

RECIPIENT DESIGN OF STATUTES AND JUDGMENTS

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ABSTRACT

One of the distinguishing features of legal discourse is the highly restricted institutionalization of its authorship which is mirrored in the specialized character of the legal audience (cf. Goodrich 1987: 117). This paper seeks to explore the various distinctions that can be drawn on the recipient side of legal communication on the basis of two legal instruments: statutes and judgments. It is argued that it is the communicative function of specific legal texts that determines the type and, consequently, the identity of their recipients. The function in question is, in turn, crucially conditioned by the illocutionary intention manifested in a legal text by its producer. The notion of an illocutionary intention originates from speech act theory which provides a theoretical framework for the recipient-oriented analysis of legal texts carried out in the current study. Compatibility of speech act theory with the fundamental concepts of the positivist theory of law ensures, it is hoped, that the proposed account of recipient design is justified not only on pragmalinguistic but also on legal grounds.

1. Introduction

In this paper, I want to examine recipient statuses that can be distinguished in statutes and judgments. Although these instruments are central to legal discourse, neither jurists nor linguists can agree on such fundamental issues as to whether or not the texts in question are directed at addressees, who these addressees may be, and what functions they fulfill. My aim, therefore, is to tackle all these questions from the vantage point of speech act theory – a framework of inquiry which, since its inception, has been successfully applied in many studies of institutional (including legal) speech acts (cf. Austin 1962; Samek 1965; Nowak 1968; Hancher 1976; Tiersma 1986). However, traditional speech act theory has been preoccupied, on the recipient side, almost exclusively with the addressees of illocutionary acts, as a result of which the different roles that other participants in legal discourse may perform have remained largely unaccounted

for. In order to overcome this drawback, my research is based on a modified version of Clark and Carlson's (1982) model in which the whole recipient design of legal texts is determined by the producer's illocutionary intentions.¹ One merit of employing the concept of illocutionary intention, along with other basic notions of speech act theory, is that the account proposed here becomes compatible with the positivist theories of law and legal acts. As a consequence, the insights into the recipient design of statutes and judgments that a speech act analysis provides are subsequently corroborated also by the world of law from which these acts originate.

2. Theoretical background

Austin (1962) and Searle (1969), as well as most of their followers, adopt a model of communication in which the speaker produces an illocutionary act directed at the hearer who is at the same time the addressee of that act. Scholars working in the standard speech act framework analyze exchanges between two parties only, ignoring other roles that participants in discourse may assume. Yet, in speech acts it is possible to distinguish, apart from the traditional functions of the speaker (addresser) and the hearer (addressee), further participant statuses as well. Different positioning of speech act interactants and the effects of the presence of a third party on the significance of the speaker's utterance to the hearer may have far-reaching consequences for the interpretation of speech acts. All these factors should therefore be examined not only in the analysis of everyday conversation but, as will be shown below, of more formalized types of discourse as well.

The various roles to which hearers and other parties in a conversation can be assigned by speakers, and the ways in which speakers produce their utterances with these participants in mind, are collectively known as "recipient design" – a notion originating in the studies of the sequential organization of conversation (cf. Garfinkel 1967; Sacks, Schegloff and Jefferson 1974). Goffman (1975: 260), for example, distinguishes on the recipient side "ratified participants" who are entitled and expected to be part of the speech event and "unratified participants" who are not. He then divides the former group into participants not specifically addressed by the speaker and participants to whom a speech act is directly addressed. The latter group, of "unratified participants", subdivided into

¹ Different participant statuses can also be distinguished as regards the production format of an utterance (for an account in speech act terms cf. Hancher 1979). In this paper, however, I will not investigate their role any closer since nothing of substance in my analysis hinges on such distinctions. Accordingly, I will assume throughout that the text of a statute or a judgement originates from one producer, without specifying her/his exact status.

"by-standers", "overhearers" and "eavesdroppers", is designed specifically for everyday face-to-face conversational settings.

