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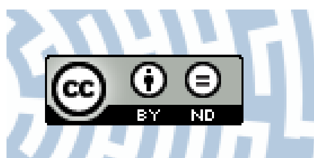

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VAGUENESS IN POLISH AND AMERICAN CRIMINAL LAW LANGUAGE AND DEFINITIONS (A STUDY OF POLISH AND US LEGAL SYSTEMS)

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Abstract: The paper below intends to present and evaluate the theories of vagueness in the language of criminal law as exemplified in legal definitions. In the theory aimed to facilitate the task of interpretation of laws and statutes, in practice legal definitions they may be vague themselves, a phenomenon which either jeopardizes the stability of law and order, or makes law more flexible and compliant with the changing status quo. How one approaches the matter would depend upon a variety of factors. Among them we will find the branch of law or the type of the legal system. As far as criminal law is concerned, vague expressions are to be avoided. However, some legal systems "stigmatize" them more than others. In the American legal system the "void-for-vagueness" doctrine best illustrates the negative attitude of law enforcement institutions towards vague and unclear language. In the Polish law, on the other hand, it is not so explicitly criticized. Leaving room for free interpretation, vague language may prove a useful tool if literal interpretation defies the so-called "common-sense" understanding (very often referred to in works dedicated to law interpretation). Once a review of both legal systems is made, the author tries to arrive at a definite conclusion whether we should treat vagueness in the language of criminal provisions as something sought-for or rather undesirable.
Key words: vagueness, language of criminal law, legal definitions, law interpretation, criminal provisions.

NIEOSTROŚĆ W JĘZYKU I DEFINICJACH PRAWA KARNEGO POLSKIEGO I AMERYKAŃSKIEGO (STUDIUM SYSTEMÓW PRAWNYCH POLSKIEGO I AMERYKAŃSKIEGO)

Abstrakt: Niniejszy artykuł ma na celu dokonanie przeglądu oraz ocenę teorii dotyczących zjawiska nieostrości w języku prawa karnego na przykładzie definicji legalnych. W teorii mając za zadanie ułatwienie interpretacji przepisów i ustaw, w praktyce definicje legalne często same posądzane są o nieostrość, zjawisko, które z jednej strony zagraża stabilności systemu prawnego, z drugiej zaś czynią prawo bardziej elastycznym i zaadaptowanym do zmieniających się warunków. W jaki sposób to zjawisko potraktujemy zależeć będzie od wielu czynników. Wśród nich można wymienić gałąź prawa, z która mamy do czynienia lub też typ systemu prawnego. W przypadku prawa karnego, wyrażenia nieostre powinny być unikane. Jednakowoż niektóre systemy prawne "piętnują" nieostrość bardziej niż inne. W amerykańskim systemie prawnym doktryna "void-for-vagueness" najlepiej ilustruje negatywny stosunek tamtejszych instytucji do nieostrego języka. Z kolei w polskim systemie prawnym wyrażenia te nie są tak otwarcie krytykowane. Pozostawiając luz interpretacyjny, język tego typu może ułatwić wyrokującym zadanie w przypadku, gdy zbyt

sztywne trzymanie się litery prawa doprowadzi do zaprzeczenia regułom zdrowego rozsądku. Po dokonaniu przeglądu obu systemów, autorka próbuje wysunąć definitywne wnioski, czy nieostrość w języku prawa karnego powinna być postrzegana jako cecha istotna czy też niepożądana.
Słowa klucze: nieostrość, język prawa karnego, definicje legalne, interpretacja prawa, przepisy prawa karnego.

1. Introductory remarks: legal language versus everyday language

Describing legal language is not an easy task, especially if one refers not to one particular area of law but rather to an entire scope of law branches (i.e. civil law, criminal law, contracts, torts, business and tax law, commercial law, private and public international law etc.). As Stanisław Goźdź-Roszkowski observes, 'legal discourse spans a continuum from legislation enacted at different levels (e.g. state, federal), judicial decisions (judgments, decrees or orders), law reports, briefs, various contractual instruments, wills, power of attorney, etc., academic writing (e.g. journals, textbooks), through oral genres such as, for example, witness examination, jury summation, judge's summing-up, etc. to various statements on law reproduced in the media and any fictional representation of the foregoing' (Roszkowski 2011, 11). It is for this reason that the author would like to restrict the research in question to one specific field, i.e. the criminal law and its terminology.

