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REDUNDANT AND USELESS FRAGMENTS OF LEGAL TEXTS. BASIC DEFINITIONS AND PRELIMINARY TYPOLOGY OF CASES

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Abstract. The theory of rational lawgiver uses an assumption of normativity of legal text. The authors propose several definitions to express theoretical possibility and to show real cases of non-normative fragments of integral (articulated) parts of legal texts and normative fragments of other parts of legal text. Three types of normativity are defined: the broadest, broad, and strict. The notion of normativity is connected with notions of redundancy and uselessness of legal texts. The authors examine in this context five elements constituting legal system: (1) legal provisions – basic element of the integral (articulated) part of a normative act, (2) fragments of legal provision, (3) elements of the non-integral (non-articulated) part of a normative acts, (4) normative acts in their entirety, (5) judgements of the constitutional court as sui generis interventions in the current legal text. The analyze leads to showing four basic types of errors in legal provisions, which are dubbed: "doubles," "widows," "orphans," and "botches." In closing remarks the authors signal perspectives of formulation of a complex theory of redundancy and uselessness of legal text.

Keywords: normative act, legislation, legal text, normativity, normative change, redundancy, uselessness

INTRODUCTION

We shall begin with a pharmaceutical metaphor. In any tablet, pharmacists distinguish the active substance as well as fillers, lubricants or binders which do not have curative properties. Among these other substances, there are plain "fillers" (*massa tabulettae*) as well as substances which aid the absorption of the medicine into the body. We can look at a legal act with the eye of a pharmacist. The role of a legal act is to influence human behaviour. Already at first glance, it can be seen that every genuine legal act is heterogeneous. Just like the tablet, an act contains an integral (articulated) part, in which instructions for behaviour are formulated within successively numbered sentences (articles, paragraphs), and also non-integral (non-articulated) parts, such as the title of an act, its preamble, footnotes, and so on [Malinowski 2012, 182ff].

Of legislators wishing to write a perfect[1] text expressing a legal norm, we have the following to say: a text should be created in such a manner that the entirety of the normative content is contained in the integral part of the act; the non-integral parts should perform a purely auxiliary function. However, when reading normative acts, doubts as to their being drawn up perfectly grow. We consider that it is justified to ask the most general questions regarding the theoretical possibility and practical examples, firstly, of non-normative statements in the integral part of normative acts, and secondly, of normative statements in their supplementary parts [Wróblewski and Zajęcki 2012, 303–304]. The category of normative statements is also, in our opinion, not homogeneous. Normative statements feature redundant and useless elements, too.

The aims of this paper are to broaden the conceptual framework applied in jurisprudence, and to describe in consistent terms a range of specific examples.[2] We treat the legal system as a set of legal norms decoded from legislative acts and their logical or instrumental consequences. This set has the nature of a system, as it is rationalised on the basis of using collision rules to remove inconsistencies within the set of currently valid norms. A consequence of the assumptions adopted is the relativisation of all concepts with regard to the given (accepted within a concrete legal order) set of rules for the writing and interpretation of the law. In addition, when, within a given legal culture, there is no unanimity as to the form of the rules for the proper writing and interpreting of the law, that relativism goes even further – the definitions we formulate must be related individually to each of the competing concepts of jurisprudence.

This paper is based on our studies which have already been partially presented in published texts, and partially are still in preparation for publication. We deliberately reduce the level of technical detail and examples contained in the article. Instead, we focus on presenting the very notions of redundancy and uselessness of legal text. Our aim here is to show clearly the rationale for broadening legal terminology. In that sense, this paper introduces a research programme which we

[1] Assumptions regarding the linguistic correctness of legal texts were formulated in the Poznań-Szczecin School based on Leszek Nowak's idealised concept of a rational lawgiver [Nowak 1973]. The linguistic knowledge of rational lawgiver includes, among other things, "knowledge of the nature of the language of […] legal texts, as well as of the accepted methods of formulating norms in legal regulations" as well as "knowledge of the accepted rules of interpreting legal texts within a given legal culture" [Wronkowska 1990, 123]. "The assumption of the factual knowledge of a rational lawgiver is treated in this construction as stronger than the assumption of his/her linguistic knowledge. [...] The assumption of the axiological rationality of a lawgiver is stronger than the assumption of his/her linguistic rationality" [ibid., 132–33].

