

# Speech-acts focus of dynamic equivalence in legal translation

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## *Abstract*

*This article summarises our empirical observations on the translation of legal English texts from the point of view of recipient-focused dynamic equivalence. A sample of genre-specific texts (US/UK/SLK divorce judgments) were analysed in terms of illocutionary aims pursued by the agent of communication toward the recipient. The issue of classes of communicative functions derived from Austins' and Searle's theory of speech acts have been outlined along with the applicable tests and formal performative indicators. It has been our intention to examine the language form effecting the illocutionary forces in the selected legal texts aiming to find whether the translation process can or cannot dispense with the performative-function-bound analysis of parallel source/target texts.*

## **1. Introduction**

In order to be able to arrive at translation counterparts justifiable in terms of dynamic equivalence, it is necessary to handle the grammar, vocabulary and stylistic peculiarities of both the source and target texts. In translating texts from legal domain, however, there is another aspect that translators often leave unnoticed during their work. It is the issue of performative forces influencing the selection of the language form.

Translation process itself may be viewed from different perspectives. Linguistically-based approach attempts to correlate the language phenomena of the source and target languages. It concentrates on the equivalence of forms. On the contrary, communicative approach to translation perceives it as a communicative act and is aimed at dynamic equivalence of the source and target texts. In Nida's terms (Nida, 1969) it should focus on the addressee and attempt to convey the most natural equivalent in terms of meaning and style. In our paper we aim to show that apart from the meaning and style there is, yet, another layer that must taken into account and reflected in the target text: the factor of communicative functions of the source text that should also be subject to the imperative of dynamic equivalence.

In terms of cognition this process should be viewed as being ruled by the constancy of function that the translator must be aware of while seeking for adequate target formal means, since the communicative function of the source text should mentally supervise the selection of the language form, in other words, the performative effect of the source text should be retained. The principle of **dynamic equivalence in legal translation** may therefore be expressed *as efforts to maintain the equivalence of the communicative effect on the addressee in both the source and target text segments by employing the genre-proper formal means.*

Before attempting to identify the illocutionary forces of the selected texts, the Austin/Searle speech act theory has been outlined and the selected texts have been attributed their genre-specific parametres. The analysis itself has been concerned with a sample of 5 U.S. and 5 Slovak divorce judgments, i.e. Common-Law legal domain and Continental legal domain, respectively, the length of which varies between 10 and 15 standard pages. The length of the corpus itself has been irrelevant, as we have focused only on the performative sections of the selected texts, which show a considerable degree of standardization. For the purposes of cognitive facilitation, the Slovak text was considered as the source text to be



judge in common-law jury trials which are generally summarised in a well-known principle 'the facts are for the jury, the law is for the judge'. Upon considering all the evidence executed by the counsel for the prosecution and for the defendant, the jury is requested to return a verdict: the defendant *is either found guilty or not guilty*, by the jury, of commission of the offence the defendant has been charged with. After the jury has found the defendant guilty, the judge is bound to *convict* him/her. Where the jury has found the defendant not guilty, the judge has to *acquit* the defendant.

There are some tests available to distinguish the illocutionary status of verdictives and exercitives:

1. Jury's verdict: *'The defendant is guilty/not guilty'*  
(i.e. We find the defendant guilty/not guilty.)  
Application of the 'in/correct' test in respect of the facts:  
Is the jury correct in finding the defendant guilty?  
Yes, it is. No, it is not.

2. Judge's/court's decision: *The defendant is hereby convicted/acquitted.'*  
(i.e. The court/judge hereby convicts/acquits, i.e. legally pronounces the defendant to be effectively liable for an offence committed, which is procedurally followed by the sentencing, i.e. imposition of punishment, as a separate procedural step).

The 'in/correct' test is inapplicable in this case:

Is the judge in/correct in convicting/acquitting the defendant? \*

(\* means inadmissible )

Only the felicity test applies:

Is the judge of proper jurisdiction /ultra vires?

Has the jury's verdict been 'guilty' as grounds for conviction, or 'not guilty' as grounds for acquittal?

Has the procedure been observed properly? etc..

As has been demonstrated above, verdictives and exercitives are performatives of two different classes: verdictives are official acts which assess reality on the grounds of evidence/facts, and as such they may be correct or incorrect, whereas exercitives are official acts that become the law for the particular party, or may become the general law for future cases under the operation of the doctrine of precedent.

