

ETHICS OF PERSUASION AND OBEDIENCE IN LEGAL LANGUAGE

(ILLUSTRATED WITH AN EXAMPLE OF THE ACT ON MILITARY DISCIPLINE)

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*We all believe in the regulations,
But you have to know how to interpret them (...).¹*

1. Persuasion in legal language utterances – introduction

Legal text is a distinctive example of control of power by the means of language. The persuasive character of legal language shaping behaviour and conduct of receivers through statements expressing legal norms is a measurable manifestation of this domination.

The subject of interest of the following considerations is to demonstrate how persuasion may be justified in legal language by using the example of military legal acts.

Typical persuasion uses diverse linguistic means among which an important role is played by the rules of influence such as recognising the authority of the sender, social justification of influence as well as using presupposition or implication. We should differentiate it from linguistic manipulation, which has negative connotations. Persuasion is not about, as is manipulation, imposing a specific content but about convincing to adopt it. In speech acts theory of persuasion is defined as

1 M.V. Llosa, *La ciudad y los perros*, Premio Biblioteca Breve 1962.

the illocutive aspect of an utterance. In this sense, we may analyse it in utterances of legal language. From the point of view of the requirements of pragmatics, it is persuasion expressed in the illocutive load of an utterance. Persuasive intention to influence the receiver by means of the speech act is made possible by the illocutive load of an utterance whereas the possibility to alter the objective reality through a speech act (by creating new states and legal effects) is conditioned by its perlocutive load.

In legal language we deal with a specific type of persuasion. The use of speech acts determined by persuasion serves to influence the receiver by means of specific forms of convincing. The sender of a legal text is characterised by the intention to influence and affect the receivers' behaviour. Therefore, he uses utterances with a clearly accentuated goal. The intensity of persuasion is diversified and in various types of legal acts persuasion is constructed differently. The intention to influence the behaviour of receivers may be expressed both in an explicit and in a concealed way.² At the level of formal and linguistic characteristics, the communicative intention to formulate illocutive utterances may be signalised in the appellation of the legal act ("constitution", "decree", "order", "resolution" as words derived from performative verbs "to constitute", "to decree", "to order", "to resolve").³ It may result from "modal-illocutive frame"⁴ of utterances inscribed in the text, from which it results that it is a model of proceedings/conduct. In the literature of theory of law two ways of expressing the content of a legal norm are distinguished; "obligative" (comprising a deontic verb) and "seemingly descriptive" (without a deontic verb).⁵ However the fact that the sender of a legal text always uses the mechanism of persuasion seems indisputable. It is justified by the function and the goal of such utterances as well as by functions of the law itself.

The persuasive character of legal language utterances consists in that the goal of a legal text (or aim of the sender concealed in the

2 On this subject see also I. Szczepankowska, *Wpływ intencji perswazyjnej nadawcy na styl dawnej i współczesnej wypowiedzi prawodawczej w języku polskim*, (in:) *Styl a semantyka*, Białystok 2008, pp. 411–426.

3 E. Malinowska, *Wypowiedzi administracyjne. Struktura i pragmatyka*, Opole 2001, p. 47.

4 A. Malinowski, *Polski język prawny. Wybrane zagadnienia*, Warszawa 2006, p. 114.

5 See e.g. Z. Ziemiński, *Logiczne podstawy prawoznawstwa*, Warszawa 1966, p. 54 ff.

text) is to develop certain mechanisms and motives of behaviour of the receiver. It is the intention to affect legal subjects and the reality. The sender of a legal text expressing his intention to influence a receivers' behaviour by creating normative models directs orders, prohibitions, and permissions of a defined conduct towards them. Persuasive intention expressed in a legal text may influence the receivers' behaviour also by actual and not only potential means, when there is a possibility to apply a direct obligation and sanction. With regard to the performative force of an utterance, the sender may influence the reality (potentially and factually). Such utterances alter the extralinguistic reality. Within the use of legal language, these changes consist in causing legal effect by creating new legal relations and states. They actualise and desactualise the obligations and entitlements of specified legal subjects.