[2] In contrast to M. Kłodawski, the main focus of our interest is not linguistic issues [Kłodawski 2012a; Idem 2012b; Idem 2013]. Unlike T. Grzybowski, we do not put the primary emphasis on the practical exercise of justice, but the work of legislators and those who write legal texts [Grzybowski 2013]. For further details see [Wróblewski and Zajęcki 2017, 126ff].

already have started[3] and which will culminate, as we hope, in a systematic presentation of ideas and their applications in Polish and international jurisprudence.

1. NORMATIVITY *SENSU LARGISSIMO*, *SENSU LARGO* AND *SENSU STRICTO*

We shall limit our terminological considerations to the area of law. We shall go on to look exclusively at those contexts of the use of the term normativity which refer to the processes of creating and applying the law. In this way, we shall avoid the broad range of non-legal uses of the concept of normativity (in ethics, social philosophy, logic, etc.) [Brożek, Brożek, and Stelmach 2013].

Normativity in its broadest legal sense (normativity *sensu largissimo*) is associated with the common usage of the word "normative" in the sense of "legal;" in this meaning, a normative text is one which directly expresses, or is essential for the correct understanding (interpretation) of the norms of behaviour – both legal norms (general-abstract) and norms formulated in the process of applying the law (individual-specific, individual-abstract and general-specific norms). In this broadest sense the texts of court judgements, civil law agreements, administrative decisions, and so on are normative [Wronkowska 2005, 32]. Other examples of normative elements are – if a given legal culture regards their use as essential to interpretation – preparatory materials, explanations of verdicts, and so on.

Normativity in the broad sense (normativity *sensu largo*) is attributed to a given fragment of a normative text *sensu largissimo*, and means that taking into consideration (i.e. using in interpretation) that particular fragment is essential for the successful decoding of a legal norm (a general-abstract norm) from the text. Strictly speaking, taking into consideration a given fragment of a text in the process of interpretation is insisted on, or accepted by the interpreter of the normative concept of legal interpretation, in order to achieve correct decoding of the legal norms written in the text by the lawgiver. **Normativity in its strict sense (normativity *sensu stricto*)** is attributed to a given fragment of a normative text *sensu largo*, and means that a given fragment of a text expresses a legal norm or its part (specifies the range of those encompassed by the legal norm, its sphere of application or the scope of its normalising function).[4]

"Legal text" is a technical term [Zieliński 1972, 24] and in our further considerations we shall use it only in the following sense: **a legal text of a given state is the aggregate of all the fragments of all the normative acts of that state**.[5] The proposed understanding refers to the so-called material concept of normati-

[3] Three papers have been already published [Wróblewski and Zajęcki 2012; Idem 2017; Idem 2021]. Two more papers are currently in preparation.

[4] Cf. examples: Wróblewski and Zajęcki 2017, 126ff.

[5] The term "text of a legal act" may refer to the text of a given legal act, so in addition to the texts of normative acts it includes texts such as court judgements, administrative decisions or civil law agreements.

vity, which makes ascribing normative character to a legal act dependent on the kind of norm expressed within it, and not on the variety (name) of the act [Kosiorowski 2010, 35–36].

Alongside the fragments of normative legal texts *sensu largissimo*, *sensu largo* and *sensu stricto*, it is essential to distinguish yet another category – **fragments of legal text which are not normative in character**: 1) which do not express norms (neither general, nor individual) or their fragments; 2) which were intended by the legislator to express a norm or its fragment, but in which the properties of the text make it impossible to rationally apply.

The placing of non-normative expressions in a legal text may be a result of a mistake made by the legislator (in the second example), but also (as in the first example) a deliberate ploy aimed at legitimising or improving the effectiveness of a given act, or even of the entire legal system. Such a fragment, although not usable in decoding legal norms, may be used to analyse the so-called "ideological level of legal text" [Jabłoński 2020].

