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Identification of Procedural Acts Performed at the Hearing: Considerations in the Context of the Actual Utterances of Non-professional Participants of Court Proceedings

1. Introduction

Empirical studies² on the process of communication taking place during hearings before ordinary courts have demonstrated in particular that utterances of proceedings' participants³ who were present at the hearing were identified as procedural acts of a certain type (as motions to adduce evidence, admissions of claims, withdrawals of motions to adduce evidence, etc.) despite their varied wording. Sometimes the wording varied considerably from canonical, explicit forms that emerged in legal practice, employing appropriate legal terms⁴. An analysis of the empirical material gathered for the purposes of the aforementioned research revealed a total of 41 clear examples of procedural acts being performed in a manner which, for the purposes of said analysis, was referred to as "non-legal", but which proved effective, at least in communicative terms⁵. Moreover,

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² The research was conducted by the author. The research material covered transcripts and recordings of participant observation of 250 court trials (including 160 hours of sound recordings) conducted in three courts (two district courts and one regional court acting as the court of fact) in the same city. The research material included different kinds of court proceedings (civil matters – litigation and non-litigious proceedings; commercial cases; employment and social security cases; proceedings before family courts; criminal and fiscal penal proceedings, as well as proceedings in matters of petty offences). For full description of the methodology of this research see: K. Gmerek, *Rozprawa sądowa jako zdarzenie komunikacji społecznej [Trial as a Social Communication Occurrence]* Szczecin 2019, p. 33ff.

³ In this article, the term "participant in proceedings" is used in a broad sense, covering parties to (any kind of) judicial proceedings, participants in non-litigious civil proceedings, procedural bodies, witnesses, and any other actors appearing "apart from" or "on the side" of the parties (e.g. outside interveners).

⁴ Examples: "Your Honour, **I request to kindly adjourn** the hearing due to..."; "Your Honour, **I withdraw my motion** for XY to be examined as a witness..."; "Your Honour, **I admit the full claim**..."; "Your Honour, **I withdraw the statement of claim and relinquish my claim**..."; "Your Honour, **I request that the document** which constitutes exhibit... **be presented**" [all emphases added – K.G.].

⁵ In four cases, utterances of participants of proceedings could only be considered attempts at performing specific types of procedural acts. In three cases, unauthorized persons attempted to perform procedural acts. In one case, a participant in non-litigious civil proceedings attempts to make a request to be exempted from the duty to appear in person at the hearing, that is, perform an act that in principle does not exist in civil procedure, especially that the participant was only notified of the date of the hearing.

these acts were performed by non-professional participants in proceedings (i.e. persons without legal education, having no institutional function in the court proceedings)⁶.

Results of the analysis conducted in the scope defined above justify attempting to answer the question what mechanisms enable identifying the procedural acts on the basis of utterances of participants in proceedings that are not explicit utterances used to perform such acts⁷. The aim of this article is to characterize specific mechanisms that serve to identify procedural acts, i.e. standard interpretation, intentional explaining, as well as determining and asking for confirmation of the sense of the act being performed. This is also the order in which they will be discussed in the article. In this way, the presented picture of the process of identification of procedural acts will reflect the actual relationships between the mechanisms described. Meanwhile, utterances of participants in proceedings whereby participants performed certain procedural acts during court hearings (and which were gathered in the empirical material) will illustrate the topics discussed here.

2. Interpretation of procedural statements in scholarship and case law

Identifying the acts of participants in judicial proceedings as procedural acts of a certain type is part of the issue which in procedural law studies is sometimes referred to as “interpretation⁸ of procedural statements”. There is no need to summarize the discussions in this area, taking place both among legal scholars and in case law, in this article⁹. But it is worthwhile to point out some of its elements.

Firstly, this discussion is taking place in the context of the applicable procedural norms, formulated respectively in Article 130(1) second sentence of the Code of Civil

⁶ For more detailed results of the analysis of research material in this regard, see: K. Gmerek, *Rozprawa...*, p. 299ff.

