The Status of Term in the Context of Law Writing

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The paper deals with the boundary between what is considered a term and that which is not a term any longer. It is argued that *term* and *non-term* represent overlapping, rather than distinct, categories. Structural features of an expression are viewed as one of the defining features of term. The paper is based on an analysis of authentic texts and it is set within comparative framework. The method used is onomasiological, i.e. the same (or similar) concept is compared in the light of the linguistic form it assumes in the two languages compared. The different way in which English and Slovak meet the same linguistic needs is commented on together with the implications for the terminology in the given register.

1   Introduction

The paper aims to investigate the concept of *termness* from the perspective of syntagmatic structures. While appreciating that in many cases the term status is only decided on by intuition (hence the ultimate incapacity to extract terms solely by computer), it tackles the problem of where the boundary between *term* and *non-term* is set. The hypothesis set forth is that we are dealing with overlapping categories rather than two discrete concepts. Two basic premises are operated with. First, terms, as opposed to non-terms, represent an active style-making means. Second, one of the defining features of terminology is that it enters certain structural (i.e. syntagmatic) paradigms, which means that terms are marked by their integration into a certain system. It is further believed that a comparative framework can shed more light on the problem. The analyzed examples are taken from the text documents made by a law published in 1998 *Data Protection Act (DPA)* and its Slovak counterpart *Zákon o ochrane údajov (ZOU)*, both based on a single EU directive (95/46/EC). The analysis covers approximately the first 2800 words of DPA and 1800 words of ZOU, based on conceptual overlap. It must be added that the analysis is not exhaustive and only serves to suggest certain points of departure.

2 Definitions of key terms and the methodology employed

An established term used in linguistics to cover all kinds of linguistic expressions is *naming unit* (cf. Mathesius 1975, Štekauer 2000). The term covers both *terms* and *non-terms*, which are in fact in a relation of hyponymy to the *naming unit.* Both terms and non-terms make up the *stylistics of the text* which is, together with Findra (1992: 154), understood as

> a matter of all the utilized expressive means, their interrelation, and thus their multidirectional semantic and stylistic modification which presupposes the style-making partnership of "active" and "passive" style-making means.

From the point of view of the legal texts under scrutiny, terms will fall under the *active style-making means,* while non-terms will realize the *passive style-making means.* It is argued, however, that **apart from 'partnership' we can also speak about overlap**.

  In fact, the exact definition of the word *term* is still under scrutiny (cf. Masár 1992). Traditionally, it was used to refer to the wordstock of science, which raises difficulties because law cannot be strictly defined as science, although Masár (1992) points out that a newer definition includes "other activities". As held by the Vienna terminological school, term is "a naming unit of concept... with a higher degree of accuracy or a specific content unknown in the common language" (Picht and Draskau 1985: 97 – quoted in Masár 1992: 277). In this context, Kořenský et al. (1999: 69) remark that:

> the border between conceptual and non-conceptual means in respect of content, i. e. from the point of view of which word or word group is, and which is not, a part of the conceptual system of legal science regarding terminology, is not easy to establish [translated from Czech by the author]

Kořenský et al. claim that legal term is an *ideal entity.* The fact that legal terms only assume their exact meaning with application consequently means that judges may introduce new legal terms. Such methodological attitude leads to understanding terminological naming units in legal texts as classes of possible legal terms or empty frameworks for introducing new definitions of legal terms (Kořenský et al. 1999: 124).

  Besides content, however, the form of terms, especially in relation to other terms, plays a significant role in their definition. Horecký et al. (1989) agree that a determining feature of a term is its integration into a certain system, which would in our case be the system with respect to law.

  The methodology used in the following paper is onomasiological, i.e. it proceeds from concept to its materialization in the linguistic form. Specifically, we will focus on the different way in which the English and Slovak texts meet the same (or similar) naming needs from the point of view of surface syntagmatic patterns; and to what degree can the individual renderings be classified as terms.

3 The syntagmatic structure of terms

The most immediate answer to the question of what makes us define certain texts as belonging to legal register is that it is the denotation of the naming units used as active style-making means: *súd/court, obžalovaný/accused, uzákoniť/enact.* All these, however, could also

be found in a book of fiction or a political report. There are two perspectives from which the said naming units are employed differently in legal register.

