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PLAIN LANGUAGE FOR LEGAL ENGLISH: ACHIEVEMENTS AND PROSPECTS

Summary. The article concentrates on the study of the results, potentials and prospects of plain language movement for the English language of law, the concept that emerged in the 70s of the past century. Since that time, the possibility to communicate legal issues, which initially caused debate has been confirmed by many positive examples including legislative acts of a number of English speaking countries. Furthermore, a number of countries have adopted normative acts obligating relevant state bodies and economic operators to use methods of clear communication in the documents addressed to consumers of legal services.

The traits of English legal language that are generally recognized as obstacles on the way of clear communication have been noted and analyzed although it has been emphasized that clear legal communication depends on much more than eradicating jargon and normally means rethinking the entire document–its content, language, structure, and design–focusing on the audience and the purpose of the communication.

It has been noted that what started as a quasi-political, society-changing movement is currently changing and, to a large extent, has already changed its character since many of the people advocating the cause make their living from their plain language activities. As a result, what used to be a linguistic concept has become a product, a business, an industry, or a professional service and requires specially trained people, the mere fact meaning that the majority of lawyers still keep to traditional style of expressing legal issues.

The change of the attitude to plain legal writing, however, has brought changes to the legal education, which may eventually result in wider adoption of clearer ways of legal discourse and doing away with the most notorious traits of legalese.

The issue of the necessity of such transformations for all styles of legal writing, however, remains unsolved. Plain language for the documents directed at the people outside the legal profession has been generally accepted whereas it appears unreasonable to radically change the style of the documents directed at professionals. Professional jargons, legalese being not an exception, perform various functions including facilitation of professional communication and one could hardly demand its total prohibition.

The article has special relevance and practical importance for linguistic education of Ukrainian lawyers and organization of international legal communication since English appeared to be a valuable tool in the process of harmonization of Ukrainian and European legislation. In addition to giving access to rich legal heritage of English speaking countries, both in Europe and far beyond its borders, it has become the primary language of communication within EU official and public institutions as well as judicial bodies, the *lingua franca* for international scientific events and publications. Moreover, there are indicators showing the emergence of a new regional variant of the English language – European English, which attaches special relevance to the study of all important trends and developments in Legal English.

Key words: legal English, professional jargon, clear language, Plain language movement, law French.

On the eve of gaining independence, Ukraine chose the avenue of European integration; although the steps made were at times inconsistent, the main direction has been preserved. One of the major challenges on this path has been what is generally referred to as "harmonization of Ukrainian and European legislation", the process far more complex than automatic copying of European legal rules requiring thorough study not only of effective substantive and procedural rules, but also of the underlying ideology, philosophy, legal doctrines and history of law of particular European countries and the European Union in general.

English appeared to be a valuable tool in resolving this task; in addition to giving access to rich legal heritage of English speaking countries, both in Europe and far beyond its borders, it has become the primary language of communication within EU official and public institutions as well as judicial bodies, the *lingua franca* for international scientific events and publications. Moreover, there are indicators showing the emergence of a new regional variant of the English language – European English (a.k.a. Euro-English or *Eurish*) [1].

Importantly, during long centuries of its evolution, law in English speaking countries, notably Great Britain, the USA, Canada and Australia, has developed a distinct professional jargon, frequently referred to as legal English or Legalese, which is notorious for being at times incomprehensible even for native speakers. This language is the *de facto* medium of professional discourse for lawyers from different European countries including Ukraine. The ability to properly use this professional language is,

therefore, critical both for the Ukrainian lawyers who wish to share the common tongue with their European colleagues and translators specializing in legal translations.

Plain language movement gained momentum about four decades ago and almost immediately initiated important changes within the English language of law; the need to deeply understand this impact's results, potentials and prospects attaches **relevance** to this article. The movement itself was the reaction to rigidity of the language of law and conservatism of its certain elements, which eventually piled up to the extent blocking comprehension for the people outside (and sometimes inside) the legal profession.

The **problems** in the focus of this study's attention include the elements of Legal English that prevent its clear understanding, the methods for correction thereof propounded by the plain language movement, achievements and obstacles on the way to plain language in legal discourse, the principle possibility to clearly communicate professional issues to lay people.

The article **aims** at achievement of understanding of the ongoing processes in the modern English language of law in order to practically implement the relevant findings in linguistic training of Ukrainian layers thus providing them with the most relevant tool for communication with their European colleagues.

