



MONIKA ZALEWSKA
UNIWERSYTET ŁÓDZKI

COGNITIVE THEORY OF METAPHOR AND JERZY WRÓBLEWSKI'S CONCEPT OF LEGAL INTERPRETATION¹

1. Introduction

Jerzy Wróblewski as one of the most prominent legal theorists has enormous impact on Polish legal thinking, through creation of legal interpretation theory. Originally, inspired by Kazimierz Ajdukiewicz's philosophy of language the theory of legal interpretation became known by Polish lawyers. Three elements of legal interpretation: linguistic, systemic and functional are essential to the theory. Linguistic interpretation is bound with so-called linguistic directives. They focus on common, legal or specialist language. Systemic interpretation refers to the legal context. Such context is defined in terms of the place of the norm in a legal system. For example, norm has to conform with constitutional rules, or human rights policies. Functional interpretation is less specific and connects to the largest context: among others, social, economic, ethical. (Jerzy Wróblewski 1959, 143-147). Wróblewski is fully aware of some factors influencing the interpreter and as a result his theory does not explain the whole process of interpretation. However, when Wróblewski wrote his book, cognitivist theory had not been developed yet. Potentially, this field of science might provide some answers for Wróblewski's problems with the theory and partially identify the unknown factors. Lakoff-Johnson's theory of conceptual metaphor offers one possible explanation².

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In this paper I will apply Lakoff-Johnson's theory of conceptual metaphor onto Wróblewski's legal interpretation theory. In the first paragraph, Wróblewski's theory will be briefly presented. Next, I will move to Lakoff, Johnson's theory of conceptual metaphor. Finally, the answer will be provided whether Lakoff-Johnson's theory is able to supplement Wróblewski's theory of legal interpretation. As a result, two implications exist: theoretical and practical. Firstly, conceptual theory of metaphor might be helpful to some extent in completing Wróblewski's theory of legal interpretation. Secondly, conceptual theory of metaphor can be effectively used in the process of legal interpretation. However, the use of cognitive metaphor in the process of legal interpretation demands caution due to its specific character. Using metaphor's directives is not always advisable.

2. Wróblewski's theory of legal interpretation

Jerzy Wróblewski's theory of legal interpretation assumes that legal norms demand some further analysis as many of them are not evident. Although, Wróblewski's principle of interpretation is *clara non sunt interpretanda* (Zirk-Sadowski and Zieliński 2011, 100), he is aware that doubts concerning the meaning of the norms might occur. Three kinds of the doubts can be identified. Firstly, linguistic doubts. The use of a vague language would be an example of such. Secondly, systemic doubts. They can be exemplified by a relationship between the valid norms present in a particular legal system. Thirdly, functional doubts are the doubts concerning consequences of applying legal norm to a specific case. Some of the consequences can be of social, economic or ethical nature. Division of doubts leads Wróblewski to distinguish three corresponding types of directives of first degree: linguistic, systemic and functional (Wróblewski 1959, 145-147). These directives aim to help the interpreter to make appropriate decision regarding the meaning of the norm. Additionally, when first degree directives do not provide agreeable outcome, second degree directives are applied. Wróblewski created second degree directives in order to provide guidelines to help clarify, which directives of first degree should prevail. At this point, two sets of theories are distinguished: static and dynamic. Static theories favor linguistic directives. In addition, static theories

highlight the importance of historic lawmaker's will (Wróblewski 1959, 159-167). Within static theories group, subjective theories stress the bond between the legal text and a will of lawmaker and are most common. Dynamic theories contrast the static theories. Within dynamic theories group, functional directives are most significant, while linguistic carry least importance. Dynamic theories emphasize "adequacy of law and life" as the leading concept (Wróblewski 1959, 167). Additionally, these theories distinguish: teleological-sociological theories, theories of value, and others. Somewhere among them so called objective theories exist. Despite belonging to the dynamic group of theories, they put more stress on linguistic interpretation regardless of the lawmaker's will (Wróblewski 1959, 175). In practice, an established country with the functional government and effective legal system leans towards the use of static theories. Current situation in Poland exemplifies predominant use of static theories. On the contrary, dynamic theories seem to be more effectively applied in the countries going through transformational processes. Poland at the beginning of 90's illustrates such scenario. During transformation from communistic, non-democratic country into capitalistic democratic country, new government adjusted legal system to new circumstances. Transitional process proved to be complex. During this time functional interpretation was applied. Due to this application transformation process was possible, even though the legislation was drafted by historic, communist lawmaker.