2. Persuasion justified conventionally

To answer the question about the justification for persuasion in legal language we may relate to the specificity of the situation of communication in which a legal text is used. It is created by both the participants – the subjects of communication and the context of the text. There is a bond between the participants based on relations within the communicative community. Linguistic pragmatics defines it as a state of participants' mutual recognition of certain assumptions of the efficacy of an utterance.⁶ The performative character of language leads to an adoption of certain assumptions of the so-called validity claims. It concerns the efficacy of these speech acts as persuasive and perlocutive utterances. It is necessary to “assume an ideal communication community”⁷ for its correct functioning. This “ideal” communication community is, according to Beata Sierocka, a transcendental condition of discourse ethics. Communicative practice then becomes ethical practice.⁸ The ethics of persuasion and obedience in communication the subject of which is a legal text is founded on the existence of common

6 B. Sierocka, *Idealna wspólnota komunikacyjna jako transcendentalny warunek możliwości etyki dyskursu*, (in:) B. Trojanowska (ed.), *Rzeczywistość języka*, Wrocław 1999, p. 85.

7 *Ibidem*, p. 85.

8 *Ibidem*, p. 86.

assumptions of the sender and the receiver related to the course of this communication. They are reflected in the principles on which it is based. In a legal sphere, the participants of a communicative community are the sender, a lawmaker representing the authority of the state and the receivers – legal subjects. A communicative community is founded on counterfactual assumptions. They consist in that persuasion and the authority of the sender as well as the obedience of the receiver are adopted as a postulate of correct course of communication in a legal sphere. They are rooted in a specific convention and agreement of value.

Not exceeding legal norms, conduct according to orders and prohibitions does not have to result from a direct fear of sanctions or negative consequences but from respect of the established order, a priori acceptance of the content of law while expecting order and legal security. The influence of norms on reality and behaviour of subjects is of categorical, and imperative character that is externally heteronomically justified. The receivers act according to law irrespective of the fact whether their individual judgment or preferences are directly in accordance with its content. They give ear to norms since by an ample justification they give consent to the lawmaker (state authority organs) that they will offer them obliging models of behaviour. Therefore, the participants of communication approve the adopted hierarchy and communicative relation as well as their own place and role in this relation. Conduct according to norms is based on the conviction that they reflect a well grounded order.

Therefore, not a direct coercion expressed in defined words or utterances (for example an order) but extralinguistic factors may constitute a justification for persuasion and obedience. In this case, this will be basic assumptions adopted in a state under the rule of law. Thus, it is persuasion allowed by social consensus, agreeing on rules and values recognised as fundamental in a given legal culture, which conditions the execution of rules and the ethics of discourse. Conventionality plays a significant role in the context of persuasive influence. Extralinguistic questions motivating persuasion and obedience in a legal text are above all of conventional character in the situation of use of a speech act. Communication is based on agreeing on common validity claims and is justified by set legal rules.

The possibility to bring about changes, through legal language utterances, in non-linguistic reality is chiefly justified by conventionality. The conventionality of performative utterances is based on the existence of fixed rules, which determine the use of an utterance. The speech act is rooted in procedures according to which defined subjects have the competences to formulate utterances causing defined effects. The Authorities' competence to create a legal situation for the receiver in an obliging way here plays a significant role. It is about a particular sort of competence of the sender, an organ authorised to implement imperative decisions. The lawmaker disposes of competence to issue legally binding norms and the compulsion to enforce their realisation.

Conventionalisation involves a typical character of co-occurrence of interrelations between specified roles of a linguistic situation and a defined context characteristic of this situation. Another crucial factor is the context of the use of an utterance. The linguistic situation is also of conventional character, its course, as well as the relation between the sender and the receiver. Thirdly, the effects provoked or intended to provoke by performative utterance are also of conventional character. Expressing the same formula (e.g. an order) by another person or in a different situation than indicated according to conventional rules will not produce such an effect.

These three conventional aspects in legal language utterances compose the conditions defining the competence of the sender to formulate utterances of a binding character and constitute justification for producing effects of persuasion and influencing the receivers. They are as follows: conventionality of competence and of the pattern of speech act development (1), conventionality of speech act procedure (2) and conventionality of effects caused or intended to cause by the utterance (3). All of the mentioned conditions gain cardinal significance on the communication level of the relation between sender-receiver based on the mutual recognition of validity claims. These characteristic traits may be illustrated by the example of legal regulations related to an army.

