



Metaphors Lawyers Live by

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Abstract

The usage of metaphor in languages for specific purposes has been in the focus of interest of cognitive linguistics for years, especially after Lakoff and Johnson published their famous book “Metaphors We Live by” in 1980. Inspired by that book, the author strives to prove that metaphor was not only intensely present in the history of law but also that it pervades the language of contemporary legal theory and practice. Terms like *injury of law*, *the burden of evidence*, *soft laws*, *hard laws*, etc. are so often used by lawyers in their professional communication that they are hardly recognizable as metaphors. In the theoretical part, the terms *conceptual metaphor* and *lexical metaphor*, as well as *the source domain* and *the target domain of the metaphor* are defined. Accordingly, conceptual metaphor and lexical metaphor are interpreted from the perspective of the language of law. As an introduction to the discussion on metaphoric terms in the field of law, a number of metaphors is presented and discussed from the point of view of legal history, as the metaphoric and other poetic expressions were recognized as the features of legalese back in the early seventeenth century. In the main part, the author presents and discusses the most common conceptual metaphors in connection with the terms *law*, *justice*, *court*, and the types of metaphors typically used in specific branches of law as criminal law, company law, and contract law. The empirical part of the paper is focused on two research tasks. Firstly, metaphors occurring in selected Legal English textbooks are explored and discussed by using a qualitative and a quantitative approach, and secondly, metaphoric terms and phrases of the EU Law are excerpted from the Treaty Establishing the European Community (Consolidated version 2002), the main task being to establish the frequency of metaphors in this relatively young branch of law and the types of conceptual metaphors they belong to. In the closing part, conclusions on similarities and differences in the use of metaphor between two different types of legal texts are drawn with specific reference to the frequency, lexical structures, and typology of conceptual metaphors in the field of law.

Keywords Metaphor · The language of law · Cognitive linguistics · Conceptual metaphors

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1 Introduction¹

Metaphor became an object of intensive research in the last decade of the twentieth century. It was launched by Lakoff and Johnson in 1980 in their widely known book “Metaphors We Live by”, in which metaphor is seen as a basic process pervading all our speaking, thinking, and acting as well as “a basic means to understand the world around us” [5, p. 7]. As laws regulate every aspect of human reality, metaphor is also observable as an essential part of the language of the law. Linguists had recognized the presence of this phenomenon in the language of law back in 1816, when one of the brothers Grimm, Jacob, probably the first lawyer-linguists in Europe, published the paper “On the Poetry of the Language of Law” [Von der Poesie im Recht] in the Journal *Zeitschrift für geschichtliche Rechtswissenschaft* dedicated to the history of law [2].

Linguistic analysis that is focused on metaphors in legal communication sheds quite a different light on the language of law than that usually attached to the legalese that is generally perceived as a special technical sociolect characterized by a neutral, exact, and precise style. The foundation of this approach is a revolutionary idea by Lakoff and Johnson that not only human language, but also our conceptual systems are metaphorical in nature. They introduced a dichotomy between a conceptual and a linguistic metaphor and constructed their original approach within cognitive linguistics known as a Conceptual Metaphor Theory or a Cognitive Metaphor Theory [5]. Conceptual metaphor is understood as “a neural mechanism that enables networks used in sensorimotor activity to be also used for abstract reasons” [5, p. 7]. The term *conceptual metaphor* is widened by Kövecses who defined it as “understanding one conceptual domain in terms of another conceptual domain” [6, p. 4]. These two domains are determined as the source domain and the target domain. The source domain represents the domain from which we draw metaphorical expressions to be able to understand a target domain. According to Li and MacGregor, target domains express relationships between entities, attributes, and processes that mirror those relationships stemming from the source domain [7]. Lakoff and Johnson divided conceptual metaphors into three basic types: structural metaphors (based on structural systematic mapping, e.g. *justice is blind*), orientational metaphors (related to spatial concepts, e.g. *the wind of freedom*), and ontological metaphors (related to objects, substances, and containers as basic conceptual domains, e.g. *the wheel of justice*). Kövecses [4] has widened the domains of conceptual metaphors to the fourth group—complex systems within the great chain framework. A metaphor of that type can be illustrated by the example *to win the case*, which is founded on a conceptual source domain *a court case is a battle*. This complex chain framework according to Kövecses includes domains such as machines (complex

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systems), buildings (complex objects), plants, and humans as complex system conceptual metaphors [4].

2 Goal, Corpus and Methodology of the Research

The metaphor can be explored from different points of view, one of the most recognized being a transformational-generative approach. This exploration will be focused on the cognitive approach to the phenomenon of metaphor in law, as a wider analysis of the two selected research corpora from another aspect would exceed the domain of this paper.

