

INTERPRETATION OF THE CONCEPT GENDER IN LEGAL DISCOURSE

BAIBA RUDEVSKA

Ministry of Justice of the Republic of Latvia, Latvia

GUNTA ROZIŅA AND INDRA KARAPETJANA

University of Latvia, Latvia

Abstract. It is commonly accepted that the language of law is often considered to be a highly traditional and, to a certain extent, a conservative means of professional communication, which tends to be stereotypically viewed impenetrable by the layman. Various peculiarities of the language of law and the fact that many legal systems differ all over the world in terms of their origins and frameworks often make legal discourse difficult to comprehend. To communicate professionally, the English language for instrumental purposes is increasingly employed at international level. Considering the above stated, the present study aims at analysing selected areas of the language of law. More specifically, using a case study, it finds its research interest in revealing the many-faceted nature of the concept *gender* within the framework of its contextual meaning established in specialist discourse. It has been concluded that due to the fact that *gender* is a polysemic concept in English, the translation in Latvian has more than three possible variants: *dzimums*, *sociālais dzimums*, *dzimte*, *sociālā dzimte* and *dženders*, depending on the context of use in the respective normative legal act. Moreover, within the context of the social theory of *gender*, the proposed translations in Latvian could be either the neologism *sociālā dzimte* or *dženders*.

Key words: applied linguistics, interdisciplinarity, legal discourse, social context, interpretation, gender

INTRODUCTION: INTERDISCIPLINARY NATURE OF APPLIED LINGUISTICS

Nowadays applied linguistics has proved its many-faceted and interdisciplinary nature and comprises such fields as the teaching and learning of second and foreign languages, translation, language assessment, language for special purposes, language policy and planning, psycholinguistics and other fields (e.g. Cook, 2003; Widdowson, 2005).

It is argued that applied linguistics is firstly motivated by real-world problems rather than theories (e.g. Corder in Cook, 2011: 47; Grabe, 2002). However, it would be wrong to claim that applied linguistics does not deal with theories; for example, Baynham (in Davies, 2007: 5) argues that applied linguistics 'now contributes its theoretical perspectives to a range of areas'. Due to its

interdisciplinary nature, applied linguistics is a somewhat eclectic field that draws insights from various theoretical and methodological approaches in a wide range of scholarly disciplines, such as the humanities, natural and social sciences to study language-related aspects in various fields, including law. Besides, applied linguists develop and implement original theories and models in such areas as genre analysis, discourse analysis, critical discourse analysis, and pragmatics.

It is maintained that applied linguistics 'is using what we know about (a) language, (b) how it is learned, and (c) how it is used, to achieve some purpose or solve some problem in the real world' (Schmitt and Celce-Murcia, 2002:1). Similarly, Grabe claims that the focus of applied linguistics is on trying to resolve language-based problems that people encounter in the real world, whether they are language learners or language users for professional purposes (Grabe, 2002: 9). Thus, applied linguistics is concerned with solving or at least improving social problems involving the research on language use for professional purposes.

Over the last two decades, the concept *gender* has been studied by different academic disciplines in Latvia, such as linguistics, law, psychology and pedagogy. As regards linguistics, for example, Veisbergs (1999a) has researched the concept as a linguistic category within the framework of the Latvian language use. Strelevica-Osina (2004) has approached the study of grammatical genders in Latvian based on the analysis of selected extralinguistic aspects of the language use, such as gender equality, political correctness, gender neutrality and sexism. Veisbergs (1999b) has revealed the linguistic nature of *gender* as it pertains to monolingual and bilingual dictionaries. Kalnača (2008) has determined the stylistic functions of gender as a linguistic category in the Latvian language. Pokrotniece (2008) has distinguished common gender nouns in Latvian.

With globalization processes and considering the interdisciplinary nature of the English language used for instrumental purposes, the current research on the concept *gender* in Latvia emphasises absolute necessity for differentiating the meaning between the concepts *sex* and *gender*. Moreover, it sees a strong diversity in the way how different academic disciplines interpret the meaning of the concept *gender*. Its current use in a wide range of contexts has demonstrated that some academic disciplines, for instance, medicine and psychology, use the concept *sex* when they refer to a biological belongingness of someone. When a social belongingness is considered, the concept *gender* is applied by such academic disciplines as law, communication sciences, psychology, pedagogy, and social and linguistic anthropology.

An interdisciplinary academic debate on gender (*Dzimte? Dzimums? Starpdisciplīnu akadēmiskā diskusija*, n.d.: Online) held by the University of Latvia in March 2016 and an interdisciplinary-interinstitutional conference organized by the Gender Studies Centre at the University of Latvia in September 2016 evidenced a growing research interest in the use of the concept *gender* nowadays. Professor Cimdiņa, professor Baltiņš and other presenters stated that, in general, the interpretation of *gender* appears to be loose. Its literal meaning cannot be often assigned precisely; the concept can have shades of meaning depending on

its contextual use. As a result of the academic debate in March 2016, professor Cimdiņa proposed a new translation for the concept *gender* in the Latvian language, which is *dzimumsocialitāte*. It was emphasized that further academic research should be undertaken to specify the differences between the semantic and contextual meanings of the concept.

The present study aims at revealing the interdisciplinary nature of applied linguistics by exploring the language of law, manifesting the multi-faceted nature of the concept *gender* in legal discourse and identifying some of the challenges that specialists in the humanities (e.g. applied linguists) and in social sciences (e.g. lawyers) face when determining the scope of the meaning *gender*, which is a socially, socio-culturally and socio-politically constructed concept.

It should be stated that the opinions expressed in the article are those of the authors and do not reflect the ideas or the opinions of the institutions involved.