Applying Wróblewski's directives of first degree result in three types of legal interpretation: linguistic, systemic and functional. However, as Wróblewski, notes, all three sets of directives do not provide exact and explicit rules regarding law interpretation. Instead, directives are guidelines (Wróblewski 1959, 143). In this context, Wróblewski argues that a wide range of experience is needed to apply them properly. Thus, even though, clear recognition of directives is available, the result of interpretation might still be unpredictable (143). Consequently, Wróblewski compares the lawmaker to a composer and the interpreter to a musician playing the piece of music. In each case, the personality of the interpreter, and factors affecting him influence the interpretation. Wróblewski's inability to recognize the factors leads him to conclusion they must be disregarded in the process of analysis of

legal interpretation (143). To sum up, Wróblewski is aware of shortcomings of his theory in explaining the process of legal thinking. Hence, a twilight zone exists with other factors influencing legal interpretation. Additionally, until these factors remain unknown, predictability within interpretation process is impossible to achieve. Despite many factors go unrecognized, I believe one can be identified as conceptual metaphor presented in Lakoff-Johnson's theory.

3. Conceptual metaphor – Lakoff-Johnson's theory

According to Lakoff-Johnson's theory, language and especially metaphor have much broader function, than traditionally ascribed. Commonly, metaphors are understood as "device of poetic imagination" (Lakoff, Johnson 2003, 3) concerning only language. Such metaphors are called verbal or point metaphors (see: Rybarkiewicz 2015, 208)³. On the other hand, conceptual metaphors as described by Lakoff and Johnson influence the way of thinking as well. This point of view, defines language as a top layer of something greater. Conceptual metaphors structure our cognition and perception of abstract phenomena. As a result the issue relates rather to the way of thinking than the way of speaking. Conceptual metaphor's function is to aid thinking in order to understand abstract idea in less abstract terms. The whole process of metaphorical thinking is described in terms of source domain and target domain. Source domain is a domain where metaphor is drawn and is rather tangible (e.g. war). On the other hand, target domain is abstract (e.g. argument), and more difficult to understand. Comprehension of target domain can be achieved by referring to source domain. Lakoff and Johnson provide an example of conceptual metaphor with a statement "argument is a war" (Lakoff Johnson 2003, 4). To support this claim, they provide some utterances illustrating transition from war to argument. Some of the utterances are: "your claims are indefensible" or "he attacked every weak point in my argument". Lakoff and Johnson also note that idea of argument as a war is something greater than just linguistic expression. For instance,

³ Rybarkiewicz distinguishes three types of metaphors: verbal (point) metaphors, systemic which allow to think outside the box and are created consciously, and hidden systemic (conceptual).

people tend to think about a person arguing the opposing view as an enemy. Additionally, strategies can be involved in the argument in order to win it. Therefore, structure of argument seems to resemble structure of war. Next, Lakoff and Johnson make a remark:

“Try to imagine a culture where arguments are not viewed on terms of war, where no one wins or loses, where there is no sense of attacking or defending, gaining or losing ground. Imagine a culture where an argument is viewed as a dance, the participants are seen as performers and the goal is to perform in a balanced and aesthetically pleasing way. In such a culture people would view argument differently, experience them differently, carry them out differently and talked about them differently...”(Lakoff and Johnson 2003, 4–5)

In the following chapter of their book Lakoff and Johnson draw very important consequence from their observation:

“The very systematicity which allows us to comprehend one aspect of a concept in terms of another (...) will necessary hide other aspects of the concept... that are inconsistent with that metaphor. For example, in the midst of a heated argument, when we are intent on attacking our opponent's position and defending our own, we may lose sight of the cooperative aspects of arguing.” (Lakoff and Johnson 2003, 9)

Hence, metaphor concerning “argument as a war” while revealing something has a side effect. Repercussions may hide some other aspects of the abstract concepts. In example mentioned above, potentially argument does not need to be perceived as a war.

