Marta Andruszkiewicz
University of Bialystok

ON SOME OF THE ASPECTS
OF THE LINGUISTIC THEORY OF LAW

Abstract. The article analyses the approach to the study of the sphere of language between theory of law and the philosophy of language. The aim of the paper is to study the range of applicability of philosophical and linguistic conceptions in theory of law. Law theory reflects certain movements and controversies that have been significant in linguistic sciences. The analyses, which, so far, have been conducted in theory of law, concentrated mainly on the use of the results of such achievements made by the representatives of the philosophy of language and linguistics as formal languages theories, transformational-generative theories, structuralism, formalism, pragmalinguistics. In this article, it is claimed that contemporary changes in the humanities justify the expansion of the range of jurisprudence integration to some other approaches, different from formalistic and pragmatic ones.

Keywords: legal language, theory of law, philosophy of language.

1. Introduction

The issues and questions which are the subject of linguistic aspects of theory of law are also philosophical problems (Gizbert-Studnicki, 1985, p. 81). The reflections on language within the theory and philosophy of law are stimulated by numerous other sciences, such as linguistics, sociology, psychology, logic, but also philosophy, indicating that jurisprudence is multidimensional and integrated with other disciplines. The aim of the paper is to study the acceptability of conceptions typical for philosophy of language and linguistics as used in theory of law, as well as the influence of the conceptions on the range of the outer integration of jurisprudence with those disciplines which deal with the study of language. Linguistic problems will be analyzed in light of selected conceptions which are relevant for the theory and philosophy of law as well as for the philosophy of language and linguistics. It is claimed that language sciences, which have dealt with the

language of the law, are subject to change and that they are being extended to new research paradigms. As far as methodology is concerned, analyses within the field of jurisprudence and linguistics will be used, with such research tools typical for linguistic conceptions which might be relevant for the study of the language of the law as translated into jurisprudence. This approach refers to methods within the field of the theory of philosophy of law, linguistics, and the philosophy of language. Linguistic conceptions, which were selected for the analysis process, are collated with the approaches within the field of the theory of law. As a starting point, assumptions were made referring to the ontological dependence of language on culture and on the cultural context of the language of the law. It is also claimed that language plays a specific role in the processes of social communication.

2. Why does theory of law study language?

Multidimensionality issues, as well as those referring to the outer integration of jurisprudence, have been long in the area of interest of theoreticians and philosophers of law, including Kazimierz Opałek and Jerzy Wróblewski. Although the concept of jurisprudence as a multidimensional science originated in the 1960s, it still can be an inspiring point of reference for organizing theoretical research on law. As Kazimierz Opałek frequently pointed out, multidimensionality is not a feature unique to jurisprudence, but it is characteristic to many other social sciences. This is because the issues connected with meaning, experiences, values, and their mutual relationships belong to general philosophical problems present in the humanities, including legal sciences (Opałek, 1969, p. 994). The integrated model of jurisprudence is based on the idea that legal phenomena are complex and must be studied multidimensionally (Wróblewski, 1978, p. 162, 1981, p. 23 ff.). In this light, law can be seen from the perspective of its many components, such as legal norms, social facts, behaviours or mental experiences. This is connected with a conviction, prevailing in theory of law, of the ontological complexity of law and related "claims for methodological pluralism and integration", as indicated by Kazimierz Opałek (1969, p. 985).[1] The question of the place of ontology in theory of law concepts is, in jurisprudence, a debatable matter. The controversies on the ontological nature of the objects of study are also present in many broader disciplines, such as the many fields of philosophy.

The assumption that law can be presented as an ontologically diverse creation (Gizbert-Studnicki, 1986, p. 8 ff.) makes it possible to indicate

two approaches that treat law as a set of norms and a set of objects of another kind (facts, behaviours) (Wróblewski, 1973, p. 48).[2] Consisting of objects other than norms, law is a specific set of facts. These may include experiences and behaviours which are connected with norms, either by being expressed in procedures or in the form of behaviours of subjects in the process of executing legal norms (Wróblewski, 1973, p. 48). This view also covers the idea of law as a cultural phenomenon. On the other hand, law considered to be a set of norms is a system of rules which can be presented in the form of utterances in a given language. It is a framework created by the behaviour patterns aimed for the addressee of the utterance and subordinated by the various links and relations between its elements. The approach to law as a system of norms may refer to law as one-dimensional or as multidimensional concepts (Wróblewski, 1969, p. 16 ff.). On the grounds of the theory and philosophy of law, law as a set of norms studied as a one-dimensional concept is mainly the focus of legal positivism, normative theory, and analytical jurisprudence. Multidimensional concepts view law as a set of norms along with its corresponding social and mental phenomena. Assuming such an approach to law makes it possible to analyse it linguistically.