METHODOLOGY

The present study has employed a case study as an interdisciplinary research method conducted from the qualitative perspective. Legal discursive practices have adopted a comparative law approach and the methods of legal interpretation such as grammatical (literal) as well as historical and systemic interpretation methods of legal norms. The use of the concept *gender* in normative legal texts, such as English translation of Annex IV of the *Report of the Fourth World Conference on Women* (1995), the *Rome Statute* in English and French (*Rome Statute ...*, 1998: Online), the *Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence* (hereinafter *Istanbul Convention*) in English and French (*Istanbul Convention*, 2011: Online), the *Explanatory Report of the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence* in English (2011: Online), is viewed as a case to analyse its meaning in authentic contexts. The theories of translation models under analysis have been applied to the study of the concept *gender* to justify its meaning in the target language. This, in turn, has contributed to rendering the meaning of the concept into Latvian. Herbots rightly states that ‘the translator who is not a lawyer must take into consideration that while translating he or she is also interpreting the text [...]’ (Herbots, 1987: 831). In other words, interpretation and translation are linked with each other, and as such they should be applied to legal discourse.

LEGAL INTERPRETATION, MEANING AND GENDER

It is commonly accepted that legal interpretation sees legislative texts as clearly, concisely and appropriately constructed documents that display the legislature’s communicative intentions fully. Yet, specific forms of reasoning related to

legal rules often have word meanings that vary significantly depending on the communicative and/or social context of their use. From the perspective of linguistic semantics, the legal meaning of words that is associated with their semantic dimensions is concerned with the denotational meaning(s) of the words and depends on the syntactic relations established between words in the way they are used in sentences.

According to the theories of meaning (e.g. Grice, 1989) and relevance theory (e.g. Sperber and Wilson, 1995), word meanings can be widened, narrowed, approximated or adjusted depending on the context of their use. To perceive and understand the *intended* meaning, known as *inferential meaning*, a language user is faced with discursual interpretation of the given meaning of the statement or utterance, which is related to text external factors, such as a target audience, a communicative purpose, background knowledge and alike. From the perspective of cognitive pragmatics, the *intended meaning* of a statement or utterance is concerned with both text internal dimensions, such as co-textual features, and text external dimensions, such as a context of language use, a target audience, a communicative event, a communicative purpose and a communicative situation.

To interpret the meaning of words, several approaches are usually applied in legal interpretation. Historically, it was *literal interpretation* that flourished in the second half of the twentieth century. Until quite recently, it was assumed (e.g. Durant et al., 2016) that the focus on a communicative purpose and the communicative intention of a statement should be considered to ensure the linguistic appropriacy and pragmatic adequacy of its meaning considering its co-textual and contextual dimensions. Today, it is the *purposive interpretation* that is preferred as an approach in the interpretation of legal discourses (ibid.: 79–91).

In sum, *literal interpretation*, also known as *the plain meaning rule* is currently still employed in legal discourses to ensure precise word-for-word meaning of statements when words are applied in their denotational meanings in the legal context. However, to express a legislative purpose or to ensure that a language user makes appropriate inferences from the conveyed idea, and, what is more important, arrives at the relevant meaning of a statement, it is vital to know that the linguistic inferences are combined with external contextual inferences at the co-textual level. As a rule, this enhances the language user's processing effort and thus signals the relevant meaning of the communicative intention.

Undoubtedly, laws and legal enactments are seen not only as semantically literal statements, but also as rules expressed in legal language. Laws and legal enactments have definite aims. Legislative systems create the words in their new meanings that result from new socio-political frameworks, unique normative regulations and legal standards that respond to new tendencies in legislative discursual practices.

The above-stated might be referred to the interpretation and perception of a new meaning that has been created for the concept *gender* in view of the present socio-political conditions.

As regards the manifestation of the concept *gender* in different discursive contexts and practices, it should be mentioned that a rapid research interest in exploring the relationship established between gender and language has been observed since the mid-1970s.

Over the past two decades, the concept *gender* has drawn close research attention in the areas of literature, applied linguistics and sociolinguistics. It is generally known that the earlier contributions to gender studies focused on male and female gender differences (e.g. Lakoff, 1971; Tannen, 1990) in language use. This specified them as a 'fixed gender-specific universal phenomenon that juxtaposes men and women' (Kubota et al., 2013: 482).

The present-time research focuses on postmodern, poststructuralist and constructive approaches. They examine gender differences (e.g. Cameron, 2005; Higgins, 2010) and characterize the current conceptual understanding of *gender* as a social product of practice that is governed by new socio-cultural and socio-political aspects. The concept *gender* has broadened its meaning today: it is not only directly related to the study of gender dominance or diversity. Moreover, because of new ethno-cultural and socio-economic contacts between countries, the 21st century poses significant challenges. The understanding of the concept viewed as the category relating to other social categories, such as race, social class, and sexual identity has been enhanced. It should be noted that a relatively marginal attention has been drawn to the study of the concept *gender* considering its current meaning in other discursive practices so far. On the other hand, it is evident that the present situation has posed real-life challenges to the new understanding of the concept *gender*, and, thus, it is vital to highlight the role of applied linguistics to bridge the widening gaps between linguistics and law.

In genre-related discourses, the interpretation of the concept *gender* is often largely a listener or a reader based and bears a multi-sided nature. Besides, it is based on the principle of its relevance in a specified situational, communicative or social context. By and large, if legal discourse can be characterized by the features that specify its genre-based precision, clarity, unambiguity and inclusiveness, then it can be assumed that the interpretation of the concept *gender* largely depends on two significant aspects, such as (a) contextual factors that show how this concept is to be understood and, thus, interpreted, and (b) sources of the relevant ordinances (statutes) and cases that reveal the use of the concept in relevant communicative and/or social situations.

UNDERSTANDING PARTICULARITIES OF INTERPRETATION OF LEGAL CONCEPTS

It is very important to point out that legal language cannot be separated from law studies as such. Lawyers use specific professional language, which law students acquire during their academic studies. The acquisition of a genuine in-depth knowledge of legal language and terminology is time- and effort-consuming

endeavour. Therefore, one can say that ‘when ordinary events, objects, and concepts enter the realm of the legal world, they often undergo significant transformations’ (Rotman, 1995: 195). Moreover, one cannot understand properly legal terminology without comprehending legal matters and theories. As Beaupré states, ‘one is required to be familiar with judicial methods of legal interpretation as well as with the general law behind the source and target texts’ (1987: 740). In legal translation, as de Groot (1987) emphasises, one must have a good knowledge of legal terminology of the language in which the information was originally given and of the language into which the information must be transferred. It means that ‘the translator must possess the skill to compare the legal content of terms in one language (one legal system) with the legal content of terms in another legal language (the other legal system)’ (De Groot, 1987: 794). Therefore, comparative law with its own methods and techniques forms the basis for translating legal texts (ibid.: 797). Lawyers not only use a specific language, called *legal language*, but they also have a particular style of reasoning, called *legal reasoning*.