Referring to the structuralist nomenclature, we might define the language of criminal law as discrete and dichotomous in nature and as relying heavily on binary oppositions. The majority of criminal concepts are divided into two categories, one of which possesses a given feature and the other one which is devoid of it. The said feature is often a relation towards other entities, e.g. 'guilty' vs. 'innocent', 'prosecutor' vs. 'defendant', 'conviction' vs. 'acquittal'. In principle, therefore, there is no room for "in-between" concepts or phenomena that would not match the category. In his observations on legal matters, Bohuslav Havranek proposes to refer to this feature as 'intellectualization': 'This intellectualization culminates in scientific speech determined by the attempt to be as precise in expression as possible, to make statements which reflect the rigour of objective thinking in which the terms approximate concepts and the sentences approximate logical judgments' (Havranek 1964, 3-16).

1.1. 'Binary' code: an obstacle?

In legal definitions precision is of utmost importance since law should be clear and easily understood by the defendant, or those against whom a trial is taking place. Hence, the language of a legal statute should be relatively accessible and straightforward (cf: void for vagueness doctrine in the American legal system: requires criminal laws to be drafted in a language that is clear enough for the average person to comprehend).

However, the dichotomous character of legal discourse as opposed to the "continual" character of common everyday speech gives rise to a "conflict of interests".

It does not suffice to refer to someone as 'guilty'. In the course of history, the understanding of the term itself has evolved.

According to article 53 § 1. and 2. of the Polish Penal Code:

Example 1.

> Art. 53. § 1. Sąd wymierza karę według swojego uznania, w granicach przewidzianych przez ustawę, bacząc, by jej dolegliwość nie przekraczała **stopnia** winy, uwzględniając **stopień** społecznej szkodliwości czynu oraz biorąc pod uwagę cele zapobiegawcze i wychowawcze, które ma osiągnąć w stosunku do skazanego, a także potrzeby w zakresie kształtowania świadomości prawnej społeczeństwa.
>
> Art. 53. §1. The court shall impose the penalty according to its own discretion, within the limits prescribed by law bearing in mind that its harshness should not exceed the **degree** of guilt, considering the **level** of social consequences of the act committed, and taking into account the preventive and educational objectives (...).

Example 2.

> **§ 2.** Wymierzając karę, sąd uwzględnia w szczególności motywację i sposób zachowania się sprawcy, popełnienie przestępstwa wspólnie z nieletnim, **rodzaj** i **stopień** naruszenia ciążących na sprawcy obowiązków, **rodzaj** i **rozmiar** ujemnych następstw przestępstwa, właściwości i warunki osobiste sprawcy, sposób życia przed popełnieniem przestępstwa i zachowanie się po jego popełnieniu, a zwłaszcza staranie o naprawienie szkody lub zadośćuczynienie w innej formie społecznemu poczuciu sprawiedliwości, a także zachowanie się pokrzywdzonego.
>
> § 2. In imposing the penalty, the court shall above all take into account the motivation and the manner of conduct of the perpetrator, committing the offence together with a minor, the **type** and **degree** of transgression against obligations imposed on the perpetrator, the **type** and **dimension** of any adverse consequences of the offence, the characteristics and personal conditions of perpetrator, his way of life prior to the commission of the offence and his conduct thereafter, and particularly his efforts to redress the damage or to compensate the public perception of justice in another form.[1].

In the above particularization, one can see that the words "degree", "type" and "dimension" have been repeated in characterizing the circumstances in which the court inflicts a penalty upon the potential perpetrator.

Likewise, in the American legal system, the classification of various types of culpability suggests that it does not suffice to call a person 'guilty'. According to the 2.02 of the

[1] Polish Penal Code (Dz. U. 1997 no. 88 item 553, Ustawa z dnia 6 czerwca 1997 r. Kodeks karny).

