

# Textual strategies of forensic psychiatrists. A corpus-based analysis of how the language of psychiatry is reconciled with the language of law in polish forensic psychiatric opinions

Agnieszka Karlińska\*

Faculty of Sociology, University of Warsaw, Poland

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## ABSTRACT

The role of an expert forensic psychiatrist is likened with that of a translator: their task is to translate the language of medicine into the language of law. The aim of the article was to reconstruct the textual strategies adopted by forensic psychiatrists in terms of reconciling the discourses of law and medicine. The analysis covered 65 opinions/reports issued at a psychiatric reference centre in Poland. Thanks to the application of the innovative corpus linguistics methodology, the singularities of forensic psychiatric opinions as a genre have been captured and the degree of its conventionalisation has been assessed. The findings indicate that psychiatric opinions have not yet achieved the status of a homogenous genre, and the standardisation and formalisation processes have only reached the structural level. The expert psychiatrists constrained the presence of the author's voice and did not use the narrative form in their opinions. The analysis also captured the ethical challenges related to the dual role of forensic psychiatrists as medical doctors and representatives of the judicial system.

## 1. Introduction

The role of an expert psychiatrist is often compared to that of a translator: their task is to translate the language of psychiatry into the language of law so that the court or law enforcement authorities can understand the medical findings in their own conceptual system and then use them in legal proceedings (O'Grady, 2004). The authors of this comparison emphasise that forensic psychiatrists target their texts at a "foreign audience with significantly different education, disciplinary culture, and professional language" (Griffith & Baranoski, 2007, p. 30; see also Silva, Weinstock, & Leong, 2003; Hecker & Scoular, 2004; Resnick & Soliman, 2011). They note that expert opinions may reach a wider audience, also outside the area of law (Griffith, Stankovic, & Baranoski, 2010, 2011). In their opinion, this gives rise to tensions. On the one hand, experts are expected to be precise in their descriptions and diagnosis expressed in medical language and, on the other hand, to make their opinions understandable to lay people, i.e. to avoid jargon and vague or ambiguous phrases (Resnick & Soliman, 2011).

The process of translation is described in terms of ethical, institutional and discursive challenges. Ethical challenges can be reduced to a question posed, among others, by Appelbaum (1990, 1997), Strasburger (Strasburger, Gutheil, & Brodsky, 1997) and Weinstock (Weinstock,

2001; Weinstock, Leong, & Silva, 1990) about the extent to which a forensic psychiatrist can assume the role of a representative of the judiciary, and to what extent the psychiatrist should remain a medical doctor. Medicine and law use different ethical frameworks, have different principles and purposes. The purposes of the law include retribution, deterrence, and rehabilitation, while its fundamental principles include justice and finding truth (Candilis, 2009). Legal provisions take the form of an ethical system focused on maintaining social order, even at the expense of the individual. Psychiatry, founded on the values of care and treatment, focuses on the well-being of the patient (Candilis, Weinstock, & Martinez, 2007). As Candilis notes, "competence and mitigation hearings, insanity defenses, commitments, and guardianships all call for the two systems to overlap, causing a serious clash of values and priorities" (2009, p. 424). One way to close this gap is to invoke the concept of therapeutic jurisprudence, which attempts to integrate therapeutic goals into the legal system (Winick & Wexler, 2003) and suggests that a reduction of "anti-therapeutic consequences" created by the law can be accomplished without "subordinating due process and other justice values" (Berman & Feinblatt, 2005, p. 49). It should be noted that while the therapeutic jurisprudence approach is well established internationally, its principles are not yet widely acknowledged and applied in many countries (see Jones & Kawalek, 2018).

\* Corresponding author at: Faculty of Sociology, University of Warsaw, Karowa 18, Warsaw 00-927, Poland.

E-mail address: [a.karlińska@is.uw.edu.pl](mailto:a.karlińska@is.uw.edu.pl).

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The second challenge relates to the question of the boundaries between medical and legal assessment (Buchanan, 2006; Meynen, 2016). Although the role of the expert psychiatrist, delineated by the court proceedings, is limited to issuing an opinion on the mental disorders of the person concerned and their consequences for the decision of the procedural body (O'Grady, 2004), in practice the psychiatrist often interprets a prohibited act, for example with respect to its legal qualification. The literature indicates that "psychiatric testimony is more likely than other evidence to intrude into the jury's realm" (Buchanan, 2006, p. 19), and may be decisive for judicial decisions. As a result, a forensic psychiatrist becomes a "scientific judge" or "a judge in white" (Habzda-Siwek, 2006).

The third challenge stems from the difference between psychiatry and law as disciplines. Court decisions are binding and have immediate effect while psychiatric evidence concerns cases that are multidimensional and change over time: psychiatrists develop initial hypotheses, then test and review them as new facts arise (Candilis et al., 2007; O'Grady, 2004). Psychiatric knowledge does not always enable categorical answers to questions asked by procedural bodies. There are no evident phenomena in psychiatry (Roth & Dager, 2014), and formulation of precise definitions is not a fundamental task in the process of reaching a diagnosis (Gierowski, 2014). As a result, it is difficult for experts to avoid collisions with lawyers for whom "a clear and unambiguous definition is the starting point for all actions taken" (Gierowski, 2003, p. 18).

The application of modern medical and psychological knowledge for the needs of the justice system is certainly not easy due to the "dogmatic, static and conservative character of the law" (Gierowski, 2006, p. 17). The legal discourse, which is necessarily normative in order to avoid ambiguity, uses expressions and structures that already have a fixed manner of interpretation (Sinclair, 1991). There is little room for innovation and creativity in the texts belonging to this sphere. They are highly conventionalised and formulaic. Therefore, legal genres are sometimes referred to as "frozen" (Bhatia, Langton, & Lung, 2004). In other fields of knowledge, including medicine and psychology, more liberal forms are used, allowing the use of the conditional mode, open-ended questions and hypotheses.

In this paper, I will show how the aforementioned challenges and tensions are manifested at the level of text. On the basis of corpus analysis of forensic psychiatric opinions issued in a reference centre of psychiatric diagnosis in Poland, I will reconstruct the processes of reconciling the language of psychiatry with the language of law: the transition from medical findings to conclusions concerning legal norms.

I will treat forensic psychiatric opinions as a specialised genre (see Borja, García Izquierdo, & Montalt, 2009), showing their particular characteristics against the background of other texts generated in the course of court proceedings. The application of corpus-based methodology (see, e.g., Sinclair, 1991; McEnery & Wilson, 2001) will enable me to compare texts not only in structural, but also lexical and grammatical terms and, thus, to provide a more precise analysis of the genre characteristics of psychiatric opinions.

To date, corpus-based analyses of genres created for the purposes of court proceedings (e.g., Gotti, 2005; Heffer, 2006; Pontrandolfo, 2015; Tessuto, 2012) have not covered psychiatric expert opinions. As texts, written psychiatric opinions are still under-researched. There is no consensus about the optimal methodological approach in this area (see Wettstein, 2010). My study will be the first case of applying corpus linguistics methods to analyse this type of documents. It may provide a starting point for comparative research carried out within other legal systems. It can also serve as a basis for assessing the quality of expert reports and, in the longer term, contribute to the development of standardised formats of opinions and a uniform genre convention, which will facilitate the use of opinions in procedural activities. In this context, the results of my analyses may be useful not only for researchers in the field of law and psychiatry, but also for court experts and legal professionals.

