PLAIN OR ARCHAIC: THE NEW CZECH CIVIL CODE GOING AGAINST THE FLOW

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Abstract: The article presents the discussion on the wording of the new Civil Code of the Czech Republic which becomes effective on January 1, 2014. Some critics claim that the Code contains many newly coined or re-introduced terms which are unknown to the general public and may even feel archaic. Inspired by this debate, a survey was carried out in which a group of students was asked to assess the perceived familiarity with ten terms selected from the new Code and also mark the terms with respect to their perceived stylistic features. All the terms had been analysed with respect to their relative frequency in various text types using the Czech National Corpus. Only one term was assessed as known by more than 40% of the subjects. The same portion of the subjects marked six terms as archaic and five terms as strangely formed. The results show that the debate on the wording was justified. Nevertheless, the requirement for accessibility of legal documents to the general public should be seen with due consideration to various functions, situations and contexts in which individual genres and text types are used.
KEYWORDS**:** legal drafting, plain language, term motivation, archaism, Civil Code

SROZUMITELNOST NEBO ARCHAIČNOST: NOVÝ OBČANSKÝ ZÁKONÍK POPÍRÁ TRENDY

Abstrakt (Czech / česky): V úvodu článek seznamuje s diskuzí o znění nového občanského zákoníku České republiky, který nabývá účinnosti 1. ledna 2014. Podle některých kritických ohlasů zákon obsahuje mnoho nově utvořených nebo zpětně zavedených termínů, které veřejnost nezná.

výzkum, v rámci

nového zákona s ohledem na to, zda si myslí, že jejich význam je jim známý, a dále označit, jak tyto termíny vnímají s ohledem na jejich stylistickou hodnotu. U všech termínů byla provedena analýza se zaměřením na jejich relativní frekvenci v různých typech textů s využitím Českého národního korpusu. Pouze jeden termín byl označen jako známý více než 40 % účastníků výzkumu. Stejný podíl účastníků označil šest termínů za archaické a pět termínů za neobvykle utvořené. Výsledky naznačují, že diskuse o znění zákona byla oprávněná. Nicméně požadavek na všeobecnou

srozumitelnost právních dokumentů pro širokou veřejnost je třeba vnímat ve vztahu k různým funkcím, situacím a kontextům, v rámci kterých se jednotlivé žánry a typy textů používají.

KLÍČOVÁ SLOVA (Czech / česky): tvorba právních dokumentů, srozumitelný jazyk, motivace termínů, archaismus, občanský zákoník

PROSTY CZY ARCHAICZY: NOWY CZESKI KODEKS CYWILNY PŁYNIE POD PRĄD

Abstrakt: Język nowego czeskiego kodeksu cywilnego, który wejdzie w życie w styczniu 2014, wywołał w Czechach dyskusję. Niektórzy krytycy twierdzą, że kodeks ten zawiera wiele nowo utworzonych lub wprowadzonych ponownie terminów, które są powszechnie niezrozumiałe i mogą brzmieć archaicznie. Debata ta dała powód do przeprowadzenia badania, w którym poproszono studentów o określenie stopnia znajomości wybranych terminów z nowego kodeksu oraz określenie ich cech stylistycznych. Wszytkie terminy zostały przeanalizowane pod kątem częstotliwości występowania przy użyciu Narodowego Korpusu Języka Czeskiego. Tylko jeden z badanych terminów został oceniony jako zrozumiały przez 40% respondentów. Taka sama liczba badanych określiła sześć terminów jako archaiczne i pięć jako utworzone w dziwny sposób. Wyniki pokazują, że debata na temat sfomułowania nowego kodeksu była uzasadniona.

1 Introduction

The fact that the language of legal drafting tends to be archaic is a well known and documented phenomenon. In this respect, Matilla (2006, 93–94) identifies the following reasons: conservative mentality of lawyers, long-standing tradition of certain legal documents, efforts to avoid ambiguity and use "proven" wordings, and in some cases the tendency to use solemn and conservative language by authoritarian regimes.