The sphere of language is considered the most significant of the dimensions of analysing law in jurisprudence, next to its psychological, sociological and axiological levels (Wróblewski, 1981, p. 23 ff.). To be more precise, the logical and linguistic dimension can be separated into two distinct levels – that of logic and that of language. According to Zygmunt Ziembiński (1980, p. 78 ff.), the linguistic aspect of law is the subject of studying law as a set of a special type of behavioural norms, created through specific procedures. Ziembiński juxtaposes the linguistic (formal) dimension with the reality perspective, which focuses on how societies shape their systems of legal norms and how it reflects on individuals and the structure of social functioning (from a psychological or sociological point of view). The first level, in jurisprudence, is called the formal aspect, while the second level is called the realistic aspect. The formal aspect refers to the linguistic framework and presents law as a set of certain norms. The significance of the linguistic aspect of jurisprudence stems from the necessity of verbalizing legal norms. As a consequence of studying the formal (linguistic) aspects of law, they refer to rulings in which statements constitute the legal norms of an analysed system of law. Legal texts containing law provisions form the material for formulating norms in a specific verbal, linguistic form. These statements are expressed in a specific form of natural language, namely, the language of the law.

The linguistic aspect of jurisprudence is unique in comparison to the languages of other disciplines because of the nature of the analysed subject, namely, the use of language in order to influence behaviour with the use of statements contained in provisions of law, and not, like in other sciences, to describe reality (Ziembiński, 1985, p. 330). The specific nature of language in jurisprudence consists of the fact that the statements contained in legal provisions are used to construct legal norms in order to apply law. Logical and linguistic methods of studying law are used to analyse the specificity and correlations between the elements of a legal system, to determine the meaning of statements in a legal language, and to construct a specific type of texts in the application of law. Jerzy Wróblewski (1973, p. 50–51) notes that "in all concepts where the norm is the subject of jurisprudence, it is possible to use logical and linguistic methods, as they are fully applicable in the analysis of linguistic statements, whereas the norm is a statement expressed in a specific language." Legal science indicates the different subjects of logical and linguistic studies (Wróblewski 1973, p. 50–51). These methods may be applied as an analysis of particular legal disciplines (as methodology), while in the logical and linguistic perspective the characteristic of a legal norm system may be the subject of study. It may also be the broad practice of law and its corresponding processes connected with creating, applying or explaining law. The study of language in jurisprudence may focus on describing the processes of shaping and constructing legal norms, as well as on their effects in a social aspect. Logical and linguistic analyses in jurisprudence focus on languages connected with law, including legal language and the language of the law (Ziembiński, 1985, p 330). Language is used to qualify behaviours and situations in terms of legal norms, as well as to analyse the systems of legal norms. It is worth noting that the necessity and significance of observing legal phenomena in terms of their linguistic context stem from the fact that it is important to analyse the linguistic layer of legal norms, whose content is described precisely by means of language.

This supports the existence of relationships between the theory of law and other disciplines that also study language. The intensity of these relationships gained increasing significance with the rise of research on linguistic issues in jurisprudence in the 1950s (Gizbert-Studnicki, 1985, p. 68–69). These studies were dominated by multifaceted approaches and many research fields, different trends in linguistics and in the philosophy of language which had an impact on the reflection on linguistic issues undertaken in theory of law. Those that have gained significant recognition in the study of the language of law among theoreticians and philosophers are discussed

below. Their scope is intentionally presented as a review and in a simplified manner. It must be noted that theory of law in the logical and linguistic aspect focuses mainly on studying the language of normative statements and law texts. Significantly, the objective of studying language in legal theory is different than in the philosophy of language or linguistics. Marek Zirk-Sadowski (1981, p. 53) indicates that language studies in linguistics take on one method in favour of another in order to solve a theoretical dilemma that occurs in the field, whereas for a theoretician of law it matters whether a method is useful for analysing the issues of rationality and predictability of a legal decision as well as the functions of the language of law.

3. Linguistic issues in the theory of law and the philosophy of language – formal and logical approaches within the field of philosophy of ordinary language, descriptivism and reconstructionism

More than 30 years ago, Kazimierz Opałek (1986) already indicated that research conducted in the field of the philosophy of language is an inspiring and valuable contribution to theory of law as "the philosophy of language plays a huge role in contemporary philosophy. Due to the subject of its observations, it must be confronted with the study of law, especially theory of law, from the perspective of existing influences and the opportunity of using yet unexplored findings of the philosophy of language" (p. 88, p. 85–95). References to the relationships between law and language theories and linguistics are also present in the works of authors such as Tomasz Gizbert-Studnicki (1985, p. 67–82), Marek Zirk-Sadowski (1981, 2000, p. 96 ff.), Jerzy Stelmach and Bartosz Brożek (2004, p 121 ff.). Research of the linguistic aspect of law shares provenance with the philosophical aspects of this subject of study. The philosophy of language is a field significantly impacted and expanded by many diverse movements and ideas in science, some of which are on the borderline of linguistics and philosophy (Bronk, 1988, p. 269). These influences include the achievements of the representatives of the Vienna Circle, English analytical thought with its philosophical concepts of ideal language and natural language, hermeneutic philosophy, and John L. Austin's theory of speech act, developed further by John R. Searle. All these movements had a significant impact on linguistic research conducted within theory of law.