The aim of the paper is to prove that the language of the law is inclined to the usage of metaphor from its early beginnings in history and that metaphors continuously pervade written and oral communication in the field of law. The hypothesis of the research is that different types of conceptual metaphors are present in legal texts because of the complexity of the law and the numerous legal branches it comprises. The author strives to explore and discuss metaphoric terms and phrases excerpted from two corpora. The first encompasses theoretical legal texts from three Legal English textbooks that are currently used in European law faculties, and the second is the text of the Treaty Establishing the European Community (Consolidated version 2002). The main reason for using Legal English textbooks as the first source of examples for this research is the fact that most branches of common law and civil law systems are covered by texts in those books so they can serve as a reliable source of legal terminology and phraseology including metaphorical expressions. The second corpus represents an example of a contemporary legislative EU-Law text. The main task of the research is to establish the frequency of metaphors in two different corpora and the specific types of conceptual metaphors they belong to. By comparing the results of that analysis, similarities and differences between theoretical and legislative texts will be established (a) in the frequency of metaphors, (b) in the most common types of conceptual metaphors, and (c) in their lexical structures in two different corpora. The research is conducted by using a qualitative and a quantitative methodology. In the introductory part, the role of metaphor in law will also be presented from a diachronic perspective.

Obviously, there are some differences in oral and written communication in the professional sphere. This especially relates to law, as in oral communication lawyers apply a wide scale of rhetorical strategies to achieve their communicative goals. Idiomatic expressions and metaphors are intensely present and have their specific rhetoric and stylistic functions in courtroom discourse, so this aspect of legal communication will be shortly tackled before the results of the research are analyzed and discussed.

3 Metaphors in Law from Historical Perspective

Metaphors played an important role in ancient times when the rules of customary law were formulated by using rhetoric and poetic figures to help ordinary people memorize them. Poetic and rhetoric figures in customary laws stem from Roman law. That is confirmed by the following statements by Susan Šarčević [15]:

“Much of what is currently western Europe, including parts of England, had been romanized for some 400 years. After the shattering of the western Roman Empire by German tribes, the surviving elements of Roman law persisted mainly in memory or a custom and habit.” [15, p. 26]

According to Šarčević, between the fifth and ninth centuries, the laws of German tribes that were formulated orally in vernacular German were recorded ad hoc in Latin by clergy by a literal translation. Latin had become the dominant written language for statutes, charters, and writs in England after the Norman conquest (1066). “Even with the rise of law French (...) some Latin could be found in the statutes until 1461”, while the English language entered into the field of law after Latin and French had been outlawed during the Commonwealth language reform 1649–1660 [15, p. 28]. Due to literal translations, the language of English law remained obscure and retained the elements of Latin (archaic legal terms and legal maxims) and the French language of the law.

The obscurity of the legal languages and the influence of Latin are even more present in Continental legal systems (Germany, France, Croatia...), mostly due to the tradition of the literal translations of metaphorical expressions stemming from Roman culture. The terms and phrases of metaphorical character stemming from the Latin are present not only in the Continental court proceedings but also in that of the common law systems. The proof of that is the fact that specific metaphorical expressions are equally present in both legal circles and there are exactly the same metaphorical terms and phrases expressed by the same lexical forms in the Latin, German, Croatian, and English language of the law:

open the procedure / das Verfahren eröffnen/ otvoriti postupak
weigh up the evidence / Beweise gewichten/ odvagnuti dokaze (činjenice)
burden of evidence / Beweislast/ teret dokazivanja.

Of course, there are cases that the same legal institute or legal phenomenon is expressed in different legal systems and languages by a different conceptual metaphor. The reason for that are different cultural backgrounds they belong to. For example, the metaphorical expression *reach a verdict* is expressed in the German language by a conceptual metaphor *Urteil fällen* (literally: to cut a verdict), while its Croatian equivalent is *donijeti presudu* (literally: to bring a verdict).

In ancient times, the metaphor was used to help ordinary people memorize the content of customary laws in Western Europe. An illustrative example by Mattila [8] represents The Pagan Law of Sweden on Insult (eleventh century): “(...), for insulting words are the worst of things, and the tongue is the slayer of the head”. In this provision, “the dramatic and metaphorical character of the expression helped the law to be engraved in the mind of ancient Swedes” [8, p. 40].

