

Plan Overview

A Data Management Plan created using DMPTool

Title: The communicativeness of legal and regulatory language and the protection of consumer rights.

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Project abstract:

SHORT DESCRIPTION

1) Scientific goal of the project

Much has been written about the need for legal consumer protection, and in fact has been written about it for centuries (i.e. since Roman times). What is more, every revision of the law stirs up new discussions on the subject, not only among lawyers, but also among consumers (consumer organisations) and businesses themselves. A theoretical legal assessment of the appropriateness of the adopted legal solutions - although indisputably necessary - is, however, not sufficient for a real concern for consumer rights. Equally necessary seems to be an assessment of "law in action" and an answer to the question of how consumer protection law is actually used and applied in real situations? This general question, in the case of the proposed research, boils down to an analysis of practices and standards relating to the implementation of information obligations towards consumers, the correct fulfilment of which will often enable or facilitate the exercise of the consumer's right. It is not a question of fulfilling the information obligation as such, but of the communicativeness (comprehensibility) of the information clauses (the information provided) and their form. Failure to understand, or inadequate or incomplete understanding of the content of information clauses may lead to a significant restriction of consumers' ability to exercise their rights, although at the same time the information obligation is formally fulfilled. By way of example, if the consumer does not understand what the concept of out-of-court

dispute resolution actually means, he will not exercise this right and it will therefore be illusory. This is because only a small part of the population (consumers) will have knowledge of this right directly from the law.

Moreover, even the nowadays common requirement that the information obligation should be fulfilled in an understandable way using clear and simple language does not necessarily mean that the level of communication of the information clauses will be adequate and sufficient for the consumer to actually obtain information about his/her rights:

I. Related to the level of linguistic competence of the addressees of the norms, understood as the ability to perceive the legal language stipulating the information obligation

II. Consumer-related

1. Strong differentiation of consumers' linguistic competence, i.e. by criterion:

(a) age: minors and adults

(b) disability: persons with severe, moderate or mild disability

(c) level of education: persons with primary, secondary or higher education

a) Strong differentiation in the form in which the information obligation can be fulfilled, i.e. e.g:

b) orally

c) in writing

d) in another form, including electronically

2. Strong variation in the way the information obligation is implemented in the digital world. It seems particularly important to pay attention to practices that differentiate the implementation of the information obligation as to: a) place and time

b) layer approach or not

The number of variables (factual circumstances) indicated above, the number of possible combinations of them, justifies the following main research question: does, and if so, to what extent does the practice of fulfilling information obligations towards consumers correspond to the actual purpose for which these obligations are to be fulfilled?

The following intermediate research objectives will serve to answer the above research question:

1. Identification and selection of the legal texts setting out the information obligations to be fulfilled vis-à-vis consumers, taking into account the criterion of practical relevance

2. Identify the criteria that legal language (i.e. legislation) and legal language (information clause) must meet to be considered communicative (understandable)
3. Study of the communicability of legal language (selected legal acts)
4. Examination of the communicative capacity of information clauses in relation to different categories of consumers, taking into account the criterion of their linguistic competence: minors and adults, people with different degrees of disability and different levels of education
5. Identify and develop a set of guidelines, good practices for fulfilling information obligations to consumers

2) Significance of the project

Referring to the state of the art and the body of science to date in the context of the proposed research, two important considerations must be pointed out, namely:

- the prevalence of work (research) on consumer legal protection (Google Scholar for the keyword "consumer rights" offers more than 28 000 search results)
- the niche of the work (research) on the communicability of legal language or legal language itself (in abstracto)

In the author's opinion, it is not possible to juxtapose the conclusions of the above-mentioned research in such a way that they would jointly provide an answer to the question posed above, for the reason that research into the communicability of a specific legal act and a specific legal language must be carried out individually. Hence, the research carried out earlier can only serve as a prelude to the research referred to in this proposal. For this reason, it must be recognised that the planned research will be of an innovative nature, as it will touch upon a problem not yet investigated by academics. For the development of the law, including consumer law, it will constitute an added value, as its conclusions may be translated into the application of the law in practice and better protection of consumers. What is more, if the conclusions of the proposed studies prove useful and the methodology itself accurate, this may provide an impetus for replicating this type of research in the future as those that produce the expected results.

3) Concept and work plan

The project will be carried out within a new research team to be established at the Institute of Legal Studies of the University of Opole, i.e. a Principal Investigator (PI) and one co-researcher with competence in linguistics (scholarship grantee). The project will consist of five work packages (WPs) corresponding to the ROs identified in Part 2 of the project description.

Work Package 1: In a first step, the work will focus on the identification and selection of the legal acts that

constitute information obligations to be met by consumers. The multitude of legal acts and the fundamental diversity of their material scope make it necessary to make a preliminary selection. The author will therefore review the existing legislation and identify those acts whose scope of application potentially affects a larger number of consumers.

Work Package 2: Identifying and defining the conditions that legal language and legal language must meet in order to be considered communicative (understandable) is essential for the development of criteria for assessing the communicativeness of the law as well as for assessing the communicativeness of the information clauses themselves, and thus the criteria on which the response to RO3 and RO4 will depend.