Unlike many professional languages of law, English legal language has experienced a remarkable continuity following the path of evolution rather than that of revolution. Dramatic political, economic and social changes that occurred in many countries notably in the late 19th and during the 20th centuries resulted in revolutionary, often conceptual changes in these countries' legislation including the methods of representation thereof, in particular through the use of more modern variants of the relevant languages, which additionally expressed the idea of breaking with outdated rules and norms. This was particularly the case with the Ukrainian legal language, which was extensively modernized following the 1917 revolution that proclaimed the objective of eliminating the traces of the past from all spheres of social relations.

In addition, law in most of English speaking countries follows the case law tradition, which ideologically maintains closer ties with historical tradition through legal precedents, to a certain extent finding legitimacy and justification therein. In the 70s of the previous century, the concentration of outdated, obscure elements in the legal prose became critical turning obvious both to the people outside and inside the profession. Although the rise of interest in plain writing dates back to the 18th–19th century (some researchers even quote Cicero), this concept for legal English has not been clearly formulated until the 1970s in the works by Melinkoff (Language of the Law, 1963) [2] and further popularized by R. Wydick in Plain English for Lawyers, 1979 [3]. Three basic requirement for legal writing were formulated: it should "be clear, concise, and engaging" [4]. Simultaneously, the characteristics of legal English, which obviously prevented from achieving this goal were found. Williams C. summarized them as follows:

– archaic and Latin expressions;
– unnecessary words;
– the text cannot be understood by someone "of average intelligence";
– "purposive" clause at the start of the text;
– the use of the passive;
– nominalization;
– "shall" meaning must;
– the text is not gender-neutral [5].

The first point should also include Old French, which may present even more difficulties for comprehension by the target audience.

The calls for the legal language's simplification almost immediately found strong support both in academia and, although to a smaller extent, among practitioners. Thus, one of the prominent proponents of the legal language simplification, Wydick claims:

"We use eight words to say what could be said in two. We use old, arcane phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to be cautious, we become verbose" [3].

Haigh supports plain legal writing claiming that "writing of all kinds should be as easy to understand as possible." [6] Importantly, the above mentioned arguments found support on the official level; for example, Law Reform Commission of Victoria, stated that many legal documents are unnecessarily "lengthy, overwritten, self-conscious and repetitious". In addition, the legal documents of this kind "…use confusing tautologies, such as let, allow, and permit and use archaic phrases such as "this indenture witnesseth" and "know all men by these presents" as well as foreign words and phrases, such as "*res ipsa loquitur*", "*ratio decidendi*", "*ab initio*" and "*inter alia*" even when English equivalents are readily available thus being unintelligible to the ordinary reader, and barely intelligible to many lawyers. To this, lengthy sentences, which are frequently poorly structured and poorly designed and suffer from elaborate and often unnecessary cross-referencing should be added [7].

Initially, the movement met strong opposition. Driedger insists that, "every word in a statute is intended to have a definite purpose and no unnecessary words are intentionally used. Anyone who wishes to understand a statute must be willing to spend a little time with it, reading it through, slowly and carefully, from beginning to end, and then re-reading it several times …an ordinary reader must simply accept the fact that he will be not able to grasp the full implications of a bill, as it is a serious document meant to be precise, not to be read like the morning newspaper" [8, p. 12].

Neumann (2001) emphasizes the importance of the form of legal language, which he believes to be a "delicate matter and … a balance not to be disturbed" [8, p. 12]. A frequent counterargument to plain language is that complex ideas require a complex language of expression. Even proponents of plain language agree that the tasks facing lawyers are often part of the problem.

"They must do full justice to the complexity of their subject matter, no matter how torturous or ambiguous it is. Then they must transform all that complexity into a prose so lucid, so crisp and direct, that it will satisfy readers who demand absolute clarity when – in fact, especially when – the subject is most obscure" [4].

The debate, therefore, concentrated on the possibility to express clearly and precisely legal issues avoiding legalese. The proponents of the plain language seem to be winning the debate since the possibility for a document to be on the one hand, clear and reader-friendly and accurate, certain, and precise, on the other hand, has been recognized within the legal profession in most English speaking countries. Moreover, the movement has achieved noticeable success in many directions, e.g.

