

# ***Conditio sine qua non:*** **On Phraseology in Legal Language and its Translation**

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**Abstract.** *Law is characterized by formalism especially in institutional contexts, and legal texts produced by institutional authors tend to be formulaic in nature. Despite the fact that formulaic language is a feature frequently encountered in legal genres, in legal and linguistic research it remains an underexplored phenomenon. Apart from Latin phrases derived from Roman law, the role and importance of phraseology in legal language is rarely discussed by legal professionals. Yet in the process of legal translation, conducted by legal comparatists and legal translators, phraseological patterns can form a major obstacle not only to understanding foreign law, but also to creating high quality legal translations. With regard to continental legal systems and German legal language in particular, this article examines the phenomenon of formulaicity in legal language and discusses the dependency of formulaic texts and legal phrasemes on legislation.*

**Keywords:** *Legal text, formulaicity, legal phrasemes, legal translation.*

**Resumo.** *O Direito é caracterizado pelo seu formalismo, sobretudo em contextos institucionais, e os textos jurídicos produzidos por autores institucionais tendem a possuir uma natureza estereotípica. Não obstante o facto de a linguagem estereotípica constituir uma característica frequente dos géneros jurídicos, permanece um fenómeno relativamente pouco estudado na pesquisa em linguagem e direito. À exceção das expressões provenientes do Latim, decorrente do Direito Romano, o papel e a importância da fraseologia na linguagem jurídica são raramente discutidos pelos profissionais do Direito. Contudo, no processo da tradução jurídica, realizada por especialistas em Direito Comparado e por tradutores jurídicos, os padrões fraseológicos podem constituir um grande obstáculo, não só à compreensão da legislação estrangeira, mas também à criação de traduções jurídicas de alta qualidade. Tendo como base os sistemas jurídicos do Continente europeu, em geral, e a linguagem jurídica alemã, em particular, este artigo analisa o fenómeno da estereotipicidade na linguagem jurídica e discute a dependência dos textos estereotípicos e da fraseologia jurídica da legislação.*

**Palavras-chave:** *Texto jurídico, estereotipicidade, frases jurídicas, tradução jurídica.*

## Introduction

From the point of view of comparative law and legal translation, phraseology forms an integral part of legal language<sup>1</sup> that is likely to create challenges in intercultural legal communication. Legal language is always intertwined with a particular legal system (e.g. Sandrini (1996: 16, 18)), and the interdependence of legal language and legal system results in the non-equivalence of legal terminology and legal phrasemes across different legal systems (Kjær, 1995). In order to gain access to a foreign legal system, both legal comparatists and legal translators and interpreters need to penetrate the linguistic surface of the legal system in order to grasp the peculiarities in legal thinking, and to understand the legal constructs behind the terms and phrasemes used in foreign legal language. In the field of law, fixed word patterns, routine expressions and prefabricated formulas that are reproduced in certain oral communicative situations (police interviews, court proceedings etc.) and in diverse types of written legal texts (contracts, legislative texts, judgments, powers of attorney, etc.) constitute an important linguistic feature pertaining to legal style, i.e. the choice and positioning of language elements to express legal substance in legal texts (e.g. Gläser (1979: 26–27); Lashöfer (1992: 1–2); Sandig (2007: 159)). The knowledge of genre-specific stylistic conventions is highly relevant for legal comparatists and for legal translators and interpreters when describing the way of thinking in a foreign legal system and when formulating foreign legal ideas in another language. Research into phraseology in legal documents can help to shed light on the frequency and nature of the phraseological patterns used to construct legal texts and, through the analysis of recurring word combinations, can help to reveal linguistically expressed thought patterns that are rooted in the history of a legal system and embedded in a given legal culture.<sup>2</sup>

Despite its importance for the understanding of legal thinking in diverse legal cultures, phraseology in legal languages as a sub-field of LSP phraseology<sup>3</sup> (phraseology in *languages for special purposes*) has not received much attention from legal or (legal) linguistic scholars thus far (e.g. Kjær (2007: 506); Biel (2012: 225)). Due to the current lack of mono- and multi-lingual phraseological resources, gaining an in-depth understanding of phraseology in legal texts can be a challenging and time-consuming task. Especially in light of Directive 2010/64/EU of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings<sup>4</sup> it can be assumed that the translation and interpreting of such legal documents as decisions depriving a person of his liberty, charges or indictments, and judgments (“essential documents” mentioned in Article 3(2) of the Directive) is on the increase. The same applies, as a prerequisite, to the demand for qualified translators and interpreters who are able to deliver specialized linguistic services that meet the quality required under Article 2(8) and Article 3(9) of the Directive. In order to meet the standard formulated in the aforementioned Articles, i.e. to provide “[...] quality sufficient to *safeguard the fairness of the proceedings*” (italics added) as also guaranteed in Article 6 of the European Convention on Human Rights (ECHR), appropriate training programs for legal translators and interpreters should cover not only the more traditional approach of comparative legal terminology, but also the broad field of phraseology in legal languages and its cross-cultural comparison.

Against this background, this article focuses on phraseology in legal language, approaching the phenomenon of ‘fixed’ or ‘frozen’ language through the notion of *for-*

*mulaicity*. From a translation-oriented contrastive perspective, the main aims of this article are to clarify the crucial role of formulaicity in law, to highlight the dependency of phraseological units on legislative texts and to discuss the implications of this observation for the process of their translation.

