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LANGUAGE AS AN INSTRUMENT FOR DISPUTE RESOLUTION IN MODERN JUSTICE

Abstract. The frustration in Polish society arising from excessive costs of conducting court proceedings and lengthy delays for dispute resolution has resulted in a genuine limitation in access to judicial justice for citizens. This paper argues that the answer to the dilemma between ensuring both justice and efficiency lies in language being a tool for the active participation of the parties in building mutual trust and shaping solutions in conflictual circumstances. How should the postulate of effective communication leading to dispute resolution in modern justice be achieved? The authors present the advantages of oral communication in proceedings on the way to finding agreement, pointing out the content and quality of language that make dispute resolution possible.

Keywords: legal language, Alternative Dispute Resolution, communication in dispute, dispute resolution, oral proceedings.

Introduction

Communal life is possible only because members of a society possess a set of shared meanings, enabling them to make coherent sense of their reality. This stock of meanings constitutes the common sense of the community and underpins all communication and organized activity. Among the most crucial activities of a community is its handling of disputes since, unless it can contain disagreement and control violence, it has little hope of surviving. A common language is the main repository of a community's common sense and, thus, it is crucial to refer to it when addressing the issue of dispute resolution in the legal system.

The language of dispute resolution (more or less cognitively interesting for linguistics) is undoubtedly practically relevant to the lawyer. Language – unless used properly in a manner that leads to a mutual understanding

of the relevant procedure, the parties' arguments and proposed solutions – may constitute one of the barriers to access to justice, and therefore directly affect the implementation of the rule of law principle as a fundamental constitutional principle. This principle is based on the principle of access to justice, which encompasses more than merely a purely formal access to the legal system. The right of access to justice can only be fulfilled if no real barrier exists to its practical implementation, meaning the right to resolve disputes in a reasonable time. There are many potential barriers in the dispute resolution process but language can be a remedy to eliminate, or at least weaken, such barriers.

Moreover, in the globalization era of modern technologies and information transfer, language remains the key to understanding and reaching common objectives. This means that, also in dispute resolution, where proper communication is a *sine qua non* for expressing and explaining the parties' standpoints, language offers a chance to overcome conflicts and to genuinely participate in the framework for shaping justice by arriving at dispute resolution through an agreement or judgement.

Polish academia has devoted considerable attention to issues concerning the language used in legal acts and legal language (understood as the language used to describe the law). Since the publication of a pioneering monograph by Bronisław Wróblewski (1948), the issue has been the subject of numerous monographs and academic articles. However, these studies have focused primarily on the specificity of the language deployed, from the point of view of its lexical, syntactic, and stylistic properties (e.g. Zieliński 2008). Even when the pragmatic problem of the functioning of legal texts in social communication has been discussed, this issue has been analyzed in relation to the legislator-addressee relationship in legal texts (Gizbert-Studnicki 1986).

However, considering the needs and conditions of modern justice, it seems indispensable to approach language from a functional perspective. It is worthwhile trying to engage language to overcome certain current challenges of dispute resolution – comparing the overwhelming number of disputes brought before the courts with social expectations concerning the time needed to arrive at a conflict settlement.

Functions of Language in Dispute Resolution

A "dispute" is understood as a disagreement or quarrel that touches on important issues, such as people's livelihoods, but does not on the whole possess the connotation of belligerence attached to the term "conflict", which

is often used as a synonym. A dispute may involve heated debate, high stakes, and tense confrontation, but the assumption is that the opponents will pursue their differences of opinion through non-violent methods of persuasion. The suggestion is that the issues are not zero sum and that compromise is possible and desirable, since the disputants have shared interests. It is anticipated that resolution will be achieved ultimately through some form of recourse to institutional or legal mechanisms, such as arbitration or mediation.

The manner of conducting the dialogue and the choice of language thus determines the efficiency of this process. An effective examination of the language deployed in dispute resolution requires the use of approaches and methods derived from the broadly understood pragmatism of language. The last few decades have witnessed a spectacular development in research on pragmatics (Levinson, 2010). Pragmatism describes the relations between signals and those who give or receive these signals. There are relations of affirmation, understanding, communication, or others. Although various methodological and substantive approaches may be found, there exists a common conviction regarding the need to study language in action rather than merely as an abstract system. For pragmatists, the use of language should not be explained in terms of its meaning. Quite the contrary, the meaning of words and sentences is to be understood in terms of how these things are used in language. Research into the pragmatics of language also offers some practical attitudes. Its purpose is to identify obstacles encountered in communication by language and to indicate how to eliminate or mitigate such obstacles. This practical attitude is seen firstly in the study of political discourse, but it can also be applied to the study of judicial discourse.