3. Ethics of persuasion and obedience in legal acts related to an army

Certain legal regulations related to an army are examples of a communicative situation justified by convention as well as of persuasion and relation between order and obedience. A specific relation order/obedience justified by convention and marked by persuasion occurs here. The act on an army discipline⁹ and regulation regarding distinctions for soldiers (in military service) supplementing it, belong to army legal acts of this kind.¹⁰

We can reconstruct a certain vision of reality basing it on the content of the act on military discipline. It is a conventional world created by norms and acknowledged conventional assumptions. It enables to recreate rules related to established hierarchy and subordination to its requirements and primacy of military regulations.¹¹The determinant of persuasion is, above all, the relation between the participants of communication. The above-described conventionality of competences of subjects and the speech act pattern (I) consists, in this case, in relation to subordination. The subjects of communication are the soldier and the superior. The act defines who belongs to each of the categories. The statute of the soldier may consist of being “superior, subordinate, of higher, lower and equal rank” (item 2 of Regulations). The determinant of the superior is his/her authority to give orders and official orders conferred by legal regulations or another order. The subordinate is subject to the superior (item 12 of Regulations). Specific of this vision of reality reconstructed from the content of the act is to determine the relations between the subordinate and the superior. The duty of a soldier is to obey military discipline:

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- 9 The Act of 9.12.2009 on Military Discipline (Dz.U. z 2009 r. Nr 190, poz. 1474), hereinafter referred to as “the Act”.
- 10 The Decree of the Minister of National Defense concerning distinguishing soldiers, former soldiers and sub-units and military institutions (Dz.U. z 2010 r. Nr 124, poz. 841), hereinafter referred to as “the Decree”.
- 11 The General Regulations of the Armed Forces of the Republic of Poland. Attachment to the Decision No. 188/MON of the Minister of National Defense from 10.06.2009 concerning introduction to use the General Regulations of the Armed Forces of the Republic of Poland, referred to as “Regulations”.

“Soldier is obliged to obey military discipline” (art. 2, section 1 of the Act)

The superior’s task is to shape the military discipline. Therefore, to his duties belong:

“shaping military discipline of the subordinate soldiers especially through preventive/educational action and creating conditions to honour and obey military discipline” (art. 2, section 2, item 1 of the Act).”

The Act on military discipline assigns competence to organs and subjects according to the adopted hierarchical organisation of military structures. Hierarchy is justified by the situation of the subjects towards each other participating in communication according to the relation of precedence and subjection. The position of the receiver towards the sender is fixed by acceptance of military regulations according to which “organisation of the army is based on hierarchic subordination of soldiers” (item 1 of Regulations). Orders are the tools shaping behaviour. An order is both an instruction and a decision of the superior. The imperative mood of an utterance is to create duties of the subjects dependent on their superiors. We deal here with a typical performative activity, the same words expressed by someone other than the superior or to somebody who is not subordinate will not have the same effects as an order.

The conventional character of communication is justified by the fact that the sender has the competence to formulate performative (performative acts) and persuasive (illocutionary acts) utterances. This is conditioned by his/her superior position in view of the receiver as well as influencing the specificity of the relation between the sender and the receiver. The aspect of the subordinate character of the receiver is the determinant of this relation. It may also be the authority of the sender, expected sanctions, coercion or another element determining obedience e.g. deference and respect. The justification for this is hierarchy based on superiority and obedience and rules determined, among others, by regulations on which the functioning of an army is based.

Actual changes in the extralinguistic sphere may be justified by the force of the senders’ competence, the aspect of obedience and coercion

but also (it seems) by the level of acceptability during identification of the content by the receiver and, significantly, the communicative value of the act. Drawing attention to subjects being the objects of this persuasion that is the receivers is of great significance in characterising the persuasive aspect of language use. In this context, linguistics uses the notion of illocutive reception, which consists of the fact that the receiver is conscious of the kind of illocutive act directed towards him. Illocutive reception is different from utterance understanding.¹² The first may be defined as familiarisation with a speech act, the second demands knowledge of the rules of language and is familiarising enriched with a certain acceptance on the grounds of subjective knowledge of the receiver (understanding the message). Understanding an utterance is a cognitive reaction of the receiver, which may also comprise elements of identification of the illocutive and perlocutive force of an utterance. Irrespective of the fact that in typical situations of language use these two aspects are connected, in this case conventionality of persuasive influence is of fundamental importance.