There is also a difference in perlocutionary effects of the two of the above performatives. The perlocutionary effect of verdictives consists in inviting the addressee (the judge) to confirm it. The exercitives are executive in a sense that their pronouncement will result in the actual change of legal reality in respect of the affected party, the affected party is permitted to do something, or prohibited from doing something, or the party is forced to act in a certain way, hence exercitives consist in 'exerting influence or power' (Austin, 2000:159). In context of trial decision-making, verdictives are addressed to another authority to proceed further on their ground, while exercitives are addressed directly to the affected party. Their separate and sequential nature may also be proved by the fact that where the jury are unable to return a definite verdict because neither the guilt nor innocence of the defendant has been proved beyond reasonable doubt, the judge has to discharge the defendant due to lack of evidence, having no authority to overrule the jury's opinion.

In the case of a non-jury trial, i.e. when a trial judge sits singly, both the verdictive and exercitive functions are cumulated in one judicial authority, this applies to both the Anglo-American as well as Slovak Continental trial by judge, and this combination seems to occur

most frequently also in the judgments under analysis, as in both jurisdictions divorce cases are decided by single judges.

#### 4. Performative account versus terminology

There is a difference between the Anglo-American and Slovak decision-making in this context, having a practical terminological implication. While, as mentioned above, the Slovak performative pattern in respect of delivery of a judgment is of a two-stage nature, the English one (meaning the Anglo-American context regardless of finer territorial specifications) is triadic:

Anglo-American legal context	Slovak Continental legal context	Type of performative
1. The jury finds the defendant guilty	1. Judge - Obžalovaný je uznaný vinným	Verdictive
2. The judge convicts the defendant		Exercitive/Declarative
3. The judge sentences the defendant	2. Judge - a odsudzuje sa na trest.	Exercitive/Directive

The Slovak term '*odsúdiť*' shows a polysemy, it includes both English meanings: 'to convict' and 'to sentence', both being of exercitive type (the former is declarative, the latter is directive). The Slovak judgment, however, usually contains the wording:

*'Obžalovaný sa uznáva vinným a odsudzuje sa na trest odňatia slobody na 5 rokov nepodmienečne.'*

The working translation of which would be:

*'The defendant is found guilty and is imposed a sentence of imprisonment unconditionally.'*

Collocability with appropriate nouns and/or valency parameters (in this context, the verb 'to convict' is monotransitive in English, while 'to sentence' is ditransitive) may, of course, make up for this polysemy, if this issue is to be taken just as a dictionary problem. Bilingual Slovak/English dictionaries, however, often fail to provide these collocability/valency parameters. For example, in Charvátová/Mokrání's Slovak/English Dictionary of Law, the Slovak entry for *odsúdiť* provides the following English counterparts: *adjudge, commit, sentence, disapprove, condemn, convict*. It further provides several collocations among which one may also find *sentence to prison* and *convict of crime*. Nevertheless, this will not suffice, as one can also come across such collocations as *sentence for an offence, commit to custody for an offence etc.* While the meaning concerning the directive – *punishment* admits several variants, the pure exercitive meaning of *conviction* which is the only term admissible in judgments cannot be replaced by any of the suggested translations of the Slovak *odsúdiť*, but *convict*. Hence, a bilingual dictionary, even a good, specialist one, cannot account for the full repertory of lexical relations that obtain among the terms occupying one lexical field, and translators relying only on dictionary-consulting may easily get misled and make inadmissible collocations, such as: *The defendant is found guilty and is convicted to 5-year imprisonment.* \*

Moreover, the problem is not, at least in our opinion, just that of collocability on the level of lexis/terminology. It concerns, in our view, the judgment-related illocutionary forces in the source and target legal context. The Slovak wording of judgment, although consisting of two explicit performative stages only, impliedly involves three stages as does the English

one, i.e. verdictive/declarative/directive. As dynamically equivalent translation should aim to elicit the expected genre-bound illocutionary forces in its recipient, we suggest that:

*The defendant has been found guilty, (on the ground of which) he is hereby convicted and sentenced to imprisonment for 5 years unconditionally.*

would fit this aim better than:

*The defendant is found guilty and is imposed a sentence of imprisonment unconditionally.*

We could supply a lot of other examples, such as a difference between *discharge* and *acquittal*, *acknowledgement* and *attestation*, etc., but this section has been included only to support our general view that legal English translation cannot do without examining the parallel texts which is the 'safest', i.e. most objective way, to account for target terminology, performativeness, style, grammar etc.

