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Linguistic monitoring of communication between experts and non-experts in the legal field

At the annual conference of the German Association of Applied Linguistics (GAL) in Koblenz in 2005 a workshop was organised on linguistic monitoring of communication in the field of law.¹ The papers of the thematic section of this volume of *Hermes* originate from this workshop. The idea underlying the workshop was to support recent development in German applied linguistics to overcome the traditional focus of studies on the description of texts and to widen the scope in the direction of more global approaches, such as, for instance, the study of processes of understanding in the framework of legal communication.

Over the years, a substantial number of papers have been published on the topic of the intelligibility of legal texts² and there has been much focus on the topic from the general public and from politicians. However, despite the consistent linguistic contributions and the public interest in the topic the impact on writing habits of legal professionals at least in Germany has been fairly limited. The linguistic experts and the general public have not yet managed to start an efficient communication process with the legal community. This may be due to the fact that much criticism has focused upon merely stylistic features and has failed to take into consideration the full complexity of the problem. In order to break the barrier between the different communities, a dif-

¹ For a report on the programme of the workshop see Eckardt/Engberg/Warnke 2006.

² A good overview of recent positions in the field is presented in Schenderra (2004)

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ferent and more globally oriented linguistic approach is needed which focuses more on the structures of the communicative situation and their convergence with linguistic aspects of the legal texts. Applied linguistics has the potential to develop relevant methods for fulfilling this task in the form of a linguistic monitoring of the communication between experts and non-experts in the field of law. The contributions to this thematic section may be seen as a first attempt to collect and screen potentially relevant methods.

In general, *monitoring* is the structured long-term observation of a system. An example of monitoring from the field of environmental studies is the investigation of the effects of contaminants on selected species and habitats known as *biomonitoring*. What is monitored is a functioning system, and the focus of the monitoring is on assessing the state of the system and the impact of specific factors on the functioning of the system. But monitoring not only consists in observing the system and its functioning. Evaluation of the results of the observation on the basis of scientifically generated value systems is an important part of the methodology, too. Consequently, a monitoring methodology is suitable for assessing problems in the functioning of a system and for making suggestions for optimizing the system.

In the case of applied linguistics and the field of law, the goal of the monitoring process would be to optimize the system of *legal communication* in order to achieve a professionally managed mediation of knowledge relevant for legal purposes. Applied linguistics has developed specific theories for the evaluation of processes of understanding and also has at its disposal methodologies for describing and assessing communicative processes. Consequently, by adopting the principles of system monitoring applied linguistics should be able to enter into a much more fruitful cooperation with all participants in legal communication and thus contribute to a better communication not only in law, but also between the different interests of the communicative system.

The first step in the development of a methodology for linguistic monitoring must be to assess which types of problems exist and which linguistic methods have been used in practice to describe and potentially solve these problems. The thematic section contains two such contributions. The paper by Nickl treats patent documents, whereas the paper by Neumann et al. is concerned with the mediation of argumentation

and results of decisions by the German Federal Constitutional Court. Nickl presents the genre with its potential communication problems and shows how linguistic experts in his private service company actually work with optimizing the texts and solving the problems found. Consequently, he shows what a monitoring process, including the optimizing of the texts, may look like in the real world. On the other hand, Neumann et al. (a group consisting of lawyers as well as linguists) present a study more focused upon a specific linguistic feature and its impact on the intelligibility of legal texts. They describe the syntactic complexity of German court decisions, court press releases and newspaper articles on the decisions. On the basis of their results, they construct versions of texts based on original German court decisions with controlled complexity features and test the intelligibility of these text parts through psycholinguistic tests. So their contribution to the development of a linguistic monitoring lies mainly in the field of combining different methods (syntactic analysis, psycholinguistic tests) and assessing the impact of one factor (syntactic complexity) on the degree of success of the mediation in this field.

In the workshop, but not documented in the thematic section, other contributions to the development of a linguistic monitoring were also presented. Ekkehard Felder, Heidelberg, focused on law as a field of knowledge and showed how the primary problem in understanding statutory texts lies in the fact that the knowledge systems (“Wissensrahmen”) of experts and non-experts are far apart from each other. Consequently, optimizing the communication must to a certain extent consist in transferring knowledge about differences in the knowledge systems.³ Jan Engberg, Aarhus, took his point of departure in the fact that legal meaning is inherently dynamic and investigated the impact of this fact on the task of assessing the intelligibility of legal texts. As a methodology for observing differences and similarities between different conceptualisations of concepts he suggested that focus on semantic networks should be expanded.⁴ And finally, Kerstin Grönert, Bielefeld, and Kristin Gogolok, Halle, each presented empirical studies of communication in public administration. In both cases, the different

³ See Felder (2005) for information on the approach.

⁴ This contribution is in the process of being published.

knowledge basis of the employed experts in the administration and the citizens was established as a major problematic issue, and suggestions for overcoming the gap primarily through a more dialogical formulation process were given.⁵

All of the contributions mentioned so far help establish central problems of the communicative system to be monitored, and they also offer tools for observing and evaluating the problem. In other words, they contribute to the development of the process and methodology of monitoring which was at the root of the workshop. However, even the best developed descriptions and suggestions for optimizing are useless if they are not accepted by the participants of the relevant kind of communication. That, in a nutshell, is the lesson to be learned from former attempts to optimize legal communication. Consequently, two legal experts in the workshop were asked to assess the linguistic contributions from their point of view, in order to function as correctors in the process of developing the linguistic monitoring of communication in the field of law. In the thematic section, Viola Heutger, Amsterdam, and Kent D. Lerch, Berlin give a critical evaluation of ideas and suggestions in the workshop and present their view as to positive points and necessary changes in the approach in order for it to be an effective tool and a potential common ground for lawyer-linguist cooperation.

The workshop and this thematic section documenting some of the central contributions are but a first step in the development of a linguistic monitoring of the complex system of legal communication. However, this first step has shown that a number of relevant and empirically tested approaches exist and that they may function as input for the development of a more globally oriented methodology of monitoring. And the cooperation with legal experts has also shown a wish to establish fields of contact where linguistic monitoring may help overcome recognised problems. Therefore, we definitely see a future for the application of such a methodology in the field of law.

⁵ See Grönert (2004) for information on the approach. The contribution by Gogolok is in the process of being published.

References

- Felder, Ekkehard 2005: Alltagsweltliche und juristische Wirklichkeitskonstitution im Modell der ‚Juristischen Textarbeit‘ – Ein sprachhandlungstheoretischer Beitrag zur Kommunikation im Recht. In: Lerch, Kent (Hg.) *Die Sprache des Rechts. Strukturen, Formen und Medien der Kommunikation im Recht*. Band 3. Berlin/New York: de Gruyter, 133–168.
- Grönert, Kerstin 2004: *Verständigung und Akzeptanz in der Kommunikation zwischen Bürger und Verwaltung*. Bielefeld: Universität Bielefeld.
- Schenderra, Christian F.G. 2004: Die Verständlichkeit von Rechtstexten. Eine kritische Darstellung der Forschungslage. In Lerch, Kent (Hg.): *Die Sprache des Rechts. Strukturen, Formen und Medien der Kommunikation im Recht*. Band 1. Berlin/New York: de Gruyter, 133–168.
- Eckardt, Birgit/ Engberg, Jan/ Warnke, Ingo 2006: ‚Linguistisches Monitoring der juristischen Experten-Laien-Kommunikation‘ - Themenbereich der 36. Jahrestagung der Gesellschaft für Angewandte Linguistik (GAL) in Koblenz. In *Fachsprache* 28 1/2.