The analysis will incorporate opinions where the experts had to assess the sanity of the accused or the suspect at the time when a prohibited act was committed. This choice was based on three factors. Firstly, the assessment of sanity is among the most common tasks performed by forensic psychiatrists, and cannot be performed by experts representing other specialisations (see Krakowiak, 2018)<sup>1</sup> and, at the same time, it is the main subject of interest of procedural bodies in psychiatric aspects in criminal trials (Paprzycki, 2011, p. 103). Secondly, the matter of criminal liability remains the "conceptual center of law and psychiatry" (Slovenko, 2009, p. XI). Thirdly, insanity is a legal category: it is neither a psychopathological state nor a medical diagnosis (Meynen, 2016; Pardo & Patterson, 2013; Sinnott-Armstrong & Levy, 2011). Speaking about it means, in fact, speaking about the legal status. Hence, the assessment of insanity is considered as the main axis of the dispute between legal professionals and mental health professionals over the sense and possible extent of cooperation.

## 2. Forensic psychiatric opinions as texts

To date, research into the practice of forensic psychiatrists has focused primarily on psychiatric assessment and testimonies of experts before the court (Wettstein, 2010). Far less attention has been paid to the development of written expert opinions. They were often viewed as an indicator of the quality of psychiatric assessment: they were treated as documentation of the activities performed. If ever analysed separately, such analysis was usually limited to formal aspects such as text composition and correctness (e.g., Greenfield & Gottschalk, 2008; Pyrcak, 2010; Silva et al., 2003). It was noted that "like all good scientific writing," opinions should be "clear, comprehensive, relevant, and concise" (Hoffman, 1986, p. 166). The evaluation focused on the aesthetic dimension of expert opinions, which was believed to translate directly into their credibility and usefulness (see Candilis & Martinez, 2011). This type of analysis was based on the belief that expert opinions are objective and impersonal products of experts' work (Candilis, 2007).

However, this belief was questioned in discussions on the possibility of applying traditional medical ethics to judicial practice. In the late 1990s, Griffith (1998) called for a discussion on the role of narratives in reconceptualising the ethical assumptions underlying forensic psychiatric assessment. Subsequent authors (Candilis, 2007, 2009; Candilis, Martinez, & Dording, 2001; Griffith et al., 2010, 2011; Griffith & Baranowski, 2007; Martinez & Candilis, 2005; Norko, 2005) argued that forensic opinions are not impartial texts, and the presence of the expert's voice (whether introduced consciously or not) is inevitable: it derives from the expert's education, experience and the way the experts perceive their role and professional identity. In this perspective, the development of expert opinions is performative and is a "more complex enterprise than the writing of the usual clinical reports" (Griffith et al., 2010, p. 36). This process does not only involve the presentation of clinical findings, but also the creation of a narrative about the act and its perpetrator: "grounded in the discipline of psychiatry, [it] relies on ethics-based principles of respect for persons and truth-telling, and uses language to tell a story that persuades the legal audience" (Griffith et al., 2010, p. 32).

Verde, Angelini, Boverini, & Majorana (2006) proved that real human voices compete with abstract voices in forensic opinions. After Barthes, they mention the voice of truth (e.g. the way the legal question is formulated), the voice of empirics (e.g. reconstruction of the event), the voice of the person (e.g. the way the narrator describes the act), the voice of science (e.g. the practice of referring to medical textbooks to buttress the authority of the text), the voice of the symbol (e.g. the use of metaphors that have a certain effect on the reader) and the voice of society (e.g. the narrator's attitude towards the social valence of the

<sup>1</sup> In Poland, clinical psychologists are not allowed to provide opinions regarding criminal liability (Kacperska et al., 2016).

prohibited act).

According to the narrative approach, the psychiatrists' expert opinions are a mixture of science and art and can be analysed as literary texts. Resnick (2006) pointed out that the process of developing an opinion "requires formalized consideration of how one uses words in the creation of the report" (Griffith et al., 2010, p. 37). For example, the use of words such as "suspect", "possibly" or "supposedly" weakens the effect of an opinion, while the use of quotations enlivens the text and increases its rhetorical power. These analyses are part of the research on court proceedings conducted within the framework of law and literature movement. According to its representatives, literature and law are linked by language as a common platform. The movement stems from the belief that the law, by its very nature, is a "linguistic phenomenon" (Chauvin, Stawecki, & Winczorek, 2016): "language is the essential mechanism through which the power of law is realized, exercised, reproduced, and occasionally challenged and subverted" (Conley et al., 2019).

The aim of the law and literature movement, especially in its American version, is to develop lawyers' writing skills and their ability to communicate with a wider audience. The notions of narrative and rhetoric are central here (e.g., Amsterdam & Bruner, 2002; Brooks & Gewirtz, 1996; Dolin, 2007; Posner, 2009; Ward, 1995; White, 1985). Representatives of the movement argue that narratives are created at all stages of court proceedings: by the plaintiff and the defendant, by lawyers and judges, and that legal texts can be analysed using techniques known from literary criticism (see Olson, 2014; Papke, 1991).<sup>2</sup> In his research on forensic discourse, Heffer (2013) argued that judicial practices "are not aimed at revealing an impartial truth but are deeply rhetorical practices aimed at persuading decision makers to provide a remedy for a claimed wrong" (p. 459). He stated that in the course of constructing court narratives there is a constant tension between legal and non-legal concepts, between the language of law and the languages of other disciplines, and between rational arguments and other forms of persuasion. Brooks (2006) found that the law constantly tries to hide its narrative characteristics in order to maintain independence from other disciplines and to defend the seemingly exclusive reliance on abstract norms and logical reasoning.

Research on language and specialist genres of legal discourse, e.g. case notes, minutes of court hearings or court rulings, was also carried out within forensic linguistics. Apart from a high level of standardisation and formalisation, analysis of judicial documents (e.g., Bhatia, 1987; Bhatia & Evangelisti Allori, 2011; Chierichetti & Garofalo, 2010; Harris, 1988) reveals a tendency towards depersonalisation and passivisation, frequent use of resultant conjunctions and numerous references to legal acts and existing case law (Vázquez Orta, 2010).

### 3. Issuance of forensic psychiatric opinions in Poland

Polish forensic psychiatry does not have clear standards for criminal responsibility evaluation (Hajdukiewicz, 2016; Kacperska, Heitzman, Bąk, Leško, & Opio, 2016). The essential legal provision that regulates the formal requirements which should be fulfilled by a properly prepared opinion is Article 200 § 2 of the Polish Code of Criminal Procedure (hereinafter referred to as "CCP"). However, the guidelines are formulated in a very general way, leaving much room for manoeuvre for experts as authors.