– In Great Britain two legislative events should be mentioned: the new rules for civil procedure, which greatly simplify the language used in court proceedings and a project to rewrite the UK's tax laws [7].
– In the US, plain language had a major win in 1998, when the United States Securities Exchange Commission implemented regulations that required certain parts of prospectuses aimed

at retail investors to be in plain language. Further, President Clinton's Memorandum on Plain Language of June 1 1998 directing all Executive Departments and Agencies to use plain language is considered a red-letter day for plain language movement everywhere [7]. Furthermore, plain language has been recognized as a necessity at law schools, which offer a legal writing subject that focuses on clear communication.

– In Canada, the federal Department of Finance, the Office of the Alberta Auditor General, the Canadian Securities Administration, the Canadian Bankers' Association the British Columbia Securities Commission are all pushing for plain language [7].

– South Africa has demonstrated a number of interesting examples of drafting legislation in plain language including Labour Relations Act 1995, competition legislation and South Africa's new Constitution.

– Similarly, the European Union is concerned with the plain language issues. For example, the Commission of the European Communities requires the Community legislation be "…worded clearly, consistently and unambiguously … so that it will be easier to understand … [7]." The same goal is provided for in the Interinstitutional Agreement of 22 December 1998 on Common Guidelines for the Quality of Drafting of Community Legislation (20), which, according to it, should be "readily understandable by the public and economic operators".

– The relevance of the issue and the interest in it among lawyers is evidenced by the publication of the legal journal "The Clarity", which regularly presents the social and economic benefits of plain language.

– C. Balmford, however, sees Australia as the site of the most interesting developments in this sphere. It is there, according to him, that law firms see "plain language as an opportunity to provide a new service for clients" rather than developing plain language expertise in response to regulatory demand which is common in other English speaking countries. (For example, major commercial law firms in the US are equipping themselves to write documents that meet the plain language requirements of the SEC regulations) [7].

– "Several major law firms in Australia are committed to plain language. They have rewritten their precedents in plain language and have trained their lawyers in plain language skills. These firms see the clarity of their writing as a distinguishing feature of their business–something that gives them an edge, something that benefits their clients. Some of these firms go further than that. They provide plain language rewriting services" [7].

Christopher Balmford, a lawyer and a recognized plain language advocate makes a number of observations that appear especially relevant since he views the situation from inside the plain language movement. According to him, what started as a quasi-political, society-changing movement is currently changing and, to a large extent, has already changed its character since many of the people advocating the cause make their living from their plain language activities, which "sometimes creates a mild conflict of interest" [7] and "many commercial organizations use plain language as a distinguishing feature, or provide plain language related services" [7]. In his opinion, what started as theoretical and educational concept has developed "to become a product, a business, an industry, or a professional service" [7], since a certain number of people make their living from participating in plain language projects, e.g. in the field of legal education where plain language is actively taught; rewriting documents for paying clients; consulting law firms, businesses and government bodies in plain language issues, etc.

On the onset of the plain language movement, a number of basic questions were formulated:

– Is it possible to write (and speak) about legal matters in the manner that would be easily understood by lay citizens?

– What elements of legal English should be changed to achieve this goal?

– Will a plain language text fully correspond to its legalese equivalent?

As it has been already mentioned, the first question has received the positive answer since many legal documents acquired a clear and effective form. The absolute majority of them, however, are explicitly aimed at the people outside legal profession making plain language movement an off-spring of consumer rights movement. The issue, however, seems to be overgeneralized; the question should be put more specifically, whether all legal genres can (or should) be rendered in plain language. Where the target audience are consumers of legal services, it appears practical, useful and fair. "Initially, the plain language movement focused on the social benefits of clear legal communication: improving access to justice, and enabling consumers to make more informed decisions" [9].

Much of legal writing is directed, however, at professionals and concern complex legal issues, e.g. research into historical aspect or interpretation of legal phenomena, which in any case requires substantial knowledge and could hardly be perceived by the people lacking thorough legal training. Historical study, for instance, would inevitably include much Latin and Law French. The latter was the language of English law for over three centuries and substitution of Latin and French would require tremendous efforts creating much confusion. In these types of texts, old language, Latin and French terms with precise historical meaning are an obligatory part of the narration and availability of citations of historical documents and authorities could make sudden switch to simplified language seem artificial and confusing.