The main insights of Goffman's scheme were adapted to speech act theory by Clark and Carlson (1982) who propose to retain in principle such audience distinctions but reinterpret them with respect to the speaker's reflexive illocutionary intentions (or "m(utual)-intentions", cf. Clark and Carlson 1982: 348-350). Participants thus become the hearers whom the speaker intends to take part in the illocutionary act. They may become addressees if the illocutionary act is directed at them or side-participants, if they are merely listening in. Finally, overhearers (both known and unknown) are those hearers that are not reflexively intended by the speaker to participate in the illocutionary act (Clark and Carlson 1982: 342-343, 350). In conversation, the speaker can manifest her/his illocutionary intention to assign these roles (statuses) to hearers by means of numerous devices, among which the most important are the content of the utterance and such extra-linguistic means as the physical arrangement of the hearers, manner of speaking, gestures, and conversational history.

A corollary of the participant roles mentioned above is the view that in an interaction involving more than two persons, the speaker produces two types of illocutionary acts with each utterance. One is the so-called "addressee-directed" illocutionary act, aimed at hearers in their roles as addressees, including all the traditional classes of illocutionary acts. The other, logically-prior, "participant-directed" informative illocutionary act, is intended by the speaker to jointly inform all the side-participants of the illocutionary act that s/he is simultaneously performing toward the addressee(s). The upshot of these assumptions is that all addressee-directed illocutionary acts are performed by means of informatives. Clark and Carlson spell out the following set of necessary and sufficient conditions on such informative illocutionary acts, using Searle's (1969) framework:

- 1) Preparatory condition: In uttering *x*, *S* is performing *I* addressed to *A*.
Sincerity condition: *S* wants it to be commonly-known among *S* and *P* that, in uttering *x*, *S* is performing *I* addressed to *A*.
Propositional content condition: *S* predicates that, in uttering *x*, *S* is performing *I* addressed to *A*.
Essential condition: *S*'s uttering *x* counts as an attempt by *S* to make it commonly-known among *S* and *P* that, in uttering *x*, *S* is performing *I* addressed to *A*.
(Clark and Carlson 1982: 351)²

² "*x*" stands for the sentence uttered, "*S*" – for the speaker, "*A*" – for the addressee(s), "*P*" – for the participant(s), and "*I*" – for the illocutionary act which *S* is directing at *A*.

The last tenet of Clark and Carlson's model that will facilitate the exploration of recipient design of statutes and judgments concerns the possibility of assigning addressees of illocutionary acts in an indefinite way. The standard speech act accounts assume that the speaker always knows to whom s/he is addressing each illocutionary act. Yet, the speaker may also direct what s/he says at several hearers at once, not knowing which of them s/he is in fact addressing, e.g.:

- 2) *George, to Alistair and Fergus*: The last of you to leave, turn out the lights.
(Clark and Carlson 1982: 354)

Clark and Carlson claim that in such cases, when each hearer has an equal potential of being an addressee, the "equipotentiality principle" applies. According to this principle, if the speaker cannot indicate to each of two or more participants whether or not that participant is an addressee, the speaker must have the same illocutionary intentions toward all the hearers, regardless of who the addressees actually are (Clark and Carlson 1982: 354).

It is my contention that, after some necessary adjustments, the concept of an informative illocutionary act with the participant distinctions it entails, can be employed also in the analysis of highly formalized types of legal discourse such as statutes and judgments. Some evidence indicating that participant roles other than that of the hearer should be distinguished also in legal contexts is already provided by Clark and Carlson who argue that side-participants, such as institutional witnesses, may be required by law for the successful performance of certain legal speech acts:

In many legal settings, the institutional witnesses sign documents affirming that they witnessed the appropriate illocutionary acts toward the addressees and accept these as felicitous – as not being false, or fraudulent, or insincere. This includes wills, contracts, and passport applications, as well as most actions in court. With a will, for example, it isn't legally sufficient for a person to make a bequest sincerely and in sound mind: he must properly inform two witnesses that he is doing so, and they must attest to this by signing the will. There is even a person specially designated as a legally certified side-participant to such acts: the notary public.