American Law Institute's Model Penal Code (entitled "General Requirements of Culpability") we might distinguish between four types of guilt:
(i) acting purposefully (criminally),
(ii) acting knowingly (intent),
(iii) acting recklessly,
(iv) acting negligently [2].

As it turns out, therefore, 'binary' code is not enough to embrace all kinds of crimes and criminals. The 'structuralist' perspective had thus to be rebutted.

1.2. The cognitive "revolution": linguistic approaches to vagueness

The point of departure for the studies of vagueness in language (which subsequently laid foundation for the studies of vagueness in the legal language) would be the ideas introduced by the stream of cognitive semantics in the early 1970s, notably Rosch, Lakoff and Langacker (Rosch 1973, Lakoff 1987, Langacker 1987/91).

Lakoff claimed that "the structure of meaning" is based on a prototype. Prototypes, in his view, are objects which are considered by a given community as the most typical representatives of a semantic category (Lakoff 1987, 12). Here are some basic notions formulated by Lakoff in "Women, Fire and Dangerous things" which afterwards became of interest to law theorists (cf. H. Hart 1990):
(i) centrality: The idea that some members of a category may be "better examples" of that category than others;
(ii) centrality gradience: The idea that members (or subcategories) which are clearly within the category boundaries may still be more or less central;
(iii) membership gradience: The idea that at least some categories have degrees of membership and no clear boundaries (Lakoff 1987, 12).

With regard to the perception of reality, we should also evoke the theory of Hilary Putnam according to whom meaning and reference are dependent upon use in a particular context. He dismissed the notion that universal ideas are out there since they depend upon our versions of reality. Furthermore, he introduced the concept of a stereotype which he defines as the point of departure for a speaker of a given language when it comes to his/her knowledge about the external world. As such, this knowledge does not have to correspond to the scientific status quo (Putnam 1975, 249).

The above ideas concerning stereotypical and prototypical understanding of linguistic meaning have been transferred onto legal ground by the British legal philosopher, Herbert Hart who defines every legal term as consisting of a semantic core and penumbra (Hart 1990, 275).Whereas the core is a stable and unproblematic center

[2] American Model Penal Code – Selected Provisions, available online at: *http://www1.law.umkc.edu/suni/CrimLaw/MPC_Provisions/model_penal_code_default_rules.htm*

of the category and does not need to be interpreted, the penumbra are peripheral, more connotative areas of the category, the fringe areas.

The "core and penumbra" concept corresponds to roles which the legislator and the court are to fulfil in the process of law application: whilst the legislator establishes the core, the judge investigates the penumbra. The above view rendered legalese more compatible with the "the continual" and changing circumstances of the outside world. As we have already seen in the previous section, legal concepts are not that "fixed" and precise and thus might become problematic, especially when employed in the legislative acts aimed to serve the judges in determining the sentence.

2. Some linguistic approaches to vagueness, indeterminacy and hedging: a review

Authors who have hitherto contributed to the studies on the phenomenon of vagueness include among others: Lakoff, Bhatia, Channell, Charnock, Azar, Ullmann or Gizbert-Studnicki (cf: Lakoff 1972, 1987; Bhatia et al. 2005; Channell 1994; Charnock 2006; Azar 2006; Ullmann 1962; Gizbert-Studnicki 1978).

Language of law is considered to rely on the intention of the lawmaking body which is often given as the most important factor when deciding upon the verdict or sentence. The above approach would imply the stability of meaning which was once determined by the legislator and is subsequently enshrined in the legal act or statute. However, pursuant to paragraph 155 of Zasady Techniki Prawodawczej (Principles of Legislative Techniques):

Example 3.