On the other hand, there have been attempts to reform the style in which legal documents are written to make them more understandable and accessible to the general public. Petelin (2010) provides a brief account of the plain language movement in English speaking countries where such campaigns seem to be particularly prominent.[1] In 2010, the European Commission started its own campaign for clear writing and published simple guidelines individually for each of the twenty-three official languages (Wagner 2010). The aims of such campaigns are very similar: to facilitate effective communication with fewer errors and thus ensure cost savings, to respond to the call of the users of legal documents and the requirements imposed by various authorities, or to improve the image of lawyers (Asprey 2003, 33–59).

Voices critical of these attempts should also be mentioned. In his essay "A Defense of Legal Writing", Richard Hyland (1986) argues that the major difference between legal writing and other written discourses is that law requires highly conceptualized thinking. The author concludes that:

> despite the critics' fervent wish and the idea's utopian appeal, legal concepts cannot be translated into Plain English by looking in a thesaurus, and it is either delusion or

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[1] Apart from the initiatives and movements in the United Kingdom, USA, Canada, and Australia, the website of *The Plain Language Action and Information Network* links to similar campaigns in Sweden, Portugal, and Mexico (www.plainlanguage.gov/usingPL/world/index.cfm).

demagoguery to proclaim that those with no legal training might understand a legal document merely because their vocabulary includes all of the words in which it is written (1986, 618).

From the linguistic perspective, critics primarily point out that language is a structured and stratified phenomenon, a system of interlinked systems. In their review of plain English campaigns, Chovanec and Budíková (2008) warn against hasty judgements regarding the seemingly inaccessible way in which legal documents are written. The authors stress that successful communication always reflects functional and situational conditions which give rise to the variety of styles, genres, and text types that can be identified in a language. It would be unreasonable to "flatten" these functional means of communication, as well as to expect that each specialized discourse would be understandable to everyone.

In 2011, the Czech Republic witnessed a debate on the wording of the newly drafted Civil Code. While it is virtually always the content of the bills which is discussed by politicians, experts, media, and the general public, in the case of the new Civil Code it was also the language and especially some terms used in it what was commented on. This article therefore introduces the principles of and grounds for the new Code and the major voices of the debate on its wording. Inspired by some of these opinions, a survey was carried out to see whether the debate was justified.

2   The New Civil Code

The new Civil Code of the Czech Republic[2] came into force on March 22, 2012 when it was signed by the President, but it will only become effective on January 1, 2014 so that all interested stakeholders may familiarize themselves with it. At present, the Civil Code which came into effect in 1964 in the former socialistic Czechoslovakia is still effective in the Czech Republic with more than thirty amendments which have been passed after the revolution in 1989. Considering the period of origin, the Code diverges from the continental law ideologically, terminologically, as well as systematically. As for the ideology, the existing Civil Code, in line with the socialistic law, places little emphasis on the man and related issues, which are regulated in 9 sections only. As for the legal system, private law is currently fragmented in several laws, with fields such as Family or Labour Law having separate code-like acts. With regard to the terminology, the existing Civil Code intentionally avoids some traditional private-law terms because Private Law was deemed not to exist, and replaced them with newly coined artificial terms (e.g. *svéprávnost* was substituted by *právní způsobilost*). Therefore, more than ten years ago, the drafting process started with the aim to create a new law which would ultimately replace the Civil Code of 1964.

The new Code is to a great extent based on a government bill of 1937, which was, however, never adopted due to the political development in Central Europe of that

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[2] The Code is included in the *Collection of Acts of the Czech Republic* and referred to under its number 89/2012 Sb. Full text in Czech may be found at http://obcanskyzakonik.justice.cz/tinymce-storage/files/sb0033-2012.pdf.

time. The 1937 bill conceptually followed the Austrian-Hungarian ABGB Code. Therefore, the new Civil Code aims at adopting the ABGB values, while being more modern and fit for the 21ˢᵗ century at the same time. Three underlying principles of the new Code include: convention (i.e. conformity with the continental law and more generally with the Roman Law); discontinuity (with regard to the 1964 Code), which often manifests itself in the area of terminology and lexis; and integration (i.e. paying heed to the European legislation). Furthermore, the new Code is more anthropocentric than the previous one (see above).