Another means of memorizing legal rules and provisions of ancient laws were rhythmic maxims that stemmed from Roman law and were developed “in line with the style of Latin poetry” [8, p. 40]. From the eleventh century onwards, law students in France (Sorbonne) and Italy (Bologna) learned the rules and propositions of Roman law in the form of legal maxims. They had to be learned by hard,

but were easy to memorize due to the number of syllables and rhyme, rhythm and stress, and simple metaphorical images. Here are several examples of the Latin legal maxims of metaphorical character:

*Dura lex, sed lex;
testis unus, testis nullus;
cursus curie est lex curie;
ubi ius, ibi remedium,
injuria non excusat injuriam.*

Ancient laws of Germanic tribes were also expressed "through magical formulas, whose melodious character affirmed in listeners a depth of feeling that ensured respect for legal rules" [8, p. 47]. Many of those rhythmic formulas were of metaphorical character. The fact that metaphorical expressions were used in Germanic customary law instead of legal terms is confirmed by examples listed in Jacob Grimm's paper of 1816. The examples below are metaphorical sentences from this paper quoted by Günther [2] that define movables, immovables, unlimited rights, *corpus delicti*, denial of property rights, a married woman's property, and the punishment proscribed for theft in the Germanic customary law:

*Movables: das, was der Wind beweht und die Sonne bescheint /what the wind has blown and the sun has shone/
Immovables: was die Egge bestrichen und die Hecke bedeckt hat /what the harrow smashed and the hedge covered/
Unlimited rights: So lange der Wind weht, der Hahn kräht und die Sonne scheint /As long as the wind blows, the rooster crows and the sun shines/
Limited property: So weit der Hahn schreitet, so weit die Katze springt, so weit der Hammer geworfen wird /As far as the rooster steps, as far as the cat jumps, as far as the hammer is thrown/.
Corpus delicti: Wo sich der Esel wälzt, da muss er Haare lassen. /Where the donkey rolls, he leaves the hair/
Married woman's possession: Eine Frau hat während der Ehe nichts als den blauen Himmel und den Spinnrocken. /A married woman's possession is nothing but a blue sky and a loom/
Punishment for theft: Mäuse soll man fangen, Diebe soll man hängen. /Mice should be caught, thieves should be hanged/.*

According to Grimm, some methods of punishing perpetrators at the time of Charle de Magne have been transferred into German proverbs of metaphorical character:

*die Hand ins Feuer setzen (put your hand in the fire for someone/something)
für jemanden durchs Feuer gehen (go through fire for someone)
glühendes Eisen tragen (hold a red-hot iron)
auf glühenden Kohlen sitzen (sit on glowing coals).*

These examples confirm the claim by Lakoff and Johnson [5] that “a metaphor can [...] only describe pre-existing similarities. It cannot create similarities” [5, p. 154]. As illustrated by the examples quoted above, ancient laws were formulated in metaphors that reflected human reality. On the other hand, as the laws reflect all the changes in the reality, the logical presumption is that lawgivers, while creating laws, and judges while passing their rulings have also created new metaphors. This will be the object of discussion in the following part of the paper. That analysis is not challenging the fact claimed by Lakoff and Johnson that newly created metaphors reflect the similarities already existing in reality [5].

4 Metaphors in Contemporary Courtroom Discourse

Metaphor is intensely present in the modern language of the law. For example, in civil law, we often meet legal terms and phrases like a *will*, a *prayer for relief* or verb phrases like *lodge an appeal*, *suffer damage*, etc. In criminal law, there are metaphorical terms like *blackmail*, *white-collar crime*, etc. The branch of law that is especially inclined to metaphorical terms is commercial law, including contract law. In this branch of law, lawyers have created new conceptual metaphors reflecting phenomena resulting from new developments in commercial relations, especially from the perspective of the transition countries. The following metaphorical expressions from the field of commercial law illustrate this phenomenon: *the silent partners*, *hedge funds*, *collusion*, *piracy*, *shell-company*; *competition watchdogs*, *predatory pricing*, *whistleblowing/whistleblowers*, *freezing order*, *the corporate veil*, *opening bankruptcy procedure*, *entering into a contract*, *to satisfy a debt*, *to wind up a company*, etc. Some metaphors have been introduced by rulings in specific court cases. As court rulings function as precedents in the common law system, some metaphorical expressions are often used in later cases and accepted as commonly used terms. Smith [13] calls those metaphors „doctrinal metaphors” and illustrates them by well-known examples like *piercing the corporate veil* from the field of the Corporate Liability Law, and *the wall of separation* from the Establishing Clause within the US legislation [13, p. 928]. Introducing metaphorical expressions in the language of law is subject to alternations caused by the changes in human reality. This is illustrated by the two previous examples that mirror new circumstances governing corporate life that have influenced changes in social and economic norms in specific states.

The role of metaphor in legal texts is different from that in legal practice. The way metaphors are formulated is influenced by specific legal discourse. While idiomatic expressions that are present both in legal science and the texts of legal acts have their specific rhetoric and stylistic function, metaphors used in the courtroom can be seen as a persuasive strategy of judges deliberately applied to achieve their specific communicative purposes. Those metaphors are often very colorful and imaginative, which can be well illustrated by examples from the courtroom discourse of American courts that are gathered and presented by Smith [13].