> § 155. "If there is a need to ensure the flexibility of a text of a normative act, one might avail themselves of vague terms, general clauses or set the minimum and maximum limits of decisive freedom not to be exceeded".
>
> Jeżeli zachodzi potrzeba zapewnienia elastyczności tekstu aktu normatywnego, można posłużyć się określeniami nieostrymi, klauzulami generalnymi albo wyznaczyć nieprzekraczalne dolne lub górne granice swobody rozstrzygnięcia.[3]

Tomasz Gizbert-Studnicki, Polish jurist and professor at the Jagiellonian University, describes the notion of vagueness as the so-called "accidental polysemy" ("wieloznaczność z przypadku"). This, in his view, would include all words with vague meaning (Gizbert-Studnicki 1978, 54). The category of "vagueness" (in Polish "nieostrość") belongs to the more general category of polysemy. Such an approach requires a different understanding of polysemy: a polysemous word is not the one with

[3] Annex to the regulation of the Prime Minister as of 20th June 2002 on "Principles of Legislative Technique" (Journal of Laws, No 100, item 908, translation by the author).

numerous meanings but rather the one which is equivocal or ambiguous (“niejednoznaczny”, “wątpliwy”) (Gizbert-Studnicki 1978, 54).

Gizbert-Studnicki enumerates the following types of vagueness which presuppose the means in which doubts as to the meaning of a legal norm might be eradicated:

(i) scale vagueness: vagueness which arises with respect to one gradual feature of a predicate’s connotation (e.g. small- big, narrow- wide, short- long);

(ii) multi-sided vagueness: vagueness is linked to so called semantic fields of the language (a set of words referring to more or less distinctly separated sphere of reality); vagueness arises not only with respect to the borderline between the extension of a given predicate and another one but also with respect to borderlines among more than two predicates;

(iii) multidirectional vagueness: occurs when a connotation of a vague predicate contains more than one gradual feature; each of the gradual features of the predicate’s connotation determines one direction of its vagueness (e.g. “a catastrophe”: a decision whether to classify a particular event as a catastrophe does not entail classification of other events and borderlines must be established with respect to each gradual feature of the predicate’s connotation (Gizbert Studnicki 1978, 142-146).

The opposite of vague predicates would be predicates denoted as precise which, as he writes, imply the existence of a dichotomy: two categories that are mutually exclusive (Gizbert-Studnicki 1978, 54). If, on the contrary, a given term does not imply the existence of such complementary categories, the term is considered vague. However, this “faultiness” (=lack of two dichotomous terms complementing each other) is not the result of insufficient linguistic skills on the part of the speaker since the purported “vagueness” would need to be confirmed by the native. Instead, it is a consequence of intrinsic properties of a word (Gizbert-Studnicki 1978, 55). Naturally, native speakers may also resort to the so-called intuitive meaning (in Polish: *znaczenie intuicyjne*) or the meaning motivated by empiric experience (*znaczenie naoczne*) (Gizbert-Studnicki 1978, 55).

Another classification is the one proposed by Azar who distinguishes four types of semantic indeterminacy: homonymy, polysemy, generality, and vagueness. The conceptual category that has a fuzzy zone (=is vague) causes uncertainty as to whether or not an entity in the real world belongs to the category (Azar 2006, 125). Unlike ambiguity, vagueness is concerned with extra-linguistic factors and a vague term cannot be de-vaguefied by means of linguistic context (Azar 2006, 127). Vagueness therefore allows more room for interpretation when it comes to adjudication.

Due to this feature of vagueness, which has little to do with the text’s wording, neither does the linguistic context provide sufficient clues for the clarification of vague words.

Azar concludes his deliberations by stating that “the only way for a user of language to give to a vague term a precise meaning is by providing a stipulative

definition" (Azar 2006, 127). The problems concerning legal definitions are elaborated on in section 5.

In order to have a broader perspective upon the phenomenon in question, let us also describe the notion of hedging which has received an equal interest among linguists.

Hedging is a concept related to uncertainty, indeterminacy and, as a consequence, it also concerns vagueness as such. As claimed by Hyland "expresses tentativeness and possibility in communication" and may ref ect "a lack of complete commitment to the truth value of, (...), a proposition, or a desire not to express that commitment categorically" or "a variety of other conventions" (Hyland 1997, 192).

To conclude our deliberations concerning uncertainty in language and the numerous theories hitherto elaborated on, let us state after Charnock that 'the content of a legal norm is established not by the intention of the legislator but by the consensus in the relevant community, hence, it requires constant updating' (Charnock 2007, 47).