Different types of legal texts with various degrees of complexity and formalism exist, and they have an influence on the degree of precision of their translation. The first group of legal texts to be translated is scholarly texts (e.g. law review articles, monographs, and research) (Rotman, 1995: 190). The second group, comprising judgments and court decisions, contains judicial language. The third one covers legal norms, for example, regulations, codes, statutes, laws and international treaties, which use a very formal normative language. International treaties are of great interest to this study, as they are the ones that contain the legal concept of *gender*. Therefore, in the present article, only the third group of legal texts, namely, normative legal texts are analysed and their characteristics are discussed.

The main characteristics of legal texts that contain legal norms are:

1) *a great degree of precision* (Beaupré, 1987: 739; Rotman, 1995: 189). In normative legal texts, words are used to explain legal realities which are social realities at the same time. Normative language is very practical, even technical, and it serves only for a normative or judicial purpose. Therefore, the language may seem ‘unpoetical’ and very technical because normative texts do not convey human emotions like novels and poetry. Normative legal texts contain precepts and orders, and the translator should understand and accept this particularity to retain the meaning of the normative document. The translator is not expected to change, to delete, or to add any new words to the text only because it could sound more elegant to him or her; thus, considerable precision is required.

2) *use of words of positive, obligatory law* (Rotman, 1995: 190). In normative legal texts, legal terminology is used in a very concentrated manner. The application of the legal norm to individuals in the real life, for example, a judicial act which applies legal norms is a court judgment or a decision of the administrative authority, depends on the use of precise terminology.

3) *legal terminology used in legal texts deviates from the colloquial speech* (Beaupré, 1987: 739; De Groot, 1987: 796; Koziol, 2008: 231). Translating normative documents, the translator is supposed to bear in mind that the intended/inferential meaning of a word or a term used in such texts may have a different or specific meaning compared to the literal meaning of the word. For example, the term *child* in legal discourse usually means every person who has not reached the age of eighteen. In this context, Article 1 of the *Convention on the Rights of the Child* (1989) states that ‘for the purposes of the present Convention, a “child” means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier’ (1990: 46). Thus, the same word or term in normative legal texts may contain a wider or a narrower meaning, or may add some additional sense to the colloquial context (Koziol, 2008: 231). This can be called the *legal meaning of a word*.

4) *the words used in legal texts are not only simple words but they are also (and first of all) instruments of human actions* (Rotman, 1995: 191). The normative uses of language in legal discourse is not merely a denotation of objects, but it is the language of future actions, which permits one to anticipate and predict human behaviour with the degree of certainty necessary for social life (*ibid.*). Legal norms determine the rights and duties, and even prescribe sanctions.

To illustrate this, a very simple structure of a legal norm can be demonstrated: *If person ‘X’ does something ‘Y’, then there will be a right/a duty/a sanction ‘Z’*. For example, ‘If the marriage has ended in divorce, the former spouses shall not inherit from each other’ (Article 397 of the *Civil Code of the Republic of Latvia*, 1937: Online). One can transform this legal norm according to the aforementioned pattern: *If the husband and wife (‘X’) divorce or declare their marriage annulled (‘Y’), then they do not inherit from each other (‘Z’)*.

When rendering legal norms, the translator has to translate precisely: *who* this person ‘X’ (nouns, pronouns) is, *what* (‘Y’) this person ‘X’ shall do or not do (e.g. verbs, adjectives, adverbs and numerals), and *what kind of rights, duties or sanctions* (‘Z’) will be imposed (e.g. nouns, verbs, and numerals).

If the translator changes or omits some words in the legal norm, he or she changes this legal norm automatically, which is strictly forbidden by the legislator: only the legislator can change a legal norm. In other words, the translator is not authorised to usurp the functions of the legislator.

5) *polysemic terms can be found in legal texts* (Cornu, 2005: 88). In normative legal texts, polysemy can often be observed. It means that one legal term can have at least two (or more) meanings in the legal context. Polysemy is an inevitable phenomenon (*ibid.*: 102) that can have an influence on the quality of the translation.

When a lawyer and/or a translator works with international treaties, there are some particularities that should be taken into consideration; namely, international treaties are always authentic texts and almost always have some official translations (which are not authentic) into different languages. The notion

authentic text being a legal category has an influence on the texts chosen as a basis for translation. According to Article 33(1) of the *Vienna Convention on the Law of Treaties* (1989) (hereinafter the *Vienna Convention*), ‘when a treaty having been authenticated in two or more languages, the text is equally authoritative in each language unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail’. Thus, authentic texts are always equally authoritative from the legal point of view, and the terms of the international ‘treaty are presumed to have the same meaning in each authentic text’ (see Article 33(3) of the *Vienna Convention*, 1989: Online). It follows that first and foremost the translator should use the authentic text of the international treaty as the basis for the translation. A lawyer should also use these authentic texts in order to find the purpose of the treaty or the legislator (see Article 33(4) of the *Vienna Convention*, 1989: Online). All the authentic versions constitute the basis of the legal interpretation as well.

For example, the *Istanbul Convention* (2011) has two authentic versions – in English and in French (see Article 81 of the *Istanbul Convention*). Therefore, in order to translate and to interpret the terms used in this Convention, both authentic versions have to be used. In other words, they form the text of the Convention which is also the basis for legal interpretation (Herbots, 1987: 831, 833).

The texts of international treaties usually have one or more official translations which are not authentic. Official translations have only informative value (ibid.: 839). For example, the official translation of the *Istanbul Convention* into Latvian is not an authentic text. For this reason, if this official translation contains some doubtful terms, phrases or words, both authentic texts must be used for their clarification and interpretation.