The debate on the wording of the new Code became especially prominent before its final reading in the Parliament in autumn 2011. Critical voices of people of different professional backgrounds could be heard in the media. To mention but a few, Tomáš Mottl, Vice-President of the Union of Judges, admits that the Code brings a lot of positive things, but at the same time he believes that it was not necessary to make such a thick line and replace well-established and defined legal concepts with new ones. Jan Hurdík, Professor of Civil Law at the Faculty of Law, Masaryk University in Brno, thinks that "[t]he authors apparently suppose that the Code will be more likely used by people well-versed in law". Stanislav Polčák, lawyer and a Member of Parliament for one of the government parties claims that "[o]rdinary citizens will surely be lost. They will need the assistance of legal professionals even in common situations"[3].

While some critics maintain that the Code contains many newly revived terms which are unknown or feel archaic, the Ex-Minister of Justice Jiří Pospíšil argues:

> The degree to which the language is archaic or not is a very leading question. I am not a linguist. For me, it is crucial that it can be understood. But it is part of the cultural heritage and it builds on the legal tradition in this region. So, in my opinion, a certain degree of archaic form is not a problem[4].

In the same interview, Pospíšil also mentions that he has no signs that the new Code would not be understandable and easily accessible for young people. This claim inspired a survey which is described in the following section. The aim was to obtain judgement concerning perceived familiarity and stylistic features of selected terms from a group of university students. Due to its emphasis on individual lexical items, the survey offers only a very limited insight into the very complex phenomenon of legal drafting.

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[3] The quotes and paraphrase are all taken from a summarizing article published in an online magazine and translated from Czech into English by the authors. (Němec, Jan. 2011. "Nad novým občanským zákoníkem se stáhla těžká mračna." *Aktuálně.cz*, July 23. Accessed May 15, 2012. http://aktualne.centrum.cz/domaci/zivot-v-cesku/clanek.phtml?id=708108.).

[4] The quote is taken from an interview with the Ex-Minister of Justice Jiří Pospíšil who had been responsible for passing the Code in the Parliament in 2011. The quote was translated from Czech into English by the authors. (Němec, Jan. 2011. "Ministr: Revoluci v právu píšeme 10 let, na lepší nemám." *Aktuálně.cz*, August 28. Accessed May 15, 2012.
http://aktualne.centrum.cz/domaci/zivot-v-cesku/clanek.phtml?id=710578.).

3   The Survey

3.1   Material

For the purpose of the survey, ten terms were selected from the new Civil Code[5]. The selection was inspired by the discussion (some of the terms were specifically mentioned by experts as problematic). All the selected terms are single-word nouns and none of them is present in the still valid Civil Code of 1964. The terms were split into two groups of five members each in order to better concentrate on two phenomena which terminographers find relevant for the suitability of terms.

Group 1: Morphologically motivated terms derived from relatively common stems. Czech as a predominantly synthetic language has a rich inventory of affixes. Poštolková, Roudný and Tejnor (1983, 36–42) describe derivation as one of the fundamental term-formative means in Czech concluding that there is a strong tendency towards systematic usage of individual affixes within a single domain for referring to the concepts of the same semantic class. This systematic motivation facilitates semantic clarity of terms and makes their meaning more easily accessible (cf. also Sager 1997, 27–41 for morphological motivation in English). Group 1 therefore serves to investigate the effect of morphological motivation on the perceived qualities of terms.

The following list gives English equivalents or explanations of the terms, simple morphological, analyses, and the ratios of the derived word to its stem word as indicated by the Czech National Corpus[6] (CNC).