⁷ This does not concern the so-called implied procedural acts, to which attention is drawn in civil and criminal case law and scholarship. See e.g. judgment of the Supreme Court (“SC”) of 19 Oct. 2005 (V CK 708/04), Legalis No. 179880; decision of SC of 24 Sep. 2008 (II CSK 134/08), Legalis No. 133174; T. Grzegorzczak, J. Tylman, *Polskie postępowanie karne [Polish Civil Procedure]*, Warszawa 2014, p. 387; S. Waltoś, P. Hofmański, *Proces karny. Zarys systemu [Criminal Procedure. An Outline]*, Warszawa 2018, p. 45.

⁸ In this paper, the term “interpretation” with respect to utterances is used in the pragmatic sense, as the process of understanding them. In this approach, each utterance is interpreted, while the moment when interpretation begins is the moment of the listener becoming familiar with its wording. The issue of the “beginning of interpretation” of procedural statements is not understood uniformly in studies on procedural law, though mainly in accordance with the following statement: “[b]oth case law and literature accept interpreting procedural statements whose content is unclear or dubious” (A. Łazarska, *Rzetelny proces cywilny [Eng. Fair Civil Process]*, Warszawa 2012, p. 339). A different view of the issue is presented by Sławomir Cieślak, who believes that each procedural statement is subject to interpretation (S. Cieślak, *Formalizm postępowania cywilnego [Eng. Formalism of Civil Procedure]*, Warszawa 2008, p. 155). In this context, he refers to the achievements of the theory of law in the area of statutory interpretation: “[t]his standpoint refers to the rejection, in the theory of statutory interpretation, of a differentiation between direct understanding of provisions of law and their understanding through interpretation, that is, to abandoning the *clara non sunt interpretanda* principle” (S. Cieślak, *Formalizm...*, p. 155). In this context, the author uses a critical analysis of the differentiation between direct understanding and interpretation, conducted by Maciej Zieliński (M. Zieliński, *Wykładnia prawa. Zasady, reguły, wskazówki [Eng. Legal Interpretation. Principles – Rules – Hints]*, Warszawa 2017, p. 51ff).

⁹ Especially that this discussion is reported in works by other scholars, though admittedly such works are rare. See e.g. A. Muncizewski, *Wykładnia oświadczeń woli stron składanych w postępowaniu cywilnym i postępowaniu karnym [Eng. Interpretation of Declarations of Intent Made by Parties in Civil Proceedings]*, in: S. Czepita (ed.), *Konwencjonalne i formalne aspekty prawa [Eng. Conventional and Formal Aspects of Law]*, Szczecin 2006, p. 65ff; K. Markiewicz, *Oznaczenie środka zaskarżenia a jego wybór (uwagi na tle art. 130 § 1 zd. 2 k.p.c.) [Eng. Specification of the Means of Appeal in the Context of Choice of Such Means (Remarks against the Background of Article 130(1) second sentence of the Code of Civil Procedure]*, “Polski Proces Cywilny” 2015/3, p. 337 ff. See also: K. Woźniewski, *Prawidłowość czynności procesowych w polskim procesie karnym [Eng. Correctness of Procedural Acts in the Polish Criminal Procedure]*, Gdańsk 2010, p. 235ff, and the literature and case law cited.

Procedure¹⁰ and in Article 118 (1) and (2) of the Code of Criminal Procedure¹¹. The regulation concerning civil procedure is less elaborate than that concerning criminal procedure and, additionally, applies to pleadings (documents), rather than all procedural acts, which may also be performed in speech (orally)¹². In studies on civil procedural law, it is therefore debatable whether rules of interpretation of declarations of intent laid down in Article 65 of the Civil Code¹³ can be applied to interpreting procedural statements made during civil proceedings¹⁴.

Secondly, this discussion is characterized by diversity, both in terms of the conclusions being drawn and the level of acceptance for the conclusions already drawn¹⁵, e.g. in case law¹⁶, and the terminology used. Due to the topics chosen to be discussed in this article, it is worthwhile to present the last area of diversity mentioned above in more detail.