Thus, depending on the prevailing ideology, the meaning of the letter of law would be adjusted to suit a particular conviction or premise.

3. Vague expressions versus general clauses:

Opinions vary as to the classification and nomenclature of vague words (or under-defined concepts, as they are referred to by Beata Kornelius) differ. We shall mention only a few of them. According to Jopek-Bosiacka, we can distinguish between two types of vague expressions:

(i) general clauses (mostly the domain of the civil law and contracts);
(ii) vague expressions (the domain of both: civil and criminal law) [in Polish: zwroty nieostre, szacunkowe] (Jopek-Bosiacka 2006, 32).

Beata Korenlius, on the other hand, distinguishes between three dimensions of vague, or under-defined concepts: those referring us to customary norms, to the estimated valuation or to the systemic valuation (the general clauses) (Kornelius 2009, 90). Examples of evaluative, or comparative phrases are, according to Kornelius: *strong reasons, appropriate benefits or striking loss* (Kornelius 2009, 90).

As explained in the subsequent paragraph, "their understanding depends on the valuation (estimation, to be more precise) and requires the application of a differential method which relies on the comparison of the factual state with the desired one" (Kornelius 2009, 90).

3.1. General clauses

General clauses are indeterminate terms which send the reader to extralegal phenomena, ethics, moral systems (good faith, good will, the best interests of the child) that increase the elasticity of a legal text. According to Panek, they may serve as safety-valves of law

since their semantic vagueness makes law flexible enough for unexpected situations (Panek, 2010, 45). Lawyers who are well-trained in their profession are able to make use of this feature of legal language while "juggling" with arguments during trials.

Being a branch of the private law, civil legislation abounds in general clauses. However, in the criminal law it is to be avoided for the reason which shall be elaborated later on. As observed by Beata Kornelius "some researchers define by this term any use of the expression generating a freedom of decision in the text of the legal act. Others claim that any situation where legal regulations establish the necessity to give evaluation to fix the content of the concept should be treated as general clauses. Yet, other researchers define a general clause as the expression of language which refers to a certain system of evaluation which is beyond the scope of law" (Kornelius 2009, 91). In the opinion of Hart, the open texture and the use of general concepts enable a legislator and the organ of law application to adopt legal regulations to actual needs (Hart 1990, 176).

3.2. Vague *expressions*

Vague expressions make the norm potentially applicable and relevant pragmatically. According to Jopek-Bosiacka, the legislator thus tries to render legal texts flexible and adequate vis-a-vis the changing social and political circumstances (Jopek-Bosiacka 2006, 33). Examples of this kind include: *adequate compensation, adequate remedy at law, due care, due process, extreme cruelty, reasonable time, as soon as possible, sufficient, under the influence of liquor (Polish ones: promptly/without undue delay, due diligence generally required in relations of a given kind, glaring loss, excessive difficulties, etc.)*.

According to Panek, "vagueness of single lexemes does not lie directly within the semantic scope of their category but has much more to do with pragmatics and context. Phrases such as 'sufficient,' 'as soon as possible,' or 'undue influence' mean very little when taken out of their context, it is in large measure pragmatic, contextual" (Panek 2010, 41).

Polish Penal Code operates with numerous vague expressions. Among them we may find: *considerable value* (art. 294), *particularly justfied cases* (art. 60 § 2), *permanent source of income* (art. 65), *accident of lesser importance*, *insignificant social consequences*, *dangerous item*, *particular cruelty*, *essential needs* (art. 209), *personal inviolability* (art.217), *malicious infringement* (art. 218), *guilt* (occurring in the provisions of both substantive and procedural criminal law).

In the Polish legal system the meaning of such terms is usually determined through the analysis of a body of rulings and the doctrine. This is to clarify the exact scope of a vague term.

4. Practical part: a review of means of avoiding vagueness in criminal law and their applicability in particular cases

Although legal definitions should in principle provide grounds for 'the only proper' interpretation, they might be vague and deliberately leave room for the judges and legislators. Likewise, semantic particularizations are not unproblematic since they contain general clauses and are dependable upon local conditions. As heretofore stated, general clauses are preferable in private law but undesirable in criminal law.