> *Rozhrada* – a physical division between plots of land (e.g. a fence, a ditch…); *roz-* (pref) : to divide
> + *hrad*(*ba*) (stem): wall, fence; derivation ratio 2 / 21343.
> *Soupojištění* – co-insurance; *sou-* (pref): together + *pojištění* (stem): insurance; derivation ratio 42 / 103178.
> *Švagrovství* – relationship in-law (of a brother or sister in-law); *švagr*(*ová*) (stem): brother (sister) in-law + *-ství* (suf) : -hood (cf. parenthood); derivation ratio 10 / 6057.
> *Služebnost* – servitude: a burden attaching to an estate for the benefit of an adjoining estate or of some definite person; *služba* (stem) : service + *-nost* (suf): -tude (cf. gratitude); derivation ratio 364 / 638955.
> *Výprosa* – precarium: gratuitous loan in which the lender gives the use of a thing in express words, revocable at pleasure; *vy*(*ý*)- (pref): "to procure by means of the activity referred to by the stem" + *pros*(*it*) (stem): to ask (for something) *-a* (suf): "the product/service obtained from the activity referred to by the stem"; derivation ratio 1 / 73154.

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[5] Since the purpose of the present study is primarily to introduce the debate on the wording of the new Civil Code and only suggest a way of gaining insight into the issue, the scope of the survey was limited to ten terms in order to keep it compact and convenient for the subjects. As mentioned by the critics, the new Civil Code contains a number of problematic terms; for illustration, other terms which might have been considered for the survey include *držba* (possession), *vypuditel* (an ejector; a person who ejects another person from possession), *beneficient* (beneficiary), or *průhon* (a cattle drive).

[6] Data and comments concerning selected terms are based on the SYN corpus which combines all synchronic written corpora created and managed under the project of the Czech National Corpus (Český národní korpus). It contains texts from the period between 1990 and 2010 with the total amount of 1.3 billion tokens.

Group 2: Terms with specific distribution within the lexicon. In the theory of terminology, one of the requirements for terms is that they are stylistically unmarked with no expressive or emotional load. It should, however, be noted that after a word has been taken from the general language and defined as a term in a specific domain (assigned to a concept), it loses its markedness (Poštolková, Roudný and Tejnor 1983, 76–77). Group 2 was compiled in order to investigate perceived stylistic features and markedness of the terms.

The following comments are based on the results of searches for the relative frequency of distribution of individual terms (lemmas) within the text-types recognized by CNC. It should be noted that apart from the term *prokura*, the remaining four words are often used not strictly terminologically in the respective sources.

> *Závdavek* – advance payment/earnest payment; the word appears with the highest relative frequency in works of fiction (49 tokens) and non-fiction (23 tokens) predominantly in the religious contexts, and in newspapers and magazines (148 tokens).
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> *Pachtýř* – tenant (a party to gale); the word again appears with the highest relative frequency in works of fiction (65 tokens including for example the Czech translation of *Harry Potter and the Prisoner of Azkaban*), then in non-fiction publications dealing with history (29 tokens), and in newspapers and magazines (40 tokens).
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> *Výměnek* – right to a granny flat; the word concludes the group of three words which were found with the highest relative frequency in works of fiction (54 tokens), then in non-fiction publications (20 tokens), and in newspapers and magazines (175 tokens). In most contexts, the word has no abstract meaning, but refers to the flat or part of a house as such.
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> *Prokura* – procuration (a power of attorney related to running a business); the term appears almost exclusively in books and dictionaries dealing with law and economy (91 tokens) and with much lower relative frequency in newspaper and magazines articles dealing with the same topic (123 tokens).
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> *Spolek* – club, association; unlike the previous words, this one is much more frequent in the general language (74736 tokens in CNC). Its relative frequency shows that it most often appears in newspapers and magazines, but also in fiction as well as non-fiction publications.