(Clark and Carlson 1982: 341)

In view of the fact that some of the illocutionary acts given above by Clark and Carlson are written, a question might be posed whether their ideas may be extended to the written mode of communication in general. Considering the importance of written texts in legal discourse, for my current purposes such an extension would indeed be desirable. In order to see the plausibility of applying Clark and Carlson's model to written texts, it is worth looking into the following two arguments. First, contrary to its literal meaning, the notion of a speech act,

which comprises an illocutionary act, is applicable to spoken as well as written language. This is because "the general concept remains the same, since we have language which *does something*. Many legal documents – which certainly do not evoke an image of speech – are precisely of this character: they do not merely inform the reader of the legal situation, they create that situation" (Jackson 1995: 55; emphasis original). Following this line of argumentation, in the remainder of this paper I will adopt a terminological convention along the lines suggested by Kearns (1994: 50) and expand the term "speech act" to mean the same as "linguistic act". As a result, this notion will be understood to cover all intentional and meaningful acts whereby speakers or writers produce spoken or written utterances. Second, the notion of the speaker's illocutionary intention, determining audience design, is not confined to the oral mode of communication only. The writer can perform informative illocutionary acts by manifesting the relevant intentions also in writing. Since, however, recipients of written texts, unlike participants in conversation, do not have to be present at the time the text is produced, the range of devices that the writer can employ to assign different statuses to readers is rather limited in comparison with those available to the speaker in face-to-face conversation. Unless the reader's role is determined in advance by law, the writer can confer a given status on the reader mainly by means of the content of an utterance, reflecting the former's illocutionary intentions.

If the foregoing considerations are correct and Clark and Carlson's model can be applied to written discourse, some terminological changes will ensue. The agent of the illocutionary act is the writer. Participants in the addressee-directed illocutionary act are those readers whom the writer intends to take part in the illocutionary act that is directed at the addressees. Overhearers, in turn, correspond to those readers toward whom the writer has no such intention but who nevertheless read the text. In this way, the whole concept of audience design which was originally worked out for conversation becomes recast in more general terms of recipient design.

3. Recipient design of statutes

According to the positivist theory of law, statutes are legal texts, enacted or accepted by the legislator, in which prescriptions of conduct in the form of legal norms are worded. Legal norms unequivocally and directly command a directly specified addressee to perform a directly prescribed act in directly specified circumstances. The structure of legal norms can be represented as follows:

- 3) Addressee of the prescription (A) – prescribed act (B) – circumstances in which the prescribed act must be performed (C).
(Ziemiński and Zieliński 1992: 22)

Linguistically, the above structure of a legal norm can be expressed as:

4) Any A is hereby ordered to do (not to do) B in C.

In practice, the distinction between the three elements of a legal norm is arbitrary to a certain extent because it is impossible to segregate them in a clear-cut way. As Pintore argues

[T]he description of the addressee of the rule can also be treated as the description of a circumstance of the prescribed conduct ... The same can be said of the distinction between the circumstances in which the prescription must be fulfilled and the prescribed behavior: indeed the prescription to follow a certain behavior always presupposes a reference to the circumstances in which such behavior is required. (Pintore 1994: 2099)

Although the arguments just presented are convincing, for expository purposes it is convenient to divide legal norms into smaller components such as the application range (specifying the addressee and the circumstances) and the normative range (specifying the prescribed act) (Ziemiński and Zieliński 1992: 24-32).

The above-mentioned elements of each legal norm are expressed in legal texts in the form of legal provisions. A legal provision can be defined as a sentence occurring in the text of a normative act, constituting the smallest unit in its systematization, individualized as an article, section, paragraph, point etc. (Ziemiński and Zieliński 1992: 104).³ Theoretically, a single provision could correspond to one fully-fledged legal norm with all its obligatory components. Yet, this is hardly feasible in practice. Due to a hierarchical structure of modern legal systems and an intricate network of interrelationships among legal norms, a statutory provision expressing a whole norm would have a daunting size and complexity. In addition, such a normative utterance would not only have to specify all the qualifications modifying the basic legal norm but also provide the exceptions. This is why statutory provisions usually contain only certain elements of one or of several prescriptions.

The obligatory components of a legal norm can serve as a criterion dividing prescriptions into different types. According to how the circumstances in which legal norms apply are defined, the latter can be classified into abstract norms that discipline a multitude of acts and concrete norms that discipline a single act. Further, depending on how their addressee is specified, legal norms can be divided into general norms addressed to a multitude of individuals, e.g.:

5) Any A is hereby ordered to do B in C.

³ Since in this paper I will be concerned with legal provisions found in a statute, they will henceforth be referred to as "statutory provisions".

and singular norms that are directed to a single person, e.g.:

6) John Smith is hereby ordered to do B in C.