The analysis below shall take a closer look at legal definitions at work in criminal law in both Polish and the US legal systems.

Let us, first of all, refer to legal theorists who attempt to resolve problems arising out of vagueness. Afterwards, we will try to take a closer look at legal definitions. According to Tomasz Gizbert-Studnicki, depending on the fact-situation we deal with, an interpreter may decide to resort either to decisions that determine the qualification of a specific situation or decisions that formulate some general criteria of being included or not to the scope of the predicate. The possibility of limiting the scope of the predicate is dependent upon the type of vagueness we deal with (Gizbert-Studnicki 1978, 142).

Kaczmarek, in turn, enumerates certain strategies which, she claims, might help to reduce the degree of vagueness in criminal statutes. These, amongs other, include:

(ii) placing the terms in a particular context, (e.g: "including", "in particular," in Polish: "z uwzględnieniem", "biorąc pod uwagę");

(iii) establishing the border, e.g.: "from 2 to 6 years";

(iv) explicit reference to some other statute, inference "per analogiam" (e.g.: "if the provisions of this law concern…, they shall also apply to …");

(v) determining the conditions that restrict applying the law (the use of conditional clauses marked with the conjunctives such as: "if", "unless", "until", "exclusively" etc; the construction of the criminal sanction itself should be clear enough and should not leave doubt as to the exact scope);

(vi) legal definitions (e.g. "suspicious persons" defined as "any person who wanders about the streets or other public ways or who is found abroad at late or unusual hours in the night without any visible or lawful business and who does not give satisfactory account of himself");

(vii) semantic particularization which Kaczmarek defines as "adapting the implementation of the law to the local circumstances and socio-cultural conditions" (e.g.: *where it is necessary or desired, where it does not contradict the principles of social life*) (Kaczmarek: 2013, 58-64). The most notable example of the use of semantic particularization would be article 56 of the Polish Civil Code:

Example 4.

> Art.56. An act in law shall have not only the effects expressed in it but also those which follow from statutory law, the principles of community life, and the established customs[4].

5. Application of the aforementioned theories on vagueness on the example of legal definitions:

The strategies mentioned so far may not be used without restrictions with regard to every single term that poses interpretational doubts as to its reference in the real world.

In certain cases, i.e. where the connotative areas of the concept are not involved, legal definitions may be consulted without additional deliberations. In defining the scope of the term "vehicle", for instance, one would not have any doubts as to the inclusion of automobiles and cars.

However, we would have to deliberate whether our definiendum should include skateboards or wheelchairs. The judge would have to take into consideration the particulars of the case. In his remarks concerning interpretation of law statutes, Hart refers to the distinction outlined earlier: that between core and penumbra. The exemplary statute that forbids the use of vehicles in a park has a core and penumbral message: the latter would include such means of transport which the creators of this statute had not taken into account: like the aforementioned skateboards and wheelchairs. The definition is thus also subject to interpretation. Since law is sometimes at rears with the changing world, one has to account for such "penumbral" cases (Hart 1958, 593–629).

In his observations on the faultiness of legal definitions, Charnock states, 'Where the meaning of a statute has not been authoritatively decided, judges refer to the meanings clauses, which form an integral part of English statutes. However, these clauses do not usually supply detailed definitions. On the contrary, they tend to refer only to prototypical cases (…) thus permitting the elimination of certain improbable, peripheral interpretations. Furthermore, they are often hedged with phrases to the effect that the judge may supply a different definition if he sees fit. Typical examples of such phrases are: 'unless the contrary intention appears' or 'except insofar as the context otherwise requires'. In cases of linguistic indeterminacy, meanings clauses are rarely useful as an aid to adjudication' (Charnock 2006, 25).

[4] Polish Civil Code (Dz.U. 1964 no. 16 item 93, Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny).

5.1. Basic legal definitions in the Polish criminal law on the example of the terms: crime, unlawfulness, guilt

As regards the classification of a crime, it is determined in art. 7 of the Polish Penal Code:

Example 5.

Article 7. § 1. The offence is either a crime or a misdemeanor[5].