### **5. Grammatical means as illocutionary force indicators in general**

It is generally admitted that the most typical grammatical indicator of the performative force is the first person singular/plural indicative present of verbs, active voice: *I pronounce you husband and wife*. This use of indicative mood is peculiar: it is neither a statement, nor a habitual present, but rather a performative use of the present indicative, or the 'instantaneous present' used with performative verbs that refer to speech acts performed by uttering the sentences (Quirk, 1990:49). Second and third person plus the passive prevail in the genres under analysis.

Another typical performative indicator is a special deictical 'hereby', i.e. 'by this act,' or, in Mellinkoff's interpretation, 'right-now-by-means-of-this-writing' (Mellinkoff, 1963:314). These expressions are usually classed, with difficulty, with either pronouns or adverbs, their function is, however, pragmatic, i.e. indication of illocutionary force of a particular locution, rather than semantic or syntactic. We may agree with Mellinkoff, who discards this item as being only stylish, vague and therefore "[...] unnecessary. *I do hereby revoke* is not more precise than *I revoke*" (Mellinkoff, 1963:314), in that it is linguistically redundant as the English sentence is able to dispense with them by just employing the simple present indicative of the English verb to attain the intended performative goal. On the other hand, the possibility of inserting 'hereby' may serve as test for the same:

a) *I (hereby) pronounce you husband and wife (performative employment of simple present)*

*versus*

b) *I (hereby)\* write him every day (habitual present).*

Generally, the performative nature, even if not explicitly conveyed by lexical and grammatical means, may be proved by the presence of the agent. In written documents this presence is confirmed by the signature of the person (and official stamp) attached at the end of a document, even if explicit grammatical forms are impersonal throughout the text. The illocutionary force of a sentence may be tested by a possibility to transform it into a performative with an explicit performative introductory verb in the first person singular active indicative: '*Guilty.*' > '*I hereby find you guilty.*

## **6. Genre/register/style parameters of the selected texts**

Legal texts sampled for the purposes of the present analysis fall within the domain of legal subsystem (Knap, 1988), and, generally, their language may be ranked with the professional subsystem of standard language, or, in Kurzon's terms, 'legal sublanguage of a particular language' (Kurzon, 1989:283). Within this subsystem they may be classified depending on the criterion of choice. In Tomášek's triad (Tomášek,1998:27): the agent of communication (i.e. writer/speaker), the object of communication (i.e. the content of a legal discourse), and the patient of communication (i.e. the addressee/recipient/reader/hearer of a legal discourse). This roughly corresponds to Biber/Conrad's study of register. i.e. 'a variety associated with a particular situation of use (including particular communicative purposes)' (Biber, 2009:6).

As for the agent and the patient of communication, judgments are made and entered by judges as representatives of the judicial branch of government in course of the exercise of their power to apply the law, and they are addressed to individuals. In Tomášek's classification the sample texts are ranked with the 'application stylistic layer' – they are intended to apply the law (Tomášek's: 'stylová vrstva aplikační' (Tomášek, 1998:28).

From the point of view of the patient, here the particular parties to a case upon which the judgment is binding, Anglo-American judgments may also be classed differently. If these judgments are entered by higher courts, the addressees may also include parties of subsequent cases having analogical essential elements under the doctrine of stare decisis. Hence, by entering a judgment an Anglo-American judge may, under certain conditions, make a new law at the same time, the resulting stylistic classification of its ratio decidendi (i.e. reason of the decision) should be a specific combination of the normative stylistic layer (Tomášek, 1998:28, 'stylová vrstva právní normy') and application stylistic layer.

From the point of view of the object of communication, all our sample texts, are ranked with Family Law as one of the branches of Private Law, combining substantive as well as procedural sources in their wording. In particular situational contexts their authors are bound to draw up complete texts in 'genres perspective' (Biber, 2009:18), employing the branch-specific formal means as well as terminology.

Hence, the results of the present analysis may be viewed from the register perspective – in terms of a particular communicative function to be effected in a particular legal situation via genre-specific formal means.

## **7. Layout of American and Slovak divorce judgments**

A Slovak divorce judgment consists of two main parts: the part containing a decision in the case and the reasoning part.