2. ASSUMPTIONS REGARDING THE NORMATIVITY OF LEGAL TEXTS

The foundations of the Polish theory of statutory interpretation contain the **assumption of the normativity of the integral part of the text of normative acts**. J. Wróblewski's conviction that the legislator does not use superfluous phrases from the point of view of the process of establishing the meaning of regulations is reflected in the rules of linguistic interpretation: "It is inadmissible to establish the meaning of a norm whereby certain phrases in it are treated as superfluous" [Lang, Wróblewski, and Zawadzki 1986, 444]. In cases where establishing the meaning of a norm with the aid of a particular directive means that a particular phrase used in that norm turns out to be superfluous, and the use of other directives would not lead to that occurring, then those other directives need to be used in establishing the meaning of the norm [Wróblewski 1959, 405]. These theses have been frequently, and with approval, referred to by Polish experts in jurisprudence [Ziembiński 1980, 283; Wronkowska and Ziembiński 2001, 166], as well as specialists from the field of legislative technique [Wronkowska and Zieliński 2012, 90–91; Wierczyński 2010, 180, 629]. A more detailed view of the general assumptions is found in J. Wróblewski's typology of regulations on account of the theoretical assumptions regarding their normative sense.[6]

[6] We can speak of the normative character of a text in five basic senses. An element of a legal text is normative if: (1) it is a regulation directly setting out the behaviour of a specific addressee, (2) it is a regulation directly or indirectly setting out the behaviour of a specific addressee, (3) it appears in a legal norm constructed on the basis of existing law, (4) it is contained in a legal text *ex definitione*, (5) the idea behind the adopted directive for applying or interpreting the law influences the process of applying or interpreting the law [Wróblewski 1965, 23]. In our proposed conceptual framework, regulations of types (1), (2) and (3) are normative *sensu stricto*, the status of regulations in (4) depends on the theoretical assumptions adopted, whereas type (5) regulations are normative *sensu largo*.

Another method of approaching the assumptions of normativity of legal texts was adopted by M. Zieliński: the interpretation of a legal text is based on a strong metalinguistic assumption: "The basic assumption of the normativity of expressions which lawyers are especially interested in is the assumption of the normativity of legal regulations. It is an assumption allowing legal regulations to be regarded as expressions that verbalise the norms, regardless of whether they do not normally directly verbalise those norms. This assumption also constitutes a common principle that lies behind the application of the linguistic rules for decoding a legal text [...] distinct from the functioning rules for decoding them which use other assumptions" [Zieliński 1972, 24]. "There arises [...] the question on what descriptive basis formulated legal texts are supposed to be read at the level of directives, and thus how the norms of behaviour are expressed in them. The answer to that question is widely accepted. The basis for such a reading of legal texts is the assumption of their normativity" [Idem 2012, 105].

Legal texts almost never express norms directly (which is acceptable in J. Wróblewski's typology), but always in a *quasi*-idiomatic manner. In the process of deriving them, the interpreter must reconstruct the norm from multiple fragments of legal texts, taking into account the fact that plural, supplementary and modifying regulations appear in legal texts. All the regulations of the text of a normative act must be taken into consideration in their entirety in the process of reconstructing legal norms.[7] In the proposed language, the assumption of normativity in M. Zieliński's version states that a legal text is normative *sensu stricto*.[8]

3. CONCEPT OF VALIDITY OF STATUTORY LAW

The concept of validity of statutory law is weighed down by various connotations [Wróblewski and Zajęcki 2017, 130]. Providing a quasi-definition is essential because, as indicated in the introduction, our point of reference for the analysis is the system of interpreted law, understood as the **system of valid legal norms**. It is thus not possible to refer to the problem of the irreducible vagueness of the term "validity", as the lack of precision here would affect the entire analysis. We shall begin with the definition of validity of a legal provision.[9] A legal provision is "a grammatical sentence (from full stop to full stop, or from full stop to semi-colon, or from semi-colon to full stop) usually clearly graphically distinct

[7] It does happen that the rules for decoding cause that certain phrases used in regulations (e.g. the modal verbs "must," "should" etc.) do not appear in the reconstructed norm.

[8] "every legal regulation serves to interpret at least one of the substantive elements of legal norms" [Grabowski and Hermann 2006, 69].

[9] One should mind at that point that the term "validity" will be used differently when associated with provisions, acts, and norms. This may be regarded as a quite severe inconvenience of Polish legal terminology, but we claim that this is methodologically correct way of proceeding, because some scientific notions can (and do) change meaning when associated with different elements described by sciences [Zajęcki 2012].

in a legal text, and usually identified within it as an article or paragraph" [Zieliński 2012, 4].