Analyzing the language of dispute resolution requires a different methodological and theoretical approach than that used in the study of statutory language. Examining only the syntax and lexical expressions formulated by the parties to a dispute will not significantly develop knowledge of their discourse. The discourse consists of specific forms of speech and encompasses linguistic performance (*parole* linguistics, not *langue* linguistics). The research into this topic is not intended to reconstruct the linguistic system, which is the basis for the realization of linguistics (actually formulated statements), but rather to seek to reconstruct the structure of discourse in the dispute process, the functions of the discourse that form the discourse and their mutual relations. Such studies must, therefore, take into account various factors that are heterogeneous to the language itself – including the psychological determinants of understanding and formulating speech, and the social and procedural determinants of their use.

Given the dynamic nature of every discourse (and in any case involving more than one person), it is also necessary to examine statements as acts of speech, and not merely as the creations of such acts. This being so, it is necessary to take into account various types of pragmatic rules for making such acts of speech, including legal procedural rules. It seems necessary to refer to the division of roles of participants in the discourse and to their mutual, to a large extent, formalized social relations, as determined by the provisions of such procedures. Due to the specificity of the organization of speech (its linearity, spontaneity, and other characteristics), communication difficulties caused by the particular lexical, semantic, and syntax features of legal language are even more pronounced in the dispute resolution process.

Language is best thought of as shaping expectations rather than determining thought. According to Ludwig Wittgenstein, if one wants a fundamental model for thinking about language, one should rather not think of it as a means for explicitly representing thoughts or experiences, our beliefs or desires. It is really just a practice, something people do that is woven seamlessly into their other activities. From this point of view, the linguistic activity of parties in dispute resolution appears specific and rather seems to undermine the concept. The participants of the process express their inner states, as well as presenting their definitions and understandings of facts and legal provisions whilst disagreeing on the adequacy of their statements. Here another view on language can be adopted – the psychologist Karl Bühler distinguished three main functions of language, to which his student, the philosopher Karl Popper, added a fourth. The functions are reflected during dispute resolution proceedings and are as follows:

1. The expressive function, involving the outward expression of an inner state. Here language operates in a way comparable to the sound an engine makes when it is revved up, or an animal's cry when in pain.

2. The signalling function, which adds to the expressive function the generation of a reaction in others. Popper compares it to the danger signals an animal might send out in order to alert other animals, and to the way a traffic light signals the possible presence of cars even when there are none about.

3. The descriptive function, which involves the expression of a proposition, something that can be either true or false. The paradigm here would be the utterance of a declarative sentence which differs from an animal's cry of warning in the sense that it has a conceptual structure. A bird's squawk might cause another bird to feel fear and take flight. What it does not do is convey an abstract concept like eagle, predator, or danger, and, thus, it does not convey the propositional content that presupposes such concepts.

4. The argumentative function, which involves the expression of an inference from one or more propositions to another in a manner than can be said to be either valid or invalid (Popper, 1994, p. 79–81).

Spoken versus Written Language

To enable an exchange through language, the modern judicial process uses two-way communication – communication in writing and oral statements, especially during trial-orientated activities. In many countries, a considerable percentage of court proceedings are conducted primarily in written form. For example, Polish civil procedure has increasingly become characterized by written proceedings in the guise of exchanging written statements. It is noticeable that a growing percentage of civil cases requires the application of procedures that can, should, or must be carried out in a written form. Law students and young lawyers are trained in writing pleadings (which virtually get no attention or understanding from the participants of court proceedings). Paradoxically, the computerization of court proceedings and the introduction of standard civil proceeding forms has limited the use of oral proceedings and extended the timeframe for exchanging information between the participants in the proceedings. This is somewhat paradoxical, since the new technologies simultaneously lay down the foundations for faster and less formal communication. Therefore, the importance of written proceedings in comparison to oral proceedings in civil procedure may give rise to doubts about whether the parties' rights are appropriately protected.