One is the pragmatic consideration, where legal terms are employed systematically in legal documents in order to fulfil a distinct function, i.e. "to regulate society by establishing obligations that must be fulfilled and by ensuring that rights are granted" (Thorne 1997: 327). This is tied to the concept of 'ideal entities' spoken about earlier, by way of which the precise definition of almost any legal term rests on its functioning in a specific social situation. This issue, however, exceeds the scope of the paper.

The other consideration is structural, i.e. text inherent, and it focuses on the relations between the terms effected by their structure by means of which they are integrated into a certain system. Findra (1992: 158) claims that "the stylistic classification of the wordstock [...] has a paradigmatic nature."

The paradigmatic relations on the level of the naming unit are relationships between the components of the same category, relationships between the components of one category to those of a subcategory or to individual ones, and relationships between the components of different categories (see Kačala 1989). The last type of relations will provide for the syntagmatic relations between the members of a multi-word naming unit or combination.

As we can see, the meaning of a naming unit is not limited to the designation of a referent. Kačala (1989: 77) defines the meaning of a naming unit (word) as:

> [...] a hierarchically ordered totality of the components of meaning of a different degree of generalization. This aspect of the meaning of the word is a result of the fact that the meaning of a word not only contains a referring component [...], but also a cognitive, or conceptual one referring to the integration of the meaning of the word in a linguistic system, i.e. the structural relation to other words of the same, or another hierarchic class. [translated from Slovak by the author]

This has significant implications for terminology. Applied lingistics proves the point:

> It would be of great help in terminology extraction if there were some features which would differentiate between terms and non-terms. One such feature could be the surface syntactic patterns of the candidate terms. (Arppe 1995: 4)

This statement is supported by empirical research, where certain structures are more likely to function as terms than others. For example, while double noun compound words consisting of two words have a 73 percent probability of being a term, simple nouns have only a 33 percent probability of being a term (Arppe 1995: 5). This in effect supports the view that **one of the defining features of term is its syntagmatic structure.**

4   The productive group forming patterns

When establishing the nature of a naming unit in terms of word categories, Mathesius (1975: 58) points to the discussion held by linguists and philosophers whether naming units denominate certain categories of our experience or particular syntactic functions. Although he did not take either of the extreme standpoints, he comes up with an observation that:

> The contribution of ontological categories to the classification of words is the most evident in nouns, whereas in the case of verbs the most significant factor in their classification is the syntactic function.

When used directly, verbs denote 'process' , whereas nouns denote 'product', which means we are dealing with an opposition *transient* vs. *permanent*. This means that nouns are inherently more suitable for the description of concepts (compare *to fail to act : failure to act*). In this connection, Kořenský et al. (1999: 70-73) illustrate on the example of the term *škoda* that

> As far as the hypothesis of possible deconceptualization related processes employed when the term *škoda* undergoes derivation [...] in the majority of cases, the noun *škoda* maintains its conceptual nature [...] "deconceptualization" would rather accompany derivation resulting in the change of word-class [...], or the verb *škodit*. [translated from Czech by the author]

A number of linguists stress that the category of noun is closely connected with terminology on account of being more **precise**:

> Nouns are the most specific with respect to meaning, the meaning of verbs, on the other hand, are more fluctual and evaporating, depending on words in context. (Filipec, Čermák 1985: 78) [translated from Czech by the author]

and stable:

> Verbs usually [...] do not stand for fixed terms, which is also due to their greater polysemic character. Internationalisms too enter our language in their nominal form. (Horecký et al. 1989: 254) [translated from Slovak by the author]

Mistrík (1997: 428) in this connection speaks about hypertrophy of substantives as opposed to atrophy of verbs expressing action in professional style. It is thus noun phrases (NPs) that occupy predominant position in terminology. This is justified by empirical research:

> As the bulk of terminology consists of NPs – 80-99% depending on the source – fishing for NPs as a starting point for term extraction can be considered a justifiable approach. (Arppe 1995: 1)