Intuitively, a provision is valid if it is passed following the conventions established by the validating rules of a given legal system. This is the most formal definition for the validity of a provision, related to the ideas of Hans Kelsen.[10] For our purposes in this paper we want to be a bit more specific, though. Let us start with a quasi-definition of a valid normative act, after which we will clarify the notion of a valid legal provision, and a valid fragment of a legal text. Finally, we will formulate a sketchy definition of a valid legal norm.[11]

A normative act *A* is valid at time *t* when the final conventional act necessary for its passing into force took place no later than at time *t*, and: 1) the act *A* has not expired automatically as a result of triggering self-derogating clause, or 2) the act *A* has not been derogated, or 3) no court judgement declaring act *A* to be as a whole in contravention of the constitution has been delivered, or 4) has not been identified as temporarily non-binding at time *t*, or 5) no special cases of derogation of an implementing legislation took place.

Provision *P* is valid at time *t* when it is included in the integral part of a normative act *A* enacted no later than at time *t*, and: 1) the act *A* has not been derogated as a whole, or 2) the provision *P* has not expired automatically as a result of triggering self-derogating clause, or 3) the provision *P* has not been derogated, or 4) has not been identified as temporarily non-binding at time *t*, or 5) no court judgement declaring provision *P* to be in contravention of the constitution has been delivered.

The definition of validity of fragments of a normative act (which include elements of non-integral parts of normative acts) is analogous, so we shall not formulate it *in extenso*. It is assumed that only the current legal text forms the basis for establishing the current law (the set of valid norms).[12] **The current legal text (at time *t*)** is the set of all fragments of normative acts valid at time *t*. Using the definition of the current legal text, we can formulate a definition for the validity of the norms of statutory law (or, more precisely, the skeleton of such a definition,

[10] In our studies, we do not follow Kelsen's ideas directly, but refer to L. Nowak's concept [Nowak 1966, 97]. The definition omits the conditions for a regulation coming into force. From the moment a regulation comes into force, it represents a "fully legal" element of the legal system, on the basis of which all actions shaping that system. In particular, a regulation can be amended, overturned, be referred to in consolidated texts, become the basis for issuing secondary legislation, become a statutory instrument for a court.

[11] The definitions presented here are sketchy; they are discussed in a more elaborate and systematic fashion in [Wróblewski and Zajęcki 2017, 130–33]. Therefore, all the clarifications given here are, at best, quasi-definitions, with a number of simplifications.

[12] The practice of so-called "interpretative application of a new law," i.e. taking into account regulations in their new form when interpreting laws that have long since been in force, is contrary to the principle of retroactive operation of the law, and it is permissible only when it is possible to attribute the will for such an interpretation to be made to an axiologically rational legislator. For more, see Grzybowski 2013, 212, 222.

which would need the details to be filled in [Patryas 2016, 214ff], but this task lies outside the scope of this text).

A norm of statutory law *N* is valid at time *t*, when: a) it can be decoded using the rules of exegesis from the current legal text at time *t*, or b) it can be deduced from the statutory norms valid at time *t* using the rules of legal inference, and 1) it does not conflict with the norms valid at time *t*, which, on the basis of the accepted rules of conflict, take priority at time *t*, or 2) there are no factual obstacles (e.g. *impossibilium nulla obligatio*, *desuetudo*), or 3) there are no axiological obstacles.[13]

4. CURRENT, HISTORICAL AND POTENTIAL LEGAL TEXTS

The terminological discussion enables us to precisely define the concept of normativity. In each of the meanings highlighted (*sensu largissimo*, *sensu largo*, *sensu stricto*), the normativity of current, historical and potential texts can be discussed. Consequently, one needs to refer to the current, historical and potential interpretations of legal norms, respectively. Examples of these kinds of texts are shown in a tabulated form below [Wróblewski and Zajęcki 2017, 133–34]:

	normative text *sensu largissimo*	**normative text *sensu largo***	**normative text *sensu stricto***
current text	valid testament	Preamble to the United Nations Charter (1945)	text of a currently valid act
historical text	earlier testament	Preamble to the Covenant of the League of Nations (1919)	text of an abolished act
potential text	draft testament	draft of a preamble to a constitution	draft text of an act

Distinguishing current, historical and potential texts is relational in nature. In each case, it is necessary to identify, even implicitly, the moment of interpretation. A given text may currently be historic, but depending on the selection of the moment of interpretation, it could become a current or even potential text.

[13] For details and comments, see Wróblewski and Zajęcki 2017, 132–33.

5. NORMATIVE CHANGE

Using the terminological framework, we can define the concept of normative change. Based on the general-theoretical assumptions cited here, we can define the technical terms used in our further analysis.