GENDER AS A LEGAL CONCEPT: EXPANSION OF THE MEANING

The meaning of the concept *gender* in legal discourse is not clear and unequivocal at all. In the Latvian legal system, it is rather new and comes from international law, where authentic texts are usually written in English. Since it has appeared in the field of international law, it also exerts influence on the national law.

It has already been mentioned that a term or a word in legal contexts can have a different meaning in everyday language. Indeed, the concept *gender* has a specific and different sense in legal discourse.

It is well known that the concept *gender* is used in linguistics to designate primarily a class of nouns based either on an animate/inanimate or a male/female distinction, or both. Thus, genders can be masculine and feminine (e.g. in Latvian, French, Arabic and Hebrew), masculine, feminine and neuter (e.g. in Latin, Greek, Russian and German), common and neuter (e.g. in Swedish), or, according to a more ancient scheme, animate and inanimate (e.g. in ancient Hittite). The Latvian word *dzimte* designates *gender* in the sense of a male/female distinction.

In legal discourse, one can distinguish three principal stages of the development of the meaning of the concept *gender*. At the same time, it is possible to observe a certain expansion of the meaning of the concept *gender* through these three stages: a synonym, the biological (natural) theory of gender, and the social theory of gender.

In the first stage, the concept *gender* was understood as a polite form of the English word *sex* (in Latvian – *dzimums*) and was also used to avoid confusion between the English words *sex* (i.e. male and female) and *sex* (i.e. *intercourse*; in Latvian – *dzimumakts*). So far, the Latvian language has employed different words to designate these two realities: *sex* (i.e. male or female) – *dzimums* and *sex* (i.e. *intercourse*) – *dzimumakts*. Consequently, any confusion is hardly possible in the use of these concepts in Latvian, the same refers to German (*sex* – *Geschlecht* and *sex* – *Geschlechtsverkehr*), for example.

In legal English, the concept *gender-neutral* was first explained as ‘that which makes no differentiation based on sex’ (Rossini, 1999: 86). The same can be said about the concept *gender discrimination* which has been used as a synonym of ‘sex discrimination’ (ibid.: 80).

Another example of a synonymic meaning was *gender* as a synonym for *women*, especially within the gender mainstreaming policy documents of the United Nations (hereinafter U.N.) in the late 1990s (Charlesworth, 2005: 14; D’Aoust and Saris, 2016: 160). The Report of the Economic and Social Council for the Year 1997 can be mentioned as an example. Such use of the concept *gender* was criticized by some representatives of the feminist legal theory, namely: ‘*gender* as a synonym of “women” links gender with biology, implying that gender is a fixed objective fact about a person’ (Charlesworth, 2005:15), ‘it reaffirms the “naturalness” of female/male identities and bypasses the performative aspects of gender’ (ibid.), ‘it requires women to change, but not men and leaves both the roles of men and male gender identities unexamined’ (ibid.: 15)), ‘the term *gender* is more neutral than the term “women” or “sex”’ (ibid.).

In the late 1990s, there was a first attempt to adopt a definition of the concept *gender* in legal discourse during the Fourth World Conference on Women, held in Beijing in 1995. The final document of this conference containing the following definition of *gender* was adopted:

2. Having considered the issue thoroughly, the contact group noted that: (1) the word *gender* had been commonly used and understood in its ordinary, generally accepted usage in numerous other United Nations forums and conferences; (2) there was no indication that any new meaning or connotation of the term, different from accepted prior usage, was intended in the Platform of Action 3. Accordingly, the contact group reaffirmed that the word *gender* as used in the Platform of Action was intended to be interpreted and understood as it was in ordinary, generally accepted usage. (*Report of the Fourth ...*, 1995: 218)

The 'ordinary, generally accepted usage' means that *gender* was understood as a synonym for *women* and/or *sex*, as it has already been mentioned in the present article.

It is very important to emphasize that the *Beijing Declaration* is not a legally binding document. Besides, as it has already been stressed in this article, feminist legal theory criticizes and even rejects the concept *gender* as a synonym of *women*.

Therefore, we can read in the *Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (hereinafter the *Explanatory Report*) that the concept *gender* under the definition laid down in Article 3 of the *Istanbul Convention* is not intended as a replacement for the terms *women* and *men* used in the Convention.

The second phase of the understanding of the concept *gender* in legal discourse was the stage of the biological (natural) theory of gender. According to this theory, *gender* is intimately and bi-univocally linked to *sex*. Agnello points out that, as a consequence, there are only two *genders* – masculine and feminine – corresponding respectively to male and female sex. Therefore, the biological theory argues that *gender* is given in nature, together with *sex* (Agnello, 2013–2014: 92). In the feminist legal theory, this concept of *gender* allows one to study all inequalities of power between men and women better (Charlesworth, 2013: 161). In this way, *gender* permits one to separate the term *sexual equality* from the term *gender equality* and to establish a link between the definitions of masculinity and femininity. In other words, *sex* pays attention to the nature of human body, while *gender* deals with the spirit and culture of both sexes (ibid.: 163).

The biological theory of gender as a correspondence between the biological sex and *gender* can be illustrated as follows: masculine (*gender*) ↔ male (*sex*) and feminine (*gender*) ↔ female (*sex*). Thus, it is self-evident that women represent the feminine gender and men – the masculine gender.

The *Rome Statute of International Criminal Court*, 1998 (hereinafter the *Rome Statute*) is the first international treaty which contains a legally binding definition of the concept *gender* (Agnello, 2013–2014: 99). Pursuant to Article 7(3) of the *Rome Statute*: 'For the purpose of this Statute, it is understood that the term "gender" refers to two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above' (*Rome Statute ...*, 1998: 6).

This is a closed definition which not only defines what the concept *gender* is, but also sets the limits of its meaning. Therefore, it is difficult to enlarge it in the future despite the fact that some feminist legal theorists propose to adapt this definition to the social theory of gender (e.g. Oosterveld, 2005: 73–75).