### **Understanding Phraseology in Legal Language**

Phraseology is used here as an umbrella term to refer to formulaic language comprising fixed expressions ranging from single word combinations such as idioms, collocations and binomials to larger linguistic units such as routine formulae.<sup>5</sup> Taking the definition provided by Burger (2010: 14) as a starting point, *phraseological units*, or *phrasemes*, can be seen in a wide sense as linguistic expressions characterized by two features:

1. They consist of two or more words (*polylexicity*), and
2. The combination of these words is fixed (*stability*).

In addition, some of the word combinations that fit this description are distinguished by the characteristic of *idiomaticity*; in this case the meaning of the phraseme cannot be concluded from the meaning of its single components (e.g. *die Katze aus dem Sack lassen* – *to let the cat out of the bag*). These expressions are called *idioms*, phrasemes in a narrow sense (Burger, 2010: 14). When determining the phraseological status of an expression, the criteria of polylexicity and idiomaticity can be established rather easily, but verifying the required stability, or fixedness, of a potential phraseme is a more complicated matter. Phraseological stability is a feature that can manifest e.g. in the structure of an expression or in its use (*psycholinguistic, structural and pragmatic fixedness*, see Burger (2002: 393–398) and Burger (2010: 16–23)). In the recent literature on phraseology it is commonly held that the criterion of structural stability can no longer be deemed absolute, since it has been discovered that structural variability is not uncommon among phrasemes (e.g. *bis an den/über den/zum Hals in Schulden stecken* – *to be up to one's ears/neck in debt*, see Burger (2002: 396) and Burger (2010: 23–27)). In fact, pursuant to the corpus-based study of Fellbaum *et al.* (2006: 43–44), even idioms are to a great extent utilized according to the rules of free language usage: e.g. the idiom *to cry over spilt milk* can be used in different tenses and modalities, and it can be embedded in sentences in many different ways (*There was no crying over spilt milk. Did you cry over spilt milk? I shouldn't cry over spilt milk. I used to cry over spilt milk. Don't let us cry over spilt milk. You can cry over spilt milk. It's no use/There is no point/use/sense crying over spilt milk. Crying over spilt milk is stupid*). With regard to the criterion of stability, it can therefore be concluded that only relative stability is required for a word combination to be classified as a phraseme.

### **From Formulaic Language to Formulaic Texts**

In recent years the scope of phraseology has widened in accordance with the growing interest and the expansion of different perspectives on the phenomenon. Today, the understanding of the concept of formulaicity is no longer restricted to the contextually bound repetition of individual word combinations, traditionally idioms. The perspective has expanded to include the examination of larger linguistic units as *formulaic texts*, as discussed by Gülich (1997) in the context of cooking recipes and death announcements, Gülich and Krafft (1998) in relation to scientific abstracts and Stein (2001) in connection with notices of termination of employment. In such genres, formulaicity is visible not

only at the level of wording, i.e. in phrasemes, but also in the content, structure and layout of these texts (see e.g. Dausendschön-Gay *et al.* (2007: 469)). In fact, formulaicity in terms of text formulation within a genre would not be possible without formulaicity in text content, as it is the recurring substance that tends to be expressed in a similar manner. The content, in turn, is inclined to be organized in a particular logical order, thus resulting in formulaicity of text structure. Especially in institutional genres there is not much room for spontaneity in language use and creativity in text production. As Mackenzie (2000) states:

[–] a great deal of linguistic performance, both speech and writing, does not involve improvising phrases and sentences *ex nihilo* [–], but is rather a case of deploying prefabricated, institutionalized, and fully contextualized phrases and expressions and sentence heads, with a grammatical form and a lexical content that is either wholly or largely fixed. [–] Real data show that we are much less original in using language than we imagine. (p. 173)

Formulaicity can consequently be described as a characteristic of routinely written and often standardized genres that are produced in similar circumstances in recurring communicative situations, thus serving the same communicative functions (e.g. Dausendschön-Gay *et al.* (2007: 469); Stein (2007: 220, 233)). According to Gülich (1997: 149–154), linguistic units must meet the following criteria, essential from the point of view of their reproduction, to be classified as formulaic texts:

1. The components the text consists of remain the same,
2. The order of the components is relatively fixed,
3. The components are formulated in a formulaic manner, and
4. The entire text is embedded in a particular communicative situation that determines the main communicative function of the text.

It should be noted that texts don't need to be identical in order to be classified as formulaic texts; variation within texts is allowed to a certain extent (Dausendschön-Gay *et al.*, 2007: 469). Gülich (1997: 132–133) clarifies that, whereas identical texts without modification form the obvious example of formulaic texts (e.g. oaths taken before a court), texts consisting of both routinely reproduced formulas as obligatory components and of facultative elements derived from the individuality of the communicative context, (so-called *Phraseo-Schablone*, see Fleischer (1997: 131)) can also be seen as formulaic texts (e.g. obituaries). In the framework of phraseology, the group of formulaic texts can thus be considered to include a broad variety of linguistic units that show a varying degree of formulaicity in terms of content, structure and formulation. Yet, similarly to the differentiation of fixed word combinations, i.e. phrasemes, from free word combinations, the difficulty in classifying a text as formulaic lies in the determination of how fixed or stable the wording actually needs to be. This question still remains unanswered, thus also leaving room for a range of alternative views regarding the exact definition of formulaic text (Lindroos, 2015: 265).

### **Formulaicity in Legal Texts**

Legal language is known for its formalism especially in institutional contexts (Mattila, 2013: 2, 97, 106, 108). When looking closely at corpora of written texts belonging to diverse legal genres (judgments, contracts, testaments etc.), legal linguistic patterns, i.e. patterns of legal thought and judicial argumentation, begin to become visible: not only

is similar or even identical wording often used by a variety of legal authors (e.g. judges, police officers), but within that genre, the structure and the content also remain to a large extent the same. For example, in German criminal judgments the information about the defendant(s) is followed by the operative part of the judgment, leaving the grounds, including the facts of the case, until last. This means that formulaicity, as understood by Gülich (1997), is to a varying degree present in legal genres. Authors of legal texts are not entirely free in drafting their documents, but bound to certain linguistic conventions (e.g. Engberg (1997: 11) and Frilling (1995: 3)). Yet, attributing the explanation of regularities apparent in the content, structure and style of legal genres merely to the concept of *conventions*, i.e. the culture-bound regularities in linguistic behavior that direct the formulation of texts (Reiß and Vermeer, 1991: 183), would be too shortsighted. In the field of law, textual regularities are very often norm-governed, as already shown by e.g. Kjær (1990, 2007) in her extensive publications on norm-conditioned phraseology in the field of law. Indeed, to gain an in-depth understanding of formulaicity in legal texts, a shift in focus from the characteristic discovered on the surface level of the text to the explanatory factors in the realm of law is necessary.

