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Analysis of two legal chunks within the doctor thesis work of Ermo Täks

Study

Automated and Systematised Legal Process

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METHOD AND SUBJECT OF STUDY

Within the course “*Automated and Systematised Legal Processes*”, the student was assigned to make a study on two freely-chosen legal chunks, i.e. clusters containing Estonian legal acts with similarities. Information was provided as an extract from Excel file, containing wide-spread linguistic analysis of approximately 300 Estonian legal acts.

The student chose two legal chunks approved by the professor. The student chose two variations: one of the chunks was symmetrical and another assymmetrical. Therefore, the student proposed to make an analysis of those variations.

Legal chunks are provided below.

	Trade Marks Act	Geographical Indication Protection Act	Microswitch layout Protection Act	Industrial Design Protection Act
Trade Marks Act	1	1	1	1
Geographical Indication Protection Act	1	1	1	1
Microswitch layout Protection Act	1	1	1	1
Industrial Design Protection Act	1	1	1	1

Table 1. Symmetrical legal chunk consisting of trademarks act (TM ACT), geographical indication protection act (GIP ACT), microswitching layout protection act (MSLP ACT) and industrial design protection act (IDP ACT).

	Restrictions on Acquisition of Immovables Act	working conditions for posted workers into Law
Forest Act	1	1
Alcohol, Tobacco, Fuel and Electricity Excise Duty Act	1	1
Aliens Act	1	1
Hunting Act	1	1

Table 2. Assymetrical legal chunk consisting of forest act (F ACT), alcohol, tobacco, fuel and electricity excise duty act (ATFEED ACT), aliens act (A ACT), hunting act (H ACT), restriction on acquisition of immovables act (RAI ACT) and working conditions for posted workers act (WCPW ACT).

The student analysed acts based on three methods:

- 1) Acts were analysed based on the paragraphs they consists of. Similar paragraphs providing, for example specific rights, specificity of the procedure etc, within the acts in the legal chunk were compared.
- 2) The main subject, object, rights, principles, authorities and references to other acts of specific act in the chunk was studied.
- 3) As well amendments of acts were analysed and explanatory note research was concluded, in order to find the similarities of the reasoning of amendments and creation of the act.

RESULTS OF THE STUDY

1. Similarities in the paragraphs

The student concluded a research by analysing similarities in paragraphs based on following order:

- 1) Structure of the act and similarities between acts
- 2) Based on similar chapters analysis of the paragraphs.

paragraphs within the chapters of the act containing in the same legal chunks. Symmetrical (left) and asymmetrical (right) legal chunk. Hereby the student marked those paragraphs that contained the same heading, but on substance were completely different in red colour, those paragraphs that contained same substance, but remained fairly different wording in yellow colour and those paragraphs that were identical, but might have derivations due to the substance (eg geographical indication and trademark - both are marks, but still different).

Regarding the symmetrical chunk, as the field regulated by those acts is fairly one - intellectual property, the similarity of the acts are quite high starting from the structure, same principles, principles of procedures. Same principles means that throughout the chunk, general principles of intellectual property (authorship, requirements imposed to the item to be protected, public order and good, rights and obligations of the authors, users, owners, principle of priority). Within the principles of procedures for example protection application through representative, necessity of application, state fee. This cannot be very important weigh as a lot of acts include the same requirements. Important point is that the procedure is conducted by the same authority within all acts and it is the Patent Office (Patendiamet), therefore the procedure is quite similar as it is conducted by one authority. Another important fact is that all of them are connected to several registers. This bears actually interesting fact, in 2002-2003 it was considered to establish one uniform single register for all intellectual property items, but in 2003 it was reconsidered that it is not applicable. Therefore the amendment has to be made and at first the registry part was excluded from the trademarks act.¹

Regarding the asymmetrical chunk, at first, the student got confused whether to analyse the relativity of restrictions on acquisition of immovables act and working conditions for posted workers act separately related to other chunks' acts or together. Finally, the decision was concluded based on the finding. The fact that both of those acts are comprised of 10-15 paragraphs makes them relatively short acts. Therefore as they are so short, they are inevitably linguistically connected to other acts which are more substantial and comply of more than 20 paragraphs. The student proposes to exclude short acts from the research, as the probability of those act to be similar with other acts is much more higher, than in case of

¹ Kaubamärgiseaduse par 74 ja tööstusomandi õiguskorralduse aluste seaduse par 66 muutmise seadus

lengthier acts. All in all asymmetrical chunk did not have any substantial similarities within the paragraphs. Excluded from above can be implementation paragraphs and paragraphs related to state supervision and coercive fees. Last is mainly related to the fact that all legal acts in asymmetrical chunk provide obligations to right holders and subjects of the act, therefore the persons are liable for being in concordance with the law and therefore the state has the right to impose penalties and fees for infringement of the paragraphs. Infringements are mainly misdemeanours not offences. Maybe the most interesting related to hunting act, forest act and aliens act is that the authority which conducts procedure, relatively, is Environmental Inspectorate, Environmental Insepectorate and Police, and Police.