The above-mentioned conventionality of the procedure of language use (2) allows for the adoption of fixed conditions and the ways of expression of some speech acts. It enables predictability or repeatability of the way they are assimilated and understood (which may increase efficiency of communicativity). The Act on Military Discipline characterises both circumstances and situations in which the receiver may be both rewarded as well as sanctioned by the law. Within this context military discipline covers two areas: rewarding and discipline *sensu stricto*, proceedings in a situation of violation of discipline and bearing disciplinary responsibility. Normative regulation also concerns elements of rules regulating the methods of proceedings in the mentioned cases. It is expressed in the content of the art. 1 of the Act:

“The Act determines rules of distinguishing soldiers, former soldiers, sub-units, units and military institutions as well as the rules and methods of reaction to violation of military discipline and bearing disciplinary responsibility by soldiers and proceedings in such cases.”

12 E. Malinowska, *op. cit.*, p. 44.

Except for general regulations determining the subjective and objective scope of the act in the first section, we find a description of subjects and the significance of basic legal definitions (soldier, military discipline, distinction, disciplinary action, disciplinary offence etc.). The second section contains legal regulations related to soldiers; the third section is devoted to disciplinary action and disciplinary responsibility whereas the fourth section defines proceedings in the event when the decision becomes final.

The act uses three levels characterising the receiver and the circumstances. The first of them concerns the way the receiver should act to be awarded a distinction. The second gives instructions on how to act in order not to be disciplined. While the third one indicates which disciplinary (penalties and punitive measures), preventive measures are possible. Additionally, the act comprises regulations related to rules of execution of orders in distinctions and penalty cases.

Achievements for which distinctions are given have been characterised in the act:

„1. A soldier may be given a distinction for acts giving evidence of devotion and courage or for particular achievements in execution of official tasks.

(...)

3. Granting a distinction is stated by an order or a decision.

4. One person cannot receive more than two distinctions.” (art. 10 of the Act)

The first excerpt indicates clearly the degree of conventionality of granting distinctions. It concerns the conventionality of generally defined merits of a soldier as well as the form of distinction granted and subjection to condition that he may receive two distinctions at a time at the most. Among the conditions and the procedure of distinctions it is specified what decorations, honourable titles as well as to whom and for what they are granted:

„The distinctions are:

- 1) cancelling penalty within the time limit defined in the act;
- 2) praise;

- 3) congratulation letter;
- 4) commendatory letter with a photo of the distinguished soldier against the background of:
- 5) national flag of the Republic of Poland or military flag,
- 6) standard of military unit or navy flag;
- 7) reward leave;
- 8) cash prize;
- 9) financial prize;
- 10) inscription of soldiers' merits to military unit annals;
- 11) badge of honour;
- 12) title of honour;
- 13) cold steel of honour;
- 14) inscription of soldiers' merits to the Book of Honour of the Polish Armed Forces (...)." (art. 11, section 1 of the Act)

The Act determines that only the indicated subjects are entitled to give distinctions and to receive distinctions. The Act mentions, in a detailed way, who can give distinctions of a certain type (art. 14). Some of them may be awarded by disciplinary superiors. Only the President of the Republic of Poland or the Minister of National Defence may award some of the distinctions. Selected titles of honour mentioned in the decree may not be awarded more than the defined number of times (clause 5, section 7). This is the case of the Distinguished Air Force Pilot title, which can be awarded not more than three times to one soldier. Furthermore, there are particular conditions concerning the frequency of awarding distinctions to a definite person.

„5. Consecutive award of Distinguished Air Force Pilot title of honour may occur after at least two years counting from the previous award.

6. Awarding a badge of honour and a title of honour with rank insignia excluding the title of honour mentioned in clause 5, section 2 and one of cold steel weapon of honour shall only occur once.” (clause 10 of Decree)

It is characteristic of the code to mention the circumstances of awarding certain distinctions. The title of Distinguished Air Force Pilot may be awarded during the Air Force Day, while a consequent title may be awarded not earlier than 3 years counting from the previous award (clause 10, section 3 of Decree).