These criteria overlap and norms can be both abstract and singular, abstract and general, concrete and singular, and concrete and general. Moreover, since the above distinctions are based solely on the structure of a legal norm, single acts of single individuals can nevertheless be phrased in a general and abstract way. A solution offered by Ross (1968) is to distinguish between a closed class of addressees who are indicated by a proper name in a logical sense (i.e. denoting one and only one individual) and an open class of addressees whose number is variable in time. Norms whose addressees are described as a closed class are said to be singular while norms whose addressees are represented as an open class are considered general.⁴ Ross's characterization of addressees of legal norms will prove to be especially useful for my purposes in the discussion of the equipotentiality principle (cf. below).

Most scholars working in the positivist framework consider as legal norms only such prescriptions that are both abstract and general, reducing law to statutory law. However, it cannot be denied, especially in view of Ross's (1968) interpretation, that legal systems contain also concrete and singular legal norms, even at the statutory level. In English law, for instance, private and personal acts of Parliament relate either to particular circumstances and/or to particular individuals (e.g., an act authorizing the marriage of people who would otherwise be forbidden to marry – cf. McLeod 1999: 228). My adherence to the traditional positivist model can, however, be justified by the following factors. First, a large majority of legal norms in force in a given legal system are indeed abstract and general. This is due to the impersonal and detached character of legislation, aimed at satisfying such values as equality and certainty (cf. Jori 1994a: 2110). Second, the assumption that legal norms are predominantly abstract and general will be important for an analysis of the process of law application. It will be shown that concrete and singular legal norms laid down in judgments are linked to their abstract and general counterparts found in statutes through important bonds.

The direct implications of the distinctions introduced above for the recipient design of statutes should be evident by now. Granted that a statute consists of a number of (statutory provisions expressing) legal norms, each of which may prescribe conduct of different addressees, it is doubtful whether one can legiti-

⁴ The application of the same principles to the characterization of the prescribed conduct yields a distinction between concrete and abstract legal norms.

mately distinguish a single addressee of a statute.⁵ Even if the addressees of a legal norm are described as a closed class, each norm worded in a statute determines its own set of addressees which may not overlap with that specified by another norm. Therefore, the addressees of legal norms should, logically speaking, be established before the set of addressees of a statute can be identified. The latter group can be regarded only as a sum of all the addressees of each legal norm contained in a given statute. And even here matters may be further complicated since, as I have already noted, a legal norm can be reconstructed from a number of statutory provisions worded in different statutes. For all these reasons, in the following characterization of recipient statuses I will consider addressees of legal norms in statutes and not addressees of statutes as such.

In modern legal systems, a statute is a written document later to be printed and universally promulgated within a jurisdiction. This property considerably influences the recipient statuses because a statute does not presuppose the presence of the addressees of its legal norms at the time of writing or promulgation. A statute is thus highly impersonal (Pintore 1994: 2100) and not directed to a concrete person who is specified in advance. Rather, it is intended for an unspecified range of addressees (Malinowska 2001: 29-30). However, at the time of enacting a statute, the legislator cannot foresee exactly who will become a recipient of this legal act, as theoretically anyone knowing the language of legislation may read the text of a statute (Gizbert-Studnicki 1979: 55). Such factors are likely to influence the choice of perspective in statutes. With regard to recipients, statutes take a third person point of view, addressing the whole speech community of a jurisdiction. Although such a formulation “reduces the immediacy and directness of the illocution, and at the same time the precision of reference that a first- and second-person view affords”, it increases the range of things and ideas that may be expressed and permits abstract classification (Trosborg 1997: 35). The “impersonal” character of statutes is to a large extent determined by the need to communicate prescriptions out of context. These texts are designed to be understood in a relatively uniform way by different addressees in different situations, so they rely minimally on extralinguistic contexts and maximally on their own system of interrelated definitions and concepts (Jori 1994b: 2121).