A detailed description of the elements of an opinion, developed by

Hajdukiewicz and Heitzman, can be found in *Zalecenia konsultanta krajowego w dziedzinie psychiatrii w sprawie struktury opinii sądowo-psychiatrycznej w sprawach karnych i cywilnych* [Recommendations of the National Psychiatric Consultant on the structure of forensic psychiatric opinions in criminal and civil matters] (Jarema, 2007). The authors of the recommendation point out that a court expert's report should consist of four parts: (i) introduction, (ii) report on the activities carried out, (iii) discussion of all material and presentation of conclusions with justification, (iv) answers to questions from the procedural body. It should be noted, however, that the model has the status of a "suggestion" and reflects the views of the community of forensic psychiatrists—or some of them—rather than a generally accepted and binding instructions for experts.

As a genre, a forensic psychiatric opinion was shaped in Poland in a bottom-up manner, at the level of specific medical centres and teams of doctors. Research conducted on material dating back to 1995–1996 (Bogdanowicz & Hajdukiewicz, 1997; Hajdukiewicz, 2006) and 2004–2005 (Pyrcał, 2010) showed that the diversity of textual strategies was very high, also within the opinions drawn up by the same experts, but in different cases.

For many years, the community of Polish forensic psychiatrists has been debating whether the psychiatric segment of the definition of insanity is in line with the current status of medical knowledge, i.e. whether the legal approach is compatible with the psychiatric approach (see Hajdukiewicz, 2016; Zalewski, 2015).<sup>3</sup> The definition of insanity contained in Article 31(1) of the Criminal Code (hereinafter referred to as "CC") consists of two elements: a specific psychological condition of the perpetrator ("inability to recognise the significance of the act or to direct one's own conduct") and its biological and psychiatric sources ("mental illness, mental retardation or other disturbances of mental functions"). The wording used in Article 31 does not represent scientific terms defined in psychiatry or clinical psychology. In modern psychiatry, the term "mental illness" is considered anachronistic and burdened with negative connotations (Pużyński, 2007). It should be noted that, according to some commentators, the notion of mental illness is understood by the legislator as psychosis.<sup>4</sup> The use of the term "other disturbances of mental functions" is even more problematic. The linguistic formulation itself indicates a broad and under-defined coverage of this category. Moreover, mental disorders include mental illness and mental retardation.

On the one hand, the absence of precise definitions and the resultant freedom of interpretation facilitates the translation process but, on the other hand, it makes it even more difficult to develop the standards of opinion-giving. Article 31 of the CC creates a legal framework where psychiatrists must fit the modern psychopathological constructs and concepts. In the Polish judiciary, however, the language of psychiatry comes into contact not only with the language of law, but also with the languages of other medical specialisations. The law requires that legal sanity is to be established by psychiatrists.<sup>5</sup> Experts representing other disciplines—mostly psychologists—are appointed at the request of forensic psychiatrists in order to resolve diagnostic uncertainties (Eichstaedt, Gałęcki, & Depko, 2017).

<sup>2</sup> It is important to note that some authors within the law and literature movement express scepticism about the possibility of using literary research methods to analyse the law. Posner (2009) notes that while the linguistic shaping comes to the fore in literature, style understood as the literary dimension of the text must be clearly separated from the conceptual content in legal discourse. As a result, methods developed in literature studies do not work well when applied to legal texts.

<sup>3</sup> Worth noting is that the definition of insanity has remained almost unchanged in the Polish criminal law for over 85 years.

<sup>4</sup> This is particularly evident in the analyses of opinions prepared by lawyers, where the term "psychosis" is treated as synonymous with mental illness (e.g., Krakowiak, 2018).

<sup>5</sup> According to the provisions of the CCP, two expert psychiatrists are appointed to issue an opinion on the mental health of the accused (Habzda-Siwek, 2006; Heitzman, 2016).

## 4. Material and method

### 4.1. Corpus

For the purposes of this study, a corpus of 65 forensic psychiatric opinions was built, based on opinions prepared by psychiatrists representing the Department of Forensic Psychiatry of the Institute of Psychiatry and Neurology, a reference centre for psychiatric certification in Poland. The choice was based on two factors. First of all, the selected centre sets standards for opinions (best practices), which are then adopted by other units (the centre developed the invoked document with recommendations concerning the structure of opinions, as well as a number of other publications on the preparation of expert opinions). Therefore, it can be assumed that the opinions included in the analysis will be complete and carefully prepared, which will enable the characteristics of the genre to be captured. Secondly, since the selected centre has the status of a reference centre, its employees issue opinions commissioned by courts and prosecutor's offices from all over Poland, and the scope of underlying cases is very broad and covers particularly difficult and controversial cases. In such instances, the opinion issued by the Department is final.

Before acquisition, the material was anonymised in accordance with the General Data Protection Regulation and approved by respective legal entities. According to Polish regulations, an ethics approval is not required for retrospective studies.

The corpus includes opinions from 2015 to 2018, where the experts were tasked with assessing the sanity of the subjects. Opinions written solely by forensic psychiatrists or jointly by a forensic psychologist and a forensic psychiatrist were included. Opinions written solely by a forensic psychologist, without the involvement of a forensic psychiatrist, were excluded from the corpus. The corpus does not include supplementary opinions, where the procedural body expected experts to answer specific questions, or opinions concerning the same individuals written by the same psychiatrists but commissioned by other procedural bodies. In the case of complex psychiatric-psychological, psychiatric-sexological and psychiatric-gynaecological opinions (50 items in total), only fragments written by forensic psychiatrists were included in the corpus.

Since references to comparative material play an important role in linguistic analysis (see Rybicki, Eder, & Hoover, 2016; Zaśko-Zielińska, 2013), an additional corpus was created using psychological opinions, which constituted a clearly separated part of the texts. The corpus of psychiatric opinions consisted of 557,670 tokens (507,496 words),<sup>6</sup> while individual texts consisted of 1267 to 31,133 tokens (mean: 8579, median: 6368). The corpus of psychological opinions was much smaller (74,176 tokens). Thus, for the purpose of comparative stylometric analysis, a subcorpus of psychiatric opinions was created, containing only those psychiatric opinions that were accompanied by psychological opinions (50 items) (see the supplementary material for more details).

### 4.2. Methods of data analysis

The analysis used a mixed methods approach (Creswell, 2003; Tashakkori & Teddlie, 2003) that allows us to obtain "richness and precision" while ensuring "statistically reliable and generalisable results" (McEnery & Wilson, 2001, p. 77). It was divided into three interrelated steps.

The first step, designed to assess the degree of conventionalisation and formalisation of forensic psychiatric opinions as a genre, was the analysis of the composition of texts included in the corpus, conducted with a reference to the *Recommendations of the National Psychiatric Consultant* (Jarema, 2007).

The second step included quantitative analysis based on corpus

linguistics methods: keyword analysis, collocation analysis, i.e. repeated patterns of co-occurring words (Stubbs, 2001), analysis of verb forms used in utterances, analysis of the use of personal and possessive pronouns (see Pennebaker, 2011), and stylometric analysis (see Rybicki et al., 2016). The analysis of keywords was carried out using the comparative corpus method. The procedure of identifying keywords consisted in drawing up frequency lists<sup>7</sup> for the opinion corpus and a balanced subcorpus of the National Corpus of the Polish Language (NKJP), which constitutes a representative sample of the Polish language,<sup>8</sup> then comparing the frequency of each word on both lists and, if any differences were found, estimating their statistical significance. As the Polish language is highly inflected, both corpora were lemmatised, i.e. each word form was reduced to its basic form.