From the point of view of linguistics, it could be interesting to compare some authentic texts (in French and in English) with the Latvian official translation (which is not authentic) of the *Rome Statute* (1998: 6 (French), 6 (English) regarding this definition of *gender* (Article 7(3)):

Table 1 Definition of gender in French and in English (Rome Statute ..., 1998: 6)

| French | English |
|--|--|
| 'Aux fins du présent Statut, le terme "sexe" s'entend de l'un et l'autre sexes, masculine et féminin, suivant le contexte de la société. Il n'implique aucun autre sens'. (emphasis added) | 'For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above'. (emphasis added) |

Table 2 Official translation of the definition of gender in Latvian (Civil Code..., 1937: Online)

| Latvian (non-authentic text) |
|--|
| 'Šo Statūtu mērķiem termins "dzimums" ir attiecināms uz diviem dzimumiem, vīriešu un sievieti, kas sastopami sabiedrībā. Termins "dzimums" neietver sevī nevienu citu nozīmi, kā vien iepriekš definēto'. (emphasis added) |

As it can be seen from Table 1 and Table 2 above, the concept *sex* has been used in French and in Latvian instead of the concept *gender*. It does not reflect the biological theory of gender, while the English authentic text does so.

From the abovementioned legal definition of *gender*, one can infer the following tendencies: (1) the concept *gender* is not a synonym of *sex* or *women*; (2) *gender* corresponds to two sexes – male and female. It follows that there can be only two genders; (3) *gender* relates to the context of society, namely, with the social and cultural roles of women and men in society; (4) the definition recognizes the social dimension of *gender* and strongly reconnects *gender* to *sex*, explicitly affirming the existence of 'two sexes, male and female' at the same time (Agnello, 2013–2014: 99).

We can conclude that consensus on the definition of the concept *gender* has been reached in international law, and that it is based on the biological theory.

The third phase of the development of the meaning of *gender* in legal discourse is related to the latest tendencies in social sciences. It is argued that *gender* is totally split and independent from biology, thus making it absolutely irrelevant for a person to be born male or female (Oosterveld, 2005: 73, 82; Agnello, 2013–2014: 91). Agnello writes that

the social theory denies any difference of any nature between men and women, affirming that such difference is only of a social nature. If gender is conceived as a social construct, then a social evolution of it is legitimate. Splitting 'sex' and 'gender' and redefining the latter as a social construct means to accept theoretical constructions – such as 'multigender', 'postgender', 'transgender'. (Agnello, 2013–2014: 91)

Disconnecting *gender* from biological *sex* allows the construction of an unlimited number of different *genders*, while biological *sexes* remain only two. In 2002, the U.N. Refugee Agency adopted a legally non-binding document – *Guidelines*

on *International Protection: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol relating to the Status of Refugees (UN)* (2002: Online) – where the Agency gives the following explanation:

In order to understand the nature of gender-related persecution, it is essential to define and distinguish between the terms ‘gender’ and ‘sex’. Gender refers to the relationship between women and men based on socially or culturally constructed and defined identities, status, roles and responsibilities that are assigned to one sex or another, while sex is a biological determination. Gender is not static or innate but acquires socially and culturally constructed meaning over time. (2002: 2)

This can be illustrated as follows:

Table 3 **Social view of gender**

| | |
|--------------------------------|---|
| Male (sex) ⇒ Female (sex) ⇒ | Both biological sexes can choose one or even more socially constructed genders they prefer. The chosen gender(s) can also be changed. |
|--------------------------------|---|

The second legally binding definition (after the *Rome Statute*, 1998: Online) of *gender* is given in Article 3(c) of the *Istanbul Convention*:

‘**Gender** shall mean the socially **constructed** roles, behaviours, activities, and attributes that a given society considers appropriate for women and men’ (*Istanbul Convention*, 2011: Online; emphasis added).

At the same time, Article 4(3) of the *Istanbul Convention* shows that *gender* and *sex* are separated from each other:

The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as **sex**, **gender**, [...] or other status. (ibid.; emphasis added)

The *Explanatory Report of the Istanbul Convention* sheds more light on the understanding of the term *gender*, namely:

[...] gender identity, which in simple terms means that the gender they identify with, is not in conformity with the sex assigned to them at birth. This includes categories of individuals such as transgender or transsexual persons, cross-dressers, transvestites and other groups of persons that do not correspond to what society has established as belonging to ‘male’ or ‘female’ categories. (2011: 10)

It follows from the interpretation of the *Istanbul Convention* (2011: Online) and its *Explanatory Report* (2011: Online) that the social theory of gender is represented in this international treaty, and it means that: (1) *gender* and *sex* are separate

concepts; (2) *gender* shall mean the socially constructed roles; (3) the concept *gender* also includes such categories of individuals as *transgender, transsexual persons, cross-dressers, transvestites* and *other groups of persons*.

After this short overview of the social theory of gender and the contents of the definition included in the *Istanbul Convention*, it is necessary to analyse the translation of *gender* in the same Convention. As it has already been said, this Convention has two authentic texts – in English and in French. All other textual versions are official or unofficial translations.

Table 4 Authentic texts of the *Istanbul Convention* (2011: Online)

| Article | English | French |
|---------|---|---|
| 3(c) | “ gender ” shall mean the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for women and men.’ (emphasis added) | ‘le terme “ genre ” désigne les rôles, les comportements, les activités et les attributions socialement construits, qu’une société donnée considère comme appropriés pour les femmes et les hommes.’ (emphasis added) |
| 4(3) | ‘The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender , [...] or other status.’ (emphasis added) | ‘La mise en œuvre des dispositions de la présente Convention par les Parties, en particulier les mesures visant à protéger les droits des victimes, doit être assurée sans discrimination aucune, fondée notamment sur le sexe, le genre , [...] ou toute autre situation.’ (emphasis added) |