In theory, writing seems very similar or even identical to spoken language. After all, writing is nothing more than a way of representing speech. It is obvious that certain aspects of speech – like intonation – are not conveyed well by the writing system. Yet, even if writing could be made to reflect all the nuances of speech, oral and written communication would still differ in some ways. Written documents tend to resist change and exert a conservatizing influence on the language of the law. Once written texts came to be regarded as authoritative, lawyers began to fixate more on the text and less on the speaker's intended meaning. Writing tends also to be more autonomous than speech. Whether something is spoken or written has other implications. Being more transient and spontaneous, oral communication tends to be less formal than written language.

The comments above also apply to strictly legal language. Archaic, formal, and ritualistic language is primarily found in lawyers' documents; it is far less common in their speech. Furthermore, written language tends to be

more syntactically complex and lexically dense than speech. Again, the reasons are obvious: writing can occur over an extended period of time, which allows an opportunity for reflection and editing. The permanence of the written record motivates people to choose their words carefully. Likewise, the author of a written text is aware that the reader will be able, should they so require, to pause, reflect, and return to the written text at a pace which they find best facilitates their understanding. Such an approach is rarely possible when dealing with oral communication. Accordingly, since the reader can go over dense written material several times, if need be, writing can be far more complex than speech. Moreover, the fact that lawyers may be interrupted when making oral statements in court, whether by an opposing counsel who seeks to challenge an oral statement or by a judge seeking clarification of the statement, also mitigates in favour of expediting the process of making oral statements. Such pressures are notably absent in relation to written texts, where lawyers are able to make complex, lengthy arguments or statements without any fear of interruption or opposition such as would prevent the statement being made. The complexity, density, and formality of legal language is thus closely related to the fact that legal language is predominantly written.

Modern justice, however, rightly pays increasing attention to oral statements in dispute resolution. The recording of hearings, the widespread use of technologies, and the presence of external observers and an audience make oral proceedings more accessible and more easily perceived by the participants themselves. The European Court of Human Rights, in its judgment of 15 February 2005 in the case of Steel and Morris v. the United Kingdom recognized that it is crucial for the concept of a fair trial in both civil and criminal proceedings, that the parties to the dispute are not denied the possibility to present their cases effectively in court. According to the European Court of Human Rights, it is difficult to "present a case in court" other than orally (Steel and Morris v. the United Kingdom, no. 68416/01, § 87, ECHR 2005II).

The oral form is more transparent than the written one, as the parties directly participate and the judge is able to listen to the parties' standpoints and arguments, to interact directly with the parties, their legal representatives and any witnesses, and to formulate their viewpoint of the case based on intentions and interests that are more fully-explored through interactive discussion. An inevitable feature of any written communication is the establishment of an author-reader relationship which unavoidably assigns active-passive roles to the various parties, depending upon whether they are the author of the text (the active creator) or the consumer of the text

(the passive reader). Naturally, if the same parties engage in a lengthy exchange of documents, each of which seeks to comment on the content of the former, a dialogue develops which may introduce a certain degree of interactivity to the exchange as a whole. Nevertheless, as regards each individual written communication, the inescapable conclusion is that the recipient is unable to engage directly or instantaneously with its author, and is therefore unable to reach the levels of interaction which are commonplace in oral communications. Indeed, it is a familiar occurrence for a judge to ask lawyers questions in court, during their oral submissions, regarding the intended meaning of written arguments they previously submitted. This occurs precisely because oral channels of communication can facilitate a more comprehensive, or perhaps merely a more comprehensible, exploration of the subject-matter previously presented in a written form.

Oral proceedings play a substantial role in discovering the truth in a dispute. The application of oral and written proceedings refers closely to the fundamental need to hear the parties' statements and the principle of equal defense. The parties' confidence in the work of the administration of justice is based, inter alia, on an awareness that the parties had a possibility to express their views in relation to all documents in the dossier.

It should be also taken into consideration that a majority of people form their thoughts and views better in an oral way rather than in writing, and that in some situations it is easier for the court to understand the requests and positions of the parties if they present their case orally. The same rule applies to perception of the message leading to understanding also supported by intonation, expression, gestures and body language. It is estimated that words comprise only about 10 percent of human communication, while nonverbal behaviour makes up all the rest (Moore and Yamamoto, 1987).