The third step consisted in a qualitative analysis, focusing on the functions of specific words or word groups in the text and proposing a deeper, contextual interpretation of quantitative patterns. For this purpose, concordances for the 20 most important keywords and 20 most frequent collocations were generated, understood as lists of occurrences of keywords in context, i.e. words preceding and following the given concept (Baker, 2006), and then semantic preference analysis was conducted, i.e. the tendency of words to co-occur with other words in a particular meaning or function (Sinclair, 2004).

The analysis of keywords and concordances was performed in the Korpusomat software (Kieraś, Kobyliński, & Ogrodniczuk, 2018). For collocation analysis, the MeWeX application was used, while the Verbs application was used to obtain verb characteristics (Walkowiak, 2018). The stylometric analysis was carried out in WebSty (Piasecki, Walkowiak, & Eder, 2018).

## 5. Results

### 5.1. Structure of opinions

Opinions included in the main corpus were prepared by eight different experts, working in mixed teams of two (in one case: in a team of three). In nine cases, the opinions were issued after a period of hospital observation. In the remaining cases, examination was conducted on an outpatient basis. In 50 cases, the opinion included in the corpus was not the first psychiatric opinion issued on the case.

The composition of the analysed texts corresponded to the proposal described in the *Recommendations of the National Psychiatric Consultant* (Jarema, 2007). The texts consisted of an introduction, a report on the activities carried out, a discussion of the material and conclusions. Sometimes, however, the content of individual parts differed from the overall model. The introductory part contained information on the experts and, with one exception, the name of the procedural body that commissioned the examination. As a rule, albeit not in all cases, it also included the date and place of the examination, the subject's details and the legal classification of the charges brought (the content of the charges was often quoted in the subsequent segment of the opinion). Also, the introduction included a description of tasks assigned to experts (questions from the procedural body), usually in the form of a quote or, much less frequently, in the form of a paraphrase.

Then the experts presented an extract from the case file, usually in the form of a separate subchapter. It was often very extensive and

<sup>7</sup> A frequency list or a word list is a list of words occurring in the corpus, along with their frequencies (Baker, 2006).

<sup>8</sup> NKJP (nkjp.pl) is the reference corpus of the Polish language which contains over one and a half billion words. The list of sources for the corpus includes the Polish classic literature, daily and specialist press, conversation recordings, ephemeral and online texts. NKJP includes a manually tagged, balanced subcorpus made up of small samples of various texts, consisting of a little over a million words (Przepiórkowski, Bańko, Górski, & Lewandowska-Tomaszczyk, 2012).

<sup>6</sup> A token (segment) is a basic element of text that is usually separated by spaces or punctuation marks. The notion of a token is not equivalent to a word.



constituted even one third of the entire opinion. The subsequent segment, usually separated and titled, contained a description of data from medical records. Both parts lacked an analysis, and often even an attempt at organising and selecting the data. Medical records and documentation were rewritten and included in the opinion, sheet by sheet, in chronological order. Moreover, a large part of the attached documents were not used in any way in the subsequent part of the opinion.

In the next segment of the text, psychiatrists described the course of the examination or observation, often dividing it into several sub-chapters and quoting the subjects' statements, this time only in short passages. Sometimes psychiatrists also quoted their own questions. The subjects' statements which did not answer the questions but could have been important for the diagnosis were introduced by the phrase "spontaneously states". Psychiatrists usually began by providing the date and place of the examination and describing the circumstances ("The patient willingly agrees to undergo the examination, comes to the doctor's office and takes the seat indicated"). Self-anamnesis was the key element of the examination. The description ended with short conclusions about the subject's mental condition. Psychiatrists used specialist medical language in those conclusions.

The subsequent section, titled "omówienie" [discussion], was preceded by the opinions of experts from other specialisations, constituting separate sections with a structure of their own (they were excluded from the analysis), as well as the results of additional examinations underwent by the subject. The experts began the "discussion" by formulating a diagnosis. Then, they proceeded to the analysis of "the subject's life trajectory" and medical history, highlighting the discrepancies between the details provided during subsequent medical interviews. Finally, they presented their assessment of the subject's mental state before and during the event. This part of the text, according to the observations made by Griffith et al. (2010), had the most pronounced characteristics of a narrative structure.

The final part of the opinion ("conclusions", "summary", "opinion") was usually very short (from 0.5 to 1 page) and contained a diagnosis for the current condition and the condition *tempore criminis* as well as answers to questions asked by the procedural bodies (usually as a list). Worth noting is that in some cases the opinion was accompanied by a bibliography.

## 5.2. Characteristic vocabulary

Keyword and collocation analysis helped to identify the vocabulary specific to forensic psychiatric opinions. In the corpus of forensic psychiatric opinions, the lexeme with a very high frequency (1740 occurrences), which, at the same time, was most distinctive in the context of the comparative corpus, was "opiniować" [to issue an opinion] (Table 1). This lexeme was usually used in the form of a participle ("opiniowany" [the subject, the person assessed]) to describe the person who was the subject of the opinion. A total of 1678 such uses were identified (96.5% of occurrences of this lemma), including 1262 in masculine and 416 in feminine forms. This was the most common way to refer to the person being assessed and, at the same time, a lexeme specific to forensic expert opinions as a genre.

A similar function was played by the words "oskarżony" [the accused] (442), "podejrzany" [the suspect] (476), "pacjent" [the patient] (558) and "badany" [the examined person] (535). The two former words are characteristic of the legal language. They usually appeared in the initial sections of opinions when selected fragments of the case-file and questions formulated by the procedural body were invoked. In turn, lexemes "badany" and "pacjent" belong to medical vocabulary. The term "pacjent" appeared primarily in the description of medical records: the experts usually did not use it to describe the person who was the subject of the opinion. In turn, lexeme "badany" was used interchangeably with "opiniowany". Psychiatrists also used the full name of the subject, and did so either in the final sections of the text (discussion and conclusions)

**Table 1**

Twenty most important keywords identified on the basis of comparative analysis against the general corpus of the Polish language.

Lemma (Polish)	Lemma (English)	Freq. in the opinion corpus (n = 0.6 m.)	Freq. in the comparative corpus (n = 1.2 m.)	Significance
opiniować	to issue an opinion	1740	5	41.6
psychiczny	mental	1325	46	35.7
psychiatryczny	psychiatric	1208	11	34.6
czyn	act/deed	1273	80	34.4
zaburzenie	disorder	1114	19	33.1
badanie	examination	1304	260	32.1
stan	condition	1537	524	31.9
dzień	day	2068	1000	29.9
sądowy	forensic/judicial	936	66	29.4
alkohol	alcohol	970	150	28.5
lek	medicine (also MD)	889	76	28.4
opinia	opinion	1013	212	28.1
objaw	symptom	834	41	28.1
biegły	court expert	804	26	27.8
choroba	illness	957	176	27.8
zachowanie	behaviour	803	109	26.2
nastroj	mood	701	57	25.3
okres	period	932	376	23.8
leczyć	to treat	633	66	23.7
leczenie	medical treatment	608	46	23.6

or in the initial sections (description of the case and questions from the procedural body).

