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FUZZY EXPRESSIONS IN LEGAL TEXTS

Abstract: Compared to vague and ambiguous language in legal texts (Witczak-Plisiecka 2009; Čutura & Stevanović 2014), fuzziness and its effect on meaning in legal context have not been a subject of much discussion, in spite of the fact that fuzziness is an inherent property of language and cannot be avoided (Radovanović 2013) even in registers which require the use of precise language. The aim of this paper is to examine the meaning of the fuzzy term *reasonable* as used in Title 18 – Crimes and Criminal Procedure and Title 49 – Transportation (USA Public Law) and the pragmatic factors affecting its denotation or reference. Furthermore, we shall examine the application of a numerical and non-numerical approach to the fuzzy expression in question (Zadeh 1965, 1983; Zhang 2005). In pragmatic terms, especially from the point of view of Relevance Theory, one of the most prominent differences between legal language and other registers is the fact that the context is almost never pre-given, which greatly affects the meaning of the expression used, as shall be seen in this paper.

Key words: legal language, fuzzy expressions, relevance, context, explicature

1. Introduction

In this paper we shall try to explore fuzzy linguistic expressions employed in the register one would not expect them to be – legal texts (more specifically laws and regulations). We shall first briefly present what fuzzy expressions are for the purpose of this paper and afterwards present the analysis of the fuzzy term *reasonable* based on the examples taken from Title 18 – Crimes and Criminal Procedure and Title 49 – Transportation (USA Public Law). Special attention shall be given to the relevance-theoretic approach to fuzzy expressions and how these expressions are affected within legal communication.

2. Fuzzy expressions

First of all, it is important to try and establish a distinction between the terms *vague*, *ambiguous* and *fuzzy*. For the purpose of this paper, we shall adopt the differentiation made by Zhang (2005: 73–75) who states that a fuzzy expression has no clear-cut meaning boundary and (unlike vagueness, generality or ambiguity) cannot be resolved

in the context. He furthermore explains that there is normally no problem to reach an agreement regarding the sense of a fuzzy expression, however, difficulty arises when trying to establish the reference or denotation of such an expression. Therefore, it can be concluded that the extension of a fuzzy expression is a fuzzy set, a class of objects with a continuum of grades of membership ranging from 0 to 1 (Zadeh 1965: 338).

As noted by numerous researchers in the field (Radovanović 2009; Zadeh 1968; Zhang 2005) human categorisation of the world is primarily fuzzy. In systematization of different variations observable in the world humans have often tried to be exclusive but failed in doing so, and language, much as human cognition, is fuzzy “per definitionem” (Radovanović 2009: 11–12). Departing from Aristotle’s logical system, we have admitted the existence of at least three levels of truthfulness – true, false and undetermined (Radovanović 2009: 17–18). Zadeh (1983: 152) notices that almost everything depending on natural languages represents a matter of degree. In his other work (Zadeh 1968: 421) he notices that everyday events are usually fuzzy, without defined edges, like in *It’s a warm day*. The interpretation of *warm* largely depends on expectation – it would be assigned different values in Toronto and Madrid, for example. On the other hand, the term *warm* would again be assigned different values when modifying *coffee* for example. Similar principles apply for fuzzy expressions in legal language. We shall see that interpretation of a fuzzy expression depends on numerous factors such as expectation, cultural influences, linguistic surrounding etc., but in this paper we shall focus mainly on the item being modified by the expression in question.

Researchers who have dealt with vagueness and/or ambiguity in a legal context (Witczak-Plisiecka 2009; Čutura & Stevanović 2014) did not give much attention to fuzziness. Witczak-Plisiecka (2009: 232) defines vagueness as unclear and underspecified reference and ambiguity as presence of multiple reference. Even though she does mention fuzziness as defined by Zhang (2009: 233), in her paper the term reasonable is classified under vague specialized terms and expressions (2009: 238).

Accepting that sometimes there is no clear-cut distinction between fuzzy and vague, we shall consider an expression to be fuzzy if it cannot be resolved in the context. As previously stated, one does not expect expressions without clear denotation or reference to be common in legal language. This is because legal language strives to be explicit and unequivocal (Čutura & Stevanović 2014; Shane 2002; Tiersma 2008) and not fuzzy and unclear. However, fuzziness is inherent to human thinking and, hence, language (Zadeh 1965: 338; Zadeh 1968: 421; Radovanović 2009: 11–12) and cannot be avoided even in registers striving to be precise in what is being communicated.