Although different addresser – addressee relations in legislation are widely acknowledged in the literature, there is no agreement as to what participant statuses can be distinguished on the recipient side. While some authors believe that the addressees of statutes are exclusively the persons on whom an obligation is imposed or on whom a right is conferred (Maley 1994: 18; Trosborg 1997: 31),

⁵ I exclude here rather hypothetical examples of statutes containing only one singular legal norm.

most others broaden the group of addressees to include not only the addressees of the legal norms expressed in a statute but also all persons affected by a given piece of legislation. The latter view is most notably supported by Kelsen (1967: 40; cf. also Kurzon 1986: 28) who claims that the direct addressees of general legal norms are specialists (lawyers) empowered to interpret and apply such norms, i.e. competent law-applying bodies. Persons who are affected by the application of norms are referred to by Kelsen as “indirect addressees”. Bhatia also contends that although statutes are meant for ordinary citizens, the real readers are lawyers and judges who are responsible for interpreting the law for ordinary citizens (Bhatia 1993: 102-103). Šarčević (1997: 60) follows this track and distinguishes different groups of direct addressees, depending on the type and subject matter of a legal text. In her opinion, since most legal disputes are ultimately adjudicated by the court, the primary direct addressees of statutes are judges who are authorized to interpret and apply normative legal texts. Communication in the legislative process is viewed here as taking place between two main groups of specialists: lawmakers who lay down the laws and lawyers who interpret and apply these laws.

The first position discussed above, treating “ordinary” legal subjects as addressees of statutes, is challenged on the premise that successful communication presupposes interaction between producers and addressees and that the communicated text should be accepted by the addressee. This of course does not mean that the addressee must act or refrain from acting in accordance with the prescriptions expressed in a statute but rather that s/he must acknowledge its text as a cohesive and coherent instrument for attaining a specific goal (cf. de Beaugrande and Dressler 1981: 3). As Šarčević (1997: 58) notes, such reasoning led some authors (Forsthoff 1940: 8) to conclude that statutes have no addressees at all. In a similar vein, Hurd (1990) maintains that statutes are not communication at all because they often lack an audience and as such may secure no response. According to Hurd, this is due to the fact that very few citizens actually read the text of laws, even though they are bound by them (Hurd 1990; after Tiersma 1993: 132). Other scholars argue that statutes are in fact monologues “without witnesses” (Zieliński 1999: 55). I agree with Šarčević that such conclusions are misleading as they contradict the basic presumption that a statute, despite its uniqueness, is after all a communicative occurrence. Yet, for reasons to be spelled out below, I am not inclined to adopt the second option presented above.

The discussion centering on recipient statuses in legislation may become pointless unless some important terminological distinctions are first introduced. The preceding exposition has revealed that some scholars employ heterogeneous criteria to distinguish different recipient statuses in legislation. Others fail to differentiate statutes as texts consisting of statutory provisions expressing (parts of)

legal norms from legal norms themselves. It is therefore unclear whether the categories of recipients they demarcate pertain to statutes as collections of many legal norms or individual legal norms only. This is why a consistent analytical framework should be applied to all the classes of persons involved in the reception of statutes.

In the variant of speech act theory adopted in this paper, addressees (both actual and potential), side-participants, and recipients of a speech act are sharply distinguished. Only the first two categories are determined by the writer's (legislator's) illocutionary intention. Addressees (potential and actual) are the addressees of the legal norms (directive illocutionary acts) expressed in a statute, intended by the legislator to take part in the legal directive illocutionary acts, whether or not they actually read the text. Side-participants are also intended by the legislator to be involved in the legal illocutionary acts, although they are not, strictly speaking, addressees of the statutory legal norms. An example should help to clarify these distinctions. Proponents of treating, e.g., judges as direct addressees of legal norms assume that judges are direct addressees of the same legal norm that imposes an obligation on its indirect addressees (i.e. "ordinary" legal subjects), e.g.:

- 7) Any person who discloses any information in contravention of this section shall be guilty of an offence and liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or to both.

(Part I. Section 4.-(6) of the UK Electronic Communications Act 2000 from 25th May 2000)

Accordingly, the judge's obligation would be to deliver a judgment whenever the indirect addressee of the norm (e.g., a person disclosing information) fails to comply with it. In fact, however, it is another legal norm (LN₂) that orders (and at the same time authorizes) the judge to give a judgment should the first legal norm (LN₁), imposed on an "ordinary" legal subject, be breached. The first norm is substantive, whereas the other is procedural, specifying what measures should be taken by the judge in case the substantive norm is broken. This is why in the example just given the judge is not an addressee of the legal norm (LN₁) expressed in a statute but a side-participant only, being the addressee not of the directive illocutionary act but of the informative one.⁶ It is of course also possible that the

⁶ The same line of reasoning applies to other persons or bodies such as the police, prosecutors, attorneys, etc. who may be involved in the implementation of a norm and who are traditionally regarded as its addressees.

second procedural (authorizing) legal norm (LN₂) will be contained in the same statute, stipulating, for example, that the judge should inflict punishment on any person guilty of offences defined in (7) above. That being so, the judge will be the addressee of the second legal norm (LN₂), while an "ordinary" legal subject – its side-participant. The different statuses assigned to readers are thus determined by a specific legal norm, in which the legislator's illocutionary intention is manifested. This corroborates the claim I have made earlier that it is legal norms (directive illocutionary acts) that have addressees and not statutes as such.