An oral exchange of views is the best way of revealing contradictory standpoints, to confront such standpoints and to explain them; it is also the simplest way of conveying information. Oral proceedings allow the court to examine witnesses personally, to ask them questions and to confront them. Human evolution has resulted in each of us acquiring a range of instinctive methods and skills to identify whether a person speaking to us is, in our opinion, telling the fullest truth. Our cognitive functions and perception are at their most efficient when evaluating a person, or an event, which we see first and hear first-hand. Conversely, it takes considerable training and practice to mask the tell-tale signs which our bodies give out when we are lying or seeking to disclose only a partial truth. Few people appearing in court, whether as a party, a legal representative, a witness or an expert

have sufficiently mastered these masquerading techniques. The result is that, whether in the courtroom or elsewhere, we are all capable of forming more meaningful assessments regarding the veracity of a statement if we witness it directly and it is provided in oral form, as opposed to attempting to perform such an assessment on a written text which may not have been written solely by the purported author and which may have been produced in a style which is designed more to obfuscate than to elucidate. It should not be forgotten that the courtroom, in addition to providing a more useful forum for assessing the truthfulness of witnesses' statements, also usually allows a judge to witness the reactions of the parties to oral evidence that is given by such witnesses.

The impact of observing the range of emotions that unconsciously show themselves in the parties' demeanours as they hear oral evidence being given by others – such as apprehension, recoiling, anger, disappointment and many others – can have a potent effect on a judge's assessment of where the truth lies in a particular case. Since a proper assessment of the evidence is a key component in ensuring a just and fair result to a legal dispute, the ability to experience evidence provided orally should not be underestimated as a tool for improving a judge's sensory experiences of the disputed subject-matter. Indeed, in the United Kingdom, one of the reasons that appeal courts are generally limited in their functions to identifying mistakes of law (not fact) contained in a first-instance judgment, is because the appeal courts do not re-hear evidence provided at first instance. Of course, a written transcript of such evidence will exist, but this is generally deemed insufficient as a basis for calling into question a trial judge's assessment of the same evidence, since that trial judge will have experienced the evidence in a far more vivid manner than any transcription could hope to convey. Anyone who has ever witnessed a trial in Poland, during which witnesses are instructed to pause while their evidence is laboriously typed into the trial protocol, will realise that the written version may lack crucial features which could, or should, influence the judge's assessment of the witness's evidence. For example, it is inconceivable that a judge would ask the written court record to reflect the fact that a witness had behaved in a manner which led the judge to conclude they were lying, or that the witness had taken a suspiciously long time to answer questions. Such signals may well have been noticed by the judge during the oral testimony, but they may well be forgotten when the judge reads the written summary at a later date.

The principle of equal defense – one of the elements of a broader understanding of a fair trial – requires that all parties be given a reasonable opportunity to present their case in conditions that do not place one party

at a significant disadvantage to the opposite party. Only the parties themselves can make a valid decision as to whether or not they need to take a position on certain statements.

In some cases, such as when taking into account the personal characteristics of a particular party, the court must listen to their oral explanations in order to ensure that the party has indeed been granted their right to be heard, which consequently enables the court to decide the case correctly. Oral activity becomes a filter of argumentation presented in writing. The European Court of Human Rights made an accurate comment on this issue, stating that each case requires an individual assessment in relation to the application of oral or written proceedings. The European Court of Human Rights made a statement in the judgment of 20 October 2005 in the case Özata v. Turkey that the complainant should be given the possibility to make an oral explanation in a court in her country in relation to her personal losses arising from having experienced suffering and fear following her arrest. In principle, it was necessary to have the complainant appear in court in order to decide on the appropriate level of compensation, given the personal character of the complainant's experiences. Such issues are not merely technical in character and could not have been appropriately decided merely on the basis of written case records. Conversely, the administration of justice and the state's responsibility would have been served better if the complainant had been given the right to explain her personal situation during a public court hearing (Özata V. Turkey, no 19578/02, § 36, ECHR 2005III).