In the German legal system, examples of such norm-conditioned legal genres, with both obligatory and facultative elements, are the documents characterized as “essential” in Article 3(2) of the Directive 2010/64/EU: decisions depriving a person of his liberty (*Anordnung einer freiheitsentziehenden Maßnahme*, see e.g. *Haftbefehl* (Warrant of Arrest), Section 114 of the German Code of Criminal Procedure (*Strafprozeßordnung*, StPO)), charges or indictments (*Anklageschrift*), and judgments (*Urteil*, cf. Lindroos (2015)).

Original legislative text in German	Unofficial English translation provided for informational purposes by the Federal Ministry of Justice and Consumer Protection (Bundesministerium der Justiz und für Verbraucherschutz) of Germany at <a href="http://www.gesetze-im-internet.de">www.gesetze-im-internet.de</a> <sup>6</sup>
<p>Strafprozeßordnung (StPO) § 200 Inhalt der Anklageschrift</p> <p>(1) Die Anklageschrift hat den Angeschuldigten, die Tat, die ihm zur Last gelegt wird, Zeit und Ort ihrer Begehung, die gesetzlichen Merkmale der Straftat und die anzuwendenden Strafvorschriften zu bezeichnen (Anklagesatz). In ihr sind ferner die Beweismittel, das Gericht, vor dem die Hauptverhandlung stattfinden soll, und der Verteidiger anzugeben. Bei der Benennung von Zeugen ist deren Wohn- oder Aufenthaltsort anzugeben, wobei es jedoch der Angabe der vollständigen Anschrift nicht bedarf. In den Fällen des § 68 Absatz 1 Satz 2, Absatz 2 Satz 1 genügt die Angabe des Namens des Zeugen. Wird ein Zeuge benannt, dessen Identität ganz oder teilweise nicht offenbart werden soll, so ist dies anzugeben; für die Geheimhaltung des Wohn- oder Aufenthaltsortes des Zeugen gilt dies entsprechend.</p> <p>(2) In der Anklageschrift wird auch das wesentliche Ergebnis der Ermittlungen dargestellt. Davon kann abgesehen werden, wenn Anklage beim Strafrichter erhoben wird.</p>	<p>The German Code of Criminal Procedure Section 200, Contents of the Bill of Indictment</p> <p>(1) The bill of indictment shall indicate the indicted accused, the criminal offence with which he is charged, the time and place of its commission, its statutory elements and the penal provisions which are to be applied (the charges). In addition, the evidence, the court before which the main hearing is to be held, and defence counsel shall be indicated. If witnesses are designated, their place of residence or whereabouts shall be indicated, whereby indication of the full address shall not be required. In the cases referred to in Section 68 subsection (1), second sentence, and subsection (2), first sentence, indication of the name of the witness shall be sufficient. Where a witness is mentioned whose identity is not to be revealed either wholly or in part, this fact shall be indicated; the same shall apply mutatis mutandis to the confidentiality of the witness's place of residence or whereabouts.</p> <p>(2) The bill of indictment shall also set out the relevant results of the investigation. This may be dispensed with if the charges are preferred before the criminal court judge.</p>

**Example: Bill of indictment (*Anklageschrift*) in the German legal system**

The bill of indictment as a legal genre contains the application to open the main proceedings (Section 199 (2) of the German Code of Criminal Procedure) and is communicated by the presiding judge to the indicted accused, who is summoned to state whether he wants to apply for individual evidence to be taken before the decision on opening the main proceedings, or whether he wants to raise objections to the opening of the main proceedings (Section 201 of the German Code of Criminal Procedure). In order for the details of the case to be established, the bill of indictment must contain the components mentioned in Section 200 of the German Code of Criminal Procedure (the name of the indicted accused, the criminal offence with which he is charged, the time and place of

its commission etc.). Although no particular order for these components is prescribed by law, a logical order has been established in practice by the legal community – with regional differences between the German states – thus enabling an electronic template to be used and filled out with the individual elements related to the case at hand (names, dates, offences, evidence etc.):

1. *Kopf der Anklageschrift* (the heading: prosecutor, court, case number, date etc.);
2. *Personalien* (personal information regarding the indicted accused);
3. *Zeit und Ort der Tatbegehung* (the time and place of the criminal offence);
4. *Gesetzliche Merkmale der Straftat* (the statutory elements of the criminal offence);
5. *Konkretisierung* (the facts deemed to be proven which establish the statutory elements of the criminal offence);
6. *Anzuwendende Strafvorschriften* (the penal provisions to be applied to the case);
7. *Weitere Angaben* (further relevant information, e.g. evidence);
8. *Das wesentliche Ergebnis der Ermittlungen* (relevant results of the investigation);
9. *Mit der Anklageschrift zu stellende Anträge* (request e.g. to open the main proceedings); and
10. *Unterschrift* (signature of a representative of the prosecutor’s office).  
(Wolters and Gubitz, 2005: 78–103)

These single components of the bill of indictment are formulated using diverse prefabricated linguistic patterns, e.g. routine formulae such as

“*Dem Angeschuldigten wird Folgendes zur Last gelegt: ...*”  
(*The accused is charged with the following criminal offences: ...*), and

“*Es wird beantragt, das Hauptverfahren vor dem Amtsgericht ... zu eröffnen*”  
(*It is requested for the main proceedings to be opened before the ... local court*)

(cf. Wolters and Gubitz (2005: 88, 99); English translations are provided by the authors of this article). As can also be observed in the other two “essential” genres – decisions depriving a person of his liberty and judgments – these longer formulaic sequences often contain phrasemes that derive from national legal provisions: e.g. *zur Last legen – to be charged with* (Section 200 (1) of the German Code of Criminal Procedure and its unofficial English translation, [www.gesetze-im-internet.de](http://www.gesetze-im-internet.de)) and *das Hauptverfahren eröffnen – to open the main proceedings* (Section 207 (1) of the German Code of Criminal Procedure and its unofficial English translation, [www.gesetze-im-internet.de](http://www.gesetze-im-internet.de)).