Table 5 Official translations of the *Istanbul Convention* in German, and Latvian (2011: Online)

| Article | German | Latvian |
|---------|---|---|
| 3(c) | ‘bezeichnet der Begriff “ Geschlecht ” die gesellschaftlich geprägten Rollen, Verhaltensweisen, Tätigkeiten und Merkmale, die eine bestimmte Gesellschaft als für Frauen und Männer angemessen ansieht.’ (emphasis added) | ‘ar terminu “ dzimums ” tiek saprastas sociālās (had to be correctly translated “ sociāli konstruētas ” – the authors’ note) lomas, uzvedība, nodarbošanās un īpašības, ko konkrēta sabiedrība uzskata par atbilstošām sievietēm un vīriešiem.’ (emphasis added) |
| 4(3) | ‘Die Durchführung dieses Übereinkommens durch die Vertragsparteien, insbesondere von Maßnahmen zum Schutz der Rechte der Opfer, ist ohne Diskriminierung insbesondere wegen des biologischen oder sozialen Geschlechts , [...] oder des sonstigen Status sicherzustellen.’ (emphasis added) | ‘Konvencijas dalībvalstis garantē to, ka, īstenojot šīs Konvencijas noteikumus, [...] nenotiek nekāda diskriminācija neatkarīgi no tā, vai šādas diskriminācijas pamatā ir dzimums , (lack of the translated word “gender” – the authors’ note), [...] vai cits statuss.’ (emphasis added) |

On the basis of this short comparison, we can conclude that:

- in the French authentic text, the English concept *gender* is translated as *genre* (and not as *sexe*, as it is in the Rome Statute). It is indeed very interesting because in 2005 the General Commission of Terminology and Neology of France (*Commission générale de terminologie et de néologie*, 2005: Online) recommended translating the English concept *gender* as ‘*hommes et femmes*’ (in English – *men and women*) or ‘*masculin et féminin*’ (in English – *masculine and feminine*) regarding the context of the text to be translated (2005: 12000). In French legal discourse, this new legal concept *genre* is still under discussion (e.g. Charruau, 2015: 127–136);
- in the Latvian translation of the *Istanbul Convention*, there are some significant errors which, from the legal point of view, change the whole content of Article 3(c) and 4(3) of the Convention. These errors are: (1) in Article 3(c), the term *gender* has been translated as *sex* (in Latvian – *dzimums*); (2) in Article 3(c), the phrase *socially constructed roles* has been translated as *social roles* (in Latvian – *sociālās lomas*). Thus, in the Latvian translation, the word *constructed* has been omitted; (3) in Article 4(3), only the word *sex* has been translated (in Latvian – *dzimums*), and *gender* has been omitted (*Istanbul Convention*, 2011: 5).

In the Latvian official translation, these errors should be corrected in order not to create a situation where the Convention would be interpreted in a completely different way than in the other Contracting States.

CONCEPT GENDER IN THE LATVIAN LEGAL TERMINOLOGY: TRANSLATION VARIANTS

The analysis of the expansion of meaning of the concept *gender* in English shows that it is a polysemic term with at least three different meanings in legal discourse: (1) *gender* = *sex* or *woman/women*. In Latvian – *dzimums*, *sieviete/sievietes*; (2) *gender* as in the biological theory. In Latvian – *sociālais dzimums*; (3) *gender* as in the social theory. In Latvian, an appropriate term has to be found.

Even within a single legal culture, the same legal term may express several concepts depending on the context in which it is used. The frequency of polysemy can be explained by the fact that legal systems are in a constant state of change, and they also influence each other. (Mattila, 2012: 30)

Therefore, even from the legal point of view, polysemic legal terms make difficulties for the interpretation of legal norms. There are at least three ways how the legislator can avoid or solve the problem of polysemy:

- 1) in a normative legal text, the legislator gives a definition of the polysemic term, limiting it to one meaning. By using this method, the content of the term can be made more or less clear and unambiguous (Cornu, 2005:

- 104; Koziol, 2008: 236). It is claimed that ‘once defined, a legal term is intended to have the same meaning each and every time it is used’ (Daigneault, 2005: 85);
- 2) the legislator respects only one style of legal writing, that is, he uses the term only in one precise sense throughout the legal act (Cornu, 2005: 105). In this situation, a legal definition of the term is not necessary. Butt and Castle point out that a definition of the term is unnecessary ‘if the meaning of the word or phrase is clear or can be readily ascertained from the context’ (Butt and Castle, 2001: 119);
 - 3) the legislator uses a neologism, that is, invents a new legal term/word. It can be a completely new one (for example, it could be a new word *dženders* in Latvian), or it can also be created as a composed word (syntagma) (for example, it could be *sociālais dzimums*, *sociālā dzimte* in Latvian). Neologisms are useful when new legal concepts are created and do not have any designation in the language concerned (Cornu, 2005: 108–111; Koziol, 2008: 236).

If the legislator does not use any of these methods, then the lawyer interpreting and applying the legal norm has to find a solution for the right interpretation of this norm and legal concepts integrated therein. The situation is more complicated if the legal norm and legal concepts are included in an international treaty. Therefore, a correct translation of the text and legal concepts is of a great importance for lawyers.

In legal linguistics, Beaupré proposes four most important methods for the reception of legal terms into the target language (Beaupré, 1987: 739): (1) formal equivalence (or literal translation); (2) functional equivalence (or non-literal translation); (3) borrowing or transcription; (4) neologism.

It would be useful to provide some illustration of how these four methods could be used to translate the English concept *gender* into Latvian. For this reason, each method will be applied and the translation results will be compared.

A **literal translation** of the concept *gender* into Latvian gives only one possibility – it will be understood and translated in the same way as in grammar: *dzimte*. As to the term *sex*, it will be translated as *dzimums*.

A **functional equivalence** of the concept *gender* in Latvian legal discourse, both gender theories – biological and social theory – must be taken into account. As a result of the translation, there can be two possibilities: *sociālais dzimums* and/or *sociālā dzimte*. Conversely, the term *sex* could be translated as *bioloģiskais dzimums*. In this way, functional equivalence takes into consideration the biological sex and gender as a social and cultural phenomenon.

Borrowing or transcription of the concept *gender* into Latvian legal terminology gives the same result as the English legal concept *trust* (in Latvian – *trasts*). Therefore, the English concept *gender* must not be translated but only transcribed into Latvian. It gives the Latvian concept *dženders*, which makes it

easier to borrow into Latvian such English terms as *agender* (*adženders*), *bigender* (*bidženders*), *pangender* (*pandženders*) and so on. The term *sex* will be translated as *dzimums* without an explanation that this is a biological sex.