Cooperation through Language

The aforementioned pragmatics of language are very clearly associated with the so-called "word culture (ethics)", formed in Polish linguistics mainly under the influence of Jadwiga Puzynina (Puzynina, Pajdzińska, 1996, p. 44.). They refer primarily to the theory of speech acts, which within the scope of the paper concerns in principle the correct use of language. The basis for this was laid down by H.P. Grice (1975) in his Cooperative Principle, according to which dialogue should be the result of cooperation based on four rules: 1 – the quantity of information, 2 – its quality, 3 – its relation, 4 – the manner of expression.

In dispute resolution, the quantity of information depends upon the level of the participants' activity in the process. The active participation of litigants in the settlement process results in benefits not only to the disputing parties, but also to the judiciary. Evidently, approaching a solution for

the dispute can be implemented mainly by verbal communication between the participants. In practice, the model of any dispute resolution involves the relationship between the litigants or between the litigants and the judge, mediator, or arbitrator. It triggers on each side a set of specific behaviours and expectations about the other party's behaviour. The outcome (a win for the claimant or defendant, or a compromise settlement) is the result of a complex interaction between the efforts of the parties involved in the process and the underlying facts and law in the case.

As a complex, interconnected chain of nonverbal and verbal messages and reactions, conciliation can advance only when there is synchronized and consecutive understanding at every stage of the process. For information to be comprehensibly exchanged and the issues at stake to be discussed, the parties must be able to draw on a shared store of meaning. Yet, before they can meaningfully discuss substance, which is a difficult enough task in itself, they must first arrive at a metaunderstanding of form and procedure. To negotiate agreement, the parties must agree on what it is "to negotiate" and what is meant by "agreement".

The participation of parties in framing and conducting the proceedings should include making arrangements to streamline process activities, including mutual communication based on a constructive dialogue, in search of an optimal solution to the conflict. It is also indispensable to optimize the conduct of the proceedings by carefully diagnosing the needs and expectations of the parties to the proceedings and determining the essential priorities of procedural steps taken to settle the dispute. The optics of the parties to the proceedings is, thus, inclined to suggest that legal services provide simplifications, improvements, and facilitation to solve their problem and resolve the dispute without over-absorbing time and generating unnecessary costs.

The activity of the lawyers involved cannot exclude the skilful suppression and extinguishing of conflicts, the necessary tendency to compromise, the openness to mutual concessions, friendly cooperation in order to choose and conduct an effective and reliable course of action. Professional legal assistance should therefore promote, expose, and exploit all possibilities for amicable settlement of conflicts as the most appropriate model for modern dispute resolution.

Determining the rules and procedures of conducting court proceedings, including the implementation of individual actions, requires that the parties be involved and aware of participation, taking into account the specific nature of the proceedings obliging them to make arrangements to guarantee a smooth settlement of the dispute. Detailed arrangements for mutual communication are also important – filing and delivering correspondence,

as well as concerning the course of court proceedings, including arrangements made during the initial meeting, with a timetable for implementing the various activities, the place and language of the proceedings, the scope of the proceedings etc.

The good start principle, together with determination to conduct proceedings actively and dynamically, is also crucial in the subsequent stages of the proceedings, including the cooperation of the parties making the relevant findings. In particular, it may be necessary to agree on shortening time limits for specific activities or phases of the trial and to establish optimum arrangements for resolving a dispute without the need for a full trial. That is to shape the amount and content of information. It should be emphasized that there is considerable discretion and flexibility as regards how to conduct proceedings, including how to determine the manner of carrying out particular parts of a trial, taking into account the constructive suggestions of the parties and the necessary decision-making role of the adjudicating panel. Resolving possible procedural difficulties requires prior consultation with the parties, as hearing the parties is always relevant both to the atmosphere of a dispute-resolution procedure and to the predictability of the consequences of procedural decisions.

Again, it is important to underline the appropriateness of settling organizational and technical issues at the optimum level using electronic communications, including teleconferencing and video conferencing, and particularly by hearing the parties in person. It should also be noted that it is necessary to consider the appropriateness of establishing excessively long deadlines for the fulfilment of obligations, repeatedly fixing subsequent dates for hearings and, in principle, excluding the appointment of a hearing merely for the purpose of obtaining the findings. All organizational activities should be undertaken during the initial meetings (preparatory meetings) which aim to clarify and resolve any disagreements regarding preparation for substantive evidence and judgment.