### **Formulaicity as a precondition of law**

Law is a particularly fruitful area of study when it comes to formulaicity: law itself is an inherently formulaic discipline and formulaicity an integral quality of law. In all democratic societies, arbitrary conduct and discriminatory actions of legal actors and authorities need to be prevented to guarantee fairness and legal certainty in legal processes and legal decision-making. The necessary security and stability in a legal system is achieved through repetitive, predictable proceedings and actions, some of them even deep-rooted traditions and rituals (e.g. Hertel (1996)). This formulaicity in law is reflected in legal language: with the help of text corpora it can be discovered that in different genres, legal speech acts are often performed according to certain prefabricated formulas that are not used randomly or formulated freely (e.g. the routine formulae *Im Namen des Volkes* (*In the name of the people*) in German judgments, Section 268 (1) of the German Code of

Criminal Procedure). In addition to a synchronic perspective focusing on current legal linguistic behavior and formulas in use, formulaic language can also be inspected from the diachronic point of view, i.e. as a manifestation of historically born legal traditions which carry the 'pastness' of law and reflect its continuity in the collective knowledge of legal professionals.

Consequently, formulaicity can be described as an in-built mechanism of all legal systems, serving many functions essential for the operation of a legal system and for its acceptance by the general public, including, *inter alia*,

1. Facilitating legal communication: Text authors reproduce prefabricated formulas instead of using their creativity to generate new expressions (e.g. *I give, devise, and bequeath the rest, residue and remainder of...*, *We, the Jury, find the defendant (not) guilty of (...)*) (cf. Stein (2001: 25) and Gülich and Krafft (1998: 21));
2. Ensuring the continuity of law: Reproduced formulaic units function as vessels carrying legal knowledge (e.g. *adverse possession*) (cf. Stein (2001: 36) and Stein (2007: 234));
3. Creating documents characterized – at least to some extent – by stylistic homogeneity and uniformity, simultaneously forming an image of a 'collective voice' of the institution (see the example of indictment presented above) (cf. Nussbaumer (2009: 2135); Gülich and Krafft (1998: 21–23));
4. Promoting and ensuring the consistent application of legal norms through the use of standardized phrases with an established interpretation (e.g. *aggravated vehicle taking, grievous bodily harm*);  
and
5. Stabilizing the legal system and ensuring legal certainty reflected in linguistic repetition (Kjær, 2007: 508, 510).

To grasp the importance of formulaicity in law today, it is essential to acknowledge the roots of this phenomenon. As pointed out by Mattila (2013), formalism in legal texts has its roots in archaic law where the oral repetition of certain word combinations was believed to have a magical function in the judicial process:

In former times, much of the power of legal language was based on its hypnotic rhythm and on magical elements, other than those of religion strictly speaking. Indeed, rituals always have an impact on the human mind, especially in the case of rhythm comparable to an incantation. This strengthens the authority of the law and inspires fear in those with a disposition to delinquency. [...] Archaic German law was expressed through magical formulas, whose melodious character affirmed in listeners a depth of feeling that ensured respect for legal rules. Thus, listeners were linked to the rhythmic movement of speech that led them to the magical space of law. (p. 58)

This kind of repetition in terms of legal linguistic formulas is still visible today e.g. in oral vows taken by judges before starting their duties in court and in electronically available model forms of judgments (Mattila, 2013: 108). Although the exact degree of formulaicity in different legal genres and the explanatory factors contributing to this phenomenon vary in different legal cultures, it can be said that the formulaic nature of legal texts results from the combined influence of legal norms and other legal cultural aspects (cf. Lindroos, 2015). It is true that, on many occasions, the phrasemes used in diverse legal genres are reproductions of phrasemes in legislative texts (cf. Kjær (1990), Kjær (1991),



Kjær (1992), Kjær (1994), Kjær (2007)). With reference to the example of indictment in the German legal system it can be said that many word combinations occurring in the text that can be classified as phrasemes stem from legislative texts, e.g. the German Code of Criminal Procedure (*Strafprozeßordnung*, StPO) and the German Criminal Code (*Strafgesetzbuch*, StGB). Legal language is to a large extent norm-conditioned and especially in judgments, intertextuality becomes evident in the legislative phrasemes that are typically reproduced by judges to ensure legal certainty (e.g. elements constituting a criminal offence in the Criminal Code of the country in question). However, in addition to binding legal constraints regarding the content, composition, and wording of legal texts (Kjær (1990), Kjær (1991), Kjær (1992), Kjær (1994), Kjær (2007)), other factors such as instructions for text production and formulation provided in national legal literature, (electronic) model forms used for particular genres within institutions, and legal cultural conventions, including linguistic traditions possibly dating back centuries, also need to be taken into account (cf. Lindroos (2015)). As a consequence, the formulaic nature of legal texts is a result of the interplay of conscious standardization on the part of the legislator (legal norms) and legal scholars (legal literature), and of legal cultural conventions and traditions that have been developed among legal professionals as adequate solutions to recurring communicative needs (sayings, phrases established through their consistent usage).

### **Phraseology in Legal Language**

As stated by Kjær (2007: 506), research into phrasemes in legal texts is an “under-explored subfield” of phraseology (see also Goźdz-Roszkowski and Pontrandolfo (2015: 130)). Considering the importance of formulaicity in law, and the necessity of a certain degree of rigidity for the functioning of the legal system, this forms a significant research gap in the domain of legal discourse. Obtaining an overall view of this specialized sub-field of LSP phraseology is made even more difficult by the fact that the research conducted on phraseology in legal texts is highly fragmentary in nature (see e.g. Grass (1999); Wirrer (2001); Lombardi (2007); Volini (2008); Szubert (2010); Krzemińska-Krzywda (2010); Pontrandolfo (2011) and Pontrandolfo (2015); Tabares Plasencia (2012); Biel (2012); Goźdz-Roszkowski (2012); Hudalla (2012)). With the increasing attention the field has received from scholars in recent years, different theoretical approaches, methodologies and classifications of phraseological units in legal language have been proposed (e.g. Pontrandolfo (2015: 139–140)). However, quite often there seems to be a lack of reflection on fundamental issues and basic assumptions relating to phraseology in legal language. In particular the varying definitions and classifications of phraseological units used by researchers lead to difficulties in utilising and comparing the research results across legal languages and legal systems.