As regards legal texts which, by their function, predominantly describe processes, Masár (1992) notes that the ratio of verb terms in legal texts is higher than in other specialized registers. They are, however, still greatly outnumbered by nominal terms, with the most frequent suffix being significantly the suffix employed to form nomina actionis, i.e. *-ing / -ion* in English and *-nie / -ova-nie* in Slovak. It follows from the above that nominal expressions shall be at the centre of any terminological research into the area. Kořenský et al. (1999: 75) arrive at a similar conclusion when establishing their methodology of research:

> legal texts are characterized by high incidence of nominal constructions, whose natural components are also deverbal nouns, nomina actionis and infinitives [translated from Czech by the author]

A research into types of attribution in the analyzed texts has revealed the following facts:

Table 1 Types of syntagmas

Type of syntagma	ZOU %	DPA %
Non-verbal*	88	66
Verbal**	12	34

*   attribution containing no verbal element includes verbal premodifying adjective or noun in an adjectival position, premodifying possessive case, postmodifying adjective, postmodifying genitival noun phrase – in English mediated by the preposition of, postmodifying prepositional construction (other than of), postmodifying adverbial construction

** attribution containing a verbal element includes passive participle, active participle, infinitive, finite subordinate clause

Although a significant number of the above NPs are clearly non-terms, it is still significant that in the given context, English is as many as (almost) three times more likely to use clausal modification than Slovak. The English text thus employs a more explicit mode of expression (which is supported by the premodification (more implicit) / postmodification (more explicit) ratio as well – see table 2).

Table 2 Type of branching

Type of branching	ZOU %	DPA %
premodification	38	22
postmodification	62	78

Indeed, it is this disproportion of the frequencies of use of individual structural patterns that is in the background of the examples analyzed below. With respect to the issue of termness, however, the results of term extraction from general professional (i.e. non-legal) texts do not even make reference to a pattern that would include a verbal element in postmodification subsuming it under the category of 'others' taking 5% to 6% of all examples. It follows that even if the argument is strong enough to label the constructions with a verbal element in postmodification as terms, they would still represent a marginal category in respect of general texts and would be marked for style.

     Let us now treat some of the examples found by the onomasiological method, where we can see the different way in which the two texts meet the same (or similar) naming needs. Even if the English expressions cannot be strictly defined as terms (e.g. they would be considered deconceptualized in Kořenský's sense as suggested above), it can be stated that they function as terms on the basis of two features: they denote a clearly defined concept (just like their terminological Slovak counterparts) and exhibit repeated patterns (most markedly the *such ... as ...* construction – see example [2] below).

> [1]   *(information as to) ... whether he is a member of a trade union*
>   *(oznámiť) ... členstvo v odboroch*

Here the English finite subordinate clause (*whether he is ...*), which is considered among the most explicit modes of denomination, is matched by the Slovak suffix (*-stvo*), which is on the opposite side of the spectrum.

[2]   *such data as may be required*
      požadované údaje

Here what in English is denominated by a clause where modality is expressed is semantically equivalent to a modifying adjective in Slovak. The construction *such ... as ...* in English may be said to have become fossilized with respect to the register.

[3]   *the recipients or classes of recipients to whom they are or may be disclosed*
      predpokladaný okruh užívateľov

It is both coordination and attribution by a finite subordinate clause that engrave a more concrete character on the English expression, the equivalent of *predpokladaný* being *to whom they are or may be disclosed*, and *okruh užívateľov* matched by *the recipients or classes of recipients*. Again, modality is highlighted. A similar example is represented by a structural correlate:

[4]   *the category or categories of data subjects to which they relate*
      okruh dotknutých osôb

where again attribution by a subordinate clause in English is matched by attribution by an adjective in Slovak. Moreover, the English expression *the category or categories* is of more concrete character than Slovak *okruh*.

[5]   *a description of a purpose or purposes for which the data are being or are to be processed*
      účel spracúvania osobných údajov

Similarly to the example above, where it is sufficient in Slovak to use denomination by the abstract word *účel*, English resorts to a more complex description, i.e. *a description of a purpose or purposes*. Moreover, while the Slovak *spracúvanie* is neutral regarding time reference, the English expression is specific in that respect: *are being or are to be processed*, and, as a result, a subordinate clause is used.