Another crucial component of Lakoff-Johnson's theory is the concept of experiential gestalt. Experiential gestalt can be perceived as a “cluster of other components” (Lakoff and Johnson 2003, 69–70). This cluster is more basic in human's perception than individual parts creating it. An example of the cluster is prototype causation, which is a basic concept. The idea of prototype is similar to Wittgenstein's idea of family resemblance. For example, prototypes are small, flying birds. On the other hand, chickens or penguins are not prototypical birds (Lakoff and Johnson 2003, 71). Such properties constituting prototype are experienced as gestalt. Lakoff and Johnson define it as: “complex of properties occurring together (...) more basic to our experience than their separate occurrence” (Lakoff and Johnson 2003, 71). According to Lakoff and Johnson, prototype of causation contains many components,

for instance: change of a state, action or direct contact (Lakoff and Johnson 2003, 70–71).

Concept of gestalt is present in human's direct experience, and also in metaphorical sphere. Lakoff and Johnson provide the example in the statement: "Harry raised our morale up by telling the jokes". The statement uses "happy is up" metaphor (Lakoff and Johnson 2003, 72). I believe, such gestalts can be found in law and in the following paragraphs it will be demonstrated.

If the observations of Lakoff and Johnson are true, than this theory should also work in the field of law. Law and legal language concern abstract concepts, and most legal institutions contain the abstract feature. Hence, legal text is saturated with metaphors, revealing some aspects of legal institutions and hiding others. For example, in penal code there is plenty of metaphors referring to responsibility as a burden (and not many referring to responsibility in the context of freedom). Similarly, goods being an object of a crime are viewed as a treasure. On the other hand, Polish copyright law treats subject of intellectual property equally to an exclusive and fenced piece of land demanding guardians. Examples mentioned above, demonstrate the way to perceive legal institutions and law itself. Sometimes, due to specific metaphors certain aspects of legal institutions are disregarded. Moreover, individuals are not aware of metaphors' presence (Lakoff, Johnson 2003, 3). Metaphors are built in the structure of language, secretly influencing our thinking and the way we perceive the world, especially abstract phenomena such as legal institutions.

Lakoff and Johnson's observation have serious implications for legal interpretation. In law meaning is often artificially shaped. The temptation to miss some aspects in favor of highlighting others might be strong. Additionally, it might be a political decision to do so. In next paragraphs, I will make attempt to demonstrate the interplay of legal interpretation and metaphors. Firstly, a discussion regarding compatibility of conceptual metaphors in legal sphere will be held. Next, I will argue that due to character of metaphors, the caution is demanded when employing metaphors as directives of legal interpretation. Finally, the issue of incompleteness of directives and their relation to metaphors will be explored. Namely, do conceptual metaphors taken into account make Wróblewski's theory more complete?

4. Conceptual metaphors and Jerzy Wróblewski's theory of legal interpretation

4.1 Are metaphors needed in legal interpretation?

Returning to theory of legal interpretation, imagine a judge interpreting the text. He has three directives of legal interpretation at his disposal. Probably, at first he uses linguistic directives, followed by systemic and functional directives. In each case of directives application, the query is: whether the conceptual metaphors in the legal text influence judge's interpretation. As it has been mentioned before, when possible, interpreter is obliged to use common language at first step. Alternatively, when necessary, he should use expert language used for certain field of science or law. Then he should regard systemic context and check if his interpretation conforms with international, EU or constitutional rules. Finally, functional context regarding social or economic rules exists. As we already know, most of the legal rules are abstract, therefore they potentially contain metaphors. Hence, metaphorical context of interpretation is possible. The question is whether it can be useful. In order to answer this question, let us analyze the hypothetical process of interpretation regarding conceptual metaphors. Two possible cases occur. Firstly, when the text is clear and the interpreter falls under the rule *clara non sunt interpretanda*, or secondly, when the text is unclear and interpreter needs to use first degree directives. Such text might be either easy or problematic to interpreter and the reasons might vary. For instance, the text could be badly constructed or just ambiguous.

Both cases pose the dilemma whether the interpreter is influenced by metaphors in the text. According to Lakoff-Johnson's theory, we are always influenced by metaphors. They shape our way of thinking. Thus, the dilemma truly becomes about the potential degree of influence an interpreter experiences through the metaphors.

It is also worth to mention that metaphorical context in legal interpretation lies rather in the context of discovery than in the context of justification. This opposition has been introduced by Reichenbach and then developed in Poland by Jerzy Wróblewski. The opposition is bound with two questions: how the certain decision has been made and how such a decision has been justified (Holocher 2009, 9). These

questions are regarded also in the scope of legal interpretation. The context of discovery is bound with the query of the potential ruling and if certain interpretational hypothesis might be as such regarded (Holocher 2009, 12). As mentioned above, Metaphors seem to be a good response to such query, since they influence the way of thinking of the judge.