Professionalization of the dispute-resolution process means that judicial activity is expected to clarify the views of the parties, including assessing the claim and remedies sought, and the arguments put forward by the parties. At the initial stage of the proceedings, however, it is particularly important to determine and differentiate between contested and uncontested issues between the parties, since this has a direct impact on the appropriate actions to be taken in the context of providing evidence. The issue of distinguishing uncontested issues that do not require proof from those which require the time-consuming preparation and delivery of evidence should correspond with the discipline of the parties and their plenipotentiaries in

seeking brevity and clarity when presenting their viewpoints and claims. Where the uncontested factual/legal aspects of a case are precisely indicated at an early stage, this enables a speedier and more focused analysis of those issues which are disputed. Any request to submit or demand evidence regarding uncontested circumstances should be categorically refused by the judge. Conversely, disputed issues clearly require evidence to be submitted and therefore demand the construction of a framework for conducting the evidential aspects of a trial. Preparing a list of disputed circumstances that require analysis can materially improve the manner in which evidential aspects of the case should be conducted. Compiling such a list before commencing the evidential aspects of a trial helps to focus the court's attention on relevant issues and to gradually eliminate or reduce the number of disputable issues which, in the course of the proceedings, become clear or irrelevant. The parties' mutual agreement on compiling the list of contested facts/law, and possibly the order in which particular issues will be examined, is of decisive importance in choosing the best and most economical way of conducting evidential hearings.

P.H. Gulliver compares and contrasts the negotiation of disputes in different cultures in order to reveal the underlying and invariant logic of the process. His point of departure is "the hypothesis that there are common patterns and regularities of interaction between the parties in negotiation, irrespective of the particular context or the issues in dispute" (Gulliver P.H., 1979, pp. 64–65). This approach seems justified in the first instance because the major categories of conflict resolution – negotiation, adjudication, mediation, and arbitration – appear to be more or less universal and share family similarities. Moreover, at the foundation of a discipline it is appropriate to establish a shared conceptual framework, even if this means temporarily setting aside anomalies.

Gulliver's hypothesis on the assumption of universality has paid off handsomely at both the theoretical and applied levels. It has brought us to the point where there is an established discipline and substantial consensus – at least in much of the English-speaking world (Australia, Canada, Great Britain, New Zealand, and the United States) – about the utility of integrative bargaining and alternative (or appropriate) dispute resolution (ADR) techniques. Ethics aside, there is growing acceptance that disagreements are rarely handled effectively by a preoccupation with relative gain at others' expense, mindless intransigence, or violence. The problem-solving approach to conflict resolution maintains that real needs rather than tactical positions should be addressed, and creativity and pragmatism applied to the settlement of differences.

Where necessary, the skills of trained third parties are drawn upon. Nobody is considered to possess a monopoly of truth and justice, and outcomes are sought that leave neither triumphalist winners nor embittered losers. As Jeffrey Rubin put it: "Rather than view negotiation as a tug of war in which each of two sides attempts to surrender as little of its aspirations as possible, the mutual gains approach regards negotiation as a puzzle to be solved" (Rubin J. Z., 1997, p. 7).

The optimum solution seems to be the negotiating judges' activeness inducing the parties to conclude an agreement and/or a skilful conduct of the parties themselves to an amicable dispute settlement. It is also possible to use a mediator's involvement by referring the case to mediation. Again, it should be emphasized that alternative dispute resolution methods, including negotiation and mediation, remain an optimal way of regulating civil conflicts. It is the ability to expose the possibility of dispute settlement and to reach a satisfactory result for both sides that is an extremely important determinant of modern dispute resolution. In the context of verbal action, the succinctness of oral pleadings, the elimination of repetition, and encouraging the parties to prepare written summaries before presenting their oral statements – are all to be welcomed.

Besides increasing the professionalism of litigation, modern dispute resolution primarily requires that the parties actively participate in proceedings. Concern regarding the quality of mutual communication seems to be especially desirable and expected, leading to an understanding and acceptance of often divergent positions and diametrically different processes. Communication based on good faith and openness guarantees mutual trust, which in turn makes it possible to find a way to resolve conflict and to reach an optimum agreement for resolving each dispute.