In this regard, one of the essential aspects is the clarification of the terminology referring to and used within this sub-field. Legal language as a LSP is based on ordinary language, which means that legal language and ordinary language share the same grammar, and also mainly the same vocabulary (e.g. Mattila (2013: 1)). However, in the context of law, language serves to express specific legal knowledge and to execute diverse legal functions through legal-linguistic speech acts<sup>7</sup>; the words of ordinary language hence gaining a differentiated legal meaning in a given legal system (e.g. Sections 22 and 24 of the German Criminal Code: *Versuch, Rücktritt* – *attempt, withdrawal* (unofficial English translations, <http://www.gesetze-im-internet.de>)). It follows that phrasemes

in legal language are also composed of words that exist in the ordinary language, which, in a particular, (relatively) fixed combination, often have a specified legal meaning.

Original legislative text in German	Unofficial English translation ( <a href="http://www.gesetze-im-internet.de">http://www.gesetze-im-internet.de</a> )
<p>Strafgesetzbuch (StGB)            § 164 Falsche Verdächtigung</p> <p>(1) Wer einen anderen bei einer Behörde oder einem zur Entgegennahme von Anzeigen zuständigen Amtsträger oder militärischen Vorgesetzten oder öffentlich wider besseres Wissen einer rechtswidrigen Tat oder der Verletzung einer Dienstpflicht in der Absicht verdächtigt, ein behördliches Verfahren oder andere behördliche Maßnahmen gegen ihn herbeizuführen oder fort dauern zu lassen, wird mit Freiheitsstrafe bis zu fünf Jahren oder mit Geldstrafe bestraft.</p>	<p>German Criminal Code            Section 164 False accusation</p> <p>(1) Whosoever intentionally and knowingly and with the purpose that official proceedings or other official measures be brought or be continued against another before a public authority falsely accuses another before a public authority or a public official competent to receive a criminal information or a military superior or publicly, of having committed an unlawful act or a violation of an official duty, shall be liable to imprisonment of not more than five years or a fine.</p>

**Example: Phraseme *falsche Verdächtigung* – false accusation**

It should be borne in mind, though, that phraseology in legal language also includes phrasemes without a differentiated meaning in the legal system: e.g. prepositional phrasemes such as in German *im Hinblick auf* and *in Bezug auf*, and in English *with regard to* and *in accordance with* (on complex prepositions see Biel (2015)). As a consequence, the multi-word terms *phraseology in legal language* (*Phraseologie in der Rechtssprache*) and *legal (or judicial) phraseology* (*juristische/rechtliche Phraseologie, Rechtsphraseologie*) are not synonymous and should not be used interchangeably, as phraseology in legal language is not confined to legal phrasemes with a particular judicial meaning.

In the existing literature, phrasemes in legal language have mainly been studied from the point of view of LSP phraseology which differs in some ways from the phraseology used in ordinary language (e.g. in belles-lettres, films etc.). Phrasemes in both ordinary language and LSP (medicine, economics, politics, computer technology, law etc.) are fixed, lexicalized, reproducible units that consist of two or more words (cf. the definition of LSP phrasemes in Gläser (2007: 487)). However, idiomaticity as well as expressive and stylistic connotations – two aspects that have traditionally generated a lot of interest in phraseological research – are significantly less relevant in LSP phraseology (Gläser, 2007: 487) even though idiomaticity is not excluded in LSP (Lindroos (2015: 171) referring to idiomatic phrasemes in law). In addition, LSP phraseology is always linked to the specialized knowledge of the area of expertise in question. Therefore, both LSP phraseology in general, as well as phraseology in legal language in particular, have close relations to terminology. Kjær (2007: 506) points out that in general phraseological classifications LSP phrasemes tend to be situated under “multi-word terms”, and, that in some previous studies their phraseological status has even been denied. Modern research, however, accounts for the standing of LSP phrasemes in the field of phraseology. When it comes to phraseology in legal language, it can be stated that because of its proximity to general

language it does not constitute an independent phraseological system, but can be seen as a part of the phraseological system as a whole (cf. Gläser (2007: 488)).

In this article, *legal phrasemes* are defined in accordance with Kjær (1991: 115) as such repetitively used formulaic expressions that, in the context of law, have a specific legal function and meaning. Legal phrasemes, as opposed to the language of e.g. medicine or economics, are not universal in their meaning, but bound to a particular legal system (Kjær, 2007: 508), which leads to the necessity of studying legal phrasemes in connection with the legal system and legal culture in question (cf. Lindroos (2015: 166)). Moreover, within civil law systems that emphasize codified law, phraseological units in legal language that can be classified as legal phrasemes often originate from legislative texts (e.g. legal acts and regulations) which form the ‘institutional core’ of legal language (Busse, 1998: 1382–1283). In many legal genres – judgments in particular – legal phrasemes are often applied as both explicit and “implicit quotations” (Kjær, 2007: 512) of legislative texts, i.e. the authors reproduce word combinations that stem directly from national legislation either with reference to the legislative act at hand (*explicit intertextuality*) or without providing information on the source (*implicit intertextuality*). Thus, in the phraseological system in legal language, legal phrasemes appearing in legislative texts are especially relevant in terms of their function and meaning as constituent parts of legal norms with an established interpretation.

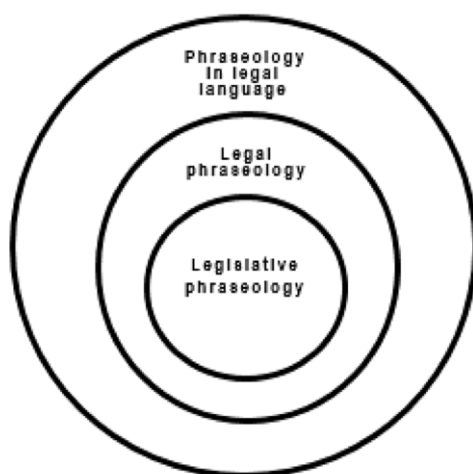


Figure 1. Phraseological system in legal language.