However, it is the doctrine that elaborates on the above distinction. The crime in the Polish legal system is thus based on three elements:

(ii) statutory features/ marks of a prohibited crime (statutory definition),

(iii) unlawfulness (*bezprawność*),

(iv) guilt (*wina*).

Statutory features/marks of a prohibited crime are characteristic features referring to the value protected by the law, the perpetrator, his/her act and the psychic attitude of the perpetrator to the committed act (4 elements: the object, the subject, the subjective element and the objective element).

Unlawfulness in turn, is the fact of there being a discrepancy between the actual behavior and the sphere of obligation; generally unlawfulness cannot be considered separately from human behavior; we rather look at unlawful behavior and unlawful acts not at an unlawfulness as such (Sójka-Zielińska 2011, 296-297*)*.

5.2. Guilt and its occurrence in the Polish legal context

In section 1.1 we have already enumerated various types of culpability distinguished in the American legal system. As far as the Polish criminal law is concerned, the term "guilt" might be encountered in both material and procedural law but it has various meanings. The legislator has not defined it leaving it to the doctrine and the judge to determine its significance:

In the historical perspective, "guilt" has evolved and has shifted on the objectivity-subjectivity continuum. Whereas it was formerly the objective liability (the visible marks of the crime) that constituted guilt, it is nowadays the subjective and personal liability that determines whether one is guilty or not.

In the penal code guilt is one of the elements of the crime: the inflicted punishment depends upon the grade of guilt and constitutes a premise for the conditional discontinuation of legal proceedings.

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[5] Polish Penal Code as amended (Dz. U. 1997 no. 88 item. 553, Ustawa z dnia 6 czerwca 1997 r. Kodeks karny (tekst jednolity)).

In the Polish Code of Criminal Procedure the term "guilt" is polysemous.
(i) It occurs as an evidence for determining the guilt of a perpetrator,
(ii) as an evidential statement of the defendant pleading guilty,
(iii) as an indicator of "borders" of persecution in case where the appellant challenges his/her guilt before courts of higher instances (Świecki 2009, 5-10).

6. American criminal law: clarity in definitions (the void-for-vagueness doctrine)

According to the definition from the textbook for the American law students "E-Study Guide for Contemporary Criminal Law: Concepts, Cases, and Controversies", a statute is void for vagueness and unenforceable if it is too vague for the average citizen to understand. There are several reasons a statute may be considered vague; in general, a statute might be called void for vagueness when an average citizen cannot generally determine what persons are regulated, what conduct is prohibited, or what punishment may be imposed. Criminal laws which do not state explicitly and definitely what conduct is punishable are void for vagueness[6]. The analysis below shall take account of the following terms as found unconstitutionally "vague":
(i) "suspicious persons"
(ii) "abominable and detestable crime against nature"
(iii) "gang", "gangster"
(iv) "vagrancy": being a common thief, common night walking)
(v) "humane and sanitary manner"
(vi) "legal adult pornography"

The above examples have all been taken from the American online database of legal information for lawyers and law students: *law.justia.com.*
(i) "Suspicious persons"
According to the defeated act, "suspicious person" is as "any person who wanders about the streets or other public ways or who is found abroad at late or unusual hours in the night without any visible or lawful business and who does not give satisfactory account of himself" was found void only as applied to a particular defendant.
(ii) "Abominable and detestable crime against nature"
The Florida Supreme Court, in Franklin v. State, ruled that the state's felony ban on sodomy was unconstitutionally vague because an "average person of common intelligence" could not reasonably know, without speculating, whether "abominable and detestable crime against nature" included oral sex or only anal sex.

[6] *E-Study Guide for Contemporary Criminal Law: Concepts, Cases, and Controversies* (textbook edited by Matthew Ross Lippman).

(iii) “Gang”, “gangster”
In the case of the above terms, the Court observed that neither common law nor the statute gave the words “gang” or “gangster” definite meaning, that the enforcing agencies and courts were free to construe the terms broadly or narrowly. In the same manner, the phrase “known to be a member” was considered ambiguous.