Normative change (normative innovation) refers to any change in the set of valid legal norms. A normative change can take place as a result of a change in a legal text, but also as a result of other circumstances (e.g. *desuetudo*, a change in the rules of interpretation, inference or conflict) [Grzybowski 2013, 41; Wróblewski and Zajęcki 2017, 134–35].

We also take into account the case in which a normative change occurs without the activity of the lawgiver (and also the "negative lawgiver" – the constitutional court) on the current legal text. This **type of case is termed an extra-textual normative change.** It is a result of changes occurring in the social reality, and especially in the rules for interpreting the normative concept of the legal source [Zwierzykowski 2005, 94–95]. It is conceptually possible to distinguish a category of changes to the legal text which do not lead to a normative change. We shall use this category to define the concepts of redundancy and uselessness of the legal text.

6. REDUNDANCY AND USELESSNESS OF LEGAL TEXT

A change in a legal text does not necessarily lead to changes in the set of existing legal norms.[14] This conclusion has serious consequences not only for justifying interpretative decisions when making an operative interpretation, but also for numerous issues in jurisprudence which use assumptions about the normativity of legal texts. Let us suggest two notions which express the conclusion.[15]

A fragment of a legal text is redundant if its removal does not lead to a change in the set of extant legal norms (it would be a redundant change to the legal text).

A redundant change to the legal text is a change in the legal text that does not lead to a normative change. A legal text, in addition to expressing legal norms, fulfils a range of other pragmatic functions. We permit, for the time being purely theoretically, a situation in which a legislator creates or maintains a redundant text in the legal system which performs a significant pragmatic function (for example, it helps improve the communicability of the text). We additionally consider that redundancy and normativity (in its strict sense) are not antonyms. It is easy to imagine a situation in which the current legal text expresses a norm (i.e. is normative in the strict sense), but in which the interpreted norm adds nothing new to

[14] This conclusion is of enormous practical significance. It decides, at least on the level of the practice of interpretation and application of the law by Polish courts, the controversy over the status of assumptions about the normativity of changes to the legal text [Grzybowski 2013, 70ff].

[15] A suggested distinction appears in the literature under a variety of names [Wróbel 2003; Zaręba 1987; Zwierzykowski 2008]. See also Wróblewski and Zajęcki 2017, 135–36.

the legal system. The reverse situation may also occur: a text may be non-normative, strictly speaking, and yet not redundant. These considerations allow us to define the final term used in our conceptual framework.

A fragment of a legal text is useless if its removal would not lead to a normative change (i.e. would not change the legal state), and neither would it impair other important pragmatic qualities of the legal system. The uselessness of a legal text is a particular variety of the redundancy of a legal text. **A useless change to the legal text** is a change that does not lead to a normative change, so the new legal text is not practically improved in any way.[16] The evaluative term "other important pragmatic qualities of the legal text" encompasses a broad range of situations which, for the purposes of constructing a conceptual framework, can be specified as follows.[17] A fragment of a legal text is not redundant if (1) it makes **the correct preparation** of a legal text easier, or (2) it makes **the correct interpretation** of a legal text easier, or (3) it makes **the justification of the correctness of an interpretation** of a legal text easier.[18]

All other cases of redundancy of a legal text are, therefore, examples of uselessness of a legal text. The most important example, from the practical point of view, of a redundant but not useless change is an **"explicatory change"** [Grzybowski 2013, 163ff]. A second important reason why not all superfluous expressions are useless, is **simplifying the reconstruction of the phase of interpretation** by "shortening the time looking for related regulations" [Kłodawski 2013, 41].

Both redundancy and uselessness of legal texts represent features which can be removed. A given fragment of a redundant text may, at a certain moment, become "necessary" as a result of changes introduced by the legislator forming its interpretational context. The same may apply to useless text. Furthermore, it is possible for the condition of redundancy or uselessness to disappear without cha-

[16] This would be an example of "dysfunctional redundancy" [Kłodawski 2012b, 162]. For examples see Wróblewski and Zajęcki 2017, 136–37.

[17] We are discussing the problem from the point of view of a lawyer. A more extensive typology of functions of linguistic superfluity may be constructed by referring to the latest linguistic findings. For example, M. Kłodawski proposes identifying the following functions of superfluous text [Kłodawski 2012b, 161]: (1) improving text comprehensibility, (2) resolving ambiguities, (3) stressing (identifying) features, (4) emphasising or intensifying meaning, (5) creating a style (including the style characteristic of legal language), (6) forming fixed phrases or proper nouns, (7) improving text cohesion. See also the explicatory, strengthening and specifying functions [Kłodawski 2013, 47–48].