Regulations, being a more detailed supplement to the Act, determine conditions that shall be fulfilled by the awarded person to actually be awarded (example enumeration in the clause 10, section 1). This underlines a particular standing of the competence of awarding a distinction.

“Soldiers may receive distinctions on the condition they meet the following conditions:

- 1) cancellation of a penalty within the time limit defined in the act for actions giving evidence of fortitude and courage or for exemplary realisation of official tasks showing that the goal of the penalty has been reached;
- 2) praise – for very good performance of an official task;
- 3) congratulation letter – for very good results in performance of official tasks, for achievements in military service and for the occasion of the anniversary of its fulfilment;
- 4) commendatory letter with a photo of the distinguished soldier on the background of a national flag of the Republic of Poland or a military flag or a standard of military unit or war ensign – for exemplary fulfillment of military service in a given military unit particularly in an organizational unit abroad and in connection with transfer to another military unit or discharge from military service; (...).” (clause 10, section 1 of Decree)

A soldier, for example, may receive a cash prize for “actions giving evidence of fortitude and courage or exemplary realisation of official tasks” (clause 10, section 1, item 6 of Decree). Other types of distinctions depend on similar general clauses like attitude or activity giving evidence of fortitude and courage, exemplary execution of official tasks, exemplary fulfilment of military service, performing a remarkable act during military service. These expressions contain evaluative elements, which accentuates great influence of the scope of competence of the

subjects granting distinctions. It also allows underlining the discretionary and conventional character of gratification. Conventionality is also visible in the examples of names of the titles of honour like “Exemplary Pupil”, “Exemplary Cadet”, “Exemplary Officer Cadet”, “Soldier of Merit of the Republic of Poland”, “Military Pilot of Merit”. Each of the titles corresponds with another category of achievements (clause 10, section 1, item 10 of Decree).

As you can see, conventionality, understood in a broad context, may be achieved by the means of linguistic measures (formulas indicating the intention to incite effects) expressing the word “order” but also strengthened by the context made up by a defined sign dimension of a given linguistic situation. It may be a non-verbal gesture, appropriately identified and understood insignia or attributes such as uniform, type of weapon, type of distinction, badge and the way it is worn etc. This is also the case of awarding distinctions and awards. Conventionality of awarding and identification is characteristic here, for example, a certificate is added to a distinction, a miniature is attached to a badge, certain badges are equipped with a pad:

„Soldiers of preparatory service and National Reserve Forces soldiers who have titles of honour are entitled to badges/decorations with crimson pads” (clause 6, section 3 of the Decree).

Types, patterns, ways of wearing badge of honour, their descriptions and graphic design (clauses 7, 8, 9) are also of conventional character. The following examples of attributes of honour are mentioned in regulations:

„The cold-steel weapons of honour are:

- 1) “Mace of Honour”, hereinafter called “mace of honour”;
- 2) “Sword of Honour of the Polish Armed Forces”, hereinafter called “sword of honour”;
- 3) “Backsword of Honour of the Polish Navy”, hereinafter called “backsword of honour”;
- 4) “Dirk of Honour of the Polish Armed Forces”, hereinafter called “dirk of honour”.”(clause 8 of the Decree)

(...) „On the mace are placed:

- 1) exchangeable general's (admiral's) ring with general's (admiral's) rank insignia;
- 2) President's ring with inscription.
 2. The inscription is also placed on the interior fuller of blade of cold-steel weapon of honour.
 3. In case an officer is appointed to a higher general's (admiral's) rank he is entitled to an exchangeable general's (admiral's) ring with insignia of the appointed military rank instead of mace.”
(clause 9, section 1 of the Decree)

The Decree also regulates the way of wearing “distinctions of honour, title of honour badges, cold steel of honour as well as displaying and storing certain distinctions” (Chapter 6). Regulations also determine the appearance of the soldier on a photograph aspiring to a distinction. This happens when an authorised subject requests distinguishing a soldier by inscribing him in the Book of Honour of the Polish Armed Forces. An appropriately taken photo of the candidate has to be added to the request:

“Two photos measuring 6x9 cm, presenting the left profile of the candidate to distinction wearing ceremonial parade dress, ceremonial cord with present military rank shall be added to the requests mentioned in sections 1–3. If the soldier is not entitled to ceremonial parade dress, the candidate may present a photo wearing a dress uniform designed for ceremonial appearances.”
(clause 19, section 4 of the Decree).