An indication as to what criteria a legal text and a legal text should meet in order to be given the value of communicability (comprehensibility) only seemingly does not require further analysis. However, the communicativeness (comprehensibility) of an utterance cannot be considered in isolation from the subject matter it concerns and the purpose it serves. What is more, in the case of the proposed research, the criteria of the communicativeness (comprehensibility) of the text of the information clause should be indicated for each of the above-described groups of consumers: i.e. by age, disability, if any, and level of education. This excludes the possibility to use studies by academics on general criteria of the communicability (comprehensibility) of legal and legal texts, and requires an analysis in concreto in relation to the subject of the proposed research.

At this stage of the work, the author considers it necessary to cooperate with a researcher-linguist who is competent to select appropriate criteria for assessing the intelligibility of legal and juridical texts. The author does not have the relevant expertise in this area and does not have the experience to carry out such an assessment on her own.

Work Package 3: In this phase of the project, the research team will carry out a study of the communicability of legal language, more specifically of the legal acts selected in Work Package 1.

In order to achieve her goal, the author intends to use the concept of plain legal language, the essence of which boils down to the preparation of a document that will be clear, with legal precision and reliability, and will be understandable to a motivated recipient [[Natalia Zych, *Uproszczenie ustawy o prawach konsumenta. Plain legal language a język prawny*, *Oblicza komunikacji* 11/2019, s. 47]. This type of research method has already been used by Natalia Zych, who in her work , 'Simplifying the Consumer Rights Act. Plain legal language vs. legal language' implemented selected plain language techniques into the Consumer Rights Act of 30 May 2014, which is in force in Poland, and then the act, restructured in the spirit of plain legal language, was subjected to evaluation by lawyers and audiences who do not have a legal background. Assessing the aforementioned study by Natalia Zych as valuable and capable of achieving its objective, thus making use of already proven solutions, the Author intends to present to the group of respondents a compilation of the relevant excerpts of the legal acts selected as part of Work Package 1 in their original and reconstructed versions using an auditorium questionnaire that was handed out for self-completion to a group of people gathered in one place. In the case of lawyers (i.e. those who have obtained a master's degree), this will be a group of trainee solicitors/ barristers who will be asked to complete the questionnaire as part of a class. As for the group of non-lawyer respondents, the survey will be carried out with the support of one of Opole's business organisations or another institutionalised organisation, e.g. a start-up organisation, which also operates in the city of Opole.

Of course, it should be noted that the legal text in the form of the Consumer Rights Act will be excluded from

this study, due to the fact that a study in this area has already been carried out and its conclusions can be used effectively within the framework of the planned research.

This stage of the work also assumes the participation of a researcher-linguist who is competent to redraft the legal act under the assumptions flowing from the concept of plain language, so that a further study (comparison) of the original and redrafted text is possible.

Work Package 4: Investigating the communicative capacity of information clauses in relation to different categories of consumers, taking into account the criterion of their communicative capacity: minors and adults, people with different degrees of disability and different levels of education will be the aim of Work Package 4. The planned study will be carried out using digital tools for analysing textual data, language corpora. A number of tools (software) are widely available to analyse texts (both legal and juridical) for their communicability (i.e. AntConc, Literary Machine Explorer LEM or Corpusomat, for example). At this stage of the work, it will be up to linguist researcher to select the tools (software) which, due to their functionality, will be the most appropriate for conducting the planned research.

However, the author also intends to use the paid software SketchEngine, which has much more advanced functionality than the freeware. The advantage of using both freeware and paid software, on the other hand, is that it gives the opportunity to confidently collate information from the various tools, possibly complementing each other's data conclusions, etc.

At the same time, the author would like to emphasise that there is valuable literature on the use of linguistics for legal interpretation, i.e., for example, the work of Terrence R. Carney , 'Linguistics for legal interpretation' [UJ Press; 1st edition, July 24, 2023], which will serve as a reference source for how to conduct the research in this Work Package.

Work package 5: Assessments of the communicative or non-communicative character of a legal text and a legal text cannot be left "on their own", as it cannot hypothetically be excluded that the juxtaposition of these assessments will further create the conditions for the formulation of de lege ferenda conclusions or recommendations, guidelines. Thus, if it is concluded that there is any correlation between the communicability of legal language and the communicability of legal language, it will be necessary to assess what this correlation is. For example, if it is established that the reason for the lack of communicativeness of the information clause is the lack of communicativeness of the provisions of a particular legal regulation, the research undertaken in this panel will aim to develop de lege ferenda postulates with respect to the content of these provisions, which may further serve the formulation of a communicative (comprehensible) information clause. On the other hand, if it is determined that the reason for the lack of communicativeness of an information clause does not have its source in the law itself, then the aim of this panel will be to try to determine what is the reason for the lack of communicativeness of an information clause and to develop recommendations, guidelines in this regard.