(iv) “Vagrancy”
Papachristou v. Jacksonville and Kolender v. Lawson were two Supreme Court cases where the court struck down laws against “vagrancy” for unconstitutional vagueness (“dissolute persons who go about begging,... common night walkers,... common railers and brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers,... persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children”); The Supreme Court ruled that in restricting activities like “loafing”, “strolling”, or “wandering around from place to place”, the law gave arbitrary power to the police and people could not reasonably know what sort of conduct is forbidden under the law and that could potentially criminalize innocent everyday activities;

(v) “Humane and sanitary manner”
In this case, the U.S. Supreme Court, in City of Akron v. Akron Center for Reproductive Health, struck down a provision of Akron's abortion law which required that physicians dispose of fetal remains in a “humane and sanitary manner”. “Humane” was judged to be unconstitutionally vague as a “definition of conduct subject to criminal prosecution”; the physician could not be certain whether or not his conduct was legal;

(vi) “Legal adult pornography”
The United States Court of Appeals for the Third Circuit ruled that a supervised release condition prohibiting a defendant from possessing “all forms of pornography, including legal adult pornography” was unconstitutionally vague because it posed a real danger that the prohibition on pornography might ultimately translate to a prohibition on whatever the officer found personally titillating;

7. Additional remarks: should deliberate vagueness be allowed? (Grice’s conversational maxims):

Among Grice’s conversational maxims the most important in our case would be the maxim of relevance: make your contribution relevant to the conversation (Grice 1989, 28). Although legal discourse cannot be subject to the rules of conversational exchange, we might attempt to apply them in our cases.

The above examples, as too general to be called upon in particular situations, can be said to violate the principle of manner which boils down to an imperative: make your contribution clear enough so as it does not obscure the meaning of the utterance. However, as observed by Marmor: “The most familiar aspect of legislation is that it is

almost always a result of a compromise. Compromise often consists in what I would like to call tacitly acknowledged incomplete decisions – that is, decisions that deliberately leave certain issues undecided" (Marmor 2009, 15).

Nonetheless, a question arises whether this obscurity and ambiguity might threaten the stability of law and order. In principle, penal law should be a guarantee of law and order and should avoid ambiguity and be precise so as to "give adequate guidance to those who would be law-abiding, to advise defendants of the nature of the offense with which they are charged, or to guide courts in trying those who are accused".

As we have seen, views differ as to the role of vague expressions in the language of law, and in particular, the criminal law.

8. Concluding remarks

Vagueness may be a quality deliberately bestowed upon terminology by the legislator for the sake of convenience and mutual complementation of parliament and courts in the process of law establishment and enforcement. Should deliberate vagueness be therefore allowed? Does it not lead to the disruption in the domain of the criminal law which should be a guarantee of law and order?

In the author's view, it depends upon a case we deal with or the specificities of the legal system. In the U.S. system vagueness itself has been declared as dangerous insofar as it may fail to inform the citizens what sort of behavior will expose them to the statutory penalties.

On the other hand, the fact that law evolves over time, means that it takes account of emerging social needs and values and it shows that it is not fixed independently of the citizens, but is responsive to the changing ‚common sense' (what was hitherto considered as "abominable and detestable crime against nature", might now fit into the category of "common sense").

Therefore, vagueness is sometimes preferable as a guarantee of elasticity. However, it depends upon the branch of law as well as upon the particulars of the case whether vague expressions and general clauses turn helpful or whether, as in the case of many American criminal provisions, their "vagueness" violates the "common sense".

As expressed in an opinion of Mr. Chief Justice TAFT in a case CLINE, Dist. Atty. v. FRINK DAIRY CO. et al: "A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law".

Example 1.
Polish contracts

> Strony **postanawiają** / **ustalają** co następuje:...
> Sprzedawca **sprzedaje**, a kupujący **nabywa**…
> Przedmiotem umowy **jest** świadczenie usług logistycznych przez Usługodawcę na rzecz Usługobiorcy.

Moreover, the following phrases are used to refer the reader to a statutory instrument: in *compliance with (provisions of)*, *in accordance with (provisions of)*, which are not direct exponents of deontic modality but due to the contextual meaning they express obligation to refer to some provisions of statutory instruments.

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