In the first part, the court as an impersonal entity representing the judiciary branch of government delivers a decision in the case through its representative – the judge, after first having summarised basic particulars of litigants (petitioner/navrhovateľ/navrhovateľka and respondent/odporca/odporkyňa), the guardian/opatrovník, guardian ad litem/kolízny opatrovník), the matter (usually specified in the petition for divorce: divorce of marriage itself, determination of parental rights and duties, award of custody over minor children and support and maintenance). In the reasoning part, the court summarises the subject/matter of the proceedings. It states/repeats details of the parties, particulars of the petition, and the court's findings in course of the execution of evidence by hearing the parties, witnesses and examining documentary evidence. It further refers to the provisions of particular Acts that justify the court's decision.

Unlike a Slovak divorce judgment, a U.S. judgment, as to its layout, is not strictly divided into two parts containing a decision and reasoning. It starts with particulars of the

litigants, venue of the case, and then is divided into sections containing particular aspects to be decided or approved by the court.

## **8. Performative account of Anglo-American divorce judgments**

As suggested above, translation of a Slovak judgment should be preceded by a prior parallel-text performative analysis, we therefore start with an American judgment (Final Decree of Divorce issued by a Texas county court):

After specification of the matter, parties and the court of jurisdiction, the judgment is divided into separate text paragraphs, dealing with particular issues of divorce proceedings: Appearances, Record, Jurisdiction and Domicile, Jury, Divorce (itself), Children of Marriage, Division of Marital Estate, Attorneys Fees, Tax Return, Name Change, Court Costs, Clarifying Orders, and Relief Not Granted. The respective sections contain court's findings in respect of testimonies and documentary evidence:

*a) The Court, after receiving evidence, finds that it has jurisdiction of this case and of all the parties.*

*b) A jury was waived, and all questions of fact and of law were submitted to the Court.*

*c) The Court finds that there is no child of the marriage of... and that none is expected.*

These findings are either introduced by the explicit phrase "*the court finds that*" in the indicative present or are effected without an explicit performative indicator. Whether or not they are introduced by the explicit performative, their illocutionary force is verdictive. The content of these findings is formally expressed by the indicative mood, present or past tenses of verbs.

The exercitive illocutionary force is not present across all paragraphs, only in those where the court exercises its jurisdiction and delivers binding orders. Some sections only contain verdictives, in others, sections with verdictive illocutionary force (d) alternate/are followed by sentences with exercitive illocutionary force (e):

*d) The Court finds that the following is a just and right division of the parties' marital estate, having due regard for the rights of each party.*

*e) IT IS ORDERED AND DECREED that XXX is awarded the following as her sole and separate property, and YYY is divested of all right...to that property.*

The illocutionary force of the exercitive is formally conveyed by the passive indicative introductory binomial: "*IT IS ORDERED AND DECREED*", in the performative present, with the introductory binomial being typically capitalised to intensify its illocutionary force. This introductory phrase is followed by the nominal content subordinate clause and may have the following forms:

1. Where the content of the actual order is imposition of an obligation, the form switches, in majority of cases, to the future tense "shall" combining the grammatical semantics of future tense with deontic modality of obligation:

*f) IT IS ORDERED AND DECREED that XXX shall pay ... these items:...*

However, other formal means occur as well:

2. Subjunctive:

g) *IT IS ORDERED AND DECREED that each party **file** an individual income tax return in accordance with Internal Revenue Code...*

3. Operator to be + infinitive:

h) *IT IS ORDERED AND DECREED that costs of court **are to be borne** by the party who incurred them.*

Syntactically, the introductory binomial of these sentences is a matrix clause and the *that*-clause functions as the postponed subject proper anticipated by the matrix *it*. The *that*-clause is a dependent nominal content clause of imperative type. According to Dušková, dependent imperative content clauses are rather rare in English, and in a formal style they are usually introduced by *that + should or subjunctive*. (Dušková, 1988: 606). In fact, they are passive transforms of the monotransitive S-V-O valency structure: *He suggests that we should consult the lawyer.* > *That we should consult the lawyer is suggested* > *It is suggested that we should consult the lawyer*, where the former object is transformed into the subject, being anticipated by the matrix *it* and placed finally for FSP purposes. In the sampled genre of judgments this kind of clause seems to be the major form employed to effect the exercitive illocutionary force.