4.1.1. *Clara non sunt interpretanda*

Let us start with *clara non sunt interpretanda* case. In order to fully appreciate the problem, a description of the controversies in Polish legal doctrine follows. In past years, two competing theories concerning legal interpretation came to an existence: clarifying and derivative (*omnia sunt interpretanda*) interpretation. First theory, created by Wróblewski, is bound with *clara non sunt interpretanda* rule understood as prohibiting the initiation of the interpretational process, if the meaning of the norm is clear (Zirk-Sadowski and Zieliński 2011, 102). Wróblewski developed this concept based in Ajdukiewicz's theory of language (Ajdukiewicz 1934)⁴. According to Ajdukiewicz, the meaning-rules (or as Wróblewski calls them – directives of meaning) play the main role in establishing the meaning of any expression belonging to the language S. Hence, the meaning depends on so-called conceptual apparatus. Acceptance for any sentence in language S in accordance with meaning-rules (directives of meaning) is self-evident and categorical. Usage of such rules comes as natural as usage of phonetic or syntactic rules (Ajdukiewicz 1934, 154).

Wróblewski, inspired by Ajdukiewicz's thought clearly adapted some of the elements to his theory of legal interpretation. Among most prominent elements are directives of meaning and self-evident character of expressions in the process of accepting or rejecting sentences. Self-evident character can be bound with *clara non sunt interpretanda* rule. According to Wróblewski, in legal context two types of the directives of the meaning endure. First type is bound with the situation when the text is clear in concrete legal case. Such occurrence does not fall in the scope of the legal interpretation problem

⁴ Such interpretation, which involves Ajdukiewicz's theory is criticized by Jan Woleński. See: J. Woleński, *Szkoła lwowsko-warszawska a polska teoria prawa*, Studia Prawnicze 1985/86, vol. 3-4.

(Wróblewski 1969, 6–7). Therefore, Wróblewski employs here *clara non sunt interpretanda* rule. Second type of directives of the meaning discussed in this text are linguistic, systemic and functional. They are used when the legal text is not clear.

Getting back to metaphors a question worth asking is “does regarding metaphors in the interpretation modifies *clara non sunt interpretanda* rule?”. Or perhaps through argumentation mentioned above metaphors exclude *clara sunt interpretanda* rule. For the sake of argument the rule *clara...* will be accepted as valid in Wróblewski's theory. However, even if *clara...* rule worked in Wróblewski's theory reasonable doubts still exist about the rule combined with metaphorical directives. As mentioned above, individuals are influenced by metaphors most of the time and not being aware of them. In case of law, which is abstract and consists of abstract institutions unawareness of metaphors becomes even more obvious. Actually, each institution binds with some metaphorical apparatus due to its abstract character. In such case, one could argue none of the legal norms can be clear. However, I believe this approach would be false. Non-controversial norms from metaphorical point of view do exist. For instance, the rule stating that parliament consists of 460 deputies. From metaphorical point of view, parliament is a container and 460 deputies are the content. Despite the metaphor occurrence, rule mentioned above is clear and obvious to a lawyer. Although, a philosopher might see this statement differently. For instance, he could draw some ontological implications from metaphors. However, for interpretational process done by a lawyer this rule is clear. In spite of it, the *clara...* rule would not remain untouched. As mentioned above, this rule would apply to the cases when no legal directives are needed to interpret the law. However, it seems, regarding metaphorical context, it would be necessary to narrow understanding of what is clear in law. A situation when metaphors demanding further analysis of the legal text cannot be excluded. Hence, the principle *clara non sunt interpretanda* would be narrowed. Mainly, the legal rules which at the first glance seem to be clear, but contain interesting form legal point of view metaphors would not fall under *clara...* rule. Taking into account metaphorical context potentially results in different perception of the rule. Therefore, it might not fall under the *clara...* rule anymore.