3. Reasonable

Before we present the results of our analysis, we shall first attempt to roughly define the term *reasonable* in legal context. The definitions used in this paper are taken from a legal dictionary (dictionary.law.com):

adj., adv. in law, just, rational, appropriate, ordinary or usual in the circumstances. It may refer to care, cause, compensation, doubt (in a criminal trial), and a host of other actions or activities.

As can be seen from the given definition, the terms employed in defining the term reasonable are themselves fuzzy and/or vague. What is deemed *rational*, *ordinary*, etc. or what falls under *other actions or activities*? Even expressions involving the term reasonable are defined in similar unspecified manner, although these expressions are specialized legal terms:

beyond a reasonable doubt – adj. part of jury instructions in all criminal trials, in which the jurors are told that they can only find the defendant guilty if they are convinced “beyond a reasonable doubt” of his or her guilt. Sometimes referred to as “to a moral certainty”, the phrase is fraught with uncertainty as to meaning, but try: “you better be damned sure”. By comparison it is meant to be a tougher standard than “preponderance of the evidence”, used as a test to give judgment to a plaintiff in a civil (non-criminal) case.

reasonable care – n. the degree of caution and concern for the safety of himself/herself and others an ordinarily prudent and rational person would use in the circumstances. This is a subjective test of determining if a person is negligent, meaning he/she did not exercise reasonable care.

However, there are instances when the term reasonable can be resolved, perhaps not in a linguistic, but in the real-world context:

reasonable speed – n. the speed of an automobile determined to be lower than the posted speed limit due to the circumstances, such as rain, icy road, heavy traffic, poor condition of the vehicle or gloom of night. Exceeding reasonable speed under the circumstances can result in being cited for speeding. In the law of negligence, exceeding reasonable speed in the prevailing conditions may be found to be negligent even though below the speed limit.

Here we can see that *reasonable speed*¹ is a natural number lower than a number (speed) which can be determined in the actual context, and here the term *reasonable* can almost be regarded as a fuzzy quantifier as defined by Zadeh (1983: 152). But, we shall get back to this point later on in the paper. This is the reason we are examining whether the term *reasonable* can be analyzed using both the numeric and non-numeric approach. Our analysis will comprise those instances of use of the term *reasonable* that can be regarded as numeric and those that cannot, in order to investigate if there is any difference in meaning of the term, and, if so, how the meaning is affected.

The term *reasonable* is sometimes labeled as ‘flexible’ term by legal experts (Tiesma 1999: 79) which is very useful in certain situation, since what is “reasonable” cannot be always precisely articulated in advance. Tiersma writes (1999: 3):

¹ Similarly Witzak-Plisiecka (2009: 235) notices that semantics of the expression *safe speed* and resulting legal operational value is not vague but relative to the situation.

Lawyers find themselves in a linguistic dilemma: Should they strive to be as precise as possible, or is it better to be more general or even vague? Strategic concerns may dictate one choice over another. As we will see, general or vague language – most notoriously the word “reasonable” – leaves room to maneuver and is adaptable to unforeseen future circumstance.

4. Analysis

In this section of the paper we shall first divide the examples taken from our corpus into two main groups. The first group comprises expressions that convey only the sense suggested by the definition given in the previous section. The second group comprises expressions that still retain the above mentioned sense but also suggest their extension is a set of numbers (a fuzzy set nevertheless).