The student concluded in comparing asymmetrical and symmetrical chunk was that actually non-symmetrical chunks should not be considered to be legal chunks with purpose. In the student's opinion this specific asymmetrical chunk appeared to exist only because of the arrangement of data by the models, it could be considered as just the mistake of arrangement of data.

2. Main subject(s), object(s), rights, principles, authorities and references to other acts

All acts in symmetrical legal chunk regulate the protection of rights. Equality of subjects of acts is that all rights and obligations are imposed equally on citizens and non-citizens, no matter whether the person has residence, seat or an operating commercial or industrial enterprise in Estonia.

TM ACT	GI ACT	MSLP ACT	A ACT
Trademark Regulation	Code of Civil Procedure	Copyright Act	Copyright Act
Patent Attorneys Act		Patent Attorneys Act	Patent Attorneys Act
Principles of Legal Regulation of Industrial Property Act		Principles of Legal Regulation of Industrial Property Act	Principles of Legal Regulation of Industrial Property Act
Geographical Indication Protection Act		State Fees Act	State Fees Act

Table 7. Referred Estonian acts. Symmetrical chunk shows all acts that are referred in the acts.

Asymmetrical chunk mainly regulates the basis of main activities prescribed by the acts. As the acts are quite specific in terms activities, they cannot be compared in depth. But what is interesting related to the two first and so-called branch acts (RAI and WCPW) is that restriction on acquisition is mainly based on administrative procedure act and land related issues, as is hunting act and forest act; and posted workers is mainly based administrative procedure as well, but also on working conditions, employment contracts, occupational health and safety

RAI ACT	WCPW ACT	F ACT	AFTEED ACT	A ACT	H ACT
Administrative Procedures Act	Administrative Procedures Act	Administrative Procedures Act		Administrative Procedures Act	Administrative Procedures Act
	Accounting Act	Accounting Act	Accounting Act		
		Substitutive Enforcement and Penalty Payment Act	Substitutive Enforcement and Penalty Payment Act		Substitutive Enforcement and Penalty Payment Act
	Code of Enforcement Procedure			Code of Enforcement Procedure	Code of Enforcement Procedure
	Employment Contracts Act			Employment Contracts Act	
	Occupational Health and Safety Act			Occupational Health and Safety Act	

Table 8. References to other Estonian acts, not all included, only the most occurring.

3. Analysis based on explanatory notes

During the research on explanatory notes, no substantial findings were found. As amendments and changes in legal acts are mainly still related to political issues, for example changes in hunting act due to African swine fever of wild boars, necessity to implement

paragraphs due to accession to EU or some other international act, necessity to amend paragraphs due to the fact that some aims have not been reached in due time.

In case of both chunks, there were no amendments of acts together with other acts in the chunk, excluding one situation related to symmetrical chunk. This was the same change of trademark act mentioned above.

CONCLUSION

Following conclusions can be made on the result:

- 1) Symmetrical chunk has extensively more similarities than asymmetrical chunk. It can be thought about marking symmetrical chunks differently on the model, as in the students opinion, asymmetrical chunk occurred by arrangement of the data, therefore it is chunk only by mistake.
- 2) Symmetrical chunk is related to WIPO treaties, conventions, documents and papers (eg Nice agreement, Locarno agreement, Paris convention, Madrid agreement), as it is related to the same field of law - intellectual properties. Therefore the acts are very similar as they might be transfer of international acts to national law.
- 3) Analysis can show that one single authority can merge the acts due to its procedure.
- 4) Short acts (less than 20 paragraphs) should be excluded from the model.
- 5) All amendments of acts are usually still related to political reasoning and it occurs from short-term situations.

In students' view the model might be used by legislative powers, as it might show the opportunity to standardise the law-making. For example, simple user interface which have a standard clause and authority inputs variations, e.g. if there is license to be applied, the same paragraph should be standardised for all licenses, and separate user interface for input of

departments where the application should be submitted, eg Patent Office, Police, Environment Inspectorate etc. This should only be done if there is necessity to remain the same wording.

The student proposes for symmetrical chunks to be analysed through the amendments and time in order to find the course where the law could evolve and show future trends.