There are two groups of the most representative concepts of the philosophy of language, which were at the same time most inspirational for law theoreticians. The first group includes formal and logical approaches. A the-

oretical description of language originates from the attempts to formalize languages in mathematical sciences. This inspired researchers to analyse natural and artificial languages, which were previously studied separately and by means of different methods. An important role was played by Alfred Tarski's work entitled *The concept of truth in the languages of deductive sciences.* As indicated by Barbara Stanosz (1980, p. 11), the theory of formal languages was shaped by the formalization of the various languages of mathematical theories, and it initiated research on common principles of constructing such languages. The theory of formal languages, similarly to the later theory of generative languages by Noam Chomsky, focuses on the formal description of languages and their properties (Stanosz, 1980, p. 16). Representatives of the logical analysis approach were interested in a systemic study of language as a structure of a closed system. Their objective was to create a cohesive description reducing any inaccuracies and ambiguity. The presented concept involved unambiguousness and cohesion of notions in a given manner of expression. Its main function is to formulate statements reporting on reality, which implies the significance of the notion of truth in language. Another feature of this theory is its particular attention to sentence structure and syntactical qualities. The formal concept of language gave rise to the creation of artificial symbolic languages, which are best exemplified by the language which realizes the assumptions formulated in Bertrand Russell's *Principia Mathematica.* The idea of language presented by Russell goes in line with the tradition of perceiving language in the category of reasoning advanced by philosophers such as John Locke and Gottfried W. Leibniz.[3] In the analysis of the language of law, the findings of formal theories were used to study norms, as seen in Georg H. von Wright's deontic logic (1963). The problem using expressions lying in the sphere of interest of the concept of formal languages also appears in theory of law. The analytical approach in theory of law was mainly presented by philosophers from the Lviv and Warsaw school, Kazimierz Ajdukiewicz and Tadeusz Kotarbiński, and others who shared the same traditions, Zygmunt Ziembiński, Kazimierz Opałek and Jerzy Wróblewski.

The formal approach is based on the use of systemic analysis and on the assumption that logical methods can be applied to study language. Language is the studied object, and its properties include univocality, definiteness, and non-occasionalism. This applies to artificial, formal languages. Therefore, applying this approach to natural language was questionable. These doubts are reflected in the arguments highlighting that formal analyses do not take into account the complexity of natural language and some of its special qualities, such as ambiguity and the occasionalism of expressions

and phrases, and the fact that the special qualities of natural language are the source of many philosophical problems (Strawson, 1963, p. 512, quoted in: Zirk-Sadowski, 1981, p. 45). The conflict connected with applying the logical theory of language to natural language was also seen in theory of law (Zirk-Sadowski, 1981, p. 44). Artificial languages were the model point of reference in formal language concepts, whereas legal language is a form of natural language. The criticism of the formal approach to language principally relates to the incompatibility of the qualities of artificial language to the complexity and ambiguity of natural language, including legal language. Therefore, it seems that empirical theories would prove more useful to analyse it, which will be discussed below.

The other significant philosophical trend in the discussed context is the philosophy of ordinary language. Connected with a different approach to the study of natural language, this movement opposes the systemic approach presented in logical analyses. Studying language with logical methods was based on the analysis of natural language in comparison with artificial language in order to identify any regularities between the two modes of expression. On the other hand, ordinary language philosophy was directly oriented at the level of natural language, characterised by dynamism and ambiguity (Fodor and Katz, 1962). This type of research focused mainly on analysing the vocabulary of a language, highlighting the pragmatic aspect of the application and execution of the language. It became important for linguists to pay more attention to the issue of ambiguity and vagueness. The subject of interest shifted to the function of language in social relations based on communication.

Ordinary language philosophy was reflected in philosophical and legal conceptions and theory of law, particularly in the approaches oriented around analysis. A significant role in the study of the language of the law was played by John L. Austin's speech act theory. Its impact is seen in Herbert L. A. Hart's analytical philosophy of law (1961). Hart determined the meaning of notions by making them as precise as possible in their particular contexts. In ordinary language philosophy it was important to study language by exposing the role of linguistic intuition which made it possible to distinguish and select from many ambiguous meanings the one which is appropriate in a given context. This made it possible to give phrases or expressions an ordinary meaning, defined as a normal or regular meaning. However, such elimination of ambiguity is not always infallible. Whether a meaning is ordinary or regular, and which meaning is such, is different in various contexts. Categories like regularity or ordinariness of meaning are not essential but rather conventional (Fish, 1980). This is particularly

important in the language of law. The same text can be read with different levels of interpretation in various contexts and situations. Interpretation requires reference to several layers of an expression – its linguistic structure, the vocabulary of the language, but also its presupposed contents, inscribed normative modalities, knowledge of the sources of law in a given system, the objective and intention of the speaker, etc. (Andruszkiewicz, 2012, p. 154).

The doubts connected with using the concepts of ordinary language philosophy were related to the difficulty of determining the boundaries of the language in which the meaning could be strictly determined by the context. Walking away from a systemic analysis of language also proved treacherous by making it impossible to explain the reproductive capacities in language (its recurrence).