The following examples belong to the first group:

[1] The Administrator shall make available to the Council or Committee such staff, information, and administrative services and assistance as may **reasonably** be required to enable the Council or Committee to carry out its responsibilities under this subsection. (Title 49)

[2] If the Director has **reasonable** grounds to believe that there has been a violation of Federal criminal law, the Director shall report the violation expeditiously to the Inspector General. (Title 49)

[3] The Secretary may dismiss a complaint the Secretary determines does not state **reasonable** grounds for investigation and action. (Title 49)

[4] Such notice shall describe with **reasonable** particularity the nature of the violation found and the provision which has been violated. (Title 49)

[5] [...] imposing **reasonable** restrictions on the future activities or investments of any such person, including prohibiting engagement in the same type of endeavor as used to commit the offense (Title 18)

[6] [...] intentionally places a person in **reasonable** fear of the death of, or serious bodily injury to that person, a member of the immediate family (as defined in section 115) of that person, or a spouse or intimate partner of that person by a course of conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation (Title 18)

[7] Whoever transfers a select agent to a person who the transferor knows or has **reasonable** cause to believe is not registered as required by regulations under subsection (b) or (c) of section 351A of the Public Health Service Act shall be fined under this title, or imprisoned for not more than 5 years, or both. (Title 18)

[8] [...] in a manner **reasonably** calculated to convey the impression that such advertisement, circular, book, pamphlet or other publication, product, or item, is approved, endorsed, or authorized by or associated in any manner with, the United States Secret Service, or the United States Secret Service Uniformed Division. (Title 18)

When discussing these examples we should notice the difference in the “the level of fuzziness”. Namely, if we compare the expressions *reasonable restrictions* and *reasonable fear/belief* it becomes evident that the former is easier to determine in a given real-world situation – there is a set of prescribed restrictions that fall under civil remedies and usually there are further instructions (found in other laws, annexes or amendments) on the type of restriction to apply depending on the type of fraud (in this case). The recipient of texts containing such expressions may find it difficult to determine the full scope of instances these expressions can apply to – whether a layman or an attorney or a judge. If we look at the example with the expression *in a manner reasonably calculated to convey the impression that* (example [8]) it becomes clear why some cases regarding trademark and copyrights last over a decade and why it is sometimes difficult to prove copyright violation. What these expressions have in common is the fact that the term *reasonable* retains its core meaning (which does not cease to be fuzzy) – ‘in accordance with reason’.

The second group of examples are those expressions containing the term *reasonable* and which can be numerically expressed:

[9] Security Administration may impose a **reasonable charge** for the lease of real and personal property to Transportation Security Administration employees and for use by [10] Transportation Security Administration employees and may credit amounts received to the appropriation or fund initially charged for operating and maintaining the property, which amounts shall be available, without fiscal year limitation, for expenditure for property management, operation, protection, construction, repair, alteration, and related activities. (Title 49)

[10] Unless otherwise provided in subtitle IV, the Board may determine, within a **reasonable time**, when its actions, other than an action ordering the payment of money, take effect. (Title 49)

[11] [...] for the **reasonable cost** of repeating any experimentation that was interrupted or invalidated as a result of the offense. (Title 18)

[12] [...] such biological agent, toxin, or delivery system, is of a type and quantity **reasonable** for that purpose.. (Title 18)

[13] The Secretary shall, by regulation, authorize reimbursement of the fair market value of samples furnished pursuant to this subsection, as well as the **reasonable costs** of shipment. (Title 18).

As can be seen, since *charge*, *cost*, *quantity*, *time*, etc. can be measured and expressed through numbers, one might expect that the expressions in which the term *reasonable* modifies these nouns can be numerically expressed as well. Even so, it would be difficult, if not impossible to apply the computational approach proposed by Zadeh (1983)² since the term *reasonable* cannot be viewed as a fuzzy quantifier

² For example, in the case of a proposition QA's are B's where Q is a fuzzy quantifier and A and B are labels of fuzzy or non-fuzzy sets, Q may be interpreted as a fuzzy characterization of the relative cardinality of B and A. If we have a proposition *Some girls are tall*, Q = *Some*, A = *girls* and B = *tall* (Zadeh 1983: 159).

in the sense suggested by Zadeh. However, the expressions in the second group, i.e. the ones modifying nouns like *time*, *fee*, *cost* etc. can often be resolved in a broader context. For example, *reasonable quantity* depends on the biological agent in question and can be determined in a specific situation. Furthermore, *cost* and *time* set the level of fuzziness for the term *reasonable* lower on the scale, since the expressions *reasonable time* and *reasonable cost* acquire more precise readings when in the context of a real-life situation. The definition for the term *reasonable time* reveals that it is most frequently determined within specific documents regulating specific situations:

reasonable time – n. in contracts, common custom in the business or under the circumstances will define “reasonable time” to perform or pay. It is bad practice to draft a contract using such a vague term.