We should note that such a request might be submitted only on a fixed date (until 31st of May of each calendar year) and solely by an authorised subject defined in regulations. The content of the text inscribed in the book of honour is also determined by regulations (clause 23 of the Decree).

The next element justifying persuasion is the conventionality of the effects it produces (3) understood as above, which may be interpreted as the effect of the use of a speech act tightly connected to the above conditions. It depends, to a great degree, on the success of the fulfilment of the two preceding conditions.

Actual changes caused by speech acts result from conventionality of the connection of determined effects with the situations they accompany. Distinctions and awards received by soldiers (distinctions of honour, titles of honour, commendatory letter, praise, commemorative diploma), with the exception of cash, increase recognition, are prestigious, give the possibility of promotion, honour. The examples of conventionality can be found in rules of awarding and types of distinctions. Awarding a “letter with a photo of the distinguished soldier (...) against the background of standard of military unit or military flag” (art. 11, section 1, letter b of the Act), may be a type of distinction. It is obvious that it is not the case of the type of the object but the attributes connected to it due to adopted conventional rules. The intended effect which is to be produced is not what is included in the very activity of distinguishing but what accompanies it by virtue of conventional rules. A soldier receives not only a letter but also prestige, recognition, that is, consequences resulting from the distinction. Therefore, these are also objective effects but still conventional and not real. Creating a determined state of things through utterances is not creating real states but effects that exist because of their institution.¹³ We shall add that exceptionally characteristic examples of conventionality are distinctions or military ranks awarded posthumously. Appreciation and real dimension of effects occur only after the soldier’s death and the effects of gratification may concern solely, for example, closest relatives of the honoured person and not the person.

It does seem, however, that the sense of a communicative situation signifies not only what is in the text but also what is coded within it. The way of presenting information may proceed in two manners: it may ensue from the very meaning of the utterance, its grammatical traits e.g. an order as well as information may be conditioned by contextual and situational factors. As pointed out by Jean L. Gardies, an order, included in the content of law, based on authority, generates a one-sided obligation of the one who receives it, double-sided obligation establishes a bilaterally binding contract, a nomination, title to which one gains

13 J.L. Gardies, *Performative Statements and Psychosocial Acts*, (in:) S. Wronkowska, M. Zieliński (eds.), *Szkice z teorii prawa i szczegółowych nauk prawnych*, Poznań 1990, p. 369.

the right etc.¹⁴ The mechanisms of persuasion depend on the situational context playing a significant role here. In linguistic pragmatics it is defined as a situation of a speech act (“extralinguistic background”) influencing the character of the effect of an utterance created by a set of factors of language realization.¹⁵ Cultural, political, economic conditions coming from the social, communication field, *ergo* not only linguistic, influence the context of military speech acts as well as any other utterance. We may assume that they are indispensable in developing a performative and persuasive effect. These conditions may be objective (time, place, relation between the participants, and the content of message) as well as subjective. The intention of the subject formulating a message belongs to subjective requirements fulfilled by non-linguistic elements of a performative speech act (e.g. frankness of utterance).¹⁶ In legal regulations, objective factors belonging to an extralinguistic sphere and influencing the efficacy of an utterance are fundamental. In a legal text, influence on the receiver is justified in extralinguistic conditioning of the illocutive aspect in the form of the sender’s competence to direct a given act to a defined receiver and the intention to realise a determined goal. The efficacy is conditioned by not only an appropriate syntactic/grammatical structure but also by non-linguistic factors like intention of the sender (illocutive force of an utterance), relation between the participants of a situation of communication and the context. The literature on the subject underlines that this set of factors may decide about the efficacy of an utterance and the success of the whole speech act.

The values on which communication in legal acts concerning military discipline are based constitute a crucial issue. These are the values supported by the communication community. The person who expresses obedience does it not only because of an order but demonstrates that he or she accepts the realisation of values of hierarchy, approves of common validity claims within the communication community. Assumptions and values agreed by the communication community are fixed by the rules of military behaviour according

14 J.L. Gardies, *op. cit.*, p. 369.

15 W. Pisarek, Kontekst (sytuacja) aktu mowy, (in:) S. Urbańczyk, M. Kucala (eds.), *Encyklopedia języka polskiego*, Wrocław-Warszawa-Kraków 1999, p. 192.