From the perspective of jurisprudence, it is difficult to determine which of the above approaches to the philosophy of language could have greater significance for linguistic analysis in legal theory. On the one hand, pragmatic problems play an important role in the science of law, as they are connected with the formal analysis of the use of phrases in logical methods (Zirk-Sadowski, 1981, p. 54–55). On the other hand, however, determining meaning based on a situational context is essential in legal interpretation, such as teleological interpretation. Therefore, the semantic openness of phrases and expressions of the language of law can support the use of analysing the ordinary language philosophy. It is worth noting that there is no unanimous stand on this issue among law theoreticians, which is justified by the complexity of the various perspectives on law, among other things. Marek Zirk-Sadowski (1981, p. 55) notes that "due to the objectives set before jurisprudence, there is a need for logical methods of language analysis rather that the methods that are used by ordinary language philosophy," if we take into account those aspects of logical analyses which refer to the issues of using expressions, and not to traditional logic. It must be stressed that the analytical form of the philosophy of language studied ordinary, natural, scientific, and philosophical language. The trends in the philosophy of language which can be considered to be the richest sources of inspiration for theory of law focused in their analyses on the language of deductive sciences and therefore might not yield extensive results in the study of natural language whose register is the language of law. However, the methodology employed by these concepts proves useful to study the model properties of language.

Among the theoretical and legal analyses of language, which today are considered classical approaches, there are two methodological platforms stemming from linguistics: descriptivism and reconstructionism. Both are

connected with two major movements in the philosophy of language – logical empiricism and ordinary language philosophy, which analysed philosophical issues by expanding the knowledge of linguistic problems. Although these concepts belong to the philosophy of language, they also had a significant impact on the issues explored in law theory. In the Polish study of legal theory, these concepts were introduced mainly by Zygmunt Ziembiński.

Reconstructionism originates from empirical and logical sciences. Its most prominent representatives include Bertrand Russell, Rudolf Carnap, Alfred Tarski, and Ludwig Wittgenstein in his early works. Reconstructionism treats language not relatively but rather selectively. Determined models of language use are rejected in favour of reformulating the rules of using expressions and new ways of understanding or giving meaning. Its aim is to improve the process of using language. This type of analysis is founded in the idea of an unsystematic and irregular structure of language (Kotarbińska 1964, p. 221 ff.) which is characterised by ambiguity and lack of precision. The attributes, or rather disadvantages, of natural language, such as vagueness and imprecision of many phrases and expressions, might be "overcome" by linguistic analysis based on reconstructionism which includes the logical qualities of language (Gizbert-Studnicki, 1985, p. 71). This is supposedly achieved by applying the definition method that makes it possible to eliminate ambiguity. In the study of language, reconstructionism refers to formal logic. Significantly, it reduces language to the level of precise meanings, calculi, and relationships between its elements. These processes obviously stem from the language of logic, and, therefore, it is not always possible to translate them into natural language. The subject of study is a formal system. Reconstructionism was characterised by its openness to modification and expansion of the existing lexical resources, putting it in opposition to descriptivism which did not venture to expand or improve the studied language.

The representatives of descriptivism include George E. Moore, Gilbert Ryle, John L. Austin, Peter F. Strawson, and Ludwig Wittgenstein (in his *Philosophical Investigations* period). Oxford-based thinkers also developed this trend. Descriptivism is related to ordinary language philosophy as a stream of science which focuses on exploring natural language. Properties of natural language, such as vagueness and ambiguity, are considered attributes which improve its applicability for various functions (Gizbert-Studnicki, 1985, p. 72). The focus was on the factual and functional aspects of language and on the study of its properties by the most possibly accurate descriptions (Kotarbińska, 1964, p. 25). Therefore, the applica-

tion of the definition methodology in the study of language becomes questionable (Gizbert-Studnicki, 1985, p. 72). Descriptivist analysis was based on characterising a language by studying its use in specific contexts. This may come down to, as Zygmunt Ziembiński (1985) notes, "inventorying and documenting what kind of expressions are used in specific sources, syntax, and descriptive, expressive or suggestive significance, maintaining all shades of meaning in accordance with the context or social situation of using the expressions" (p. 239). Unlike reconstructionism, which focuses on formal and systemic languages, descriptivism is associated with the study of language perceived as a set of activities (Gizbert-Studnicki, 1985, p. 14).

Also, descriptivism is sometimes treated as a trend shaped in opposition to constructionism. Within the framework of the descriptivism-reconstructionism contrast, Janina Kotarbińska (1964, p. 246) introduces a distinction of descriptivism as a contradiction of constructionism. According to Zygmunt Ziembiński (1985), descriptivism was intended to remain in contrast to creation of a new approach to the language of science, postulated by constructionism, as "an ideal artificial language that would make it possible to describe reality precisely and clearly" (p. 330). Deconstructionism and reconstructionism, as two different poles of logical and linguistic analysis, also refer to various spheres of semiotics discerned in analytical philosophy. Jerzy Wróblewski (1973) notes that reconstructionism is in favour of separating semantics and pragmatics whereas descriptivism "may be prone to connect pragmatics with semantics, thus causing the construction of these principles arbitrary" (p. 57).[4]