C. Balmford, however, insists that "even judges prefer plain language" citing as an examples the surveys in Michigan, Florida, and Louisiana where over 80 per cent of judges gave preference to the plain language version of the document in comparison to its traditional counterpart. Another survey in California yielded similar result; ten Californian appellate judges referred to the traditional versions as "substantially weaker and less persuasive than the plain language versions" [7]. Yet in another example, he mentions the US law firm that developed a prospectus in which shares were to be offered to retail investors and which was drafted in plain language; but as soon as the policy changed and the target audience became institutional investors, the lawyers rewrote the plain language document back into legalese. This decision is not so surprising as it seems to be – they preferred addressing the audience using the common language. Thus, the target audience governs the style.

It is worth mentioning, however, that drafting legal documents in plain language in many cases requires the service of specially trained people; in fact, re-writing legal documents has become a business making the ability to communicate in plain language an additional competence for a lawyer and a valuable tool in business competition. However, the mere necessity to employ specially trained people for clear communication implies that the majority of lawyers still keep to professional jargon. Hence is the question why the greater part of the representatives of legal profession stick to

traditional way of writing and speaking despite positive examples to the contrary, government regulations and even commercial success of plain language projects. There could be several reasons for that; firstly, writing clearly and plainly is not something that is inherent in all people who have to write, irrespective of the genre – people in the fields other than jurisprudence, including academic writing, display many examples of poor writing; this ability obviously relates to training and corresponding abilities. Generally, pieces of a text, whether written or oral, are rarely constructed on the level of words; rather the writer uses blocks (or units) of words or even whole sentences stored in their memory adapting them for the current situation. These blocks are formed in the process of the relevant training, practical work and professional communication and allow economizing efforts. In case of legal writing, this gives additional advantage since these blocks (units) generally borrowed from authoritative sources, have been checked and approved through practice. Attempts to change the wording would inevitably be time consuming and bear potential risk of being legally inconsistent. It could, therefore, be anticipated that the situation with plain writing would not change until the lawyers are trained on the sources written in plain language providing them with ready blocks constructed in this manner. This process is under way, as has been demonstrated, but will obviously take time. Importantly, it must be constant and consistent since the changes in what is regarded as "plain language" may quickly make the sources, on which lawyers rely, outdated. Further, courses in plain writing that are presently delivered by law schools will definitely expedite the process of adopting plain language as the basic medium of legal discourse while commercial success of a number of plain language projects could add prestige to this manner of communicating legal issues.

Importantly, the rules of clear communication are basically common for all styles of writing, both legal and non-legal and cannot be reduced to mere substitution of old words and outdated structures.

"… clear legal communication depends on much more than eradicating jargon–mere word substitution–and on much more than familiar sentence structure.

Usually, rewriting a document in plain language involves rethinking the entire document–its content, language, structure, and design–while rigorously focusing on the audience and the purpose of the communication. It is this approach that leads to successful communication" [10].

Secondly, even when a text in plain language is clear, concise and fully presents the same facts as the corresponding text in legalese it may not be equal in all respect since traditional language of law has distinct stylistic coloring creating the aura of authority, rootedness in tradition or relation to science, which is commonly associated with a highly formalized language.

Peter Tiersma analyses a typical modern will, demonstrating its convoluted and redundant language. For example, the residuary part, according to him, almost always reads:

I give, devise and bequeath all the rest, residue and remainder of my property which I may own at the time of my death, real, personal and mixed, of whatsoever kind and nature and wheresoever situates, including all property which I may acquire or to which I may become entitled after the execution of this will, in equal shares, absolutely and forever, to Archie Hoover, Lucy Hoover, his wife, and Archibald Hoover, per capita, to any of them living ninety (90) gays after my death [11].

He further claims that "all that need be said is: I give the rest of my estate in equal shares to Archie Hoover, Lucy Hoover, and Archibald Hoover, assuming that they survive me by at least 90 days" [11]. The latter variant corresponds to the plain language requirements and fully and correctly conveys the intention of the testator, yet it is definitely different in style lacking the former variant's solemn atmosphere of the document striking a balance of the life efforts. The traditional formulae of a court sitting generally work to a similar effect giving the air of centuries-long traditions where rules and procedures have been justified by the time.