In addition, all terms were checked against a monolingual normative dictionary and a bilingual translation dictionary. The monolingual dictionary of standard Czech (Filipec 2009) contains the terms *závdavek*, *výměnek*, and *spolek*, and also the stems of *švagrovství* (*švagr*), *výprosa* (*vyprosit*), and *pachtýř* (*pacht*). The dictionary contains also the derived word *prokurista*, but not the stem *prokura*. *Rozhrada*, *soupojištění*, and *služebnost* are not included. The Czech English legal dictionary (Chromá 2010) contains all the selected words with the exception of *rozhrada*, *soupojištění*, and *výměnek*. *Pachtýř* is also not included, only the stem *pacht* and another derived word *pachtovné*. The relatively high coverage of these terms in the bilingual legal dictionary is just another proof of the fact that the concepts introduced are not new as such, but had been part of the legal theory even before the introduction of the New Civil Code.

3.2 Subjects and Procedure

Forty students of English for translators and interpreters at Palacký University in Olomouc took part in the survey. Out of them, 28 were at the BA level and 12 at the MA level of study, 7 were male and 33 female. All the students were native speakers of

Czech and all of them had already passed an introductory course which deals with concepts referred to in the survey (word formation, stylistic value, archaic, foreign origin; see below).

Before starting the completion of the survey administered via an online form, the subjects were instructed stressing the following points: give us your own opinion on the following terms; it is not a test, there are no correct or incorrect answers therefore do not search for the meaning of the terms on the Internet or in any dictionary. It was not mentioned that the terms are all taken from the new Civil Code. There was no time limit assigned. After the completion of the survey, students were asked to fill in a short questionnaire focusing on their specific experience with legal matters, e.g. studies at a faculty of law, part-time job in a company dealing with legal matters, or extensive experience in translating legal documents. None of the students reported any specific law experience.

The terms were presented to the subjects in two rounds. The first round investigated the degree into which the subjects felt familiar with each term. They could choose one of the following three options:
a) *I do not know the term and I would not be able to guess its meaning.*
b) *I do not know the term, but I think I would be able to guess its meaning.*
c) *I know the term and I would be able to explain its meaning.*
No actual proof (e.g. providing a definition or a choice out of multiple options) that the subjects knew the terms was required.

In the second round, the subjects were asked to judge each term with respect to its perceived stylistic features. The subjects could choose one to three options out of the following seven completions of the statement "*I think that the term is . . .*":
a) *used in general language*.
b) *used in special languages*.
c) *used in the language of law*.
d) *archaic*.
e) *strangely formed*.
f) *of foreign origin*.
g) *poetic*.

3.3 Results and Discussion

The results of the two rounds eliciting subjects' assessment of the selected terms are shown in Figure 1 (familiarity) and Figure 2 (stylistic features) below. As for the Group 1 focusing on morphological motivation, none of the terms were judged as known to more than 50% of the subjects. On the other hand, with the exception of the term *rozhrada* the other four terms scored relatively high (70% or more) when the answers in which the subjects felt that they either knew or would be able to guess the meaning of the terms are combined. This observation seems to be in accord with the claim that transparent morphological motivation is a desirable feature in terms because it brings easier access to the meaning of the terms.

Of course, the design of the experiment gives no proof that the subjects do really know the correct legal definitions of the terms judged as known or guessable. This issue may become apparent when the results of the two rounds are compared. The terms

služebnost and *výprosa* were marked as known or guessable by 70% and 80% of the subjects respectively, but Figure 2 shows that only 4 and 5 subjects respectively assigned these terms specifically to the language of law. Moreover, both terms were marked as archaic by more than 60% of the subjects. These results suggest that the subjects might not have been aware of the specific legal meaning of these terms.

Also, it is interesting that four out of the five terms (*rozhrada*, *soupojištění*, *švagrovství*, *výprosa*) received high scores as strangely formed terms. The term *rozhrada* which was marked as completely unknown by almost 70% of the subjects was coined for the new Code and its structure is quite complex and opaque. On the other hand, *švagrovství* was most often marked as known or guessable. The term fits into the class of words derived with the suffix -*ství* (*soused-ství*: *neighbour-hood*; *dět-sví*: *child-hood*), still it was felt as strangely formed by the highest number of subjects in the survey. This observation suggests that the subjects might have been referring in their judgements to the rather unusual combination of relatively common stems with the given affixes creating strangely sounding words rather than to the process of word formation as such.