Both of these trends had a significant impact on linguistic studies in law sciences. What is important is whether they can be applied in jurisprudence. According to Zygmunt Ziembiński (1985, p. 332–335), reconstructionism has a larger application. He points out that the presence of a descriptivist approach in the study of law is limited, occurring only to report on the status of legal phenomena or historical analyses (1985, p. 337). Reconstructionism corresponds to the methodological assumptions of legal doctrine, and it occurs indirectly in relation to the idealistic idea of the rationality (mainly linguistic) of the legislator (Ziembiński, 1985, p. 332–333). On the other hand, Jan Woleński (1967, p. 149) sees the possibility of applying descriptivist analysis to the issues connected with the language of law in order to determine meanings (in particular for the interpretation of law), assuming that the trend may yet be fallible in the case of imprecise and ambiguous concepts. Woleński claims that reconstructionism may prove useful in the light of logical relationships between norms, as

well as in situations of semantic indefiniteness mentioned earlier (Woleński, 1967, p. 148–149).

In literature, it is highlighted that the discussed research methods do not have to be treated as opposing categories, but as complementary approaches, which can be seen in the fact that moderate reconstructionism can be perceived as a form of descriptivism (Woleński 1967, p. 148). This perspective validates the study of linguistic aspects of law, encompassing both its formal aspects and referring to the instruments of pragmatics. Theory of law reflects both of these approaches in the well-known contradiction of two methodological approaches – formalism and anti-formalism (Gizbert-Studnicki, 1985, p. 73).

It must be remembered that neither reconstructionism nor descriptivism, or any other approaches of analytical philosophy, were to construct a theory of natural language (Gizbert-Studnicki, 1985, p. 75). This stems from the fact that these are not empirical theories or disciplines. Noam Chomsky's transformational-generative theory of language was considered to be an empirical language theory applicable to the study of the language of law. The application of this concept in the study of natural language in its competence and performance also presents complications similar to the ones discussed above. This is the result of the assumed idealisation in the form of the structure of the speaker's native language which ascribes linguistic intuition, and this, in fact, can also differ among speakers. On the other hand, the construction components of language (composition, levels of meaning, etc.) are its formal, and not empirical, element. The combination of formal and empirical analysis in Chomsky's theory was an argument for accepting the use of linguistic theory in law theory as an alternative for reconstructionism and descriptivism (Gizbert-Studnicki, 1985, p. 79). Tomasz Gizbert-Studnicki (1985, p. 81) also seems correct in his claim about the limited applicability of transformational-generative theory in the study of linguistic problems within theory of law. Gizbert-Studnicki bases his idea on the definitive argument of the language of law, and he highlights that the theory of legal texts rests on linguistic performance, and that it is not a theory of language competence. Concepts in the philosophy of language and linguistics, which are often referred to by law theoreticians and philosophers, find limited application in the study of the language of the law as a type of natural language. Although not completely non-productive, their usability is limited in reference to some of the issues with this type of language (Andruszkiewicz, 2014, p. 33–44). This refers, among other things, to the concepts of formal languages created by disciplines which seek definiteness and univocality in language.

The methodology of language studies offered by the founders of formal grammars, which include the idea of the complete generative process, were effectively applied in the study of artificial languages oriented mainly on syntactical issues. Linguistic analyses in jurisprudence place great emphasis not only on the syntactic aspects, but also on the semantic and pragmatic qualities of language. Theoretical and legal analyses seem to use the problem of language analysis mainly to the issues concerning the creation, application, and interpretation of law. The study of linguistic issues in law theory is not limited to analyses stemming from analytical conceptions. Concepts of formal grammar are therefore not only inapplicable, but may also prove insufficient to analyse specific and complex problems of semantics and pragmatics of the language of law which have gained significance in contemporary jurisprudential studies.

4. Other common spheres between theory of law and language studies – from structuralism to poststructuralism

As mentioned above, different approaches in the philosophy of language affected the theoretical study of law. Jan M. Broekman (1985, p. 17) writes that every theory of law is related to a specific theory of language. It can, therefore, be seen that there are some coincidences between the research conducted in law sciences and linguistics. The clear evolutionary tendencies in the philosophy of language and theory of law were dominated by several key streams of research. The early 20th century was characterised by the development of scientific disciplines oriented around structuralism, formalism, and functional styles. Then, in the 1970s, researchers began focusing on the sphere of communication, from generativism, cognitivism, semiotics, through text analysis present in text and discourse theory.

The main trends in linguistics focused, on the one hand, on language as an autonomous structure and the correlations between its elements, and, on the other hand, they were based on the idea of language as a social fact, determining its role and function. These two approaches are structural linguistics and sociolinguistics. Jurisprudence, like language studies, applies two opposite categories to explore linguistic problems – a structural category, stemming from structural linguistics, and a communicative category originating from sociolinguistics. The former concentrates around the issues of structural attributes of a language system while the latter is focused on the communicative aspect of language, understood as a construct of the

pragmatic use of expressions. The theoretical study of law was dominated by the second perspective, mainly because one of the main focuses of law theory includes the social functions of law and the study of law as an instrument of affecting human behaviour, wherein linguistic communication plays a significant role. Similarly, most concepts in linguistics focus do not concentrate on language as a homogeneous substance or language in itself. Apart from structural approaches, which highlight the study of language as a structural object, linguistic analyses tend to see language as a special creation of human activity realized in the form of statements and texts (Korżyk, 1999, p. 9 ff.).