With the account to the above said, the following **conclusions** can be drawn:

– The emergence of plain language movement was the result of accumulation of linguistic elements in the English language of law that prevented clear perception of legal documents notably by nonprofessionals. These elements included archaic, Latin and Law French words and expressions, wordiness, the use of the passive, nominalization, long and complex sentences, "purposive" clause at the start of the text and outdated grammar, which have been preserved in the process of the legal language evolution;

–The legal jargon performs similar functions of all professional jargons including easier communication among professionals and delimitation of the people outside and inside the profession and, therefore, total rewriting of all pieces of legal writing so that it could be understood by lay people "of average intelligence", although theoretically possible, is frequently cumbersome and impractical. Certain genres of legal writing intended for lawyers need not be adopted for general understanding or require slight, largely cosmetic changes, e.g. substitution of foreign words, which have clear English equivalents;

–Clear writing is required in the cases where the target audience are consumers of legal services. This direction has been recognized within the legal profession and received strong support, also on the legislative level in some countries. As a result, what used to be a linguistic concept has become a product, a business, an industry, or a professional service;

– Importantly, plain writing found a way to legal education becoming increasingly popular, which will gradually add prestige to clearer legal communication but could hardly eliminate legal jargon altogether.

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Алєксєєв М., Алєксєєва Л., Синьова Т. Проста мова для юридичної англійської мови: досягнення та перспективи

Анотація. Стаття зосереджена на вивченні результатів, можливостей та перспектив руху простої мови (plain language movement) для англійської мови права – концепції, яка виникла в 70-х роках минулого століття. З того часу можливість описати правові питання простою, загальнозрозумілою мовою, що спочатку викликало дискусію, була підтверджена багатьма позитивними прикладами, зокрема законодавчими актами ряду англомовних країн. Крім того, ряд країн прийняли нормативні акти, які зобов'язують відповідні державні органи та суб'єктів господарювання використовувати методи ясної комунікації в документах, адресованих споживачам юридичних послуг.

Було перелічено та проаналізовано риси англійської юридичної мови, які зазвичай визнаються перешкодами на шляху ясної комунікації, та було підкреслено, що чітка юридична комунікація залежить від набагато більшого, ніж викорінення юридичного жаргону, і зазвичай означає переосмислення всього документа – його змісту, мови, структури та дизайну. Особливе значення має орієнтація на аудиторію та мету спілкування.

Було відзначено, що те, що починалося як квазіполітичний рух, зараз змінюється і значною мірою вже змінило свій характер, оскільки багато людей, які пропагують просту мову права, заробляють на життя своєю діяльністю в цій сфері. У результаті те, що раніше було лінгвістичною концепцією, зараз стало продуктом, бізнесом, галуззю чи професійною послугою і вимагає спеціально навчених людей. Цей факт є свідченням того, що більшість юристів досі дотримуються традиційного стилю викладення правових питань .

Зміна ставлення до простої юридичної мови, однак, принесла зміни в юридичну освіту, що з часом може призвести до ширшого прийняття більш чітких способів правового дискурсу та усунення найбільш сумнозвісних рис юридичної мови.

Питання про необхідність таких трансформацій для всіх стилів юридичного письма, однак, залишається невирішеним. Загальноприйнятою є необхідність зрозумілої мови для документів, спрямованих на людей, які не є юристами, тоді як видається нерозумним радикально змінювати стиль документів, спрямованих на професіоналів. Професійні жаргони, юридичний не виняток, виконують різноманітні функції, зокрема сприяють професійному спілкуванню, і навряд чи можна вимагати його повної заборони.

Стаття має особливу актуальність і практичне значення для лінгвістичної освіти українських юристів та організації міжнародно-правового спілкування, оскільки англійська мова виявилася цінним інструментом у процесі гармонізації українського та європейського законодавства. На додаток до надання доступу до багатої правової спадщини англомовних країн, як в Європі, так і далеко за її межами, вона стала основною мовою спілкування в офіційних і державних установах ЄС, а також судових органах, *lingua franca* для міжнародних наукових заходів та публікації. Крім того, є показники, що свідчать про появу нового регіонального варіанту англійської мови – європейської англійської, що надає особливого значення вивченню всіх важливих тенденцій і розробок юридичної англійської мови.

Ключові слова: юридична англійська, професійний жаргон, зрозуміла мова, Рух за просту мову, старофранцузька в юридичній англійській мові.