### Types and Functions of Legal Phrasemes

Phrasemes in legal language, just like phrasemes in ordinary language, can be classified in various ways and by different criteria; for an overview see Lindroos (2015: 167–196). Thus far, the most comprehensive classification of phraseology in legal language has been presented by Kjær (2007: 509-510). With reference to German legal language, she distinguishes between six sub-groups of phrasemes:<sup>8</sup>

1. Multi-word-terms: word combinations characterized by absolute stability, mainly in the combination of Adjective + Noun (e.g. *elterliche* *Vorsorge*; *rechtliches* *Gehör*; *false statement*, *high treason*),

2. Latin multi-word-terms (e.g. *ex officio*, *actus reus*, *mens rea*, *prima facie*),
3. Collocations: most frequently word combinations of Noun + Verb (e.g. *einen Vertrag eingehen*; *to enter into contract*),
4. So-called “Funktionsverbgefüge” consisting of a semantically significant noun and a semantically “empty” verb, sometimes with a preceding preposition (e.g. *Klage erheben*, *unter Stufe stellen*; *to bring charges*),
5. Binomials (e.g. *Treu und Glauben*, *recht und billig*; *null and void*, *breaking and entering*), and
6. Phrasemes with archaic words or word forms (e.g. *an Eides statt*; *further affiant sayeth not/naught*).

According to Kjær (2007: 511), the phrasemes mentioned above can be studied using the methods of general phraseology. In addition to these groups, however, there are also “norm-conditioned” phrasemes with a primarily pragmatic stability that must be analyzed with regard to their legal context (Kjær, 2007: 511). As stated by the author, on occasion the routine character of these phrasemes can be traced back to *legal constraints*, i.e. legal rules, norms or conventions that restrict authors’ possibilities to express themselves freely. Such legal constraints are not always absolutely binding; instead a distinction can be made between four degrees of constraint (Kjær, 2007: 512):

1. Phrasemes directly prescribed by law,
2. Phrasemes indirectly prescribed by law,
3. Phrasemes whose usage is based on implicit quotations from other legal texts, and
4. Habitual routine phrases.

In case of failure to use these phrasemes, different consequences depending on the degree of legal constraint are possible. As regards the relatively small group of phrasemes directly prescribed by law, i.e. cases in which the author of a text is explicitly obliged by the legislator to use a certain phraseme, the failure to reproduce the phraseme in the exact formulation of the legislator may lead to the invalidation of the entire legal document (Kjær, 2007: 512). If phrasemes indirectly prescribed by law are not employed, the legal force of the document may be affected; this can occur e.g. if a notice of appeal does not include the statement that an appeal is being sought (Kjær, 2007: 512). Compared with these relatively serious consequences, the omission or variation of phrasemes belonging to the latter groups (3 and 4) will have no such detrimental effect.

For the purposes of this article with a focus on continental legal systems, the main interest lies in the use of legal phraseology that originates from legislation. As clarified by Kjær (2007), authors of legal documents often have to apply certain phrasemes rooted in legislative texts to produce valid legal acts. This means that, when it comes to legal phrasemes, structural variability does exist, but in the case of phrasemes directly prescribed by law, it is strictly prohibited. In the field of criminal law, designations of criminal offences – when consisting of at least two words, i.e. meeting the criteria of *polylexicality* – constitute the most obvious example of such phrasemes. According to Section 260 (4) of the German Code of Criminal Procedure, judgments must contain, *inter alia*, “the legal designation of the offence of which the defendant has been convicted” (unofficial English translation, <http://www.gesetze-im-internet.de>), e.g. *Schwere Körperverletzung*, Section 226 of the German Criminal Code (unofficial English translation: *Causing grievous bodily harm*). The omission of the legislative phraseme in the

document may lead to its invalidation (Section 337 of the German Code of Criminal Procedure, *Revisionsgründe*, unofficial English translation: *Grounds for Appeal on Law*).

In the light of the preliminary remarks on formulaicity and formulaic texts, the legal constraints mentioned here can also be applied to the broader context of formulaic legal texts, as was already demonstrated with the bill of indictment in the German legal system. The textual formulaicity observed in legal texts within a given legal system can often be traced back to national legal provisions, and similarly to the omission of a legislative phraseme, the failure to follow legal provisions regarding the textual composition can have serious legal consequences. In Germany the obligatory components of judgments in civil matters are prescribed in Section 313 of the German Code of Civil Procedure (*Zivilprozeßordnung*, ZPO): the judgment shall contain, among other things, “the reasons on which a ruling is based” (unofficial English translation, <http://www.gesetze-im-internet.de>). As stated in Section 547 of the German Code of Civil Procedure (*Absolute Revisionsgründe*, unofficial English translation: *Absolute grounds for an appeal on points of law*), the omission of grounds in a judgment opens the door to appeal: “A decision shall always be regarded to have been based on a violation of the law where: 1) The composition of the court of decision was not compliant with the relevant provisions; [...]” (unofficial English translation of Section 547 (1) of the German Code of Civil Procedure, <http://www.gesetze-im-internet.de>).

In light of the above, it is important for the translator to understand that, in the field of law, not only can phrasemes comprising a minimum of two words be norm-conditioned, but so also can entire texts. Furthermore, it should be acknowledged that in civil law systems, legislative phrasemes have a very special function and meaning: they form the core of legal phraseology and are reproduced, applied, interpreted, examined and discussed in other legal genres (legal literature, indictments, judgments, contracts, testaments etc.). Taking into account the importance of these phrasemes and the possible legal repercussions of their omission or modification in legal texts, it follows that particular care must be taken in their translation, regardless of the purpose of the translation. As a consequence, from the point of view of legal translation the following questions need to be raised and reflected on:

1. Should the translation of legislative phrasemes, i.e. phrasemes that stem from legislation, differ from the translation of other phraseological units in legal language (i.e. phrasemes whose usage is not norm-conditioned but merely habitual), and, if so, how, and
2. How are legal comparatists and legal translators to recognize such phrasemes in order to be able to adjust their translation strategy accordingly?