Group 2 which was intended specifically for the investigation of stylistic features of the terms brought interesting results as well. The terms *pachýř* and *výměnek* were marked as completely unknown by more than 50% of the subjects even though these terms appear also outside legal documents in fiction. At the same time, the two terms were marked as archaic by 67.5% and 92.5% of the subjects respectively, *pachtýř* even scored relatively high as poetic (30%). Taking both groups of terms in the survey together, six out of the ten terms were felt as archaic by more than 40% of the subjects. Given the requirement on minimizing term markedness, this observation shows that the discussion on the wording of the Code was justified.

Similar to the observation in group 1 regarding actual familiarity of the subjects with the definitions of the terms, *závdavek* was judged as known or guessable by almost 90% of the subjects but majority of them assigned it to the general language which again suggests that the subjects might not have been familiar with its specific legal meaning. The case might be, as the concordances from the CNC show, that the term is used in general language in more abstract meaning referring to any promise or even enticement.

The results obtained for *závdavek* are similar to those for *spolek* which also scored high as a word from the general language the meaning of which was judged as known or guessable. But unlike *závdavek*, none of the subjects considered *spolek* archaic, strangely formed, or poetic. Therefore, it might serve as an example of an unmarked term taken from the general language to the special language of law where it has been assigned to a specific concept.

Finally, the term *prokura* was correctly identified as a term of foreign origin (40%) and as belonging to the language of law (77.5%). This might be due to its long-standing presence in the Commercial Code of 1991.

Figure 1: Subjects' perceived familiarity with the terms.

		used in general language	used in special languages	used in the language of law	archaic	strangely formed	of foreign origin	poetic
Group 1	Rozhrada	4	11	7	18	17	0	4
	Soupojištění	1	14	29	2	16	0	0
	Švagrovství	12	5	10	5	21	0	2
	Služebnost	9	7	4	24	6	0	5
	Výprosa	2	3	5	30	19	0	6
Group 2	Závdavek	24	4	6	18	1	0	3
	Pachtýř	3	3	2	37	3	0	12
	Výměnek	13	7	7	27	4	0	4
	Prokura	2	11	31	7	4	16	0
	Spolek	39	6	8	0	0	0	0

Figure 2: The number of subjects' assessment concerning stylistic features of selected terms. The darker the background colour of each cell the higher the number of subjects who marked the respective term with the given stylistic feature.