In relation to the research planned in this way, the author sees a fundamental risk, namely that it may prove problematic in practice to carry out a study of the communicativeness of legal language according to the concept of plain language, and precisely to reach that group of respondents who are defined as non-lawyers. This requires not only establishing contact with an appropriate organisation enabling mass mailing of questionnaires, but also arranging for the respondents to fill them in and then send them back. Anticipating such a risk, the author will, when necessary, request that students of faculties other than law, especially those

majoring in business services, management (or similar), who may in the future be addressees of legal norms creating information obligations, be allowed to participate in the survey.

4) Research methodology

The planned research will be carried out using various research methods, however, taking into account the criterion of their possible joint application. The author agrees with K. Opalek's statements that the necessity to use various research methods in jurisprudence is determined by the fact that the name "law" denotes various objects altogether: legal texts, legal experiences, legal behaviour and legal values [K. Opalek, *Przedmiot prawoznawstwa a problem tzw. płaszczyzn prawa*, „Państwo i Prawo” 1969, nr 6, s. 985, cyt. za: Wioletta Jedlecka, *O metodzie socjologicznej w badaniu prawa*” [in:] *Wrocławskie Studia Erazmiańskie*, 2014, 8, s.182].

Chronologically, the first method will be the dogmatic one, which in essence will boil down to a review and analysis of legal acts in order to select those which will later be subject to examination. However, it must be stressed that this method will find its application appropriate throughout the project cycle, as is clear from its characteristics, which were perfectly summarised by F. Longchamps in the following words: "a thought activity that, by interpreting statutory texts, conceptualising, ordering, removing contradictions and filling in so-called gaps in the law - seeks an answer to the question *quid iuris*? How is it according to the law, what does the law say, what is the content of the legal order in its general principles and detailed solutions" [F. Longchamps, *Z problemów poznania prawa*, Wrocław 1968, s. 8].

Being aware of certain shortcomings of the dogmatic method, which in the literature on the subject is sometimes described as "soulless", due to the interpretation of norms from regulations on the basis of formalized procedures, without a vision of the goal [Z. Ziemiński, *Problemy podstawowe prawoznawstwa*, Warszawa 1980, s. 24], and also taking into account the goal of the planned research, the author also intends to use the "law in action" method, so as not to lose sight of the need to answer the question "how is it" or "how should it be in practice"?

The use of the sociological method will also serve to broaden the research perspective. It should be noted that sociology is the scientific discipline whose subject matter most closely overlaps with legal studies. It is about - as the doctrine rightly points out - "issues related to human behaviour regulated by legal norms. The rapprochement of the problems of law and sociology is related to the departure from formalism in jurisprudence and from the narrowing of research in this field only to the analysis of legal texts, and, on the contrary, to the expansion of the research perspective also to the issue of social genesis and social" [Wioletta Jedlecka, *O metodzie socjologicznej w badaniu prawa*” [w:] *Wrocławskie Studia Erazmiańskie*, 2014, 8, s. 181-182]. This method will be used to examine the degree of compliance of the behaviour of the addressees of legal norms with the patterns set out in these legal acts, i.e. to examine whether the information obligations are fulfilled in the manner provided for in the individual legal acts, taking into account the requirements of comprehensibility, etc. As it is rightly noted in the literature on the subject, "there may, after all, be situations when, despite the adherence of the addressees of a norm to the patterns of conduct contained therein, the legislator has not achieved the goals for the implementation of which the norm was issued" [Wioletta Jedlecka, *O metodzie socjologicznej w badaniu prawa*” [w:] *Wrocławskie Studia Erazmiańskie*, 2014, 8, s.182]. This method, in the

case of the planned research, will be used to conduct surveys of the communicability of legal language by lawyers and nonlawyers.

An obvious consequence of the planned research is also the use of the empirical method, the essence of which boils down to the fact that the researcher , "moves in the area of claims formulated in synthetic language (at least in the sense of assumptions) as to the theory built on the basis of the research obtained" [Artur Kotowski, Podstawowe założenia badań empirycznych w prawoznawstwie – próba konfrontacji, Studia Prawnicze, Zeszyt 2 (210), 2017, s. 110].

In terms of equipment and apparatus, as mentioned earlier, tools (software) for the study of language corpora will be used.

5) Project literature

1. Carney Terrence R., Linguistics for legal interpretation, 1st edition, July 24, 2023
2. Choduń Agnieszka, Postulat jasności prawa. Plain language czy praca edukacyjna, „Krytyka Prawa”, tom 10, nr 3/2018, s. 229
3. Jedlecka Wioletta, O metodzie socjologicznej w badaniu prawa” [in:] Wrocławskie Studia Erazmiańskie, 2014, 8, s.182
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7. Ziemiński Zygmunt, Problemy podstawowe prawoznawstwa, Warszawa 1980, s. 24
8. Zych Natalia, Uproszczenie ustawy o prawach konsumenta. Plain legal language a język prawny, Oblicza komunikacji 11/2019, s. 47

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The communicativeness of legal and regulatory language and the protection of consumer rights.

The communicativeness of legal and regulatory language

Created by a survey and by computer software

Number of participants in the survey

It does not foresee ethical issues

Taking account of copyright

In electronic version

create backups

encrypt files

survey results

removing them when they are no longer useful

I will not share data

no

Principal Investigator

software