As the example above shows, expressions containing a fuzzy term that has numeric value are often ‘defuzzified’ in other regulations, contracts etc. Since our corpus comprises legal documents of a general type – laws – these expressions can be useful in creating a rule applicable to a wide array of possible situations. This analysis, however, cannot be complete without the involvement of a legal expert, since, as Witzak-Plisiecka notices (2009: 233–234) it is questionable whether linguists should discuss legal language in depth, for they are not familiar with the intricacies of the legal system.

Nevertheless, in this paper we shall try to provide a linguistic analysis of the said expressions from a relevance-theoretic perspective. Zhang (2005: 73) advocates that fuzzy expressions in everyday communication conform with optimal relevance since a greater positive effect with less processing effort can be achieved. He also identifies that the relevance-theoretic approach has, apart from cultural differences, neglected the issue of group relevance, which is the case with legal language. When laws are in question, both the audience and context (apart from the linguistic one) are unknown a priori. One of the possibilities for use of fuzzy language could be that of trying to cater to as many possible posteriori contexts. A similar explanation could apply to other distinct characteristics of legal language, such as nominalizations, passivization, thematization and different types of generalization. Of course, the very nature of language – it being largely fuzzy - cannot be overlooked here.

Much like the loose use of language, fuzzy expressions convey a range of weak implicatures (Zhang 2005: 78; see also Sperber & Wilson 1987; Wilson 2003), although we argue that the fuzzy expressions do not have a *non-fuzzy* meaning, unlike *square* or *flat*. According to Zhang (2005) what can affect the interpretation of fuzzy expressions (among other parameters) is the item being modified. We have shown how the level of fuzziness of the term *reasonable* is affected depending on the noun it modifies. It can be said that in modifying nouns like *belief*, *grounds*, *doubt* etc. the term *reasonable* is “ultrafuzzy” and poses a problem in interpreting and executing regulations. One can argue what is reasonable and what is not, it is not set in stone, as texts governing people’s lives are expected to be. This leaves a window open for attorneys to manipulate the proceedings. However, this need not be

a negative state of affairs. We can identify two main reasons for the overwhelming presence of fuzzy expressions in legal language – the nature of the human cognitive system and achieving optimal relevance.

Apart from expectation and the item being modified, when it comes to interpreting fuzzy expressions in legal texts, another parameter needs to be taken into consideration – the level of expertise of the recipient. This is very similar to the cultural influence Zhang proposes (2005: 77). Namely, the same expression is less fuzzy to a legal expert than to a person without any legal training. If we take example [11], the term *reasonable time* would have clearer boundaries to someone with experience in a similar situation, or to, let's say, a member of the said Board. Similarly, even “ultrafuzzy” expressions such as in example [8] would be less fuzzy to a person whose area of expertise is trademark or copyright. Regardless of the level of fuzziness or the interpretation of fuzzy expressions, fuzzy terms cannot be avoided in any communication or any texts, even those striving to achieve the highest level of explicitness.

According to the RT, language is inherently underdetermined and the majority of linguistic expressions need to be disambiguated or resolved in the context. Pragmatic inference occurs not only at the level of implicatures, but at the level of explicatures as well. Inference prevails in human communication and code plays a minor role. As said previously, fuzzy expressions are in some respects similar to the instances of loose use of language and certain pragmatic processes are involved in the construction of explicatures. Since strong explicatures are those that are recovered mainly through the decoding process, the use of fuzzy terms weakens the explicature. If we look at the example [4] the recovery of explicature would imply, among other pragmatic processes, the free enrichment of the term *reasonable particularity*.

[4] Such notice shall describe with [particularity involving enough details but not overly detailed in accordance with notices usually submitted in such cases] the nature of the violation found and the provision which has been violated. (Title 49)

Similarly, for example, the expression *reasonable time* in [11] needs pragmatic inference:

[11] Unless otherwise provided in subtitle IV, the Board may determine, within a [time it usually takes the Board to determine when the said actions take effect, unless specified differently by another regulation, act or contract], when its actions, other than an action ordering the payment of money, take effect. (Title 49)

Depending on the situation and legal context, free enrichment may yield different results – [not exceeding 10 days], [before the actions in question are to take effect as specified in another legal document] and so on.