“Conspiracy... [is the] darling of the modern prosecutor’s nursery;” (The quotation stems from *Harrison v. United States*, 7 F.2d 259, 263—2d Cir. 1925).

“The work of the Alabama Legislature in the area of medical liability is a mule—the bastard offspring of intercourse among lawyers, legislators, and lobbyists, having no pride of ancestry and no hope of posterity.” (The quotation stems from *Houghtaling v. Superior Court*, 21 Cal. Rptr. 2d 855, 860, Cal. Ct. App. 1993).

“If, however, the parties have agreed upon all material terms, it may be inferred that the purpose of a final document which the parties agree to execute is to serve as a polished memorandum of an already binding contract. *Ibid.* Although the parties exchanged slogans of agreement in the *Rosenfield* case such as, ‘that is all settled’ and ‘the deal was closed’, it was apparent that the negotiations were imperfect on points which were material and, indeed, weighty in the context of the transaction”. (*Massachusetts Supreme Judicial Court: Richard A. Goren & others vs. Royal Investments Incorporated & others*).

“Parties to a preliminary agreement may not provide that they do not intend to be bound until the transaction is buttoned up by a more detailed and formal agreement.” (Quoted from: *Goren v. Royal Invs., Inc.*, 516 N.E.2d 173, 176; *Mass. App. Ct.* 1987).

“[Evidence] should not be admitted (...) where the minute peg of relevancy will be entirely obscured by the dirty linen hung upon it.” (from: *State v. Goebel*, 218 P.2d 300, 306 (Wash. 1950)). [13, p. 938].

To illustrate the presence of metaphor in contemporary courtroom discourse in the UK, here several quotes from the judgements of esteemed British judges available in the Internet [3]:

- a. *It seems to me that the argument of the defendant’s counsel blows hot and cold at the same time.* (Sir Francis Buller, 1st Baronet)
- b. *One cannot look too closely at and weigh in too golden scales the acts of men hot in their political excitement.* (Henry Hawkins, 1st Baron Brampton)
- c. *This contract is so one-sided that I am surprised to find it written on both sides of the paper.* (Raymond Evershed, 1st Baron Evershed)
- d. *Postal voting on demand, however many safeguards you build into it, is wide open to fraud. It’s open to fraud on a scale that will make election rigging a possibility and indeed in some areas a probability.* (Richard Mawrey)
- e. *Loss of freedom seldom happens overnight. Oppression doesn’t stand on the doorstep with toothbrush moustache and swastika armband—it creeps up insidiously... step by step, and all of a sudden the unfortunate citizen realizes that it is gone.* (Geoffrey Lane, Baron Lane)
- f. *Books delight us when prosperity smiles upon us; they comfort us inseparably when stormy fortune frowns on us.* (Richard de Bury)

5 Research: Conceptual Metaphors in the Field of Law

Metaphors are continuously present in the language of the law. Some legal expressions of metaphoric character are used so often that they are not perceived as metaphors anymore—especially by lawyers who use them on a daily basis, like *hard laws*, *soft laws*; *burden of evidence*, *injury/violation of the law*. As explained in

the introduction, from the point of view of cognitive linguistics there is a distinction between the conceptual domain and the lexical domain of the metaphor. These domains are also determined as the source domain and the target domain. The source domain represents the domain from which we draw metaphorical expressions to be able to understand a target domain. The goal of this research is to explore and discuss metaphoric terms and phrases excerpted from two corpora: the theoretical texts of the three Legal English textbooks, and the legislative EU-Law text of the Treaty Establishing the European Community (Consolidated version 2002). The main task of the research is to establish the frequency of metaphors in two different corpora, their most common lexical structures, and the specific types of conceptual metaphors represented in those corpora. The overall idea of the research is to prove that the language of the law is inclined to the usage of metaphor and that metaphors continuously pervade all types of written and oral communication in law.

5.1 Theoretical Background

There are several definitions of metaphor. Here we shall point out that by Mihaljević and Šarić [10] as most relevant for this paper: “Metaphor is a stylistic figure denoting a thing or item different from that which it originally was attached to, its purpose being to draw attention to a perceived resemblance.” [10, p. 437].