### **Translation of Phraseology in Legal Texts**

Translating phrasemes is often considered a difficult task (see e.g. Zybatow (1998: 149); Antunović (2007); Colson (2008: 199–200); Mejri (2008: 246). With phrasemes in ordinary language, the challenges lie mainly in their idiomaticity, their boundness to a particular culture, language and situation, and diverse sociolinguistic factors. The obvious hurdle in translating legal phrasemes is the established fact that these linguistic units are bound to the legal system, so an in-depth understanding of their function and meaning can only be achieved through familiarizing oneself with the legal framework. The existence of differences between legal systems has led to the conclusion that in legal translation, non-equivalence or non-similarity is the rule (e.g. Daum (2003: 40)).<sup>9</sup> As

the adequate translation of legal texts, including of legal phrasemes, requires not only linguistic but also legal knowledge (cf. Stolze (1999), this leads to certain considerations as regards the appropriate training of legal translators and legal interpreters. Especially in the view of Directive 2010/64/EU the results of contrastive corpus-based studies on phraseology in legal texts – in particular regarding the “essential documents” mentioned in Article 3(2) of the Directive – should be utilized in the training of legal translators and legal interpreters to provide them with essential knowledge of different legal fields along with the specialist features of different legal systems needed in translating legal phraseology (cf. Lindroos (2015: 270).

Although the problematics related to the process of translating legal phrasemes is yet to be studied in depth, preliminary observations can be drawn from the studies of e.g. Lombardi (2007), Krzemińska-Krzywda (2010), Biel (2014) and (2015), Pontrandolfo (2011) and (2015) and Lindroos (2015). When tackling the challenge of recreating the legal style of the source language (SL) and translating phraseological units as its key feature into the target language (TL), the main aim is to achieve functional equivalence between the SL and the TL phrasemes (cf. Stolze (2009: 203) and Wiesmann (1999: 155–156). In general, it is held that for SL phrasemes, the translator should produce “unmarked, domesticated collocations” in the TL (Biel, 2014: 182). Thus, the existence of what Pontrandolfo (2015: 153) calls “parallel phraseologisms” in the legal systems is indeed important. However, such comparable phrasemes do not always exist in the SL and the TL. Due to the divergences in legal thinking and language structures between different legal systems, legal phrasemes in the SL may have single-word equivalents in the TL, and vice versa. This leads to asymmetry in the degree of formulaicity between the original legal text and its translation, which, as such, shouldn’t be deemed to indicate that the translation is inaccurate or erroneous.

### Examples of legislative phrasemes from the German Criminal Code

Original phrasemes in German, <i>Strafgesetzbuch</i> (StGB)	Unofficial English translation of the German Criminal Code ( <a href="http://www.gesetze-im-internet.de">http://www.gesetze-im-internet.de</a> )
§ 30 Versuch der Beteiligung	Section 30 Conspiracy
§ 34 Rechtfertigender Notstand	Section 34 Necessity
§ 35 Entschuldigender Notstand	Section 35 Duress
§ 186 Üble Nachrede	Section 186 Defamation
§ 202b Abfangen von Daten	Section 202b Phishing

In connection with this, Tabares Plasencia (2010: 286) states that legal phrasemes in the SL do not always have to be translated with TL phrasemes, and TL phrasemes can differ to a great extent structurally from those of the SL. Also e.g. Edelmann and Torrent (2013: 44, 49) come to the conclusion that the Spanish legal phrasemes *daños y perjuicios* and *jueces y magistrados* can only be translated into German with one-word-expressions, *Schaden* (damages) and *Richter* (judge), and not with multi-word-phrasemes.<sup>10</sup> The lack of comparable phrasemes in two legal systems was illustrated also in the contrastive corpus-based study of legal phraseology in authentic German and Finnish criminal judgments conducted by Lindroos (2015: 229–266). In fact, most of the legal phrasemes discovered in the corpora are legislative phrasemes without corresponding phrasemes in

the other legal system. They express system-specific legal substance – national institutions, the general doctrine of criminal law and specific culturally-bound legal thinking – with no functional equivalent in the other system (e.g. *Im Namen des Volkes* (unofficial English translation, <http://www.gesetze-im-internet.de>: *in the name of the people*), *große Strafkammer* (unofficial English translation, <http://www.gesetze-im-internet.de>: *grand criminal division*); *Annettu kansliassa* (unofficial English translation provided in the Finlex Data Bank by the Ministry of Justice of Finland at <http://www.finlex.fi>: *made available in the court registry*), *yhdessä ja yksissä tuumin* (the phraseme can be roughly translated as *together and unanimously*).

As a result, in such cases the option of using comparable phrasemes is excluded and the translator of these non-comparable legislative phrasemes is required to re-evaluate his or her approach. Ultimately, the choice of translation strategy depends on the recipient and the purpose of the translation (Daum (2003: 40); Ivanova and Gonzáles de León (2014: 62)). When a translation is to be used merely as a source of information, and not as a document with legal force, a different strategy can be applied than when the translation will e.g. be admitted to court as evidence. In the latter case, the target text should not be treated as a “translation”, but as a “parallel text”, in order to avoid misconceptions. This is true especially of the legislative acts of the European Union: all language versions have the status of an original text (Kjær, 1999: 66).

It is clear that much more work is needed in order to develop best practices in translating formulaicity in legal language, referring not only to conventionally used legal-linguistic patterns but also, more importantly, to norm-conditioned legislative phrasemes with essential functions within national legal systems. Overall, it can be held that the translator enjoys a greater degree of freedom and is required to have less legal knowledge when translating phrasemes in legal texts that have no specific legal function or meaning, i.e. phrasemes occurring also in general language such as prepositional phrasemes (e.g. *im Hinblick auf, in relation to*). However, when translating legal phrasemes the translator is required to have a sound legal knowledge-base which is highlighted when translating legislative phrasemes significant for the application of law and the stabilization of the legal system (cf. Kjær (2007)).

