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The Influence of EU Legislation on Finnish Legal Discourse

1. Introduction

The European Union's impact on the Finnish language has been a focus of debate since the country became a member ten years ago. EU texts are often regarded as difficult to understand, and even the quality of Finnish used in them has been questioned. In a debate carried out in Finland's largest newspaper, for example, the linguistic obscurity of the European Constitution was stated as one of the reasons for its rejection (Akkanen 2005: A2, Suomela 2005: A3).

The idea that the language used by public authorities – legal language included – should be comprehensible to most citizens has been firmly rooted in Finnish society. Indeed, it is even affirmed by law in the Administrative Procedure Act, which came into force in 2004. The act requires that all authorities should use appropriate, clear and comprehensible language (Hallintolaki, section 9). Even before that, there was a Council of State decision from 1981 establishing the same requirement for state officials (Iisa / Piehl 1992: 112). The fact that such provisions exist implies a shared ideal, but there is still a long way towards the actual implementation.

In practice, however, even law courts may find it difficult to interpret legal texts, whose obscurity has often been linked to EU directives. In 2000, for example, such a link was alleged by the Finnish Parliamentary Ombudsman (Satakunnan Kansa 2000: 12). Blaming the EU reflects the culture shock Finns experienced as they familiarised themselves with European Community legislation. The EC legislation incorporates a legal language tradition whose features – from its overall structure to its rhetoric – appeared strange and difficult to Finnish officials involved in the EU drafting. According to

a survey conducted in 1998, over 80 per cent of such officials thought that EU regulations in Finnish were harder to understand than Finnish regulations. The same respondents also commented on actual features that most influenced their understanding of such texts (Piehl 2000: 25).

2. The comprehensibility of legal discourse

The evolution of Finnish legal language has been investigated in several papers comparing its features over decades. Mäkitalo (1970) targeted laws from the 1920s and 1960s; while Naskali (1992) compared laws from the 1920s and 1980s; Niemikorpi (1991) used a corpus of 1960s laws. All these studies focused on features which appeared to correlate with clarity and comprehensibility, e.g. the length of sentences and clauses, the number of clauses per sentence, the type of subordinate clauses and the number of nominalizations, including clause equivalents, participial modifiers and other expressions replacing subordinate clauses. Virtaniemi (1992) analysed the comprehensibility of legislation written in 1989, as compared to general language in news and general prose. This was possible because overall interest in synchronic aspects of language had led to the creation of several corpora and corpus-based analyses of different genres (cf. Hakulinen *et al.* 1980; Saukkonen 1982; Ikola *et al.* 1989).

Sentence length is one of the features that distinguish legal discourse from the general language and has been used as a yardstick for comprehensibility since the early days of readability studies. In spite of its limits as a tool, average sentence length is still used as a criterion in methods that deviate from the traditional readability formulas by taking into account also qualitative features (e.g. Langer *et al.* 1993; Sauer 1995; Nyström 2001). Long sentences are a textual feature spontaneously identified by respondents as a factor that makes reading more difficult: the officials surveyed by Piehl (2000: 26) mentioned increased sentence length as one of the main reasons why they felt EU regulations were difficult to understand.

Another crucial criterion is structural complexity, the average number of clauses per sentence. For Finnish officials (Piehl 2000: 25) this is the most important reason for the difficulty of EU texts. Clearly, it is not merely the number of clauses that makes a text hard to understand but more significantly their position within a sentence. The placing of subordinate clauses often leads to syntactic discontinuity, with the position of new clauses restricted both syntactically and semantically (Bhatia 1993: 112-113). The more clauses there are, the more difficult it becomes to construct the sentence in a way that allows readers to appreciate the text's main idea and additional elements as a whole. This may also be hindered by elements such as the number of non-finite structures used to replace independent clauses.