Metaphor is culturally determined. This is especially highlighted in the field of law, which always derives from a specific legal system and culture. Because metaphors are as a rule culture-bound, they can cause difficulties in translation [15]. Metaphorical images and expressions (linguistic metaphor) stemming from different cultures often express different conceptual domains in law. This can lead to wrong translation, and legal translation always produces legal consequences. This is nicely expressed by Šarčević in her frequently quoted statement: „Legal translation (...) leads to legal effects and may induce peace or a prompt war” [16]. According to Reiss and Vermeer [11], the translation practice in the field of law has developed the awareness that the knowledge of cultural differences represented one of the essential competencies required in translators dealing with legal texts. Founding her ideas on the same conviction, Martha Chroma introduced the phrase “Cross-cultural traps in legal translation” relating to cultural differences as an important factor in legal translation, which inevitably includes metaphors constituting a cultural heritage of a specific nation and its language [1]. Accordingly, Susan Šarčević included into her list of the essential factors of translation in the field of law the following types of knowledge: (a) the knowledge of Language 1 and Language 2, (b) the knowledge of the legal systems of Language 1 and Language 2, (c) the knowledge of the differences between the legal concepts of the two systems, (d) logical thinking, and (e) the knowledge of cultural differences between Language 1 and Language 2 [16].

According to Lakoff and Johnson [5], metaphors exist on conceptual and linguistic levels. Conceptual metaphor is a connection of two semantic domains on the level of thought. A linguistic (lexical) metaphor is a spoken or written realization of a conceptual metaphor. Linguistic metaphors can be illustrated by the examples

to win a case and the defendant. Their pair on the level of thought is a conceptual metaphor *court case is a battle.*

Many legal expressions of metaphorical character are lexical metaphors in the form of collocations. Their metaphoric character derives from attaching human characteristics to things or abstract phenomena: *soft laws, hard laws; breach of laws, violation of laws; a burden of evidence, material facts, material truth...*

Company law and commercial law are especially inclined to use metaphorical expressions: *hedge fonds, silent partnership, winding-up of the company, black market.*

In criminal law there is also a number of interesting metaphors: *reasonable doubt, guilty intent; blackmail, money laundering, white-collar crime.*

In the field of international law many metaphors are related to peace, usually with the underlying conceptual metaphor „peace is a human being” and “peace is fragile”: *to infringe peace, to strengthen the peace, to endanger peace, to threaten the peace (threat to the peace).*

As already mentioned in the introduction, Lakoff and Johnson differentiate between three basic types of conceptual metaphor: structural metaphors, based on structural systematic mapping, orientational metaphors related to spatial concepts, and ontological metaphors related to objects, things, and containers. Kövecses [4] expands conceptual metaphors to the fourth type—abstract complex system metaphors including machines, buildings, events, plants, and humans.

The analysis of the collected examples will show which types of conceptual metaphors are most frequent in the field of law and whether the fourth group added by Kövecses in 2002—*complex system metaphors*—can be seen as relevant for the language of the law.

5.2 The Research of Conceptual Metaphors in Theoretical Legal Texts

The empirical part of the paper is founded on the research of metaphors conducted on two different corpora, so it is divided into two parts. In the first, the analysis of metaphorical expressions in the English language of the law is conducted on examples excerpted from three Legal English textbooks. The following Legal English textbooks served as the source of the first empirical analysis: McKay et al. [9], Wiebalck et al. [19], and Sočanac et al. [14].

In the second part of the research, the types and frequency of metaphors in the contemporary EU Law is explored on the corpus of the Treaty Establishing the European Community—Consolidated version [18]. As already stated, the goal of the research is to present linguistic (lexical) metaphors occurring in the two corpora and analyze their conceptual backgrounds in order to establish which conceptual metaphors are most frequent in the language of the law. The in-depth analysis and the comparison of the results from both corpora should also indicate whether there are any differences between lexical structures of metaphors used in theoretical legal texts and those of legislative nature (EU-Treaty) and whether there is any distinction in their conceptual nature and the purposes they fulfill in different types of legal texts.

In the first corpus the conceptual metaphors in connection with the terms *law*, *justice*, and *court case* are excerpted and analyzed.

The linguistic metaphors *hard laws*; *soft laws*; *burden of evidence*; *breach of the law* belong on conceptual level to the ontological conceptual metaphor of the type “law is an object.”

In different legal systems, the same conceptual domain is usually expressed by different linguistic metaphors. It can be illustrated by comparing some examples in the English language with those from the German and the Croatian languages:

English: *bring/press charges*; *lodge an appeal*

German: *Klage erheben* /literally: *lift charges*; *Berufung einlegen* /literally: *insert an appeal*

Croatian: *podići tužbu* = *Klage erheben*; *uložiti žalbu* = *Berufung einlegen*.

Interestingly, as illustrated by two latter examples, conceptual and lexical domains in the Croatian language are in some cases identical to the German language. The cause of this phenomenon lies in historical connections of Croatian law with that of the Austro-Hungarian Empire and the fact that German legal terminology was translated into Croatian in 1860s.