4.1.2. Interpretation of legal text

When legal rules in concrete case are not clear situation differs. Such occasion calls for Wróblewski's directives of legal interpretation to be used. Additionally, I argue, that metaphorical context could potentially change the result of legal interpretation. As an example, let us look at the fragment of art. 17 of Polish copyright law, which reads: "*wyłączne prawo do korzystania z utworu i rozporządzania nim na wszystkich polach eksploatacji oraz do wynagrodzenia za korzystanie z utworu*" which can be translated as: "exclusive right to make use and dispose the piece of work through exploitation in all fields and compensation for using this piece of work". If the legal proposition from article 17 of Polish copyright law was interpreted in accordance with linguistic directives traditional interpretation would be rather simple. Simplicity of interpretation is achieved due to expressions "*exclusive*" or "*exploitation in all fields*". No need for speculation exists, regarding exclusivity, or what "*fields of exploitations*" means, since the rule includes *all* of them. Hence, although this text is too complex to fall under the principle *clara non sunt interpretanda*, interpretation according to linguistic directives is easy. However, as mentioned before, the situation changes when metaphorical context is added. It can be noticed that copyright law hides a very important aspect of cultural objects⁵. Expressions such as: "*exclusive*", "*making use*", "*dispose*" "*exploitation fields*" are metaphors referring to the land ownership gestalt. The land in the metaphor should be fenced off and protected against intruders. Clearly, the concept of experiential gestalt plays an important role. The components cluster is land ownership and the components mentioned above, are: exclusivity, usage and exploitation. Source domain is the piece of someone's land and target domain is a piece of work. In consequence, important components of the culture are missing, namely, creativity, freedom, inspiration, and all of them bound with the idea of community and sharing (Reyman 2012, 4–9). Therefore, good ruling should take into account copyright protection as well as freedom of culture securing rights of an author and a recipient of cultural goods (Lessig 2005). Hence, interpretation should contain not only aspects bound with land ownership, but also bound with

⁵ By cultural objects I define artifacts of cultural meaning, such as music, paintings, movies etc.

community, especially, Polish law predicts more balance on this field, introducing e.g. fair use (*dozwolony użytek*)⁶. The intention of introducing fair use is to restore the balance between copyright owner and the recipient of cultural goods. Thus the latter can e.g. share the movie or book he owns with his friends or family.

The conclusion is that metaphors might give judge a hint on interpretation and understanding of law. However, such approach poses a threat. In the example of copyright law metaphors strengthen the idea of the copyright as restricted ownership while completely losing the aspect of creativity and sharing. Metaphorical context favors one side of the relation ignoring public interest. In this case, regarding metaphorical context might bring damages to the society. Metaphors are not straightforward as Wróblewski's directives of interpretation, they are rather affect judge's subconsciousness. A dilemma presented leads to the conclusion, that strengthening one aspect of copyright and ignoring another will not have a positive effect. After all, right to culture is expressed in article 27 of Universal Declaration of Human Rights. Moreover, systemic interpretation of Polish copyright law favors balance between the artist's rights and the consumer. The fair use concept is an example of this balance. For this reason, it is both important to be aware of existing metaphors and also to examine them carefully, since they hide some important aspects.

The final case refers to the legal text being problematic for interpretation. Let us recall well-known and ambiguous article 415 of Polish Civil Code "*Kto z winy swej wyrządził drugiemu szkodę zobowiązany jest do jej naprawienia*" (Who of his fault caused the damage to the other, shall be obliged to fix it"). This short article has a very broad interpretation in the doctrine. To mention a few, the meaning of fault or query regarding causality. Would metaphorical analysis be of any help here? The damage here is treated as a fixable artefact or a device. Moreover, fault is a place of origin, or initial cause of events. Eventually, the perceived fault is a place where journey begins, such as an airport or train station. After additional careful analysis of Polish civil code, fault appears as a burden or element

⁶ I've elaborated this matter in the forthcoming article: *Znaczenie metafor pojęciowych na przykładzie „Ustawy z dnia 4 lutego 1994 r. o prawie autorskim i prawach pokrewnych”* in: *Edukacja Publiczna i Edukacja Demokratyczna*

necessary to complete the whole. Other metaphors of fault are: something which can be measured, scaled, and something vertical (orientation in space). On the other hand, fault is an experienced burden. Hence, even analysis done *in abstracto* tells something about the concepts used in the article 415. Concrete cases should offer more useful examples, since they build a new context for law. For example, ruling I C 786/07 issued by district Court in Lublin defines guilt as follows:

„obowiązek zapobieżenia szkodzie wyływał w niniejszej sprawie co najmniej ze zdrowego rozsądku, popartego zasadami doświadczenia życiowego, które nakazują unikać zbędnego ryzyka oraz podejmować czynności zapobiegające możliwości powstania zagrożenia dla życia lub zdrowia człowieka. (...) Zaniechanie przez odpowiednie służby przedsiębiorstwa komunikacji miejskiej podjęcia takich działań to jest naprawy drzwi trolejbusu, wyczerpało znamiona niedbalstwa, a więc winy w rozumieniu art. 415 k.c”

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In this short fragment of the ruling, the common sense is a source, duty to prevent the loss is a river or a boat, rules of life experience are a prop, unnecessary risk is a blow, the door non-repairment is a device for resource usage, and last but not least negligence and fault are the resources. Hence, article 415 of Polish Civil Code when regarded *in concreto* provides even more metaphors. The judge working with the concrete case can build metaphors based on legal rules combined with facts from the case. His legal thinking can be reconstructed from his sentence by analyzing metaphors he uses. Hence, from practical point of view, metaphorical analysis might also be helpful for an appeal. By identifying metaphors lawyer can recognize flaws in judge's reasoning.

This is also the argument in favor of situating metaphors in the context of discovery. The judge should regard metaphors

⁷ The duty to prevent a loss in this case stems (flows) from (at least) common sense supported by the rules of life-experience, that require avoidance of unnecessary risks and undertaking of activities preventing a possibility to threaten a life or a person's well-being (...) Failure to conduct by appropriate public transportation company authorities of such activities, which is to repair the trolley's door exhausted all hallmarks of negligence, and that is the fault as defined by article 415 of Polish Civil Code.

before he makes his ruling. Metaphors might also occur in the context of justification, as an argument supporting the hypothesis from the context of discovery (Holocher 2009, 13), however, only if arguments are regarded as supporting the *just* judgement.

4.2 Interpretational directives concerning metaphors

After demonstrating the usefulness of metaphors, it is worth asking about the formulation of appropriate interpretational directives. In order to answer the final question, the place of metaphorical directives in Wróblewski's theory should be analyzed. Should metaphorical directives be a distinct set of directives or do they belong to one of three sets of directives put together by Wróblewski? Let us start from a relation between metaphors and linguistic set of directives. Hence, whether metaphorical directives can exist independently or they are bound with linguistic context. Clearly, in this case a method of metaphor analysis is linguistic. However, the method used does not necessitate the character of directives. For instance, systemic directives also based on linguistic analysis are a distinct set of directives. Additionally, placing metaphors in linguistic set of directives would neglect the conceptual character of metaphors. The linguistic context narrows the meaning of metaphors. Metaphors would become nothing more than linguistic device. The systemic and functional context do not fit metaphorical as well. Systemic directives regard the context of other norms in legal system and obviously metaphors are not compatible. Functional context, although least specified refers to consequences of certain interpretation. Metaphors would not fit here either. To conclude, the conceptual nature of metaphors should create a new set of directives.

Next, the relation of metaphorical set of directives and other already functioning directives should be established. At first, can metaphorical set of directives be the primary one? The example from Polish copyright law negates such notion. Analysis of metaphors in the example of copyright law concludes that cultural goods should be regarded as analogical to land protection. Such interpretation seems to contradict systemic context in a serious manner by infringing the general idea of Polish copyright law as well as Human Rights Law.

Moreover, such interpretation would also be in conflict with the functional context limiting the access to the culture for the society. It is worth to note, Polish copyright law standard of author protection is generally high enough. Therefore additional extension by the interpretation is not needed⁸.

For these reasons, directives concerning metaphors should have rather subsidiary meaning to linguistic context. In cases when legal institutions are unclear, for instance, the meaning of fault, metaphors might be a great device to precise it. Additionally, at later stage, the metaphors can help the appeal to reconstruct judge's thought process. On the other hand, metaphors should be used with great caution. The potential conflict with systemic and functional context should be always examined. In case, metaphors infringe vital aspects of systemic or functional context (or both), metaphorical set of directives should be ignored. Otherwise, we could remain blind to other aspects of some abstract institutions. Just like Lakoff and Johnson "argument is war" and copyright law examples point out.