In the light of various concepts of language that are influential both to linguistics and jurisprudence, there are two general perspectives of studying linguistic matters. The first one is grounded in the assumption that the subjects of study (linguistic phenomena) are autonomous. Tomasz Gizbert-Studnicki (1986, p. 14) indicates that this approach is common to traditional and modern linguistics, as well as to some trends in the philosophy of language, which may include both reconstructionism and descriptivism. This theory claims that language is associated with a system composed of lexical units and a set of grammar rules, which are recreated by the object of study. In the second approach, language is as a set of actions. Here, language is a system of facts occurring in social interactions, it "is happening" between humans like a complex set of social behaviours (Gizbert-Studnicki, p. 14). All of these spheres of research see the importance of the flow of a specific type of message inscribed within semiotics. Artur Kozak (2010) is right when he states that "communication is an action in a certain reality, while structural categories (such as grammar) reflect the structure of this reality. Both the communicative and the structural approach is possible only because communication and structure are underlined by another, deeper layer. The communicative breakthrough can, therefore, not be treated as a 'step forward', towards a higher (better) level of cognition. Rather, it was a 'step to the side', made between two concept structures as founded on a common base – social reality" (p. 75). Both structuralism and sociolinguistics are grounded in associations with the communicative sphere of language and other products of culture. Consequently, we deal with the presence, in the study of linguistic aspects of law, of the notions concerning the symbolic character of the elements of communication and the communication process in the context of semiotics in the broadest sense.

Apart from the above-mentioned approaches, pragmatistic interpretationism, rejecting formalistic research methods, might play a key role in the language of the law studies. Pragmatistic theory of interpretation is

mainly used in the analysis of law interpretation problems. It is the text, its meaning, and its interpretation which are the most important aspects here. In the pragmatistic theory of interpretation, it is claimed that an interpreter is 'positioned', and the meaning is determined by the context. Similarly to structuralism, whose representatives seen the text (piece of work) as a closed systemic structure, pragmatism refers to texts as open for interpretation. In law interpretation, the way how the meaning of text is deciphered might depend on the directives of explanation. Their selection is based not only on a legislator's intentions but also on context conditions within which a particular legal decision is made. If an interpreter takes into consideration the influence of functional context on the way how particular expressions are understood, he/she extends beyond strictly linguistic criteria. Many various factors are considered, not only those which refer to the sphere of linguistics. Therefore, during the process of functional interpretation, the absolute acceptance of the rules of linguistic interpretation can be questioned in favour of some different indications, for example for a cultural context which determines interpretation, especially crucial in the concepts created by Stanley Fish (1988). The influence of poststructuralist conceptions on the tendencies of changes in interpretation paradigm in favour of the role of context and a creative role of an interpreter is clearly seen. Therefore, the assumption can be made that analytic philosophy, based on the belief referring to intersubjective concepts categories, as well as to the possibilities of specific notions, may not be enough to describe interpretation problems of the language of the law. The crisis of methodology based on construing explicit rules taken *a priori*, as well as the contexts changeability in which a text might be interpreted, convince us to discover innovative research tools.

The use of approaches typical for the philosophy of language and of linguistics (formal and logical conceptions, structuralism, pragmalinguistics) in theory of law should be complemented with those elements from poststructuralist conceptions, including pragmatism, which underline the process of the humanities extension.

In pragmatic approaches, the influence of the mechanisms of persuasion, rhetorics, and politicality on social reality was accented. They determine language and interpretation not only in those spheres which are naturally related to public life (for example law) but also in seemingly politically neutral areas (for instance in literature). It changes the range of applicability of linguistics in theory of law, and it extends it to the context of literary theory or cultural studies.

5. Conclusions

Theoretical studies within the sphere of language referred to two of its aspects – the functions it serves in reference to reality, and its internal structure. The main approaches of language theory refer to looking at language as an instrument. Therefore, language is perceived as a tool used for communication between humans. This approach includes, for example, the theory of communicative actions of Jürgen Habermas, concepts by Robert Alexy, Herbert L.A. Hart, or legal and theoretical normativism. It is also important that this approach focuses on the elements of the communicative process and the relations between the sender and the receiver of the text. A different approach to the study of language is to perceive it non-instrumentally. Its characteristic point of reference is the textual nature of its mode of expression. In theory of law and in language theory, it corresponds with analytic trends which focus on texts and the issues of interpretation. This type of theory of language corresponds with Paul Ricoeur's and Hans G. Gadamer's ideas.

The evolution of the relationship between jurisprudence and other disciplines studying language can be presented in an order starting with concepts focusing on linguistic structures, through the search for or expectation of univocality in a legal text, to interpretationism and contextualism. The first ones refer to analytical philosophy, formalism, reconstructionism, logical atomism from the early works of Ludwig Wittgenstein, and Noam Chomsky's formal grammars. The second pole of these approaches will refer to the assumption that language is a complex activity which finds the grounds for Wittgenstein's linguistic pluralism, contextualism, discursive approaches to the analysis of linguistic aspects of law, the textual openness of Herbert L.A. Hart, or the interpretative approach presented in the structuralism-opposing trends whose representatives include Stanley Fish.