In contrast to the above examples where a dependent clause combines the modality of obligation with the future tense to effect the intended illocutionary force that binds the affected litigants to do certain acts, in the following examples a dependent clause contains the present passive indicative, or, in other words, the present passive performative:

i) *IT IS ORDERED AND DECREED that all relief requested in this case and not expressly granted is **denied**.*

j) *IT IS ORDERED AND DECREED that XXX, Petitioner, and YYY, Respondent, **are divorced** and that the marriage between them is **dissolved**.*

The above examples f), g), h), on the one hand, and i) and j), on the other, represent two distinct sub-types within the exercitive illocutionary force. Being exercitive they decide in favour of or against a particular course of action. The “*hereby test*”, however, is possible only with the latter group:

*X and Y shall **hereby**\* pay.*

*versus*

*X and Y are **hereby** divorced.*

This distinction was pointed out by Searle (Searle, 1969), in whose conception the former group is termed ‘**directives**’ (ordering the addressee to act in a certain way) and the latter group is referred to as ‘**declaratives**’. Searle accounts for a difference between the two of the groups in terms of ‘direction of fit’ (Searle *ibid.*): directives try to influence the conduct of the addressee and thereby change the outer world – their direction of fit is ‘world-to-words.’ In the case of declaratives, on the other hand, the direction of fit is bidirectional, i.e. both ‘world-to-words’ (aimed to change the extra-linguistic reality), as well as ‘words-to-



world' (proper formula must be used, and other felicity conditions fulfilled in order that the act may be completed successfully).

The present tense indicative as exemplified in examples (i) and (j) above, serves as the primary indicator of the exercitive illocutionary force of declaratives: by the pronouncement of "*IS DENIED/ARE DIVORCED/IS DISSOLVED*", the judge actually "does things with words", i.e. changes the extra-linguistic reality and the legal status of husband and wife.

From the illocutionary point of view, two illocutionary layers may be detected here: the hyper exercitive force of '*IT IS ORDERED AND DECREED*', in the performative passive present. It resembles the concept of Fotion's 'master speech acts' (Fotion, 1971:234), governing the performative potential of the rest of the sentence, paragraph, chapter, or even the whole document (such as the enactment formula of statutes). This formula introduces, as a master speech act, both the directives as well as declaratives in the following subordinate clauses. Hence, the other illocutionary layer is the hypo-exercitive force of the subordinate clauses. As to the grammatical forms of subordinate clauses, directives employ a range of future forms and the subjunctive to convey various shades of deontic modality, ranging from statement of strict legal obligation of submitting tax returns (subjunctive mood), through obligation or entitlement imposed by the court (shall/to be+ infinitive). Declaratives employ the performative passive present.

An interesting combination of a different kind occurs in a U.K. judgment which combines a decree nisi and a decree absolute register. Here we can find a combination of exercitive and verdictive illocutionary force as in the following sentence from a decree absolute:

*k)...whereby it was decreed (in the decree nisi) that the marriage ... be dissolved, unless sufficient cause be shown to the Court...why the said decree should not be made absolute, and no such cause having been shown, **it is hereby certified** that the said decree was on 24<sup>th</sup> April 2006, made final and absolute and that the said marriage was thereby dissolved.*

The above delivery of a final divorce order may be divided into several separate parts from the point of its illocutionary forces.

First, there is a reference to a previous *decree nisi*:

*...whereby it was decreed (in the decree nisi) that the marriage... be dissolved,...*

Here the original introductory performative passive present of *IT IS DECREED* as master exercitive is transformed into the past '*WHEREBY IT WAS DECREED*', and the original declarative '*IS DISSOLVED*' shifts to the hypothetical subjunctive '*BE DISSOLVED*' of a dependent nominal imperative clause.

Next, there is a section stipulating a condition of the taking of effect of the decree absolute. In terms of speech acts, it stipulates the felicity condition of the previous declarative:

*... unless sufficient cause be shown to the Court...why the said decree should not be made absolute...*

The next part:

*...and no such cause having been shown...*

may be treated as verdictive since it conveys a court's finding which may be proved by a capability of this section of being subject to the 'correct/incorrect' test: the court is either correct or incorrect in finding that no good reason exists for the judge to avoid delivering a final divorce order.

