings or multiplicity of possible literal interpretations is application of criteria referring to a wider context than only linguistic or functional.

A contemporary lawyer who interprets the law reaches not only for linguistic rules in which do not give all the answers but also to contextual, functional rules for justification of the goal of the interpreted text. Not only language but also the context may be the source of meaning. Therefore, the interpretation context consists of a formal and institutional structure as well as cultural background. The proof of that is also the fact that a given concept of interpretation of the law is a consequence of its author's self-determination with relation to the concept of the essence and function of the law, its meaning, aim etc. Different approaches of law interpretation were motivated by differences in their representatives' views on notions fundamental for jurisprudence as e.g. legal norm. The followers of linguistic concept of a norm referred to achievements of analytical philosophy oriented around logical traditions. Taking into account the importance of the influence of cultural context of the language influenced shaping of non-linguistic concept of a legal norm and departing from methods of analytical philosophy to methods of socially oriented philosophy. The requirements to achieve a precise effect of interpretation determine the way of determining and explaining the sense of legal language notions. Adoption of defined interpretative directives (allowing for an interpretation of the law, homogeneous to some measure) causes a number of consequences in social effect of the law, the sense of legal security of subjects, fulfilment of principles of legal certainty, social acceptance for legal practice and consequently implementation of fundamental aims and functions of the law which language is to serve.

Usage of other directives than linguistic in interpretation persuades that the meaning may be influenced not only by the properties of linguistic system and its lexis but also other factors, especially when we deal with a case difficult to interpret. Therefore, it shows that strict acceptance of the priority of rules of linguistic interpretation may be questioned for other determinants of interpretation especially when clarity based on linguistic rules

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<sup>33</sup> See *Multicentrism as an Emerging Paradigm in Legal Theory*, eds. M. Zirk-Sadowski, M. Golecki, B. Wojciechowski, "DIA-LOGOS. Schriften zu Philosophie und Sozialwissenschaften-Studies in Philosophy and Social Sciences", Vol. 11, Frankfurt am Main, 2009.

is difficult to achieve. In such cases, typical positivist axiology recognising certainty of the law as fundamental value which is attainable by means of clarity may provide insufficient instruments for an interpreter. The way of reading a text depends on adopted directives of interpretation, the choice of which is imposed by the goal of the legislator and by conditions in which the decision is made, as well as by contextual conditioning. To the determinants of understanding of a defined expression belong: goal, intention and specificity of interpretative situation. In a situation when an interpreter takes also into account the influence of the context on the meaning and understanding of expressions, he goes beyond *stricte* linguistic criteria. Establishing the meaning may be based on other determinants than linguistic rules. It corresponds to Fish's views: *meanings that seem perspicuous and literal are rendered so by forceful interpretive acts and not by the properties of language.*<sup>34</sup> The influence of cultural factors on the law causes that establishing the meaning does not only consist in applying linguistic criteria or textual determinants. Cultural context becomes the point of reference in interpretation, going beyond the linguistic determinants and going in the direction of non-linguistic justifications (ethical, political, theological etc.) It fulfils a crucial role in legal interpretation, especially while using functional and purposeful directives of interpretation of the law and particularly when we deal with unclear, ambiguous or axiologically marked notions. In such cases isolation of the text from its context may turn out complicated, since not only linguistic but also paralinguistic criteria decide about its meaning. The dispute over meaning is not then reduced to linguistic criteria but consists in referring to contextual or even cultural determinants. It is in accordance with Fish's intuition according to whom the meaning is hidden not in the text but between the text and the context and interpretation is culturally conditioned. The assertion corresponding to this concept saying that 'there is nothing beyond interpretation'<sup>35</sup> shows that language texts are not ready-made, finished but demand explanation through reference to their cultural, social and political context.<sup>36</sup>

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<sup>34</sup> S. Fish, *Introduction: Going Down the Anti-Formalist Road...*, *op. cit.*, p. 9.

<sup>35</sup> A. Szahaj, „*Nie ma niczego poza interpretacją*”, *tako rzecze Stanley Fish*” (*There is Nothing Beyond Interpretation*”, *Thus Spoke Stanley Fish*), „Er(r)go” 2001, No 2, pp. 79–83.

<sup>36</sup> Compare A. Szahaj, *Zniewalająca moc kultury...*, *op. cit.*, pp. 14–15.