The analysis of the excerpted examples has revealed that most metaphors occur in five conceptual types that belong to complex system metaphors and ontological metaphors: X is a human, X is an event/a phenomenon, X is a plant, X is a building/ an object. Related to the word “law”, the complex system metaphors of three types prevail in this corpus: (1) “law is a human”/ “law is a human body”, (2) “law (court) is a force/ a power”, and (3) “law is a tree”:

(1) Examples of the type “law is a human”/“law is a human body”

the injury of law
the violation of law
in the eyes of the law
at the hands of the law
at the heart of the Court
the body of law
the long arm of law
to be digested by the law
the law cries out for reform
legal provisions suffer amendments
the law permits
law forbids.

(2) Examples of the type “law (court) is a force/a power”:

the rule of law
court order
come into force

be in force
press charges
inflict punishment
impose punishment
be imposed by law,
subject to special rules.

(3) Examples of the type “law is a plant (tree)”

The type “*law is a plant/ a tree*” is represented by only one example: *the branches of law*.

Metaphors relating to the word *justice* are also ontological metaphors and complex system metaphors. Complex system metaphors relating to justice are illustrated by three examples: *justice is blind*, *justice is slow*, and *justice knows no friendship* and belong to the type “justice is a human”. Ontological conceptual metaphors of the type “justice is an object” are illustrated by two examples: *the wheel of justice* (in German: *die Mühle der Gerichtsbarkeit*) and *bring someone to justice*. The latter example belongs both to conceptual metaphors of the type “justice is an object” and “justice is a power/an authority” so it can be observed both as an ontological metaphor and a complex system metaphor.

Conceptual metaphors relating to a *court case* are mostly the complex system metaphors related to events, usually of the type “court case is a conflict/ a battle”:

legal dispute
the affected party
the injured party
the adversely affected party
legal remedy
defend the claim
defense/ the defendant/ the defending lawyer
win the case
fight the case
take action against (...).

There are also several examples of ontological metaphors of the type “*court case is a building*”:

a provision has its foundation in legal concepts
the defense is built on the facts
the defense is constructed on beliefs
the accusation collapsed

The jury constructed a verdict based on...

The analysis of the examples excerpted from the three books indicates that complex system metaphors are prevailing in theoretical legal texts. Most examples are

metaphors relating to the term *law* (21). On conceptual level, there are two prevailing types of complex system metaphors relating to law: “law is a human” (12 examples) and “law is a power/ force” (9 examples). Metaphors related to *justice* are illustrated by five (5) examples altogether, two of which in their source domain belong to ontological metaphors of the type “justice is an object”, while three examples are complex system metaphors of the type “justice is a human”. As for the term *court case*, its most frequent underlying conceptual metaphor is a complex system metaphor of the type “court case is a battle”. Ten (10) examples of this kind were found in the first (theoretical) corpus. Interestingly, in connection with the term *court case*, there were five (5) other examples representing ontological metaphors of the type “court case is a building”.

If we observe the lexical structure of metaphoric expressions in this corpus, it can be concluded that most frequent structures are verb + object (e.g. *press charges*), adjective + noun (e.g. *legal remedy*), and noun + possessive Genitive (e.g. *the body of law*). Only some ontological metaphors of the type “court case is a building” are expressed by a full sentence, e.g. *the defense is built on the facts*.

5.3 Research into the Metaphors of EU Legislation on the Example of the Treaty on Establishing the European Community

The metaphor is present both in national laws, in international bills and conventions, as well as in supranational laws of the EU. The occurrence of metaphors in national law can be illustrated by the following examples:

“The Republic of Croatia shall safeguard the rights and interests of its citizens living or residing abroad” (Art. 10 of The Constitution of the Republic of Croatia) [17].

In this example, we can recognize the conceptual metaphor of the type “the Republic of Croatia is a human being”.

Metaphors of the same type (“a member state is a human being”) are also intensely present in the EU Law, which can be illustrated by the following example:

“Member States should protect young people against any specific risks arising from their lack of experience...” (Directive 94/33/EC, June 22. 1994). [20]

The presence of metaphors and the prevailing types of conceptual metaphors in the EU law will be explored here based on the research of examples excerpted by a detailed reading of the Treaty on Establishing the European Community—Consolidated version [18] available online at the <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=celex%3A12012E%2FTXT>.

In the research and the analysis of the gathered examples, qualitative and quantitative methods have been applied by excerpting metaphors from the Titles I, II, III, IV, V that represent 60% of the whole extensive text of the Treaty. The presumption of the research was that there will be a wide diversity of linguistic metaphors. One of the reasons for this assumption was the fact that after Croatia has entered into the EU, some new metaphorical terms from the field of law have been used in Croatian

public media in their original English version (without being translated into the Croatian language): *soft laws*, *hard laws*, *white paper*, *green book*, *white book*, etc.