3. Material and methods

This chapter investigates differences between the Finnish version of EU directives and Finnish laws drafted to implement such directives. Directives are normative rules which each Member State is required to implement by its own legal instruments. In Finland this is mostly done by making additions to existing laws or by amending them, but entirely new laws are also drafted occasionally.

The texts chosen for analysis belong to two subcorpora: the first subcorpus consists of 41 EU directives in their Finnish version. In order to single out their impact on national legislation, only their regulatory sections were considered, leaving out both preambles and appendices (which are hardly ever used in Finnish legislation).

The second subcorpus includes 25 Finnish statutes based on government bills presented during 2002 to implement the directives contained in the previous corpus. When a statute was not entirely drafted to implement a directive, only the sections aimed at its implementation were included in the analysis.

The two subcorpora total 124,361 words: 73% in the directives and 27% in the Finnish legislation. The texts were coded according to

the TEI system and analysed syntactically in the Research Institute for the Languages of Finland using the Fintwol morphological analyser developed by Lingsoft (cf. Lehtinen / Lounela 2004; Lounela 2005). This application enables the analyst to pinpoint phenomena that can be identified and distinguished according to their morphology. It does not, however, investigate the positioning of clauses in sentences or meaning-based features such as cohesion. Some of the texts had to be coded manually to distinguish, for example, participles used as modifiers from participles with temporal or modal meanings.

4. Results and discussion

4.1. Shorter sentences with fewer clauses

Various studies have shown that the sentences in Finnish laws tended to become shorter and contain fewer clauses between the 1960s and 1990s. While in the 1960s average sentence length was 22-23 words, that number had fallen to only 19-20 words by the end of the 1980s; at the same time, the number of clauses per sentence also decreased to approximately two. This development seems to continue in laws drafted since 2000 for the implementation of EU directives. If anything, the pace seems to have accelerated, with a current average of 15 words and 1.5 clauses per sentence, as shown in Table 1.¹

1 The count is based on the number of textual items between a capital letter and capital punctuation. Although some sentences contained more than 70 words, half of those in the EU directives did not exceed 17 words. Lists have been excluded, since in directives they are atypical as sentences. It should also be noted that Finnish employs fewer words per sentence than Indo-European languages because it has no articles, and case endings are used instead of prepositions.

| | <i>Words/sentence</i> | <i>Clauses/sentence</i> | <i>Words/clause</i> |
|----------------------------------|-----------------------|-------------------------|---------------------|
| <i>Finnish legislation</i> | | | |
| 1960s | | | |
| Mäkitalo (1970) | 23.1 | 2.3 | – |
| Niemikorpi (1991) | 22.4 | 2.4 | 9.6 |
| 1980s | | | |
| Virtaniemi (1992) | 19.6 | 2.0 | 10.0 |
| Naskali (1992) | 18.9 | 2.1 | 9.1 |
| 2000s | | | |
| Finnish legislation subcorpus | 14.9 | 1.5 | 10.1 |
| <i>EU legislation in Finnish</i> | | | |
| EU directives subcorpus | 19.8 | 2.2 | 9.1 |

Table 1. Sentence length and number of clauses in Finnish/EU legislation.

Sentences in the EU directives are clearly longer than those in Finnish legislation implementing them (19.8 vs. 14.9 words; 2.2 vs. 1.5 sentences). Surprisingly, the latter are not longer than sentences in other Finnish statutes despite the fact that test calculations based on two directives from the late 1990s (Piehl 2002: 110) showed that they had an average of 32.9 words/sentence, as compared to 29.6 in the laws which implemented them. A comparison of the UNICITRAL Model Law and of Finnish and Danish laws drafted on its basis seems to indicate that national drafting traditions are still followed even in legislation reflecting an international model (Engberg / Wølch Rasmussen 2003; Salmi-Tolonen 2003).

4.2. From heavy sentences to heavy clauses

The data above shows that although Finnish legislation is moving towards shorter sentences with fewer clauses, the length of clauses has remained more or less unchanged. At the same time, the number of nominalizations replacing clauses has increased considerably, with many topics once encoded by subordinate clauses now expressed through non-finite structures.