The experts often introduced legal vocabulary in the form of multi-word sequences taken from the Criminal Code (Table 2). This is indicated by the high frequency of the following collocations: "choroba psychiczna" [mental illness], "swoje postępowanie" [one's own conduct], "pokierowanie swoim [postępowaniem]" [directing one's own conduct], "znaczenie czynu" [significance of the act], "rozpoznanie znaczenia" [recognising the significance], all of which are included in the definition of insanity contained in the Criminal Code. Although the term "mental illness" is considered obsolete and inadequate in clinical psychiatry, it was used much more frequently in the analysed texts than the currently applicable term "mental disorder".

In this context, it is worth noting the expression "inne zakłócenie czynności psychicznych" [other disturbances of mental functions], also present in Criminal Code definition of insanity, but absent in medical

**Table 2**

Twenty most frequent collocations.

Collocation (Polish)	Collocation (English)	Freq.
stan psychiczny	mental condition	491
choroba psychiczna	mental illness	313
akt[a] sprawy	case file	310
swoje postępowanie	one's own conduct	266
stan zdrowia	state of health	210
instytut psychiatrii	institute of psychiatry	172
pokierowanie swoim [postępowaniem]	directing one's own [conduct]	166
psychiatria sądowa	forensic psychiatry	160
zdrowie psychiczne	mental health	160
dokumentacja medyczna	medical records	151
znaczenie czynu	significance of the act	133
specjalista psychiatra	psychiatrist	129
rozpoznanie znaczenia	recognising the significance	129
zaburzenia osobowości	personality disorders	129
uzależnienie od alkoholu	alcohol dependence	124
[w] trakt[cie] badania	during an examination	121
zaburzenia świadomości	disorders of consciousness	118
historia choroby	medical history	110
protokół przesłuchania	record of interrogation	109
klinika psychiatrii	psychiatry clinic	107

textbooks. This expression appeared only in the questions raised by the procedural bodies and in the final part of the opinions. Interestingly, the experts sometimes (I identified a total 8 such occurrences) treated “other disturbances of mental functions” as a diagnosis and then fine-tuned it using terminology of clinical psychiatry (“When committing the alleged act, [the subject] suffered from other disturbances of mental functions in the form of personality disorder”). This usage shows that experts try to include legal terms in their repertoire and to incorporate them into their own conceptual apparatus. This is also a reaction to the legislator’s imprecision as the legislator did not define the meaning of “other disturbances of mental functions”, leaving a considerable degree of discretion to experts.

As a result of semantic preference analysis, 20 most important keywords and 20 most frequent collocations were assigned to two thematic areas: legal and psychiatric. The concordance analysis showed that five out of 20 keywords (“*opiniować*”, “*czyn*”, “*sądowy*”, “*opinia*”, “*biegły*”) are legal in character and are closely related to procedural measures. Another word (“*choroba*”) is found in the Criminal Code, while it is considered outdated in psychiatry. Lexemes “*zaburzenie*”, “*objaw*” and “*nastrój*” have a medical character and are related to the diagnostic process while “*lek*”, “*leczyć*” and “*leczenie*” are related to the therapeutic process. The remaining keywords cannot be easily allocated to a thematic group. They can occur in both medical and legal contexts. Five out of the 20 most common collocations (“*choroba psychiczna*”, “*swoje postępowanie*”, “*pokierowanie swoim [postępowaniem]*”, “*znaczenie czynu*”, “*rozpoznanie znaczenia*”) come from the Criminal Code. The terms “*zaburzenia osobowości*”, “*uzależnienie od alkoholu*” and “*zaburzenia świadomości*” are part of the medical language. Four collocations refer to documents analysed for psychiatric assessment (“*akt[a] sprawy*”, “*protokół przesłuchania*”, “*dokumentacja medyczna*” and “*historia choroby*”). Further three refer to the subject-matter of the assessment (“*stan psychiczny*”, “*zdrawie psychiczne*” and “*stan zdrowia*”). The remaining ones relate to the institutions and bodies which issue opinions. For a more detailed analysis of the characteristic vocabulary, see supplementary material.

### 5.3. Narrating method

The dominant parts of speech in the opinions were verbs<sup>9</sup> and pro-

nouns in the third person singular (64.2% and 55% of occurrences respectively) (Table 3). Experts<sup>10</sup> rarely used verbs in the first person plural, i.e. “*my*” [we] (1.9% of verbs). The author’s direct voice was relatively poorly pronounced in the analysed opinions (it was strongest in the part called “discussion” and in the final “conclusions”). Pronouns in the second person plural appeared 501 times in the corpus (4.2% of the pronouns), while the pronouns “*my*” [we], “*nas*” [us] and “*nam*” [to us] were used only 13 times directly by authors of opinions. Additionally, they appeared ten times in the quoted opinions prepared by other experts. The remaining occurrences were in related to quotations from witnesses’ testimonies and excerpts from police reports.

In addition to the use of verbs in the first person plural, there are three other strategies for describing the activities performed by the experts and their observations concerning the mental condition of the subject being assessed: (i) the authors of the opinion used the third person plural and wrote about themselves as “experts” (“The experts have studied the case file in detail”, “With regard to *tempore criminis*, the experts have concluded...”), (ii) the authors of the opinion used impersonal forms and passive voice (“On 30 September 2015, a psychiatric examination of the subject was conducted”, “The examination was conducted in the clinic...”), (iii) the authors of the opinion used sentences beginning with the phrase “in our opinion” or “in our view” (alternatively: “in the experts’ opinion”). It should be noted that the possessive pronoun “*nasz*” [our], which is considered to be an indicator of the subjectivisation of the text in Polish (Zaśko-Zielińska, 2013), appeared 182 times in the corpus, but was used only 75 times by the authors of the analysed opinions.

The use of the first person singular (11.5% of verbs and 31.7% of pronouns) can be considered to be a characteristic feature of forensic psychiatric opinions. Experts rarely paraphrased texts from case files and medical records. However, they eagerly gave the voice to the subjects and witnesses, quoting excerpts from their testimonies. Another feature of the genre is the very frequent use of the past tense (58.2%). Although the experts’ task is also to assess the current mental condition of the accused, the analysed opinions put more emphasis on the reconstruction of the mental condition a few months or even a few years earlier. Moreover, limited use of the future tense (1.9%) and conditional mode (0.7%) are also worth noting, as they indicate that the assessment of the risk of reoffending, i.e. another task posed by the procedural bodies, has not been dealt with by forensic psychiatrists very extensively.