[18] The third case is by far the most problematic, as there is no consensus among theoreticians of legal interpretation about the "proper" way of interpretation. Actually, the very case of such controversy is also controversial [sic!], with some scholars claiming that the notion of "proper interpretation" is a legal myth. In a recent paper, P. Jabłoński showed that there was a controversy on how to understand the so-called "ideological level of legal text" [Jabłoński 2020, 49–52]. If we follow the hermeneutical way (based on the ideas proposed by P. Ricouer), non-normative ideological elements in legal texts should be qualified as useless (in our proposed technical meaning). If we follow the analytical way (as proposed by Z. Ziembiński), such non-normative elements in legal texts, though redundant *sensu stricto*, should not be qualified as useless (in our proposed technical sense) [Zajęcki 2017, 263ff].

nges to the legal text – exclusively as a result of *desuetudo* or change to the interpretive rules.

The conceptual distinction of normativity, in its strict and broader senses, poses the question of whether an analogous distinction might also apply to the categories of redundancy and uselessness. We think this is the case, as long as we specify the concept of normative change to a legal text as follows [Wróblewski and Zajęcki 2017, 137–38].

Normative change *sensu stricto* of a legal text refers to a change that alters the verbal form of the normative fragments *sensu stricto* of the legal text and, as a result, leads to a normative change. **Normative change *sensu largo* of a legal text** refers to a change that alters the form of the normative fragments *sensu largo* of a legal text and, as a result, leads to a normative change.

Alongside the distinction made between "redundancy" and "uselessness," one can refer to normativity either in the strict sense (fragments of a text expressing elements of norms) or in its broader sense (fragments used indirectly in the process of interpretation). The ensuing conceptual framework should contain the relevant distinctions [ibid.]. **Redundant text *sensu stricto*** is a fragment of a legal text expressing, either in its entirety or in part, a legal norm, whose removal would lead to a change in the set of extant legal norms. **Useless text *sensu stricto*** is a fragment of a legal text expressing, either in its entirety or in part, a legal norm, whose removal would not lead to a change in the set of extant legal norms, nor would it impair other relevant pragmatic properties of the legal system. **Redundant text *sensu largo*** is a fragment of a legal text which must be taken into consideration when decoding the text of legal norms, but whose removal would not lead to a change in the set of extant legal norms. **Useless text *sensu largo*** is a fragment of a legal text which must be taken into consideration when decoding the text of legal norms, but whose removal would not lead to a normative change, nor would it impair other relevant pragmatic properties of the legal system.

Examples taken from [Wróblewski and Zajęcki 2017, 138 –39]:

	normative text *sensu stricto*	**normative text *sensu largo***
redundant text	--- repetition of a fragment of a legal text expressing a legal norm to improve the interpretation of a normative act --- a "house cleaning" regulation repealing a non-valid normative act on account of a silent derogation	--- a phrase indicating the existence of exceptions --- titles of sections of a normative act not used in interpreting that act, but improving its comprehensibility (communicativeness) --- a preamble not containing any content essential for the correct interpretation of the regulations in the integral part of the normative act, but making the application of the law easier

useless text	--- a modifying provision for which a central provision does not exist (or is not valid) --- a legal definition which is not used in a legal text --- rules for performing conventional activities by non-existent subjects	--- a phrase suggesting the existence of exceptions which actually do not exist --- titles of sections of a normative act not improving the level of comprehensibility (communicativeness)

In the typology proposed by J. Wróblewski "redundant regulations" are divided into: (1) regulations which are not repealable via detailed derogation, (2) unapplied regulations, as the conditions for their application do not exist, (3) unapplied regulations, despite the conditions for their application existing [Wróblewski 1985, 316–17].

Our version is more generalised and includes those types. The first case in J. Wróblewski's typology concerns the so-called **implied (silent) derogation**. There is no doubt, as stressed in the latest literature on jurisprudence, that this phenomenon occurs and leads to normative changes (i.e. changes in the set of valid norms) [Kanarek 2004; Hermann 2012]. We take this case into consideration in conceptual terms by adding to the definition of a valid norm the criterion of eliminating conflicts with valid norms. As a result, a fragment of a legal text (or even entire normative acts) may turn out to be redundant, as they express norms regarded as non-binding due to their silent derogation.