Naturally, the presented trends do not exhaust all of the possible research approaches to the linguistic aspects of law, but they are merely a review of those that have been the richest sources of inspiration. Apart from the spheres explored here, a significant role in the study of the language of law can be played by pragmatist interpretationism which rejects formal methods of research. In theory of law, the concepts of cognitive theory of metaphors and other cognitive theories of studying both language and literature may be applied. To differentiate between the structuralism-sociolinguistics categories, or between formal and pragmatic linguistic approaches, we can also add a poststructuralist or pragmatist context of liter-

ary theories, which could also be taken into account when analysing some aspects of the language of law.

The changes occurring in culture, the humanities, and, consequently, in our understating of law, go in hand with the evolution of tendencies to integrate some of the elements of jurisprudence, the philosophy of language, and linguistics. By simplifying the ontological controversies and the conflict of the essence of law to the opposition of universals between conceptualism and nominalism, we can say that the methods of studying the language of law and its interpretation depend on the distinction of it being a mental object or rather a set of obligations realised in the sphere of pragmatics. The question of what the language of law is might be a derivative of the question of what law is, and *vice versa*. Ontological settlements decide on the use of certain concepts in the study of the language of law. On the one hand, these would refer to structuralism and formalism, assuming interpretative dogma and claiming that structure is both the object and the context. On the other hand, it deals with concepts recognising language as a changing substance, with meaning and interpretation depending on context. These include phenomenology, hermeneutics, and poststructuralism, concepts which give precedence to context, not system or structure. On the one hand, it may be assumed that a text is an autonomous object (formalism, structuralism, speech act theory), and on the other hand, texts can be seen as non-autonomous (poststructuralism, reader response theory, intertextualism). Translating this evolution to the grounds of jurisprudence makes it possible to see two contradictory approaches to law – a formal, positivistic approach and an antiformal, non-positivistic approach. It must be noted that this contradiction also refers to other disciplines of the humanities, not only to jurisprudence. Linguistics is seeing a departure from structural analysis and is opening to other social sciences in connection with the discovery of pragmalinguistics and the study of language not as a structure but as a part of context, which is seen in the evolution starting with concepts of the smallest elements of language towards larger parts of the whole. This is expressed in a global analysis of the meaning of texts by referring to contexts such as myths or parables (Gajda, 2007). Similarly to literature studies, the questions of the meaning of a text become rooted in the contexts of culture, politics, or ethics (Tokarz, 2011, p. 120). As a result of such relations, trends and concepts were shaped to integrate different fields of science within a framework of cognitive sciences (such as neurocognitive sciences, psycholinguistics, communication sciences). Opening the borders between various humanities is a fact that is supported by the existence of common cultural factors in literature, politics or law. Conse-

quently, research on culture is conducted within cultural poetics or cultural literature theory, which will later on influence the perspectives in the study of linguistic aspects of law.

Exploring the impact of these movements on the philosophical and linguistic analyses in jurisprudence leads to a scientific postulate to expand the integration of law sciences to other disciplines studying language. The methodology of formal language study is only applicable in the analysis of some issues within the language of the law. These methods may prove insufficient to fully grasp the importance of semantic and pragmatic aspects of the language of law. Research on the language of law could be supported not only by the methodology stemming strictly from the science of language or linguistics, but also from the broadly understood sciences focusing on language and literature, including literary theory, anthropology or cognitive metaphor theory.

N O T E S

[1] A polemic approach to the matter of ontological complexity of law is also expressed by Bartosz Brożek and Radosław Zyzik (Brożek, Zyzik, 2010: 122–123).

[2] For more on the issue of the ontology of law cf. also Artur Kozak's point of view (Kozak, 2009: 102, 109 ff., passim) and Tomasz Pietrzykowski 2009: 1–2, 7–41).

[3] Cf. H. Święczkowska (2008: 116), L. Rasiński (2009: 9–10).

[4] Cf. also L. Koj (1971).

R E F E R E N C E S

Andruszkiewicz M. (2014). Transdyscyplinarne związki prawoznawstwa z naukami o języku – od języków formalnych do nurtu law and literature. In: M. Król, et al. (ed.) *Integracja zewnętrzna i wewnętrzna nauk prawnych* (vol. 2, p. 33–44). Łódź: Wydawnictwo Uniwersytetu Łódzkiego.

Andruszkiewicz M. (2012). O związkach teorii prawa i teorii literatury (refleksje w kontekście tendencji ponowoczesnych). In: A. Samonek (ed.) *Teoria prawa między nowoczesnością a ponowoczesnością* (p. 151–159). Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego.

Broekman J. M. (1985). Dyskurs prawniczy – tekst i mit. *Studia Prawnicze, 3–4*, 27–37.

Bronk A. (1988). Rozumienie. Dzieje. Język. Filozoficzna hermeneutyka H.-G. Gadamera. Lublin: TNKUL.