### 5.4. Style of forensic psychiatric opinions

The aim of the stylometric analysis was to check whether or not the style of expert psychiatrists differed from the style of expert psychologists and to what extent these styles could be considered homogeneous. As a result, psychiatric opinions and psychological opinions issued in the same cases were divided into two groups, showing common characteristics stemming from the fact that they belonged to a particular style (Fig. 1).<sup>11</sup> The first group included all psychological opinions (PL) and two psychiatric opinions (PS), the second group included the remaining psychiatric opinions. Thus, it turned out that psychiatric opinions differed from psychological opinions in terms of style, and the fact that they concerned the same cases and were based on the same material did

**Table 3**  
Characteristics of utterances: verbs and pronouns.

Forms	Freq.
Tokens	562,714
Verbs	64,584 (11.5%)
First person singular	7813 (12.1%)
First person plural	1205 (1.9%)
Third person singular	41,473 (64.2%)
Third person plural	5593 (8.7%)
Infinitive	5557 (8.6%)
Impersonal verbs	2728 (4.2%)
Conditional mode	469 (0.7%)
Present tense	19,610 (30.4%)
Past tense	37,588 (58.2%)
Future tense	1231 (1.9%)
Pronouns	11,941 (2.1%)
First person singular	3782 (31.7%)
First person plural	501 (4.2%)
Third person singular	6573 (55.0%)
Third person plural	991 (8.3%)

<sup>9</sup> The verb is a particularly important part of speech in terms of building narratives. In the Polish language, information about the grammatical person and gender is usually contained in the verb form used.

<sup>10</sup> In the Polish judicial system, opinions are issued by two psychiatrists.

<sup>11</sup> The authorship analysis was applied, including the following characteristics: word forms (words in text), lemmas, punctuation, grammatical classes, parts of speech (sets of grammatical classes), bigrams and trigrams of grammar classes as well as semantic types of proper names. The results of the analysis were presented in the form of a heat map. This method is used to visualise a similarity of texts based on colours, in accordance with the colour scheme used to create the so-called thermal maps (from red, i.e. almost identical, to light green, i.e. very different).

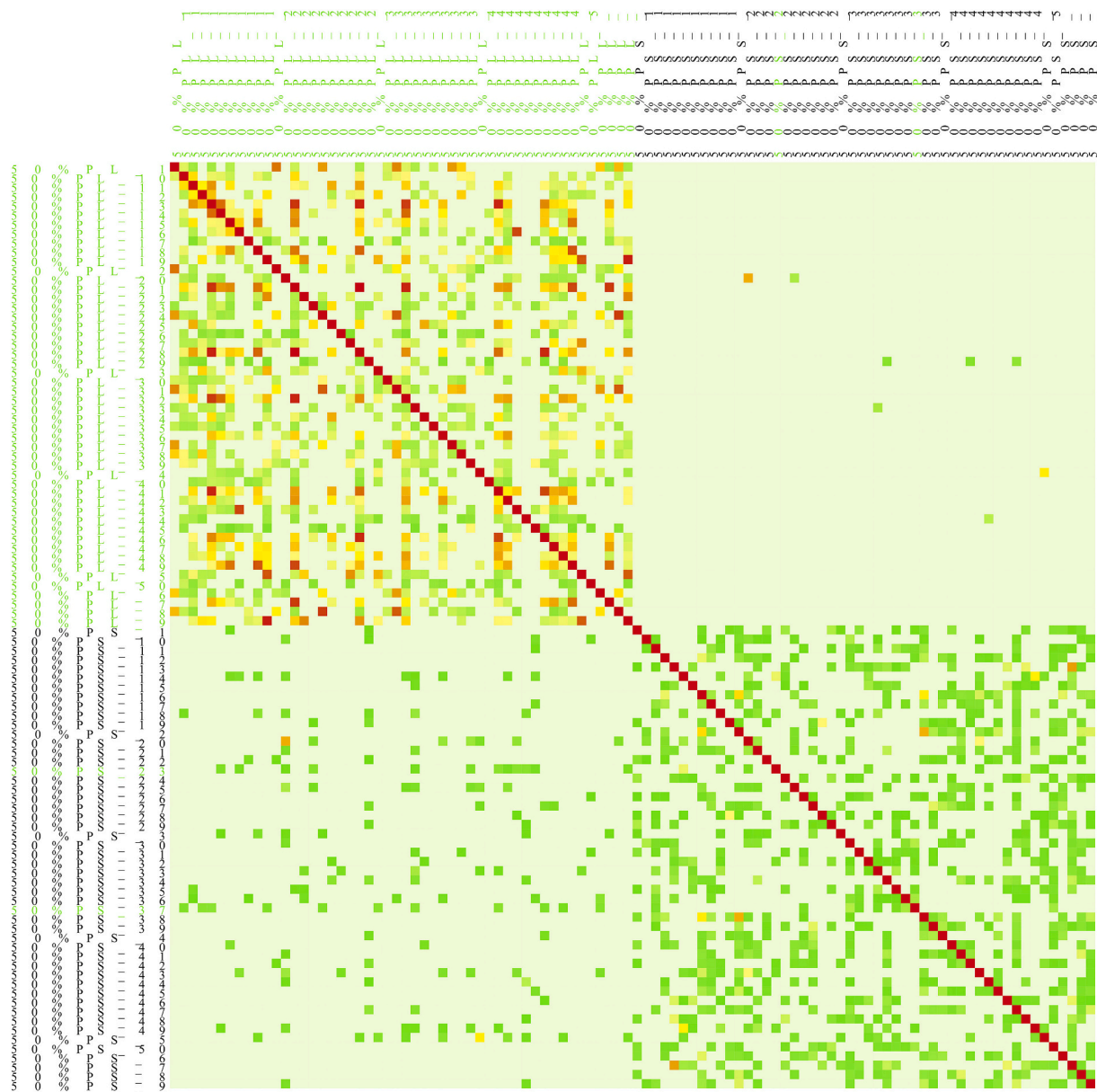


Fig. 1. Comparison of the style of psychological and psychiatric opinions issued in the same cases.

not have much influence on the grouping results (two psychiatric opinions showed a greater stylistic similarity to psychological opinions than to other psychiatric opinions, but the similarity was not considerable).

It also turned out that individual psychological opinions (upper left quarter in Fig. 1) were much more similar stylistically than psychiatric opinions (lower right quarter). At this point, it should be noted that the analysed opinions were prepared by experts representing the same expert centre, with the psychiatric opinions having been issued by eight experts working in teams of two, and the psychological opinions having been issued by 12 different experts. Thus, the similarity between the psychological opinions was not due to the fact that they were written by the same people. On this basis, it can be concluded that psychologists have a model of psychological opinion: not only at the level of structure, but also at the level of word forms, collocations and grammatical features, and try to reproduce that model. On the other hand, psychiatrists—even within a single reference centre—do not have such a model and adopt individualistic strategies. Interestingly, also opinions prepared by the same psychiatrists in different cases differed significantly in

terms of style.

In order to verify this conclusion, an additional stylometric analysis was carried out, taking into account all psychiatric opinions ( $n = 65$ ). They were divided into sections of 20,000 bytes, with the limits of words being respected (ten opinions were not divided because their size was smaller), and then assigned to 12 groups (the number of experts' teams).<sup>12</sup>

The analysis showed that individual texts were stylistically heterogeneous (Fig. 2). As a result of grouping, only two divided opinions ended up entirely in the same group. The remaining ones were classified into 2–5 different groups, although some segments of one opinion were very similar. Notably, the fragments included in different groups were written by different experts and concerned different cases. It seems that the grouping was based not as much on the experts' style as on the style of individual segments of opinions.