Both in scholarship and in case law various terms which, generally speaking, refer to phenomena connected with the communication process. These include, for instance: “purpose of the statement”, “literal understanding of charges”, “literal wording”, “form of the act”, “formal approach to a given act”, “substantive content”, “motivation”, “obvious inaccuracy”, “reasons by which a person is motivated”, “actual intentions”, “actual content”, “actual content being the essence of the statement”, “actual meaning of the procedural act”, “wording of the statement”, “contents of the document”, “the author’s intent”, “really existing intent, actually manifested to the outside world”, “internal intent”, “the party’s intent”. These terms are linked with various domains of knowledge¹⁷, though it is rather infrequent that attempts are made to explain these

¹⁰ Act of 17 November 1964 – Code of Civil Procedure (consolidated text: Dz. U. 2019 item 1460 as amended).

¹¹ Act of 6 June 1997 – Code of Criminal Procedure (consolidated text: Dz. U. 2018 item 1987 as amended).

¹² The issue of interpretation of procedural acts performed orally is extremely rarely taken up in literature or case law. See, e.g. Supreme Court judgment of 4 February 2013 (V KK 419/12), Legalis online legal information system No. 640701.

¹³ Act of 23 April 1964 – Civil Code (consolidated text: Dz. U. 2019 item 1145 as amended).

¹⁴ In particular: J. Mokry, *Wykładnia procesowych oświadczeń w sądowym postępowaniu cywilnym* [Eng. *Interpretation of Procedural Statements in Civil Court Proceedings*], “Studia Cywilistyczne” 1975/XXV–XXVI, p. 190; M. Piekarski, *Czynności materialnoprawne a czynności procesowe w sprawach cywilnych (wybrane zagadnienia)* [Eng. *Substantive Law Acts and Procedural Acts in Civil Cases (Selected Issues)*], “Studia Prawnicze” 1973/37, p. 126; M. Plebanek, *Nadużycie praw procesowych w postępowaniu cywilnym* [Eng. *Abuse of Procedural Rights in Civil Proceedings*], Warszawa 2012, s. 38–41. From a comparative law perspective: K. Markiewicz, A. Torbus, *O wykładni pisemnych oświadczeń stron w postępowaniu cywilnym rozpoznawczym* [Eng. *On Interpreting Parties’ Written Statements in Civil Examination Proceedings*], “Polski Proces Cywilny” 2013/1, p. 27ff. In more recent case law, see e.g. Supreme Court rulings: of 15 January 2015 (IV CZ 105/14), Legalis No. 1180604; of 10 February 2016 (I UZ 32/15), Legalis No. 1415259. See also the reflections of Andrzej Munczewski on this issue and on the possibility of referring to directives of legal interpretation in the process of interpreting procedural statements (A. Munczewski, *Wykładnia...*, p. 65ff). The ability to apply rules of interpretation of declarations of intent is suggested mainly because this area has been theoretically developed much better than interpretation of procedural statements, especially in the already classical works by Zbigniew Radwański. See e.g. Z. Radwański, *Wykładnia oświadczeń woli składanych indywidualnym adresatom* [Eng. *Interpretation of Declarations of Intent Submitted to Individual Addressees*], Warszawa 1992; Z. Radwański, K. Mularski, *Wykładnia oświadczeń woli* [Eng. *Interpretation of Declarations of Intent*], in: Z. Radwański, A. Olejniczak (eds.), *Prawo cywilne – część ogólna. System Prawa Cywilnego*, t. 2 [Eng. *Civil Law – General Part. Civil Law System, Vol. 2*], Warszawa 2019, p. 61ff.

¹⁵ Various views on interpreting procedural statements, especially means of appeal, taking into account the context of amendments in civil procedure, are discussed by Krystian Markiewicz. K. Markiewicz, *Oznaczenie...*, p. 340ff.