As illustrated in Table 2, the most common type of nominalization consists of participial modifiers standing for relative clauses; these are more frequent in the language of law than in general language (Hakanen 1993: 62) and appear to have increased greatly on

the model of the EU directives. The trend, however, can be traced back several decades: while in the 1920s only one third of clauses included a participial modifier (Naskali 1992: 87), by the end of the 1980s the proportion was more than half and at the beginning of the 2000s their number had doubled to almost one participial modifier per clause. EU directives include even more participial forms.

| Type of nominalization | Finnish 1980s legislation | EU directives | Finnish EU implementing laws |
|---|---------------------------|---------------|------------------------------|
| Participial modifiers | 64.8 | 101.6 | 99.3 |
| Non-finite structure for <i>siten että</i> (so that) or <i>ilman että</i> (so that not) clauses | 0.5 | 8.7 | 3.0 |
| Non-finite structure for <i>kun</i> (when) clauses | 6.5 | 6.5 | 6.7 |
| Non-finite structure for <i>että</i> (that) clauses | 0.7 | 0.9 | 1.0 |
| Non-finite structure for <i>jotta</i> (in order to) clauses | 0.1 | 0.6 | 0.1 |
| <i>-minen</i> nouns | – | 26.8 | 24.9 |

Table 2. Percentage of clauses with nominalized forms.

On the other hand, the increase in structures replacing subordinate clauses of the type *siten että* and *ilman että* ('so that' and 'so that not') may be attributable to directives. In directives they are found in almost 9% of clauses but in implementing laws only in 3%. Nevertheless, their use is clearly more frequent in current laws than in those drafted 20 years ago, when a mere 0.50% of clauses contained such structures (cf. column 1). One reason for this development is the general trend favouring non-finite expressions over clauses. In some cases infinitives replacing *siten että* clauses resemble prepositions or postpositions, which cannot always be replaced by clauses. It is impossible, however, to draw a line between lexicalised and non-lexicalised infinitives on simply lexical grounds; this is why the figures in Table 2 include all instances of such forms.

It is more typical of legal language than of general language for clauses beginning with *kun* (when) to be replaced with infinite structures. These occur as often (in approximately 6.50% of clauses) in the 1980s legislation as in implementing laws (2000s) and

directives. On the other hand, the structure replacing *että* (that) clauses is more typical of general language than of legal discourse and has remained stable over the last two decades, occurring in around 1% of clauses in both EU directives and their implementation. The structure replacing *jotta* (in order that) clauses is also used as frequently – about 0.1% – in laws of the 1980s as in implementing laws but somewhat more – about 0.6% – in directives.

Finally, clauses can be replaced by nouns in *-minen*, which may be constructed from any Finnish verb and are often used in other specialised fields (cf. Karvonen 1995: 137-139). They are almost as frequent in Finnish implementing laws and directives – around 25% and 27% respectively – and their omission in previous studies may be indicative of the fact that *-minen* nouns were not so common in legal discourse before the 1990s.

4.3. Subordination vs. coordination

Despite the decrease in the number of clauses, Finnish statutes now include more participial modifiers and relative clauses than 20 years ago; this contrasts with the shrinking number of relative clauses found by Naskali (1992: 39) between the 1920s and 1980s. As shown in Table 3, EU implementing laws include more relative clauses than Finnish legislation in general.

| | <i>Relative pronouns</i> | <i>Subordinating conjunctions</i> | <i>Coordinating conjunctions</i> |
|--|--------------------------|-----------------------------------|----------------------------------|
| <i>Finnish legislation</i> | | | |
| 1960s (Mäkitalo 1970) | 28.1 | 24.9 | – |
| 1980s (Virtaniemi 1992) | 16.7 | 19.3 | – |
| 2000s (Piehl here) | 18.5 | 15.1 | 84.7 |
| <i>Finnish versions of EU directives</i> | | | |
| 2000s (Piehl here) | 22.5 | 19.8 | 68.8 |

Table 3. Percentage of clauses with relative pronouns and conjunctions.