<sup>12</sup> The same characteristics were taken into account as in the comparative analysis of psychiatric and psychological opinions.



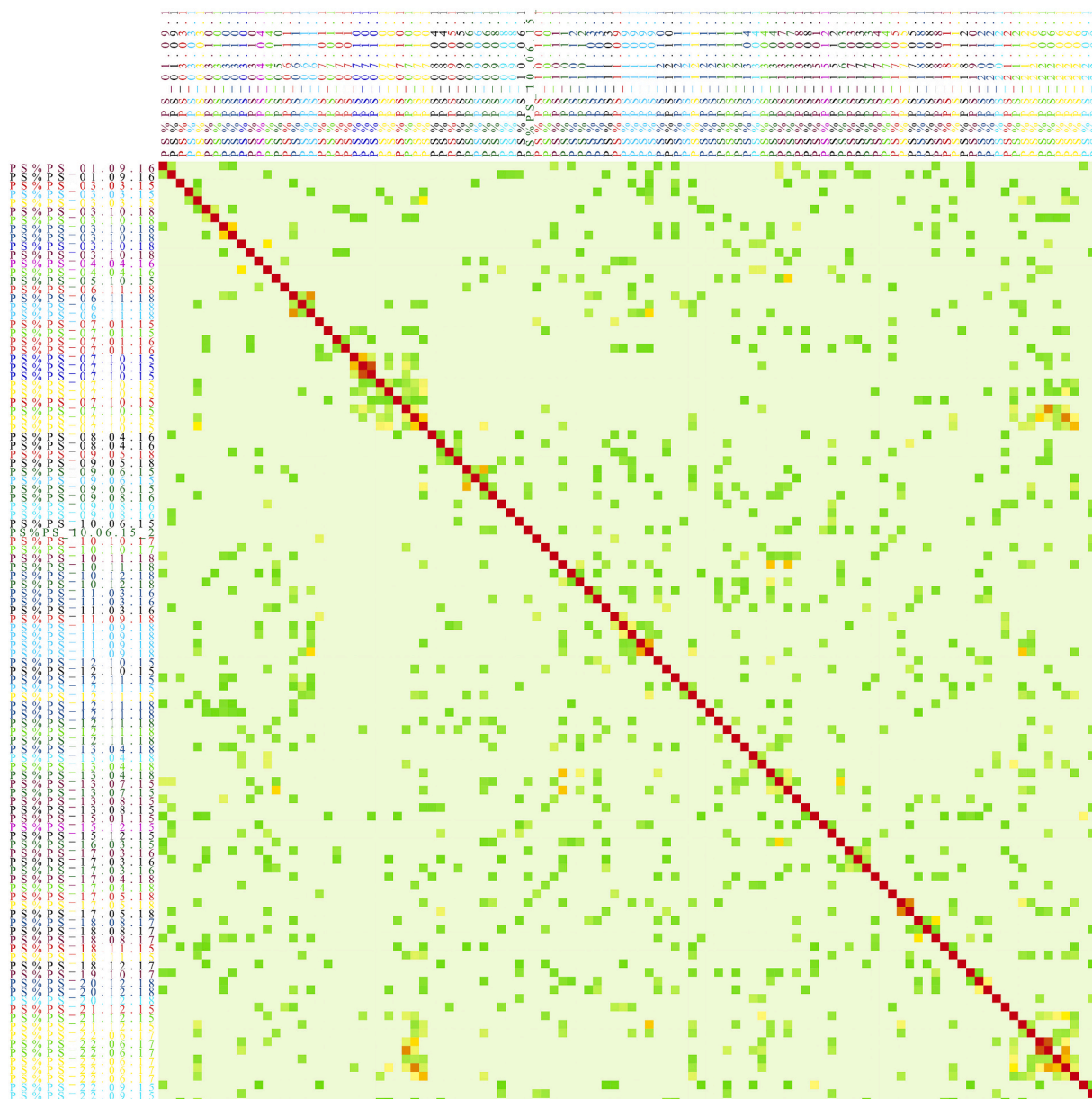


Fig. 2. Authorship analysis of forensic psychiatric opinions divided into segments.

## 6. Discussion

The essential task of forensic psychiatrists is to translate medical conclusions into explanations and interpretations that are understandable to the legal community and usable in legal proceedings. Corpus analysis, focused on the reconstruction of linguistic patterns in opinions, showed that experts assume legal jargon, usually in the form of collocations taken directly from the Criminal Code. They adapt to the expectations and competences of recipients in the area of law in order to communicate with procedural bodies more directly. They try to fill legal concepts with the current medical and psychological knowledge. Sometimes, the process of translation requires experts to abandon linguistic and methodological correctness accepted in medicine. This is evidenced by the high frequency of the term “mental illness”, which is present in the Criminal Code but gradually withdrawn from psychiatry, and of the lexeme “psychotic”. Frequent references to psychotic symptoms in psychiatric assessment may stem from the belief that procedural bodies, which liken insanity with psychosis, expect a diagnosis that goes exactly in this direction.

In the context of Polish forensic psychiatry, forensic psychiatric opinions have not achieved the status of a homogeneous genre, i.e. experts have not developed a coherent convention to be used when writing opinions. Referring to the findings from the analysis of expert opinions dating back to 1995–1996 (Bogdanowicz & Hajdukiewicz, 1997; Hajdukiewicz, 2006) and 2004–2005 (Pyrca, 2010), it should be noted that standardisation and formalisation are gradually progressing, but they have covered only the structural level to date. The texts included in the corpus did not contain any significant formal shortcomings or flaws in the presentation of sources, and their composition corresponded to the model recommended by the National Consultant (Jarema, 2007). The results of stylometric analysis, covering, among others, lexical and grammatical features, unambiguously show that text strategies used by Polish psychiatrists, even those representing the same reference centre, are very diverse. The similarities between different texts—also those written by the same two-member teams of experts—turned out to be so insignificant that one might wonder whether experts develop their own writing strategies at all. In contrast to psychiatry, Polish forensic psychology has developed not only a model of expert opinion, but also a



specific style used when writing opinions in criminal cases. Although written by 12 different experts, the analysed psychological opinions showed many stylistic similarities and stood out from psychiatric opinions in this respect.

The stylistic heterogeneity of opinions largely stems from the stylistic heterogeneity of the texts they refer to. Supporters of the narrative approach (e.g., Griffith et al., 2010) described the expert's task as including voices (e.g. those of the victim, the accused, witnesses, other experts) collected during the investigation in the narrative. In the case of the analysed corpus, this polyphony is reflected in the tendency to quote various statements literally, as evidenced by the high frequency of verbs and pronouns in the first person singular. However, what should be seen as the dominant tendency is not polyphony but intertextuality, understood in a mechanical way, i.e. indicating a specific text and copying its fragments or, much less frequently, explaining or paraphrasing those texts. The experts did not pay much attention to the selection of information. A significant proportion of the references can be considered as redundant: they consisted in repeating the content that was already known to the participants in the proceedings and were not used to build arguments in subsequent sections parts of the opinion. The analysed texts were usually very long. While some expert opinions consisted of several pages, the majority ranged from about a dozen to several dozen pages.<sup>13</sup> The imbalance between reporting the data from the case files and the description of the psychiatric examination, as observed by Pyrcak (2010), was very clear in those opinions: the description of the collected documents sometimes represented up to 1/3 of the entire opinion. The experts' focus on the reconstruction of data from court records was also visible in the lexical layer of the texts. High positions among the most frequent collocations were occupied by phrases specifying individual documents.