It is of utmost importance to realize that legal phrasemes or formulae cannot be translated as such if their phraseological status is not recognized by the translator. In such cases, a word-for-word translation strategy often leads to an incorrect translation. For example, when translating the German legislative phrasemes *rechtfertigender Notstand* and *entschuldigender Notstand* (Sections 34 and 35 of the German Criminal Code), a word-for-word translation with the help of a dictionary might lead to the creation of translations such as *exculpatory/justifying/excusing state of emergency* (unofficial English translations are *necessity* and *duress*, <http://www.gesetze-im-internet.de>). Even if not considered erroneous, the use of such phrases involves a risk of misunderstanding and certainly influences the quality of the translation. This is why the discussion and contrastive analysis of system-bound legal phrasemes and their role as patterns constructing national legal style is called for in the training of legal translators and legal interpreters.

## Concluding remarks

In this article, an attempt was made to describe the significance of formulaicity in the field of law and to shed light on the system-specificity of legal texts and legislative phrasemes. The overall purpose was to raise awareness of the fact that the drafting and formulation of legal texts as well as the application of legal phrasemes in legal genres isn't just a matter of conventions, habits and/or routines, but a legal-linguistic task often motivated by legal norms. Thus, in order to be able to develop phraseological competence especially important in the translation of legal documents such as judgments and indictments, legal translators and legal interpreters need to delve into the legal field in question to achieve a comprehensive understanding of phraseological behaviour in the SL and TL legal systems.

The legal linguistic continuum stretching from legal terminology to legal phraseology – encompassing also formulaic texts – is characterized by blurred boundaries (Biel, 2014: 178) and various degrees of stability (Kjær, 2007: 511). As the most central legal genre, the impact of legislation is reflected in all other types of legal texts, drafted not only by legal professionals (e.g. judgments) but also by laymen (e.g. contracts), thus bringing up the necessary intertextuality of legal texts. In legal translation, the high frequency of implicit quotations of legislative phrases can be seen to form a major source of errors, as the translator is often unaware that he or she is actually translating expressions derived from legal norms, i.e. translating law. As of today, hardly any comprehensive bi- or multi-lingual phraseological resources are available for legal translators, making it all the more crucial to fill this research gap and to train linguistic professionals accordingly.

To this end, further contrastive corpus-based and computational approaches to legal phraseology in diverse legal genres (cf. Goźdz-Roszkowski and Pontrandolfo (2015)) are desirable. In particular interdisciplinary research endeavors combining (comparative) legal and (contrastive) linguistic approaches to investigate phraseology in legal languages within the broad framework of (comparative) legal linguistics (Mattila, 2013) should be promoted. With the help of such systematic research, contributions can be made towards creating reliable and easy-to-update online resources for phraseology in legal languages.

## Notes

<sup>1</sup>The term 'legal language' is understood here in a wide sense as the language used by legal professionals and laymen in legal matters. Reflecting the repeatedly expressed ideas concerning the relationship between law and language within the relatively new discipline *legal linguistics* (*Rechtslinguistik*), the term *legal language* (*Rechtssprache*) is used here instead of the expression *language of the law* (*Sprache des Rechts*) because the latter can be seen to imply that *law* and *language* are two separate phenomena, see Galdia (2008: 14). In this article it is held that law and language are so deeply intertwined that they are actually inseparable.

<sup>2</sup>The concept of legal culture, used increasingly in comparative law, refers here to the societal and historical context of a legal system. The concept allows for a broad understanding of law, thus replacing the traditional positivist view of law, reduced to legal norms. Although no clear-cut definition exists, it can be held that legal culture encompasses, inter alia, common values, shared beliefs and different ways of thinking as well as interests of legal professionals, see e.g. Cotterrell (1997, 2006).

<sup>3</sup>As an introduction to LSP phraseology and its development see e.g. Gläser (2007).

<sup>4</sup>OJ L 280, 26.10.2010.

<sup>5</sup>As an introduction to the field see e.g. Burger (2010), Burger *et al.* (2007), Palm (1997), and Fleischer (1997).



<sup>6</sup>The English translations of German statutes and ordinances provided by the Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*) at [www.gesetze-im-internet.de](http://www.gesetze-im-internet.de) are "...intended solely as a convenience to the non-German-reading public" and without legal effect. For more information see [https://www.gesetze-im-internet.de/Teilliste\\_translations.html](https://www.gesetze-im-internet.de/Teilliste_translations.html).

<sup>7</sup>On linguistic operations in law, see e.g. Galdia (2009: 141–245).

<sup>8</sup>Drawing watertight boundaries between different phraseological subgroups of general language has proven to be extremely difficult if not impossible (Ruusila, 2015: 34). This also applies to legal phrasemes. Biel (2014: 178) emphasizes that her classification of legal phrasemes in text-organizing, grammatical and term-forming patterns and in term-embedding and lexical collocations is not meant to be seen as a strict category but rather as a "phraseological continuum with fuzzy boundaries".

<sup>9</sup>The term 'equivalence' in translation studies is very controversial (see Ruusila (2015: 113–114)). Despite its obvious limitations particularly in the field of law, e.g. Krzemińska-Krzywda (2010: 145–147) makes use of this concept with regard to legal phrasemes and presents four different types of equivalence: *vollständige, partielle, lexikalische*, and *fehlende Äquivalenz* (complete, partial, lexical equivalence; missing equivalence; cf. Gläser (1986: 167–178)).

<sup>10</sup>This remark interestingly raises the question of the 'minimum size' of a phraseme. Phrasemes *per definitionem* are multi-word combinations. Nevertheless, when translating legal phrasemes it must be taken into consideration that because of differences between languages, in some cases a multi-word phraseme can or even must be translated with a one-word-expression (see the examples presented by Edelmann and Torrent (2013: 44, 49). This does not imply that such an expression should be classified as a phraseme; what it does imply is that e.g. in specialized dictionaries and glossaries designed as tools for translators such one-word-expressions should be included as target language equivalents by virtue of functional equivalence (see Krzemińska-Krzywda (2010: 142) on legal one-word-terms; Ruusila (2015: 63–64) with respect to one-word pragmatic phrasemes).

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