Brożek B., Zyzik R. (2010). Reguły prawne z perspektywy „Dociekań filozoficznych. *Ruch Prawniczy, Ekonomiczny i Socjologiczny 2*, 113–132.

Fish S. (1980). Normal Circumstances, Literal Language, Direct Speech Acts, the Ordinary, the Everyday, the Obvious, What Goes without Saying, and Other Special Cases. In: S. Fish, *Is there a Text in This Class? The Authority of Interpretative Communities* (p. 268–292). Cambridge, Mass: Harvard University Press.

Gajda S. (September 2007). *Znaczenie w stylistyce.* Lecture presented during the scientific conference titled "Znaczenie i Styl", Białystok.

Gizbert-Studnicki T. (1985). Teoria prawa, filozofia, lingwistyka. *Studia Filozoficzne*, 2–3, 67–81.

Gizbert-Studnicki T. (1986). Język prawny z perspektywy socjolingwistycznej. *Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace z nauk politycznych*, 22.

Hart H. L. A. (1961). The Concept of Law. Oxford: Clarendon Press.

Fodor J. A., Katz J. J. (1962). What is Wrong with the Philosophy of Language. *Inquiry*, V(1–4), 197–237.

Koj L. (1971), Semantyka a pragmatyka. Stosunek językoznawstwa i psychologii do semantyki, Warszawa: PWN.

Korżyk K. (1999). Język i gramatyka w perspektywie komunikatywizmu. In: A. Awdiejew (ed.). *Gramatyka komunikacyjna* (p. 9–32). Warszawa–Kraków: PWN.

Kotarbińska J. (1964). Spór o granice stosowalności metod logicznych. *Studia Filozoficzne*, *3*, 25–47.

Kozak A. (2010). Myślenie analityczne w nauce prawa i praktyce prawniczej. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego.

Opałek K. (1969). Przedmiot prawoznawstwa a problem tzw. płaszczyzn prawa. *Państwo i Prawo*, *6*, 983–995.

Opałek K. (1986). Zagadnienia teorii prawa i teorii polityki. Warszawa: PWN

Pietrzykowski T. (2009). John. R. Searle i ontologia prawa. *Studia Prawnicze*, *1–2*, 7–41.

Rasiński L. (2009). „Reguły" i „gry" świata społecznego – Wittgenstein, de Saussure i zwrot lingwistyczny w filozofii społecznej. In: idem (ed.) *Język, dyskurs, społeczeństwo* (p. 7–27). Warszawa: PWN.

Stanosz B. (1980). Wstęp. In: J. W. Borejsza et al. (ed.) *Język w świetle nauki* (p. 5–25). Warszawa: Czytelnik.

Stelmach J., Brożek B. (2004). Metody prawnicze. Kraków: Wolters Kluwer Polska.

Strawson P. F. (1963). Carnap's Views on Constructed Systems versus Natural Languages in Analitical Philosophy. W: P. A. Schlip (ed.) *The Philosophy of Rudolf Carnap*. Lasall–London.

Święczkowska H. (2008). Język jako projekt filozoficzno-polityczny. G. W. Leibniza „Swobodne rozważania o naprawie i ulepszeniu języka niemieckiego". Kraków: Wydawnictwo Aureus.

Tokarz B. (2011). Lingwistyczne korzenie poetyki w perspektywie kulturowej teorii literatury. In: M. Cyzman, A. Skubaczewska-Pniewska (ed.) *Teoria literatury w świetle językoznawstwa* (p. 115–128). Toruń: Wydawnictwo UMK.

Woleński J. (1967). Język prawny w świetle współczesnych metod analizy semantycznej. *Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace prawnicze*, 31.

Wright G. H. (1963). Norm and Action. A Logical Enquiry. London: Routledge & Kegan Paul PLC.

Wróblewski J., (1973). Metody logiczno-językowe w prawoznawstwie. In: A. Łopatka (red.) *Metody badania prawa* (p. 47–75). Warszawa–Kraków–Gdańsk: Zakład Narodowy im. Ossolińskich.

Wróblewski J. (1969). Zagadnienia wielopłaszczyznowości w metodologii współczesnej nauki prawa. *Studia Prawnicze*, *21*, 3–24.

Wróblewski J. (1978). Recenzja N. Viskovic, Pojam prawa. Prilog integralnoj teoriji prawa, Split 1976. *Państwo i Prawo*, *3*, 162–164.

Wróblewski J., (1981). Modele prawoznawstwa a typy kształcenia prawniczego. *Państwo i Prawo*, *4*, 17–29.

Ziembiński Z. (1980). Problemy podstawowe prawoznawstwa. Warszawa: PWN.

Ziembiński Z. (1985). Deskrypcjonistyczna i rekonstrukcjonistyczna analiza języka w prawoznawstwie. *Studia Prawnicze*, *3–4*, 329–341.

Zirk-Sadowski M. (1981). Rola pragmatyki w badaniach języka prawnego. *Acta Universitatis Lodziensis. Folia Iuridica*, *6*, 41–57.

Zirk-Sadowski M. (2000). Wprowadzenie do filozofii prawa. Kraków: Zakamycze.