And finally:

... *it is hereby certified that the said decree was on 24<sup>th</sup> April 2006, made final and absolute and that the said marriage was thereby dissolved.*

The decision itself is introduced with the master exercitive "*it is hereby certified*", formally via the passive present performative of the verb, confirming and effecting the declarative force of the original decree nisi. The decree nisi is summarised in form of a *that*-clause, i.e. dependent declarative content clause, syntactically functioning as the postponed subject. It is expressed in the simple past tense, which is rather peculiar, as is the fact that the performative decision itself has a retro-active effect: the date of issue of the decree absolute follows the date when the decree nisi actually - '*de jure*' turned into the decree absolute. Hence, according to formal indicators this *that*- clause may be ranked with constatives.

Comparing the examples taken from the Texas judgment and the U.K. judgment in respect of the grammatical form and illocutionary force of the act of pronouncing the end of a marriage – both show identity of master exercitive nature of the relevant matrix clause, however, the grammatical means employed and the illocutionary forces of the subject dependent clauses containing the core of the information differ. In the Texas judgment the dependent clause is imperative and its verb is in the simple present indicative, intensifying the illocutionary exercitive force of the matrix. In the U.K. judgment, the dependent clause is declarative, and is formally in the past indicative, thus showing a constative nature.

## **9. Performative account of Slovak divorce judgments and justification of the relevant translation choices with reference to the Anglo-American divorce judgments**

The Slovak divorce judgment is introduced with the pattern 'Rozsudok v mene Slovenskej republiky' = 'Judgment in the name of the Slovak Republic', and, as mentioned in section 6 above, its first part contains a decision in the case. It formally consists of an introductory sentence detailing the court, judge, parties, legal matter, which is followed by the decision/s:

a) *Okresný súd... rozhodol:*

b) *Manželstvo X a Y sa rozvádza...*

c) *Maloleté deti sa zverujú do osobnej starostlivosti matky...*

d) *Otec sa zaväzuje prispievať na výživu...*

The introductory master exercitive takes the form of the third person singular past active indicative. This master speech act is followed by several declaratives b) and c), and, possibly, directives, such as d) containing the particular decisions. Their form in Slovak is the third person present passive (reflexive) indicative. As can be seen, the exercitive illocutionary force is effected here by a combination of the active simple past of the introductory verb and the passive simple present of the actual decision. Especially the form of the past indicative introductory verb "rozhodol=decided" seems to be rather "un-performative" indicator. Out of context it would be treated as a mere constative. In our context, however, we should consider it as a special performative use of the Slovak past tense. This may be proved by the

performative test of transforming the relevant section into the first person singular present active indicative/performative:

*'Okresný súd rozhodol, že manželstvo X a Y sa rozvádza.'* >  
*'Týmto rozvádzam toto manželstvo.'* > *'I hereby divorce this marriage.'*

Looking back at the performative analysis of the Anglo-American divorce judgments, we can see that they, too, contain introductory verbs which serve as master speech acts to indicate the exercitive force of a particular section. The Slovak introductory *'Okresný súd rozhodol'*, formally in the past tense, is functionally equivalent to the introductory binomial *'IT IS ORDERED AND DECREED'* of the Texas judgment, rather than descriptive simple past tense that would be the first-choice solution if there was no chance to refer to parallel legal English texts. The resulting effect of such simple past tense choice would definitely be constative:

*Okresný súd rozhodol, že manželstvo X and Y sa rozvádza.* >  
*The District Court decided that the marriage was divorced.*

In order to retain the performative effect of the source (Slovak) text upon its English recipient, within the maxim of dynamic equivalence as defined above, we suggest two variants of translating the performative sections of the Slovak judgments:

1. *Okresný súd... rozhodol:* = *The District Court HAS ORDERED AND DECREED as follows:*  
which may then be followed by the respective decisions themselves,

or, at least, use the present perfect tense which is usually treated as having current implications.

2. *Okresný súd... rozhodol:* = *The District Court HAS HELD as follows:*

and each of the following particular decisions may then be introduced by the phrase: *IT IS ORDERED AND DECREED.*

The subsequent sections of the Slovak source in the reflexive present indicative may then be transposed into the present performative, shall+bare infinite, or subjunctive form of a target English counterpart by analogy with the Anglo-American parallel texts, depending on a directive or declarative nature of a particular partial decision:

*The District Court HAS ORDERED AND DECREED/ IT IS ORDERED AND DECREED as follows:*

b) *Manželstvo...sa rozvádza* > *The marriage of X and Z is hereby divorced/is dissolved*  
(declarative)

c) *Maloleté deti sa zverujú do osobnej starostlivosti matky* >  
*The custody over the minor children is awarded to the mother*  
(declarative)

d) *Otec sa zaväzuje prispievať na výživu* >  
*The father shall pay the support and maintenance...*  
(directive)

In the reasoning part of the Slovak judgment, there may be identified two sections. First section is descriptive. It describes the petition and its content, and the procedure of the court, i.e. the court's executing evidence by hearing witnesses and examining documentary evidence. Formally, this part is conveyed in the past tense, without any introductory verbs, the section may be considered as constative.