[6]   *a description of any recipient or recipients to whom the data controller intends or may wish to disclose the data*
      predpokladaný okruh užívateľov

Apart from the correspondence of similar structures as described above, the correspondence between *intends or may wish* and *predpokladaný,* which refer to the same extra-linguistic reality, is noted. Where English employs finite verb structures where, again, both modality and time reference are made explicit, Slovak uses attribution by a premodifying adjective. The example is also revealing from the point of view of participant roles (the *data controller* being explicitly agentive) while implicit in the Slovak version. Even more revealing in terms of semantic relationships is example [7]:

[7]   *must be accompanied by such a fee as may be prescribed **by fees regulations***
      *podlieha spoplatneniu **podľa osobitného predpisu***

where what is an agent in English is correlated by the Slovak adjunct denoting manner. The last example serves to illustrate the degree to which coordination is used in English in the given context.

> [8] *the names or a description of any countries or territories outside the EEA to which the data controller directly or indirectly transfers, or intends or may wish to transfer the data*
> *názvy cieľových krajín a právny základ cezhraničného toku osobných údajov, ak sa predpokladá ich cezhraničný tok*

While in Slovak coordination is restricted to the head of NP, it spreads over most postmodifying elements in English. In fact, coordination is one of the factors that determine the choice of postmodification over premodification (compare *cezhraničný* and *of any countries and territories outside the EEA*). Meticulous description of possible modality relations by use of coordination motivates the use of finite subordinate clause typically in the position of postmodification (as the other examples above illustrate as well). In Slovak, the putative nature of cross-border flow is expressed by an agentless conditional clause which is probably given by the fact that *predpokladaný* as a premodifying adjective would connote a permanent quality, while contingency is underlined by the particular clause type, i.e. conditional clause (rather than a more implicit structure). However, Slovak, compared to English, is still very reticent about focusing on modality. This can be illustrated by the functional sentence perspective in the dependent clause, where rhematic position is occupied by *cezhraničný tok,* even though it is, unlike *predpokladá sa*, known information. The principles of communicative dynamism would require a structure like *ak sa ich cezhraničný tok predpokladá.* The looser syntactic link between the adverbial clause and the adjective *cezhraničný* to which it semantically refers is also due to the fact that attributive adjectives cannot be readily postmodified by a clause; thus, in the English example, the preference of postmodification over premodification invites the use of yet another postmodifying structure.

5   Conclusion

As regards the English text, the two linguistic tools employed most forcefully to trigger the explicit character of expression seem to be coordination, together with expressed modality. In many cases, Slovak would hardly tolerate such a degree of explicitness, especially with regard to coordination, e.g. *charakteristika účelu alebo účelov* instead of *účel*, not to mention the shades of meaning regarding time reference and modality (the two are interconnected, though) as seen above. It follows that the Slovak expressions are more condensed. For an explanation, we could make recourse to history – mounting of synonyms has its roots in the multiple lexical layers finding their way into English. For example, in The Proclamation of Henry VIII (1530) (Hladký 1994: 180,181), Germanic words like *fall* and *do* stand parallel to their Roman matches *incur* and *commyt*. In this context, Thorne (1997: 328) notes: "Synonyms are common, reflecting the influence of both French and Latin on legal language and the need to be all-inclusive." Complementary explanation has to be sought in the more concrete character of the English common law as opposed to continental law:

> English legal rule is less general than legal rule in the Continental system of law. Consequently, the concrete and largely casuistic character of English legal rules disallows codification of Continental type. (Štefanovič 1992: 44) [translated from Slovak by the author]

This, in turn, affects terminology, especially its structural patterns. Following the results of an onomasiological research into interlingual equivalents, we might call applied linguistics (creation of terminological databases) to evidence the term status of some of the given English examples. Still, leaving the issue of termness aside, to provide for transferring both

the denotative and connotative meaning, translation seeking functional equivalence has to be sensitive to prevailing structural patterns. One way or another, **the boundary between terms and non-terms, or active and passive style-making means, is effectively shaken. There are grounds to believe that we are dealing with overlapping categories**, and the exact point on which terms dissolve into non-terms cannot be clearly determined. Therefore any definition of term with regard to legal register should reflect this fact.

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