Experts usually described the data contained in the case file sheet by sheet, without attempting to organise or build their own narrative around the invoked texts or to combine them into a coherent whole. Instead, they focused on implementing the model structure of the opinion, filling in particular segments with content and meeting formal requirements. This contradicts the claims made by the supporters of the narrative approach, whereby the role of an expert as an author is to create a narrative about the perpetrator of a prohibited act: "making the events and the actors come to life and evoking emotions in the reports' audiences or readers" (Griffith et al., 2010, p. 33). It seems that Polish experts, unlike American experts (Candilis, 2007), do not yet realise that forensic psychiatric opinions are not objective and impersonal products of their work. The analysed texts looked more like examination reports. Narrative elements were only present in the segment referred to as "discussion". The use of quotations, which, according to Resnick (2006), was supposed to enliven the text, did not help to engage the readers and boost the persuasive power of the opinion due to their accumulation and length (Griffith et al., 2010, p. 40). Referring to the analyses carried out by Verde et al. (2006), one can conclude that the voiced of truth, empiricism and science had priority in the analysed expert opinions. Psychiatrists framed the prohibited act in terms of concrete, describable reality of facts and behaviours. This may be connected with the desire to create and maintain a professional image and to give weight to one's findings,<sup>14</sup> but also with an attempt to adapt to the expectations of procedural bodies and to pursue objectivity and finding truth, as is characteristic of the law (see Candilis, 2009).

Corpus analysis has revealed the ethical challenges faced by experts.

From the perspective of the accused, the forensic psychiatrist plays the role of "double agent" (Stone, 1984; see also O'Grady, 2002, 2004). On the one hand, the psychiatrist remains a doctor who cares about the patient's welfare but, on the other hand, he/she acts as a representative of the justice system, who must care primarily about the public good, pursued, among other things, through punishment. The authors of the analysed opinions focused more on pursuing the latter role, which was postulated, inter alia, by Pollack (1974) and Appelbaum (1990, 1997), placing themselves on the side of the law and assuming that "principles supporting truth and justice outweigh those supporting care" (Candilis, 2009, p. 425). This is particularly evident in the way the experts described the person being assessed. The analysed opinions contained a dominant number of forms which Resnick & Soliman (2011) described as dehumanising. The experts avoided using the term "patient". They rarely used the surname of the person being assessed. Instead, they used legal terminology and the scientific term "*badany*" [the examined person] to highlight their distance from the accused.

The tendency to limit the presence of the author's voice was evidenced in the analysis of verbs and pronouns and in the analysis of keywords (low frequency of the verb "*opiniować*" [to issue an opinion]). The experts avoided writing in the first person plural. In Polish, removal of personal forms and frequent replacement of such forms by impersonal constructions, as well as the dominance of verbs and pronouns in the third person singular are used to signal impartiality of observations. In the case of psychiatric opinions, these characteristics can be associated with the desire to clearly separate the description of examination results from the judgments made, and to focus on observing the behaviour of the subjects. This brings the expert opinions closer to scientific texts and to the style labelled by Pennebaker (2011) as formal.

Language and style changed throughout the different segments of opinions. In the description of the examination (especially in the conclusions from the assessment) and in the discussion of the material, the experts primarily used a set of concepts developed within clinical psychiatry, pursuing the familiar patterns of writing about specific cases. On the other hand, legal terminology prevailed in the initial and final parts (analysis of case file and answers to questions from the procedural body). This issue calls for further research. In further analysis based on corpus tools, it would be a good idea to consider dividing the documents into segments according to the recommendations relating to the structure of opinions and treating them as independent texts, e.g. comparing the discussion segments with one another. One should also check whether the fact that the claims made by the supporters of the narrative approach, developed in the USA, do not apply to Polish psychiatric case-law, might stem from the differences between the Polish and American justice systems.

The paper has proved feasibility of corpus linguistics as a tool for the analysis of expert reports. Corpus analysis of lexical, grammatical and narrative features of opinions has helped to capture the reconciling mechanisms between the discourses of law and medicine, and to reconstruct discursive strategies adopted by forensic psychiatrists in response to the challenges and contradictions related to their role in the legal system. As the proposed analytical strategy is innovative and does not have a clear reference point, it is difficult to fully assess the validity and reliability of the method in respect of this specific type of documents. While the validity of corpus-based methodology with regard to texts developed for the purposes of the judiciary has been confirmed by many studies of specific legal genres (e.g., Bhatia et al., 2004; Pontandolfo, 2015), achieving reliability in quantitative analyses of word use is considered to be much more challenging. Results of studies conducted in restricted discourse domains indicate that corpus design and composition have a very strong impact on lexical variation (Miller & Biber, 2015). Here, corpus representativeness is the major consideration. Therefore, for the purpose of further research, the opinion corpus should be extended to include opinions issued by various forensic psychiatry centres. Another important step on the path towards identifying the singularities of the language of forensic psychiatry and forensic

<sup>13</sup> Worth noting is that according to Pollock's recommendations, a founding member of the American Academy of Psychiatry and the Law, a psychiatric opinion should not exceed three pages (Simon, 2007).

<sup>14</sup> One way for experts to emphasise their position and thus also their credibility is to list academic degrees and titles. Their conclusions are also made more significant through references to scientific figures of authority, e.g. when bibliographical references are attached to expert opinions.

psychiatric opinions as a genre would be to compare forensic psychiatric opinions with strictly medical texts (e.g., medical discharge notes) and legal texts (e.g., rationales for court judgments).

To recapitulate, it should be stated that in comparison with other specialist genres emerging in the course of court proceedings, psychiatric opinions are characterised by a relatively high degree of openness and the possibility to shape utterances quite freely. On the one hand, when writing their opinions, experts adopt some features of legal texts, e.g. they use lexis from the Criminal Code, invoke court documents, use impersonal forms, which makes the communication with procedural bodies more efficient and improves the effectiveness of the translation process. On the other hand, they do not build their texts as a narrative and do not strive to develop a style that would be specific to psychiatric opinion-giving. The absence of uniform writing conventions does not facilitate the use of opinions in procedural activities.

One might wonder whether the slow-paced standardisation of expert opinions may be a reaction to the excessive responsibility attributed to forensic psychiatrists in the role of “scientific judges”. In Poland, opinions play a decisive role in court decisions, and procedural bodies expect experts to provide definitive conclusions, which are difficult to develop on the basis of psychiatric expertise (see: Bogdanowicz & Hajdukiewicz, 1997; Paprzycki, 2011). The stylistic heterogeneity and the non-narrative character of opinions undermine their persuasiveness and help to avoid unambiguity. Thus, experts leave some room for doubt, which is why the interpretation of the conclusions from the psychiatric examination is a task that must be, at least partly, tackled by judges.

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## Appendix A. Supplementary data

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