Then follows the fact-finding by the court which is formally introduced, again, by the third person singular past active indicative of the introductory verb:

e) *Súd...zistil nasledujúci skutkový stav: i.e. 'The Court has found the following facts:'*

The form of the introductory verb is the same as that of the introductory verb in the exercitive part of the judgment: '*súd...rozhodol...*', i.e. '*the court has held or has ordered and decreed*'. Due to performative implication of the introductory verb '*zistiť/zistením uznať*', i.e. '*to find*' this part of judgment may be assigned a verdictive force, however, the third person, past tense and active voice combination formally resembles constatives. The actual fact-finding – formally a dependent appositive clause of the matrix '*the Court has found the following facts*' is expressed as pure constative, using either the present or past tense depending on the tense setting of the particular facts, and application of the rules of tense sequence in dependent clauses:

f) *Maloleté deti pochádzajú z manželstva účastníkov –  
The minor children were born in this wedlock of the parties.*

g) *Súd vydal predbežné opatrenie dňa...–  
The Court issued a preliminary measure on...*

h) *K príčinám rozpadu manželstva žalobkyňa uviedla, že vzťahy medzi manželmi sa zhoršili po tom, čo zistila neveru žalovaného, ktorú síce žalovaný skončil, avšak žalobkyňa sa už nezabavila obáv, či to znovu neurobí a stratila k žalovanému dôveru.*"

*As for the reasons of the marital break-down, the Petitioner states/has stated that the relations between the spouses deteriorated after she had discovered the Respondent's extra-marital incident, which the Respondent had ended, but the Petitioner was unable to stop worrying if the Respondent would do it again, and so, finally, she was unable to trust the Respondent any more.*

To sum it up, the performative account of Slovak judgments has shown that they consist of two parts: the exercitive part and the verdictive part. In the exercitive part the overall illocutionary force is signalled by the master speech act of the matrix clause and is followed by ordinary speech acts of dependent clauses, being either declaratives or directives. The verdictive part contains judicial fact-finding, commonly expressed by one introductory master speech act followed by appositives of the content of the fact-finding itself. The target translation could fail to be dynamically equivalent, i.e. the original performative effect of the Slovak judgment may turn into a mere descriptive/constative effect of its English translation: '*Súd rozhodol...*' - '*The Court decided that...*', without a prior illocutionary analysis of the parallel texts which has identified the proper genre-specific illocutionary indicators: '*It is ordered and decreed...*'

## 10. Conclusions

Our findings arrived at in course of the present study may be summarized as follows:

1. From among the categories of performatives – divorce judgments are dominated by verdictives and exercitives which occur as declaratives and directives.

2. Both exercitives and verdictives tend to be introduced by verbs indicating the performative category of a particular clause, so called master speech acts. These introductory verbs prefer the form of the passive performative present and active performative past in the Anglo-American judgments and in the Slovak judgments, respectively. Master speech acts in judgments are followed by ordinary speech acts of dependent subordinate clauses.

3. The prevailing formal means effecting the function of exercitives proper in the genre of judgments is shall + bare infinitive/present subjunctive for the Anglo-American texts, and the third person passive (reflexive) performative present in the Slovak divorce judgments.

4. Declaratives and directives of subordinate clauses may be introduced by master speech acts contained in matrix clauses that are declarative in nature as they are always capable of being subject to a *hereby* test.

5. The above analysis has been intended to show that since the target translation is dynamically equivalent if it is capable of eliciting the same performative effect on the target addressee as it has on its source addressee, the source illocutionary source should be signalled by the performative indicators that are standard in the parallel context of the target text. Otherwise the intended performativeness might be misunderstood or may fully fail (the performative effect of the source text might completely change into the constative one of the target text). The knowledge of the standard genre-specific performative indicators in the target language cannot dispense with the illocutionary analysis of the relevant parallel texts.

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