In Common Provisions (Title 1, Titles II-IV) different metaphorical expressions have been excerpted covering two types of conceptual metaphor: complex system conceptual metaphors and ontological metaphors.

(1) The examples of complex system metaphors are mostly of the type “X is a human” referring to the EU, the EU Commission, the EU Parliament, the Council of the EU, the Member States. Those examples can also be observed as personifications of political and legal bodies:

Heads of the states;
Treaty makes a new stage in the process of...
the Union has decided to cease exercising its competence
The Union shall share competence with...
The Union shall take measures to ensure ...
The European Council shall take no action...
The Commission shall submit proposals...
The Council shall do all in its power to...
the Member States shall exercise their competence ...
Member State may ask the Commission to examine the situation
the Union has decided to cease exercising its competence
The Union shall share competence with...
The Union shall take measures to ensure ...
The European Council shall take no action...
The Commission shall submit proposals...
The Council shall do all in its power to...
the Member States shall exercise their competence ...
Member State may ask the Commission to examine the situation
Member States consult each other.

The collocation *movement of capital* can also be seen as metaphors of the type “X is a human”. This type of metaphor is most frequent in the corpus of the EU-Treaty. These examples can also be observed as personifications of the term *Member State* and terms for the political bodies of the EU.

(2) Three metaphors *the Treaty enters into force*, *provisions laid down by the law* and *regulations laid down by the law* are complex system metaphors of the type “the Treaty is a power”/“the law is a power”.

(3) Even the metaphors of the type “rights are fragile”/“health is fragile” (five examples), can be seen as a complex system metaphor of the type “X is a fragile/sensitive/vulnerable system” rather than as the ontological metaphor of the type “X is an object”.

rights shall be protected
protection of the rights
protecting health
Strengthening the rights and

the protection of interests.

In the corpus of the EU-Treaty, 29 metaphorical expressions were found. Interestingly, all the excerpted examples belong to the complex system metaphors.

The analysis of the examples found in both corpora leads to the conclusion that in the Treaty of the EU as well as in the theoretical texts analyzed in the first part of the research, complex system conceptual metaphors prevail. The findings indicate that complex system metaphors added by Kövecses [4] to Lakoff and Johnson's taxonomy are of utmost importance for metaphors in the field of law.

If we observe the lexical structure of metaphoric expressions in the second corpus, it can be concluded that the most frequent structures occurring in the EU-Treaty are full sentences, most probably due to the fact that the most frequent type of conceptual metaphor is a complex system metaphor "X is a human." This finding also indicates that the frequency of usage of specific conceptual metaphors is in close correlation with the nature and the function of specific legal text.

6 Conclusion

Figurative speech is an integral part of the cultural identity of every nation, and the usage of metaphors represents a distinctive feature of the language of the law in every legal system. Metaphors are recognized as a stylistic feature in the language of the law at an early stage of the development of interdisciplinary research in linguistics. The metaphor was seen as a challenge to a translator because it is always closely connected with the culture it stems from. These features make metaphors an interesting object of translation studies as they, according to Marta Chroma, represent a part of "cross-cultural traps in legal translation" [1].

The analysis has shown that metaphor has been present in the law since ancient times. Often it has been used by lawyers as a part of their persuasive strategy. This fact is confirmed by the often quoted statement by Richard [12]: "The point [of the metaphor] is not to make legal concepts accessible to everybody (though some do). It is to make them strike the mind" [12, p. 63].

Numerous examples that were analyzed in the empirical part of the paper were excerpted from two different sources: the three Legal English textbooks and the *Treaty Establishing the European Community—Consolidated version 2002*. The findings imply that metaphors are intensely used in theoretical legal texts, particularly in the fields of criminal law, company law, and contract law. The exploration of metaphors in the language of the EU law (the Treaty of 2002) has not confirmed the hypothesis that different types of conceptual metaphors are strongly present in this relatively young and complex branch of law.

Although it was expected that, because of the scope and the complexity of legal relations expressed by the texts in both corpora, diverse types of conceptual metaphors will occur, the findings clearly indicate that in the field of law complex system metaphors are most frequent with no specific reference to the type of the text analyzed. The findings also revealed that a specific type of complex system metaphor prevails in specific types of legal text, which is illustrated by the frequency of the

type “X is a human” in the EU-Treaty. On the other hand, in legal textbooks representing the first corpus of the research, different branches of law are presented and discussed. The analysis of the examples from such a diverse collection of theoretical texts indicates that complex system metaphors occur in several different conceptual types but none of them is strongly prevailing, as is the case with complex system metaphors of the type “X is a human” in the text of the Treaty Establishing the European Community. This leads to the conclusion that the frequency of the specific type of complex system conceptual metaphor is closely correlated to the type of legal text, its function, and its purpose. Interestingly, the results also indicate that complex system metaphors added by Kövecses [4] to Lakoff and Johnson’s taxonomy are strongly present in both corpora and can be seen as typical of the language of the law.