According to Robin Lakoff (Lakoff, 1977, pp. 79–106), Grice's aforementioned rule can be reduced to the principle of clarity in expression, to which also the Politeness Principle is added by Geoffrey N. Leech in his six Maxims of Tact, Generosity, Modesty, Approbation, Agreement, and Sympathy (Leech G. N., 1983). The assumptions of Negative and Positive Politeness presented by Penelope Brown and Steven Levinson were reformulated by J. Puzynina and A. Pajdzińska, considering them from the viewpoint of the sender and the recipient. The sender, according to the "no" principle, should not harm another person with words, should not lie or manipulate; they should avoid half-truths, flattery, demagogy and blackmail. The recipient must not avoid dialogue and must not take it with prejudice; at the same time they should be aware of the possibility of lying and manipulation and consider the potential bad intentions of the sender. The "yes"

principle tells the sender to speak so that the participants in the dialogue have a sense of security and acceptance; they should tell the truth, unless a lie or silence is justified with the good of others. The sender should also speak with the principles of correctness, and avoid snobbery because it can irritate a partner or even make their expression difficult to understand. It is a duty of the recipient to demonstrate good will and to seek understanding of an interlocutor's reasons. According to the authors, these are basic principles of the word ethics "related to the general (...) ideal of individual and collective good" (Puzynina, Pajdzińska, 1996, p. 42).

These are the same rules that allow including the issues in the context of pragmatic-communication problems; however, here the way in which expressions are used is mainly determined. The attitude of communicating participants becomes more important than the content of a message. It is about linguistic and communication behaviours – appropriate when they are in accordance with norms established by the community and inappropriate when they are not accepted by the community. For the participants of a communication act, the effectiveness of communication is an important (perhaps the most important) outcome. It is obvious that this does not always go hand in hand with appropriateness. Effectiveness joins appropriateness in the area of competence. It can be stated that communication competence is the ability to communicate effectively and appropriately (Morreale S. P., Spitzberg B. H., Barge J. K., 2007, p. 30). Language politeness is defined as a set of linguistic behaviors regulated simultaneously by language norms and social norms. This concept also includes language etiquette as a collection of regulated norms on politeness in different pragmatic situations (Marcjanik M., 1993, p. 271).

Attitudes of tolerance, dialogue, and cooperation in long-term perspective, and involvement and participation in amicable conflict resolution are undoubtedly important for building civil society and shaping a new legal culture (Wąsowska A., 2015, p. 90).

Conclusions

Contemporary conflicts and legal disputes are usually multi-faceted (especially in business-to-business relationships), dynamic, and generally oriented towards the future legal relationships of the proceedings' participants. The state judiciary, with its formalized procedures, overwhelming congestion and focus on making findings on past and current facts and law is not properly equipped to resolve complex conflicts that determine the future relations of the parties to legal relationships (Morawski L., 1993, p. 17).

The involvement and participation of the parties give them a real impact on the resolution of their disputes. Their active engagement implements their freedom to form legal relationships in mutual relations. At the same time, it limits the scope of automatic transfers of dispute resolution to state justice. The concept of strengthening civil society – influencing public affairs, becoming involved in local affairs and deciding on one's own issues – has become an important complementary factor to the popularization of alternative dispute resolution. The responsibility for our own affairs, the search for mutual understanding in the environment, and the real possibility of influencing solutions, including during dispute resolution, may become a genuine societal driver based on open communication.

The evolution of dispute resolution in line with the changing legal environment and the progress of citizens' legal culture also requires a change in the convictions and attitudes of all participants in the broadly-defined civil law movement including, primarily, eliminating the habit of automatically referring all disputes to court. It is advisable and desirable to change the mentality of legal services that favour judicial confrontation instead of amicable settlement and dispute resolution. Openness to communication, mutual understanding and acceptance are the new content of culture and the legal awareness of citizens. It is essential to create modern mutual relations between the parties to civil law relationships by using the benefits of amicable conflict settlement and dispute resolution.

If the parties to a dispute, and their legal representatives, place greater focus on using simple and clear language, whilst also maintaining openness in their communications and dialogue, this will generate a reciprocal, collaborative mentality and help to build, or restore, mutual trust. Finding amicable methods for resolving disputes represents not only an opportunity but also an obligation to reduce the delays and costs which seem inextricably associated with court proceedings. Despite the seemingly daunting prospects of that challenge, it is crucial to developing a lasting solution and defining mutual relations for the future.

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