Directives also display a bigger number of clauses beginning with subordinate conjunctions than implementing laws, where the proportion of conjunctive clauses has continued to decrease. The only

conjunction which is found relatively more often in implementing laws (in 9,2% of clauses) than in directives (7,0%) is the conditional *jos* (if). Clauses with subordinate conjunctions are used in the directives more or less to the same extent as they were in Finnish legislation from the late 1980s.

Finnish implementing laws contain more coordination, which accounts for approximately 85% of clauses in implementing laws and in 70% in directives. While over half (52.4%) of the clauses in laws include conjunctions expressing a cumulative relationship (*ja, sekä, sekä – että*) (and, as well as, both – and), the same conjunctions were found in only 44.1% of the clauses in directives. Conjunctions expressing an alternative (*tai, taikka*) (or) were less frequent in both types of text, occurring in a third of the clauses in implementing laws and a quarter of the clauses in directives.

5. Conclusion

This comparative analysis of EU directives and their Finnish implementing laws suggests that the former have not affected the syntax of Finnish legal discourse, which remains consistent with developments first observed in the 1980s. Thus it does not seem that the language has been disrupted, as often feared. On the other hand, the changes in legal texts have not only been positive, especially in terms of comprehensibility: participial modifiers and other nominalizations like many *-minen* nouns eventually restrict the number of verbs expressing activity.

Translation scholars (Eskola 2005: 240-241, Mauranen / Tiittula 2005: 66-68) have argued that target texts include features of the target language which are somehow triggered by the source language: the larger number of subordinate clauses and clauses per sentence identified above may be placed in this category. However, directives also include an equal or greater number of various clause-replacing nominalizations; this seems to indicate that the source texts of EU directives are so much more complex structurally that

translators need to make use all the resources of recent and earlier Finnish legal language in order to convey in each sentence the information contained in the respective sentences in the source text. But so much information packed into a single sentence can be hard to grasp for readers and may also make the texts sound less natural. An implication of this is that Finnish officials (cf. Piehl 2000: 26) often claim the word order of the EU texts is strange, even though word order is more flexible in Finnish than in many other languages. The same officials complain that comprehension is hindered by odd expressions and terminology, apparently denoting concepts for which the Finnish language already has its own words. Terminology queries have been taken up, among others, by the EU language service at the Research Institute for the Languages of Finland, which offers advice in linguistic matters to EU translators and Finnish officials. A large portion of questions concern terminology or use of words, and the officials often ask for an opinion on the term used by translators and vice versa.

Even if the syntactic properties in Finnish implementing laws that have traditionally been linked to comprehensibility do not point to a change originating from EC directives, many legal experts still think that Finnish statutes do show an influence. Since they have not specified the matter, it is possible that they may also refer to other than linguistic phenomena, e.g. the utterly detailed legal drafting of directives. However, there must also be linguistic features that can be traced. Influence from directives may be found in other syntactic properties than those included in this analysis. Atypical frequencies of forms (for example certain postpositions, so-called first infinitive, e.g. *päättää*, 'to decide') and atypical use of cases could be worth looking into, but the lack of contemporary parallel material presents a problem since such properties have not been studied in legal language. Regardless of the results of syntactical analysis, a study of the effects of directives on legal vocabulary is clearly needed. Usual corpus methods, e.g. comparing most frequent words or key words (Nevalainen 2005: 152), solve only partly the problem of assessing influence. Additional ways to approach the question are required, since relevant terms or phrases probably vary from statute to statute. It is already known from several individual cases that wordings of directives are transferred untouched to Finnish implementing laws.

This might well prove the strongest imprint that EC directives have so far left on the Finnish language of law.

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