In the second case of J. Wróblewski's typology, one comes across the situation in which "particular factual conditions" arise which justify regarding a given norm as non-binding. This results in recognising the regulations as redundant. An example of that redundancy is the expression in a legal text of norms from a permanently empty class of addressees or area of application.

The third example described by J. Wróblewski causes the most difficulty. On the basis of the definition used by us for the application of a norm, it would correspond to the situation where particular factual (*desuetudo*) or axiological conditions arise (a clearly unjust refusal to apply the law). J. Wróblewski perceives the controversiality of referring to this type of case and argues that on the basis of his rational model for the creation of the law it is difficult to find a legal basis for removing such regulations from the legal text via legal "house cleaning" procedures (through a declaratory act).

7. PRELIMINARY TYPOLOGY OF ELEMENTS OF POLISH LEGAL TEXTS WITH RESPECT TO THE NOTIONS OF REDUNDANCY AND USELESSNESS

An initial perusal of the qualities of the Polish legal language [Wróblewski and Zajęcki 2021] leads to the identification of five basic areas warranting further investigation: (1) legal provisions – basic element of the integral (articulated) part of a normative act, (2) fragments of legal provision, (3) elements of the non-in-

tegral (non-articulated) part of a normative acts, (4) normative acts in their entirety, (5) judgements of the constitutional court as *sui generis* interventions in the current legal text.

The above list was created on the basis of an initial overview of the properties of Polish legal texts. In a different cultural setting, that list might look somewhat different. Since there is no space here for an in-depth analysis of all the meanders, we shall only present a sketchy typology of the elements listed above in points (1–5). This will validate, at least intuitively, the thesis that any actual legal text contains a range of elements which (actually or only seemingly) infringe on the assumption of the normativity of the integral (articulated) part and the non-normativity of the non-integral (non-articulated) parts of acts.

(Ad 1) In the paper [Wróblewski and Zajęcki 2021], we investigate several types of legal provisions whose normativity either is or might be questioned in Polish jurisprudence, including: internal preambles, regulations using empty names, duplicated regulations, legal definitions, regulations indicating the subjective and objective range of a normative act, legal principles, programming and task provisions, meliorating provisions.

(Ad 2) In the paper that we are currently working on we seek to analyse several typical occurrences of redundancy in fragments of legal provisions. We follow here the analyses of the late M. Kłodawski [Kłodawski 2017] by introducing into our conceptual framework the notions of pleonasms, tautologies etc.

(Ad 3) Our research (currently in progress) is extended to include elements of the non-integral parts of a normative act. We scrutinise the possibility of normativity of such elements as: preambles, titles of normative acts, titles of sections of normative acts, attachments and elements typically included in them (e.g. tables, mathematical formulas, deictic definitions), footnotes.

The notions of redundancy and uselessness of such elements must be thoroughly scrutinised. Transposition of our definitions (which refer to legal provisions) to this realm can be done (this work is currently in progress), but it is not automatic, and several theoretical and dogmatic controversies should be addersed in depth.

(Ad 4) Our analyses can be generalised, and most of the notions defined in our text can be applied to the whole normative act. We claim that in a given legal system one might potentially find: normative acts *sensu largissimo*, *sensu largo* and *sensu stricto*, non-normative legal acts, redundant legal acts, useless legal acts.

Let us highlight here that special scrutiny should be devoted to the procedures of issuing consolidated texts and emendations. Both phenomena have created substantial controversies (both theoretical and dogmatic) in the Polish literature.

(Ad 5) Since the constitutional court in Poland can act as a "negative lawgiver" by declaring non-conformity of legal acts with the constitution, we should also discuss the potential redundancy and uselessness of such resolutions.

8. FOUR IMPORTANT TYPES OF LEGISLATIVE MISTAKES: DOUBLED, WIDOWED, ORPHANED AND BOTCHED PROVISIONS

Our typological analyses show that the notions of redundancy and uselessness of legal text are quite complex, and hence many special cases must be taken into account. To make our analyses more accessible for the practitioners of legislation and interpretation of law, we define four typical cases [Wróblewski and Zajęcki 2021]. We have named them metaphorically, using typographers' terminology as a source of inspiration.