This way the metaphorical directives have been formulated. They might be as follows:

1. "In order to precise the meaning or establish the unclear meaning of the certain legal institution, examine metaphorical context." (rule)
2. "In case, the metaphorical context significantly contradicts systemic or functional (or both) context, ignore the metaphorical context". (exception)

4.3. Can fixed and definite meaning of the legal norms be achieved?

Last but not least, it is worth to return to the primary problem presented by Wróblewski in the text. According to him, even though the three sets of directives (linguistic, systemic and functional) are known,

⁸ The other issue regards inefficiency of copyright law and its incompatibility to digital era. But this problem is of different kind than general standard of protection and won't be discussed in this paper.

the outcome of the interpretation will still be a mystery. After the careful analysis of the metaphorical context, metaphor directives have potential to improve the situation. Metaphorical context seems to fill the gap in Wróblewski's theory to some extent. However, they are not the only missing element. Metaphorical directives might clarify the meaning of legal text, but the final outcome of judicial decision is still unknown. Three reasons contribute to this uncertainty. Firstly, metaphors can precise the meaning of the legal text, but do not fix the actual meaning of the text. Finding metaphors to some extent depends on the text interpreter. Secondly, the exception disallowing the use of metaphorical directives returns the interpreter to original sets of directives. Therefore, the interpreter arrives back at the situation Wróblewski described. Thirdly, metaphors cannot provide the fixed and definite answer about the outcome of the interpretation since they reveal some aspects of abstract concepts, but also hide other aspects.

5. Conclusions

In this article, the usefulness of Lakoff -Johnson's idea of conceptual metaphors has been demonstrated. They can be a device for a lawyer interpreting the legal text, or reconstructing judicial thought process. Metaphorical directives are a new and distinct kind of directives. However, they should not function as primary rules and should be of subsidiary character. Metaphors might affect ruling in significant way, both in positive and negative direction. On one hand, metaphors might be helpful with precisizing the meaning of legal phrases or even the legal institutions. On the other hand, metaphors hide some aspects of legal institutions. As it was demonstrated through the example of Polish copyright law, interpretation in accordance with metaphorical context would lead to a contradiction with systemic context of Polish copyright law, Human Rights Law as well as with functional context causing damage to society. In order to prevent such situation the exception in metaphorical directives must be made. Metaphorical directives cannot be used, if they lead to significant contradictions with systemic or/and functional context.

Answering the primary question of the article, regarding combination of Lakoff and Johnson's conceptual metaphors and

Wróblewski's awareness to the unknown result of legal interpretation leads to one conclusion. Namely, metaphors inclusion among other directives would help to predict rulings more efficiently, but still would be far from certainty. Metaphors can be considered as a step forward in Wróblewski's theory of legal interpretation.

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ABSTRACT

COGNITIVE THEORY OF METAPHOR AND JERZY WRÓBLEWSKI'S CONCEPT OF LEGAL INTERPRETATION

Jerzy Wróblewski is one of the most prominent and influential legal theorists in Poland. His theory of legal interpretation containing a division into linguistic, systemic and functional dimension is highly regarded by Polish legal community. However, when formulating the theory Wróblewski was aware that his theory lacks some elements. In his work he points out that despite three dimensions the result of the interpretation is still unpredictable. For instance, interpreter's personality might be additional factor influencing legal interpretation process. In this context, Wróblewski compares the lawmaker to a composer and a subject making legal interpretation to a musician performing a piece of music. Wróblewski emphasizes the importance of such factors. However, an interpreter should disregard additional factors in the process of legal interpretation.

At the time, when Wróblewski formulated his theory, the cognitive science was not developed yet. Nowadays, Lakoff Johnson's idea of conceptual metaphors is widely known and might be one of the missing elements Wróblewski had in mind.

This paper will examine such possibility and its consequences. Firstly Wróblewski's theory of legal interpretation will be presented. Next, I will move to a brief description of Lakoff-Johnson theory. Then, it will be discussed if such approach is possible in terms of Wróblewski's theory. Finally, the necessary modification of legal interpretation theory will be analyzed. In this part, the key question is whether the metaphorical aspect is a new dimension of legal interpretation.

KEYWORDS: conceptual metaphor, Jerzy Wróblewski, legal interpretation, functional interpretation, Lakoff and Johnson

SŁOWA KLUCZOWE: metafora konceptualna, Jerzy Wróblewski, wykładnia prawa, wykładnia funkcjonalna, Lakoff i Johnson