Finally, in order to create a **neologism**, some special new term must be found in Latvian legal terminology, at the same time bearing in mind that 'the ultimate goal of legal translation is to be as precise as possible in meaning' (Beaupré, 1987: 739). Therefore, in various international treaties, the same legal concept *gender* can have a different or modified meaning which influences the correct translation. As it has been already analysed in the present article, the concept *gender* in the *Rome Statute* does not have the same meaning as in the *Istanbul Convention*. *Gender* within the meaning of the *Rome Statute* can be translated into Latvian as *sociālais dzimums*, whereas the same concept *gender* must be translated as *sociālā dzimte* or *dženders* in the *Istanbul Convention*.

A neologism can sometimes coincide with borrowing and/or functional equivalence. In the same case of *gender*, the borrowing *dženders* would also be a neologism in Latvian legal terminology. The functional equivalent *sociālā dzimte* is a neologism as well. A neologism means that not only a new legal term has been elaborated but also that there is a new conceptual content in this term. A neologism has also a negative aspect, for a person who reads this new term it is unknown and even foreign (Koziol, 2008: 236). Thus, a new legal concept can create a new legal term.

CONCLUSIONS

The study has drawn two types of conclusions, which refer to the interdisciplinary nature of applied linguistics and its relation to social sciences as well as the understanding of the many-sided nature of the concept *gender*.

Applied linguistics is a theoretical and practice-driven discipline that addresses solving language-related phenomena in a variety of general, academic, occupational and professional contexts in which the language in use is a core issue of investigation.

Interdisciplinary nature of applied linguistics testifies to the fact that applied linguistics lies at the intersection of different disciplines; its interdisciplinary nature can be appropriately evaluated if it is considered within the scope of other fields such as law, in which the language serves as an instrument of communication.

Understanding of the interdisciplinary relationship and nature of law and language can significantly broaden the scope of legal translation practices.

Based on textual precision and accuracy, legal translation 'is bound to use abstractions, whose meanings derive from particular changing in cultural and social contexts' (Rotman, 1995: 189).

In the beginning, the concept *gender* was used as a synonym of the term *sex* and *women*. Now, there are two gender theories – the biological theory and the social theory of gender in legal discourse.

In English, the concept *gender* is a polysemic term and has at least three possible meanings. It follows that the translation of the concept into Latvian has more than three possible translation variants: *dzimums*, *sociālais dzimums*, *dzimte*, *sociālā dzimte* and *dženders*. The correct translation of this concept depends on the context in which it is used in the respective normative legal act. In other words, its translation is connected to an appropriate interpretation of the concept *gender*.

Within the context of the social theory of gender, the proposed translations in Latvian could be either the neologism *sociālā dzimte* or *dženders*.

REFERENCES

- Agnello, F. (2013–2014) A new 'gender' definition in international law: the Convention on Preventing and Combating Violence against Women and Domestic Violence. *Spanish Yearbook of International Law*, 18: 87–114.
- D'Aoust A.-M. and Saris, A. (2016) Femmes, genre et sécurité en relations internationales et en droit international : un dialogue en construction. E. Tourme Jouannet, L. Burgogue-Larsen, H. Muir Watt and H. Ruiz Fabri (eds.) *Féminisme(s) et droit international*. Paris: Société et législation comparée [...], 141–188.
- Beaupré, M. (1987) La traduction juridique: Introduction. *Les Cahiers de Droit*, 28 (4): 735–745.
- Butt, P. and Castle, R. (2001) *Modern Legal Drafting. A guide to using clearer language*. Cambridge: Cambridge University Press.
- Cameron, D. (2005) Language, gender and sexuality: current issues and new directions. *Applied Linguistics*, 26: 482–502.
- Charlesworth, H. (2005) Not waving but drowning: gender mainstreaming and human rights in the United Nations. *Harvard Human Rights Journal*, 18: 1–18.
- Charlesworth, H. (2013) Le sexe de l'Etat en droit international. In S. Hennette-Vauchez (prés.) *Sexe, genre et droit international*. Paris: Pedone.
- Charruau, J. (2015) L'introduction de la notion de genre en droit français. *Revue française de droit administrative*, RFDA, No 1, Janvier-Février: 127–136.
- Cook, G. (2003) *Applied Linguistics*. Oxford: Oxford University Press.
- Cook, G. (2011) British applied linguistics: impacts of and impacts on. In *The Impact of Applied Linguistics. Proceedings of the 44th Annual Meeting of the British Association for Applied Linguistics* (pp. 35–58). University of the West of England.
- Cornu, G. (2005) *Linguistique juridique*, 3e édition. Paris: Montchrestien.
- Daigneault, E.W. (2005) *Drafting International Agreements in Legal English*. Wien: Manzsche Verlags- und Universitätsbuchhandlung.
- Davies, A. (2007) *An Introduction to Applied Linguistics*. Edinburgh: Edinburgh University Press.
- De Groot, G.R. (1987) La traduction juridique: The point of view of a comparative lawyer. *Les Cahiers de Droit*, 28(4): 793–812.
- Durant, A. and Leung, J.H.C. (2016) *Language and Law*. London and New York: Routledge.
- Dzimte? Dzimums? Starpdisciplīnu akadēmiskā diskusija* (n.d.). Available from http://www.lm.gov.lv/upload/dzimumu_lidztiesiba_a/kopsavilkums_dzimte_dzimums.pdf [Accessed on 15 August 2017]
- Herbots, J. H. (1987) La traduction juridique : Un point de vue belge. *Les Cahiers de Droit*, 28 (4): 813–844.