A legal provision in a given legal act is a double when it repeats word-to-word a provision which is part of the same normative act, or which is part of another normative act of the same hierarchical power [ibid., 210–13]. The fact of being a doubled provision does not necessarily lead to the uselessness of such a provision. There are cases when doubling normative content is both permitted and promoted by Polish rules of legislative technique. Nevertheless, many cases of so-called normative superfluity occur in Polish texts when such repetitiveness is redundant *sensu stricto*, and – very often – useless.

A legal provision is a widow when it encodes a legal norm which is permanently undoable because the norm contains a permanently empty name, i.e. a name that does not denote anything that exists (either now or in any future times) in reality.[19] As a result, obligations are impossible to fulfil [ibid., 213–14]. This technical notion of widowed provisions can be generalised to include all cases covered by the Latin dictum *Impossibilium nulla obligatio est*.

A modifying legal provision is an orphan when it encodes a modification of a legal norm, but this norm is no longer valid because its central provision has been derogated [Wróblewski and Zajęcki 2021, 214–17]. This usually happens when a careless legislator amends a legal text without paying attention to the relations between provisions which may be, and very often are, split either syntactically or with respect to their content. Resolutions of the constitutional court can also generate orphaned provisions in legal texts.

A legal provision is a botch when its linguistic form has been either composed wrongly from the beginning in the process of law-making, or became such as a result of subsequent amendments. An error in the linguistic form of a botched provision prevents the interpreter from decoding any meaningful norm from it [ibid., 217]. This is an extreme case of legislative error, when standard tools of statutory interpretation (i.e. non-linguistic methods of exegesis) fail. In such cases, an interpreter should abandon the assumption of normativity of the legal text.

[19] By referring to "reality," we do not confine ourselves to physical reality. A typical legal name, say, "limited liability company," is an abstract name, and therefore it is empty with regard to the physical world. Nevertheless, limited liability companies "exist" in the institutional reality of the legal world [Matczak 2019], and norms which refer to such entities are not widowed.

CONCLUSIONS

Resigning from an assumption of normativity *sensu stricto* without exceptions in the integral parts of normative acts opens up a field of interpretative decisions which might be considered lawless.[20] In our opinion, on the basis of the concept used in Poland for the interpretation of the law, that danger is only superficial. Each interpretation is based, *inter alia*, on linguistic directives, but where their consistent application leads to undesired effects, it is possible to appeal to the assumptions of the axiological rationality of the legislator and the functional "repair" of the legal norm. In particular, such a "repair" procedure is accepting that a legal text *docet, non iubet* in a particular place. Of course, the burden of proving that such a case has occurred lies with the body applying the law and justifying their interpretational decision. The question of whether the Polish legislator's practice of "assisting" interpreters of the law by introducing redundant fragments is deserving of praise or criticism can be answered by carrying out a detailed analysis of a legal text subjected to a given legal order.

It is worth noting that the problem was very often marginalised by Polish theoreticians of law. For example, W. Patryas states that the problem of redundant/useless changes in legal texts occurs very rarely, and he refers to such cases as "curiosities" [Patryas 2016, 199–201]. Our plan is to analyse several theoretical frameworks in which Polish authors tackle the issue. Here, we can remark that W. Patryas' approach is very instructive, as the author removes the problem of erroneously written legal texts by assuming counterfactual qualities of the "ideal norm-maker" [ibid., 34–38]. This procedure is valid and quite fruitful from the theoretical point of view [Zeifert 2019, 72], but its side effect is that rarer phenomena – such as redundant/useless changes in legal texts – are removed from their analyses.

We began our text with a pharmaceutical metaphor. Let us finish it with a medical metaphor. We were looking, figuratively speaking, at the "pathomorphology" of legal texts – we described the situations in which actual legislators deliberately choose a less than ideal solution, or simply make a mistake. Having diagnosed such "pathologies," one must now think of reformulating the directives of interpretation of legal texts to include special cases in which the text lacks some normative aspects usually presupposed by lawyers.

We are working on a paper aiming to analyse all cases of redundancy and uselessness in the light of leading Polish theories of interpretation of legal texts. Our aim in this research programme is to propose additional directives of interpretation to aid in dealing with non-normativity, redundancy and uselessness of certain elements of legal texts.

[20] See Mularski 2008, 26 where the author warns about "[…] delegation of competence to the body conducting the interpretation to define which fragments of a normative act are used, and which are not used, to interpret legal norms."

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