The foregoing discussion has not explained how addressees of legal norms can be identified and then affected by a given piece of legislation. As regards legal norms (directive illocutionary acts) expressed in statutes, it is usually not known in advance who their actual addressee(s) will eventually turn out to be. This is due to the fact that a rational legislator should regulate only the future conduct of legal subjects. Consequently, since the legislator cannot give her/his prescription to the (actual) addressee directly, all s/he can do is inform all the (potential) addressees of that prescription. Paraphrasing example (2) above, such a norm could be structured as follows:

- 8) Each you who finds her/himself in the circumstances specified in the application range, is hereby ordered to do B.

But, according to the equipotentiality principle, by informing all the potential addressees of the enacted prescription, as soon as the actual addressee is established, the legislator automatically will have imposed the legal norm on that person. It would of course be unreasonable to expect that the legislator, to ensure the operation of the equipotentiality principle, literally informs all the people whose conduct is to be regulated by the enacted legal norms. Instead, modern legal systems employ other devices to ensure that legislation is operative (cf. below).

The last group of readers of interest at this stage of my analysis encompasses recipients of a statute, i.e. all those persons to whom the text is actually communicated, regardless of the legislator's illocutionary intention in this respect. On the face of it, it might seem that as far as statutes are concerned, their recipients do not necessarily correspond to all the addressees and side-participants of the legal norms contained therein. It is a commonplace that addressees and even side-participants very often fail to read the text of a statute. Ignorance of law is not an excuse, however, and modern legal systems preserve the fiction that on the day of the official promulgation of a statute, all the addressees and side-participants of the legal norms expressed in its text become acquainted with the enacted prescriptions. Such a counterfactual assumption is indispensable for the equipotentiality principle to apply and, consequently, for legal norms to regulate human conduct. Accordingly, all the addressees and side-participants of legal

norms worded in a statute are, from the day of its promulgation, legally deemed to be recipients of the relevant directive illocutionary acts (Hancher 1976: 247).

To conclude this section, it may be interesting to note that the proposed tripartite division of recipient statuses based on speech act theory receives some support also from studies conducted within a different scientific framework. In his sociolinguistic account of language of the law, Gizbert-Studnicki claims that the addressees of a statute comprise three separate groups, i.e.: persons who actually read the text of the statute (actual recipients), persons who are the addressees of the legal norms expressed in the statute, as well as all other persons who may potentially be affected by the text of the statute (Gizbert-Studnicki 1986: 52).

4. Recipient design of judgments

In modern legal systems, a judgment is first delivered orally in the courtroom to be later recorded in written form. Therefore, although a judgment is usually pronounced in the presence of the litigant parties, it takes a third person view with regard to them, e.g.:

9) The Defendant having given notice of intention to defend herein and the Court having under Order 14 Rule 3 ordered that judgment as herein provided be entered for the Plaintiff against the Defendant

IT IS THIS DAY ADJUDGED that the Defendant do pay the Plaintiff 6,900.00£...

(Collin 1986: 310)

Since in this paper I am primarily concerned with the extension of Clark and Carlson's model to written legal texts, in the following I will focus on the written version of judgments.

A judgment is an act of law application in which a judge determines the legal consequences of a particular fact and on this basis announces a decision in a given case. Judicial application of the law consists of two main stages. In the first phase, the judge ascertains that the facts belonging to the application range of a certain legal norm occurred. In the second stage, the judge states the legal consequences specified in the normative range of this norm by performing an assertive or a directive illocutionary act (Kwarciński 2002: 326-334). In the latter case, the judge applying the law deduces a concrete and singular legal norm from an abstract and general one laid down in a statute.⁷ Considering that judgments, like statutes, also consist of a number of illocutionary acts, the preceding

⁷ Strictly speaking, the judge's decision may also be abstract and singular (e.g., prescribing the defendant to financially support her/his child). However, this in no way adversely affects the forthcoming considerations.

remarks concerning the distinction between the addressees of statutes and of particular illocutionary acts (legal norms) expressed therein will apply, *mutatis mutandis*, to judgments.