- Higgins, C. (2010) Gendered identities in language education. In N.H. Hornberger and S.L. McKay (eds.) *Sociolinguistics and education*. Clevelon (UK): Multilingual Matters, 370–397.
- Grabe, W. (2002) Applied linguistics: an emerging discipline for the twenty-first century. In R. B. Kaplan (ed.) *The Oxford Handbook of Applied Linguistics* (pp. 3–12). Oxford: Oxford University Press.
- Grice, H. P. (1989) *Studies in the Way of Words*. Cambridge, MA: Harvard University Press.
- Kalnača, A. (2008) Dzimtes stilistikās funkcijas latviešu valodā. *LU Raksti*, 728: 28–34.
- Kaplan, R. B. (ed.) (2002) *The Oxford Handbook of Applied Linguistics*. Oxford: Oxford University Press.
- Kozioł, G. (2008) Sprachliche Aspekte der Auslegung von internationalen Rechtstexten. *Juristische Blätter*, 130: 230–241.
- Kubota, R. and Chiang, L.T. (2013) Gender and race in ESP. In B. Paltridge and S. Starfield (eds.) *Handbook of English for Specific Purposes* (pp. 481–495). Sussex (UK): Wistley and Sons.
- Lakoff, R. (1975) *Language and Woman's Place*. New York: Harper and Row.
- Mattila, H.E.S. (2012) Legal vocabulary. In P.M. Tiersma and L.M. Solan (eds.) *Language and Law* (pp. 27–38). Oxford: Oxford University Press.
- Oosterveld, V. (2005) The definition of 'gender' in the Rome Statute of the International Criminal Court: a Step Forward or Back for International Criminal Justice? *Harvard Human Rights Journal*, 18: 55–84.
- Pokrotniece, K. (2008) Common gender nouns in Latvian. *Linguistica Lettica*, 18: 27–36.
- Rossini, C. (1999) *English as Legal Language*. The Hague-London-Boston: Kluwer Law.
- Rotman, E. (1995) The inherent problems of legal translation: theoretical aspects. *Indiana International and Comparative Law Review*, 6: 187–196.
- Schmitt, N. and Celce-Murcia, M. (2002) An overview of applied linguistics. In N. Schmitt (ed.) *An Introduction to Applied Linguistics* (pp. 1–16). London: Arnold.
- Sperber, D. and Wilson, D. (1995) *Relevance: Communication and Cognition*. Oxford: Blackwell.
- Strelevica-Osina, D. (2004) Par gramatiskajām dzimtēm un politikorektumu latviešu valodas kontekstā. *Linguistica Lettica*, 13: 52–68.
- Tannen, D. (1990) *You Just Don't Understand*. New York: Marlow.
- Veisbergs, A. (1999a) Dzimtes kategorijas latviešu valodā. *Linguistica Lettica*, 5: 48–59.
- Veisbergs, A. (1999b) Gender in monolingual and bilingual dictionaries. In A. Veisbergs and I. Zauberga (eds.) *In The Second Riga Symposium of Pragmatic Aspects of Translation* (pp. 252–264). Riga: University of Latvia Press.
- Widdowson, H.G. (2005) Applied linguistics, interdisciplinarity, and disparate realities. In P. Bruthiaux, D. Atkinson, W.G. Eggington, W. Grabe and V. Ramanathan (eds.) *Directions in Applied Linguistics* (pp. 12–25). Clevedon: Multilingual Matters.

LEGAL DOCUMENTS ANALYSED

- Convention on the Rights of the Child* (New York, 20 November 1989; U.N. T.S. 1577 (1990)). Available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> [Accessed on 30 May 2017]
- Civil Code of the Republic of Latvia* (Adopted on 28.01.1937) *Valdības Vēstnesis*, Nr. 41, 20.02.1937). Available from www.likumi.lv [Accessed on 30 May 2017]

- Commission générale de terminologie et de néologie. Recommandation sur les équivalents français du mot 'gender'. JORF No 169 du 22 juillet 2005, p. 12000, texte No 107 (2005). Available from www.legifrance.gouv.fr [Accessed on 30 May 2017]*
- [Istanbul Convention] *Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence* (Istanbul, 11 May 2011, C.E.T.S. 210 (2011)). Available from <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210> [Accessed on 30 May 2017]
- Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (Istanbul, 11 May 2011; C.E.T.S. 210 (2011)) Available from <https://rm.coe.int/16800d383a> [Accessed on 30 May 2017]
- Guidelines on International Protection: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol relating to the Status of Refugees (UN)*. The United Nations Refugee Agency (7 May 2002; HCR/GIP/02/01). Available from www.unhcr.org [Accessed on 30 May 2017]
- Report of the Economic and Social Council (ECOSOC) for the Year 1997, U.N. GOAR, 52nd Sess., Supp. No 3, at 24, U.N. Doc. A/52/3/Rev.1 (1997)*. Available from <http://www.un.org/documents/ga/docs/52/plenary/a52-3.htm> [Accessed on 30 May 2017]
- Report of the Fourth World Conference on Women (Beijing, 4–15 September 1995)*. Beijing Declaration (Annex I), Platform of Action (Annex II), Statement by the President of the Conference on the Commonly Understood Meaning of the Term 'Gender' (Annex IV). Available from www.un.org/womenwatch/daw/beijing/ [Accessed on 30 May 2017].
- Rome Statute of the International Criminal Court* (United Nations, 17 July 1998; U.N.Doc. A/CONF.183/9 (1998)). English and French authentic texts available from: <http://www.un.org/icc/> [Accessed on 21 December 2016]. Latvian official translation available from: www.likumi.lv [Accessed on 30 May 2017]
- [Vienna Convention] *Vienna Convention on the Law of the Treaties* (United Nations, 23 May 1969; U.N.T.S. 1155(1989)) Available from https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en [Accessed on 30 May 2017]
- Web-side of the Council of Europe* (n.d.) Available from www.coe.int [Accessed on 30 May 2017]

Baiba Rudevska (Dr. iur.) is currently working as external advisor to the Minister of Justice of the Republic of Latvia. She is also a senior associate at the law firm BDO Law in Latvia, Riga, as well as an independent researcher in the field of private international law, European private law, civil law, comparative law, civil procedure law, international civil procedure, intertemporal law, human rights issues in private international law. Email: baiba_rudevska@hotmail.fr

Gunta Roziņa (Dr. philol.) is working as full professor at the University of Latvia. She conducts research on cognitive and applied pragmatics and linguistic anthropology. Email: rozina.gunta@inbox.lv

Indra Karapetjana (Dr. philol.) is working as full professor in applied linguistics at the University of Latvia. Her main research interests involve political and academic discourse analysis, critical discourse analysis, ESP and CLIL. Email: indra.karpetjana@lu.lv