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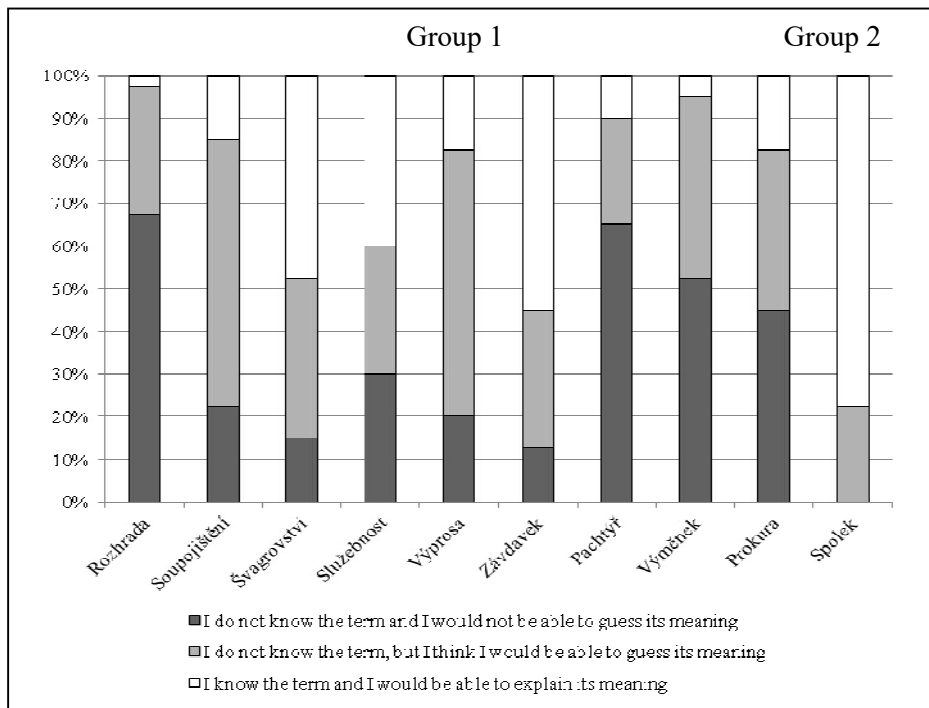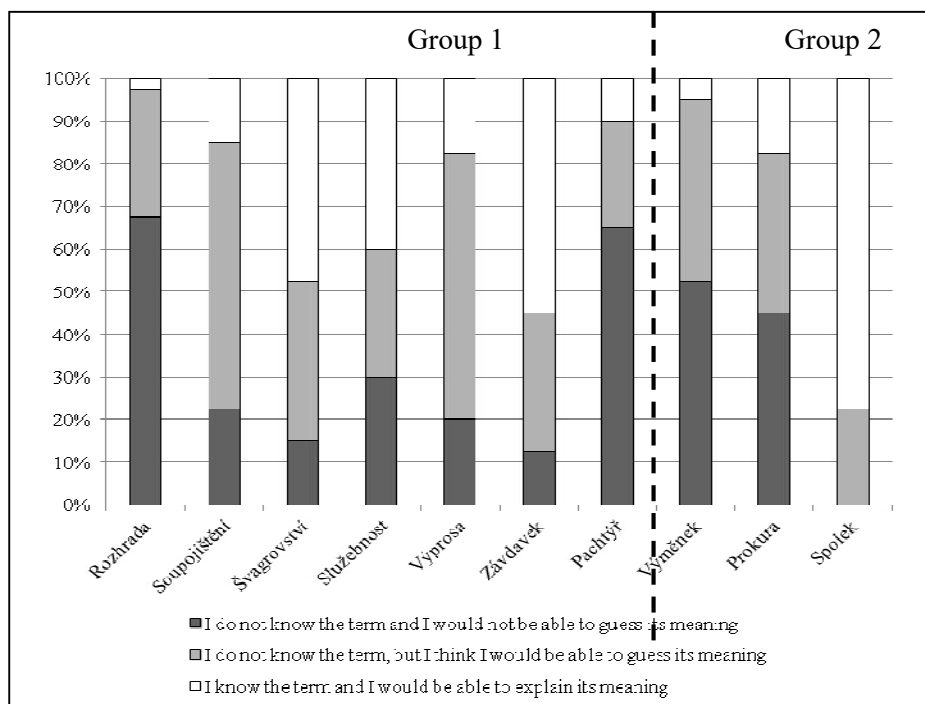
Conclusion

Overall, out of the ten terms which were selected for the survey on perceived familiarity and stylistic features six terms were marked as archaic and five as strangely formed by more than 40% of the subjects. Therefore we may conclude that the discussion on the wording of the new Civil Code was justified.

Generally, certain issues seem to be worth addressing in the process of drafting legal documents. The results for example show that morphologically motivated terms based on common stems are relatively more easily accessible while the re-introduction of previously used terms is more problematic. It is also advisable that linguists should be more involved in the drafting of important legal documents because they can provide valuable insights into language functioning. In the case investigated in this survey, it would be particularly the processes of term motivation and demotivation, issues of stylistic features, presence and loss of markedness, or function, situation and context sensitive usage of terms.

Finally, the demand that legal documents should be understandable and accessible to the general public should also be reflected on. Given the specific properties of legal thinking and conceptualization, it might perhaps be more reasonable to focus on individual genres and text types which correspond to various communicative situations, functions and needs. It this case, it might be interesting to observe in what ways, if any, the new Civil Code will be introduced to the general public and how the text types used will differ linguistically from the wording of the Code itself.

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