A judge giving a judgment performs two kinds of illocutionary acts with the same utterance. The addressee-directed illocutionary acts (assertive or directive) are aimed at readers in their roles as addressees. The addressees of the illocutionary acts forming a judgment are most often the litigant parties, i.e. the plaintiff (prosecutor) and the defendant, or other persons intended by the judge to be influenced by her/his decision. A judgment is thus oriented toward addressees as carriers of certain social roles and not as private individuals (Gizbert-Studnicki 1986: 49). However, the illocutionary acts in a judgment are always directed at specific addressees who are identified in court proceedings so the principle of equipotentiality will not apply.

The two classes of acts mentioned above constitute legal speech acts proper, affecting their addressees, irrespective of whether or not they are actually present in the courtroom at the time of the delivery of the judicial decision or read its written version afterwards. In some cases, however, the binding validity of the component illocutionary acts depends on their successful communication to the addressee(s), i.e. in speech act terms – on an “uptake” (cf. Austin 1962: 116). Analyzing its role in legal contexts, Hancher claims that although an actual uptake may be required for those legal speech acts that are addressed to a definite audience, in the case of an unspecified audience the requirement may be waived for practical reasons (Hancher 1976: 248). In practice, an uptake may not be obligatory for illocutionary acts occurring in judgments and addressed to definite addressees either. To ensure that the addressee does not avoid the delivery of a judgment and, consequently, escape its binding validity, a legal fiction (the so-called “record notice”) is often adopted. According to this presumption, it is assumed that “a person has received information of the contents of the document by virtue of that document's having been recorded in a designated public office. Similarly, a legally mandated official notice published in a newspaper or posted in a public place may constitute constructive notice to all persons addressed even if none saw the notice” (Hancher 1976: 247-248). In speech act terminology, this constitutes an informative illocutionary act whose success (felicity) does not depend on an uptake.

Apart from addressee-directed illocutionary acts, one can distinguish in judgments also participant-directed illocutionary acts. Their function is to jointly inform all the side-participants of the illocutionary act (legal speech act) that the judge is simultaneously performing toward the addressee(s). Side-participants comprise e.g., the jury, counsel, state officials taking part in the proceedings or (potentially) an appeal court, but also all those persons who, although not directly addressed in the court's decision, are nevertheless intended by the judge

to be affected by it. A paradigm here is a judgment of universal binding validity. Unlike "ordinary" judgments which bind the litigant parties and the court only in the instant case, judgments of such enhanced validity extend their effect on all persons and institutional bodies. In the latter category of judgments, the litigant parties are the addressees of the illocutionary speech acts forming a judgment, whereas all other persons and institutional bodies are their side-participants. The requirement of informing all side-participants is impracticable, so it may be waived by means of the record notice or a similar legal fiction.

The final category of persons concerned with the delivery of a judgment includes all the readers to whom the text of a judgment is actually communicated, regardless of the judge's illocutionary intentions in this respect. The class of recipients encompasses the addressees, side-participants, and all other individuals who have read the text of the judicial decision. In contrast to statutes, there is usually no legal fiction stipulating that from the moment of the promulgation of a judgment the addressees and side-participants of the illocutionary acts expressed in this judgment automatically become also its recipients. For example, it is only due to the institution of the record notice that the addressees of the illocutionary acts forming a default judgment are legally presumed to be acquainted with that legal instrument.

5. Conclusions

In this paper I have employed a modified version of Clark and Carlson's (1982) model as an investigative tool in the analysis of recipient design of statutes and judgments. I have argued, in speech act terms, that illocutionary acts contained in such legal texts can be targeted simultaneously at two groups of people. The different roles of addressees, side-participants and recipients, are assigned to the readers of statutes and judgments by means of the illocutionary intentions manifested by the writer. The proposed account of the recipient design incorporates also certain fundamental concepts of the positivist theory of law. As a result, the current study provides a broader view of communication between the writer and the reader(s) in legal discourse and helps to explain a range of issues relating to the operation of illocutionary acts associated with the texts in question.

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