16 W. Pisarek, *op. cit.*, p. 427.

to regulations. Common assumptions concerning roles of influence and importance of defined content as well as acceptance of common values must exist between the subjects of communication. These are the rules of military conduct included in regulations. These rules are above all loyalty “to the democratic spirit of army”. According to regulations, “the rule of a state of law requires that activity of state organs including the Armed Forces of the Republic of Poland is based on regulations of law excluding whatever arbitrariness of decision making”. Regulations are equipped with a motto of the Constitution of 3 May 1791 (art. XI) related to a particularly significant role of the army played in a state and a nation. According to the regulations, soldiers have to obey ethic rules, social norms, act with dignity, courtesy and tact. It equally concerns the relations with other soldiers and with civilians.

“A soldier is obliged to be disciplined and loyal to superiors and older people.” (item 33 of Regulations)

“A superior (older) when addressing the subordinates (younger) does it in a decisive way, however, tactfully and with respect of their dignity. He or she does not express a critical opinion in presence of persons of lower position (rank) and outsiders.” (item 11 of Regulations)”.

It is, however, symptomatic that these instructions are of postulative character. For an act being a breach “of exclusively ethic rules and dignity and honour of a soldier is not held disciplinarily liable” (art. 17, section 4 of the Act).

The part of the Act, which indicates the consequences of actions inconsistent with discipline, also points out the characteristics of conduct for which the soldier bears disciplinary responsibility defined as “disciplinary offence”. The Act also mentions the types of disciplinary action including types of penalties and preventive measures as well as disciplinary measures; this is of persuasive and additionally didactic aspect. Some examples of disciplinary measures are a reprimand, an order to do something during off duty time, deprivation of the right to wear a badge or an order to apologise to the injured party. The prohibition against breach of military discipline is subject to the following sanctions:

„Disciplinary penalties are:

- 1) admonition;
- 2) reprimand;
- 3) pecuniary penalty;
- 4) warning about deficient professional suitability;
- 5) dismissal from the post;
- 6) warning about deficient suitability for candidate, preparatory, periodic and professional military service;
- 7) dismissal from candidate service, preparatory service, periodic and Professional Service.” (art. 24 of the Act)

„Disciplinary measures are:

- 1) commitment to apologise the injured party;
- 2) commitment to fulfil additional official tasks;
- 3) commitment to repair the inflicted damage;
- 4) deprivation of the right to wear a badge of honour or a title of honour, and participation in military and state ceremonies with participation of army;
- 5) making information about penalty public.” (art. 33, section 1 of the Act)

In a military domain, attachment to convention, conventionality and even certain artificiality is especially distinct. The required appearance of this profession, uniform, external attributes, and badges may say something about it. Army, uniformed services are (maybe except religion) a sphere of social reality where we observe so many elements of external equipment ascribed to a professional role. From the point of view of parameters of reality, such a conventionalisation of appearance and conduct of people professionally related to a given function is an atypical phenomenon. Cultivation of professional rituals and ceremonies (military honours, military funeral, fire salutes etc.) are also specific. This is all the more significant in that the structure and natural organisation of the army is based, it seems, on full rationalism and is separated from whatever signs of metaphysics. At the same time, certain counterfactual assumptions, and far conventionalized rules constitute the basis of the

functioning of this structure. They are related to not only the way of conduct but also the appearance and many situations and activities.