The relevance of an input is proportional to the positive cognitive effects achieved by processing an input, and inversely proportional to the processing effort expended. When it comes to optimal relevance, we can safely assume that legal documents and their content are relevant to anyone needing to read them and/or

use them. However whether these texts are the most relevant ones compatible with the communicator's abilities and preferences depends on the audience. As said previously, not much attention was dedicated to group relevance.

The effect on relevance of fuzzy expressions in everyday communication is the increase of relevance (Zhang 2005: 73). However, in the legal context, the situation is more complicated. Namely, although it is true that the description *tall, slim, around 20 years old* requires less processing effort and has greater positive cognitive effects than the description *height is 1.67m, weight is 60.5 kilos, and 19 and a half years old*, a comparison of the expressions *reasonable time* and *time specified by individual contracts* or *10 days* does not provide unequivocally the same results. This is mainly due to differences in knowing the legal system and educational and/or social background of the recipients of legal texts, just as much as it is a matter of the nonexistence of a precise context a priori.

Even though fuzzy terms weaken the explicature since they require pragmatic inference apart from mere decoding, in terms of optimal relevance in the context of use of laws and regulations, these expressions contribute to achieving greater positive effects and, in fact, reducing the processing effort. As previously said, the context of legal texts we are examining is not given beforehand, nor is the audience. This is why fuzzy expressions are desirable, since they cater to a multitude of possible real-world situations. Apart from that, if the term *reasonable* were to be substituted with a more precise explanation (as suggested above), it would burden the text with additional words (and legal texts are already wordy), hence increasing the processing effort. Moreover, it is frequently not possible to predict and enumerate all the possible instances that would count as being reasonable, which would in turn create an even larger hole in the legislation and allow more manipulation. The term *reasonable*, as used in the analysed documents, leaves room for adjusting context and interpretation of the parties involved, according to the needs of particular situations.

5. Conclusion

This brief analysis has shown that the RT approach is favoured and more explanatory than the numeric approach when it comes to analysing fuzzy expressions, specifically here the term *reasonable*. This is true even if the expression can have a value expressible in numbers (such as *cost, quantity, time*, etc.) and even in the context of legal texts (which is, as we have previously stated, are expected to be precise and the very opposite of fuzzy).

Apart from this, we have identified two main reasons for using fuzzy expressions in legal language – the very nature of language and human cognition and achieving optimal relevance. When it comes to relevance, the term *reasonable* can be said to help reduce the processing effort by reducing the number of words needed for a longer and more precise description. Furthermore, the said term has an effect of increasing a positive cognitive effect by catering to numerous possible contexts due to the specific nature of communication represented in legal texts.

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FAZI IZRAZI U PRAVNIM TEKSTOVIMA

Rezime

U poređenju sa neodređenim i dvosmislenim izrazima u tekstovima koji pripadaju pravnoj struci (Witczak-Plisiecka 2009; Čutura & Stevanović 2014), fazi izrazi i njihov uticaj na značenje u okviru pravnog konteksta nisu bili predmet mnogih razmatranja, uprkos činjenici da su takvi izrazi inherentna osobina jezika kao takvog i da se ne mogu izbjeći (Radovanović 2013) čak i u registrima gde se zahteva precizna upotreba jezika. Cilj ovog rada jeste da se ispita značenje fazi izraza *reasonable* i to kako je upotrebljen u okviru dva zakonska akta Sjedinjenih Američkih Država (Title 18 – Crimes and



Criminal Procedure i Title 49 – Transportation), kao i pragmatički faktori koji utiču na denotaciju i ekstenziju datog izraza. Pored toga, pokušaćemo da ispitamo mogućnost primene numeričkog i nenumeričkog pristupa navedenom fazi izrazu (Zadeh 1965, 1983; Zhang 2005). Iz perspektive pragmatike, posebno kada govorimo o Teoriji relevancije, jedna od najuočljivijih razlika između jezika pravnih akata i jezika drugih funkcionalnih stilova jeste činjenica da kontekst gotovo nikada nije unapred dat, što u velikoj meri utiče na značenje upotrebljenih izraza, kao što ćemo videti u radu.

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