## Conclusions

Cultural conditioning of legal language and the context created by semantic codes has impact on the way the legal language and legal interpretation are understood. Analysis of the relationship between culture, language and the law allows for some remarks. It is a fact that the way we understand the relationship culture-law and culture-language affect the definition of the notion of legal language. It also affects the views on interpretation. It might be understood as reaching the unequivocal objective meaning of the text (by using linguistic directives) or establishing the meaning according to the aim of interpretation, taking into consideration the contextual and situational determinants (purposeful directives). There is a change in approach to interpretation which consists in passing from linguistic to non-linguistic interpretation. It should be added that revision of thinking about interpretation and its broad understanding (contextual and extratextual) opens the possibility to 'reactivate' the hermeneutic methods<sup>37</sup> or to look for other oppositional concepts of interpretation being a response to a crisis of analytical methods. From the definition of the relationship language-culture may depend the fact of being in favour of the concept of static or dynamic interpretation of the law. It also concerns the construction of legislator as a sender of legal text who may be understood as subject which gives the text a meaning, whereas the role of an interpreter is to decode the actual meaning on the basis of presumption of sender's rationality. Legislator may be defined as the one who forms the content of the law, interpreted in a creative way with regard to the goal of interpretation.

Opting for a given concept of legal language is productive as far as it concerns adopting ontological decisions in the concept of the law<sup>38</sup> understood from the positivist or non-positivist point of view. It is a consequence of accepting determined assumptions related to language and culture. A dispute whether the language is a product of culture or culture a creation of language is of course not easy to decide (similarly to the example of thought

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<sup>37</sup> On the practical application of hermeneutic methods see T. Stawecki, *O praktycznym zastosowaniu hermeneutyki w wykładni prawa*, in: *Teoria i praktyka wykładni prawa*, ed. P. Winczorek, Warsaw 2005. Turning to the methods of hermeneutic interpretation may signify adoption of analysis of a text as rooted in the tradition of humanistic interpretation.

<sup>38</sup> Changes in understanding the law influence the evolution of integration tendencies between jurisprudence and the disciplines interested in language. As a consequence of changes influenced by postmodernism interpretation is the key issue. With regard to this, the theory of literature and especially the research focused on the trend defined as *law and literature*, among which interpretation problems are situated, should also be included in the external integration range of jurisprudence.

and being). Let us return to Fish who thinks that interpretation is not a theoretical problem but an empirical one.<sup>39</sup> A conviction that any programmed way of perception exist and cannot exist in a text show that interpretative practice is entangled in reality (existence) and culture. Fundamental problems decided by interpreter often go beyond the field of positive law. It corresponds with the fact that notions which are to influence the reality (influence on entities by nominal objects) are constituents of a legal text. Meaning of these notions and their interpretation are rooted in cultural context. Coming back to the above-mentioned oppositions structuralism-poststructuralism, cartesianism-interpretationism in the evolution of language-culture-law relationships one may become convinced about changes in this evolution. As a consequence of post-Cartesian turn connected to revision of views on primary character of thinking about entity as well as conviction that interpretative problems embedded in social-cultural sphere (and not exclusively systemic, linguistic), maybe Cartesianism is being reformulated into specifically understood existentialism.

#### S U M M A R Y

The aim of the present article is to determine the relationship between language and culture at different levels of analysis of legal language. Elements of a legal text are notions which are to influence the reality. It is the influence on entities by nominal objects. Meanings of these notions and their interpretation are embedded in cultural context. Cultural conditioning of legal language and context created by semantic codes influence legal interpretation. There is a shift in the approach to interpretation which consists in passing from linguistic interpretation to considering non-linguistic factors (from text to context). The dispute about meaning is not reduced to linguistic criteria but consists in reference to extralegal contextual determinants. Cultural context going beyond linguistic determinants in the direction of ethical, political, theological justifications etc. becomes the point of reference in interpretation. It fulfils the key role in legal interpretation especially during functional and purposeful directives of interpretation of the law, particularly when we deal with ambiguous, polysemantic or axiologically marked notions. Therefore culture determines the way of defining the legal language and influences its understanding and interpretation.

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<sup>39</sup> S. Fish, *Stanowisko tekstualne nie istnieje*, transl. L. Drong, „Er(r)go” 2006, No 12, p. 121. According to Fish, the meaning cannot be established without interpretation. This approach is conditioned by anti-essentialist attitude of the author. It seems that Fish's anti-essentialism, his conviction about inveteracy of interpretation in context, reality is a turn in the direction of existentialism.