Shortcomings and limitations of the research of metaphors in the EU Law should be mentioned as well. Those limitations are primarily caused by the limited corpus of the research. The research into different types of legal texts within the complex EU legislation might lead to different conclusions from those resulting from the research presented in this paper, as the frequency of specific conceptual metaphor in a legal text is influenced by its function and purpose. In any case, the results based on this limited corpus can be seen as indicative for the EU Law, as the text of the EU Treaty relates to general issues of the EU legal system. On the other hand, the scientific reliability of the findings is confirmed by similar results deriving from the analysis of metaphors occurring in the three recently published Legal English textbooks.

It should also be noted that this paper was focused on exploring metaphors in law from the point of view of cognitive linguistics. Hopefully, future explorations of metaphorical expressions in law from the transformational-generative perspective will reveal some new and interesting findings as well, because the complexity of the law and the close correlation of the language and the law have always been a fruitful and challenging source of linguistic research.

References

1. Chroma, Marta. 2004. Cross-Cultural Traps in Legal Translation. In *Intercultural Aspects of Specialized Communication, Linguistic Insights Series*, vol. 14, ed. Christopher Candlin and Mauricio Gotti. Bern: Peter Lang.
2. Günther, Lothar. 1898. *Recht und Sprache*. Vienna: Heymanns.
3. <https://libquotes.com/henry-hawkins/quote/lbb1b4c>. Accessed 14 Mar 2022.
4. Kövecses, Zoltan. 2002. *Metaphor: A Practical Introduction*. 2nd ed. New York: Oxford University Press.
5. Lakoff, George, and Mark Johnson. 1980. *Metaphors We Live by*. Chicago: University of Chicago Press.
6. Lakoff, George, and Mark Turner. 1992. *More than Cool Reason: A Field Guide to Poetic Metaphor*. Chicago: University of Chicago Press.
7. Li, Lan, and Lucy MacGregor. 2009. Colour Metaphors in Business Discourse. In *Language for Professional Communication: Research, Practice and Training*, vol. 11, ed. Vijay K. Bhatia, Winnie Cheng, Bertha Du-Babcock, and Jane Lung, 11–24. Hong Kong: City University of Hong Kong.
8. Mattila, Heikki E. S. 2006. *Comparative Legal Linguistics*. Hampshire: Ashgate.

9. McKay, William, Helen Charlton, and Grant Barsoum. 2011. *Legal English-how to understand and master the language of Law*. Harlow: Longman-Pearson.
10. Mihaljević, Milica, and Ljiljana Šarić. 1996. Metaforizacija kao terminološki postupak u engleskom i hrvatskom. *Suvremena lingvistika* 41(42): 437–449.
11. Reiss, Katarina, and Hans Vermeer. 1984. *Grundlegung einer allgemeinen Translationstheorie*. Tübingen: Niemeyer.
12. Richard, Isabelle. 2014. Metaphors in English for Law: Let Us Keep Them! *Lexis - Journal in English Lexicology* 8: 1–19. <https://doi.org/10.4000/lexis.251>.
13. Smith, Michael R. 2007. Levels of Metaphor in Persuasive Legal Writing. *Mercer Law Review* 58: 919–947.
14. Sočanac, Lelija, et al. 2018. *English for the Legal Professionals*. Zagreb: Narodne novine.
15. Stolze, Radegundis. 1999. *Die Fachübersetzung – Eine Einführung*. Tübingen: Gunter Narr.
16. Šarčević, Susan. 2000. *New Approach to Legal Translation*. The Hague: Kluwer Law International.
17. The Constitution of the Republic of Croatia. The Consolidated Text of 15. January 2014. https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf.
18. Treaty Establishing the European Community: Consolidated version 2002 available online at the <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=celex%3A12012E%2FTXT>.
19. Wiebalck, Alison, Richard Norman, Clemens von Zedtwitz, Kathrin Weston Walsh, and Jean-Luc Delli. 2013. *The Legal English Manual. Handbook of Legal Terms and Practical Scenarios for Written and Spoken Legal Language*. Basel: Manz, Beck, Helbig Lichtenhahn.
20. www.ec.europa.eu/justice/fundamental-rights/files/acquis-rights-of-child.pdf. Accessed 14 Mar 2022.

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