4. Justification of persuasion in legal language – conclusions

Legal language is subject to a specific type of authority. A question arises as to what is the conditioning “causative power” and the persuasion of legal language. It appears that these are, above all, conventional factors on which mutual relations between participants of communication community are based, competence of defined subjects to perform defined activity and as a consequence to produce social and legal effects, and the context of utterance. It is not only a systemic and structural characteristic of utterance but also the context at large. Influencing reality and the psychical sphere of behaviour by means of language is not in the language itself but in its extralinguistic reference. Persuasive (or creative) character may result from other factors than the openly expressed intention of the sender. The so-called “explicit performatives” as well as other linguistic measures may serve to achieve a performative goal. Meeting requirements of its effectiveness (including conventionality and knowing the rules deciding about performative) may decide about the performative aspect of this speech act. Persuasion, as it has already been said, does not consist of manipulating but constitutes a desire to produce a reaction. It may consist of creating changes of a psychological nature. Performative load of an utterance enables not only to produce changes in objective reality through creation of new status quo but also occurrence of effects of its use in consciousness of other people. According to Karl H. K. Olivecrona, performative utterances may incite, above all, psychological effects.¹⁷ It means that there exists a close relationship of performative effects produced by a definite utterance and the content of norms which connect such an effect to a given activity or utterance of a linguistic formula. Olivecrona emphasises that effects in the sphere of law are not provoked by the very fact of performing

17 K.H.K. Olivecrona, *Legal Language and Reality*, (in:) T. Gizbert-Studnicki, K. Pleszka, R. Sarkowicz, J. Stelmach (eds.), *Współczesna teoria i filozofia prawa na Zachodzie Europy*, Kraków 1985, pp. 117–187.

an activity but a change in objective reality is determined by legal rules,¹⁸ conventionally justified. He points out the fact that in producing an effect a significant role is played by the context, the form and the circumstances, that is, a situation in which an utterance is used, and not solely the linguistic traits.¹⁹ Therefore, justification of the influence of language on the extralegal sphere (social reality) resides in the strict legal sphere (and not linguistic).

Unquestionably, axiological and ethical conditionings constitute the context of legal language. It is reflected in the fact that values recognised in a given culture (e.g. fundamental values of a state under the rule of law) are coded in utterances of the legislator and this makes it possible to reconstruct the model of communication between the state and its citizen in the context of ethical assumptions. It is, on the one hand, orientation towards dialogue and understanding between the participants of communication and on the other hand subjection of the receiver to the domination of the sender. According to Maria T. Lizisowa, "the use of an utterance by the sender in a situation of superiority over the receiver is not only a definite manifestation of an individual speaking in a representative function but constitutes a speech activity having specialized expressive and impressive functions".²⁰ Communication understood this way, based on a relation founded on domination and obedience may, therefore, have not only a linguistic dimension but also an ethical one. It contributes to justification within the conventional character of legal rules, specificity of the communicative community (ideal, presumed) and values which should be realized by law.

Keywords: persuasion, illocutionary act, conventionality of speech act, ethics of discourse

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- 18 Olivecrona emphasizes the possibility to capture legal effects of utterances in two different meanings – alongside with effects defined in the content of legal regulations he points out the effects in real sense, understood as consequences of use of legal rules by authorities.
- 19 K.H.K. Olivecrona, *op. cit.*, p. 188.
- 20 M.T. Lizisowa, Model komunikacji językowej w konstytucjach Rzeczypospolitej (relacja nadawca-odbiorca), „Biuletyn Polskiego Towarzystwa Językoznawczego” 2002, no. 58, p. 78.

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ETYKA PERSWAZJI I POSŁUCHU W JĘZYKU PRAWNYM
– NA PRZYKŁADZIE USTAWY O DYSCYPLINIE WOJSKOWEJ

Przedmiotem zainteresowania powyższego tekstu jest próba odpowiedzi na pytanie, czym uzasadniona jest perswazja zawarta w wypowiedziach języka prawnego. Jako przykład komunikacji opartej na relacji „rozkaz-posłuch” zostały wykorzystane regulacje prawne dotyczące wojska. Kontekstem rozważań jest znane w pragmatyngwistyce rozróżnienie aspektów aktu mowy – illokucyjnego i perlokucyjnego. Jak wykazano, szczególną rolę w osiąganiu efektów perswazji i posłuchu pełni konwencjonalność sytuacji komunikacyjnej w zakresie: kompetencji nadawcy, schematu przebiegu aktu językowego, jak również skutków wywoływanych przez wypowiedź. Perswazja może być realizowana poprzez uzgodnienie we wspólnocie komunikacyjnej zasad i wartości uznawanych za fundamentalne w danej kulturze prawnej, co warunkuje realizację etyki dyskursu. Uzasadnienie oddziaływania języka na rzeczywistość społeczną (pozaprawną) pochodzi zatem nie tylko ze sfery językowej, ale też pozajęzykowej (prawnej).