¹⁶ See examples of rulings: Supreme Court resolution of 24 May 2017 (III CZP 2/17), Legalis No. 1598976; Supreme Court judgments: of 15 January 2015 (V KK 361/14), Legalis No. 1200485; of 19 April 2011 (II K 285/10), Legalis No. 369599; Supreme Court decisions: of 2 February 2012 (II CZ 155/11), Legalis No. 469555; of 14 November 2013 (IV CZ 81/13), No. 742118; of 20 March 2018 (I PZ 2/18), Legalis No. 1770262; of 15 October 2015 (III KK 228/15), Legalis No. 1341816; of 23 April 2009 (II KZ 17/09), Legalis No. 444098.

¹⁷ Moreover, these terms are by definition problematic, because their content is vague, therefore their scope is poorly-defined. Also, the correctness of some combinations of words is objectionable. On the “literal wording” and “literal meaning”, see A. Choduń, *Literalnie... czy dosłownie?* [Eng. *Literally... or Verbatim?*], “In Gremio” 2016/101, <https://ingremio.org/2016/09/literalnie-czy-doslownie/>, accessed on: 1 November 2018. See also an attempt at determining in what sense the Supreme Court uses (in judgments current at the time this analysis was carried out) such expressions as “content of the statement” and “form of the statement” (A. Munczewski, *Wykładnia...*, pp. 78–79).

terms in the publications analysed for the purposes of this work (including in case law)¹⁸. The meanings of the above terms (and similar ones) is sometimes suggested by the manner in which they are juxtaposed, e.g. “literal wording” and “actual content” or “really existing intent, actually manifested to the outside world” and “internal intent”. Sometimes it is also indicated what objects (in the broad sense) are included in the scope of a given term or not¹⁹. However, in the publications on interpretation of procedural statements analysed for the purposes of this work it is impossible to identify any systematic description of certain universal interpretive mechanisms that enable us to recognize the sense of acts performed by participants in the proceedings or reconstruct their content²⁰. Moreover, authors of these publications only exceptionally refer to any concepts developed in linguistics, philosophy of language, studies on communication or general theory of law to elucidate or explain issues connected with interpreting procedural statements, as well as formulate directival statements in this regard²¹. In procedural law studies, no coherent conception has been developed for interpreting procedural statements, either descriptive or normative in character²².

3. Procedural acts as conventional acts and their identification

For the purposes of this paper, procedural acts are considered a variety of conventional acts²³. It is also assumed that procedural acts are conventionalized in the context of procedural norms (i.e. at the level of procedural norms it is possible to recreate at least one constitutive rule²⁴ for a conventional act classified as a procedural act). Moreover,

¹⁸ Reflections about the meaning of terms of this kind or the functions of their designates (e.g. in civil procedure) are undertaken definitely more often in literature than in case law. On the “form of procedural acts”, see: S. Cieślak, *Formalizm...*, p. 121ff.

¹⁹ See, e.g. K. Markiewicz, *Oznaczenie...*, p. 347.

²⁰ The relations between the sense of a given conventional act (including a procedural one) and its content are complex and require presentation in a separate paper. In this place, it is enough to indicate that certain elements of the content of an utterance made by a participant in proceedings have to be recognized in order for the utterance to be identified as a procedural act of a certain type (on the propositional content, see section 4.1), while others do not. Legal scholarship also draws attention to certain relations in this scope. See, e.g. K. Woźniewski, *Prawidłowość...*, p. 236.

²¹ One of such exceptions is the reflections of S. Cieślak about the interpretation of procedural statements. See S. Cieślak, *Formalizm...*, p. 152ff.

²² This is also pointed out in legal scholarship. See, e.g. K. Markiewicz, A. Torbus, *O wykładni...*, p. 20.

²³ Conventional acts are discussed in this paper, in line with the terminological and conceptual tradition developed in the conception of conventional acts in law, as psychophysical acts to which certain rules ascribe a specific cultural sense (see mainly: L. Nowak, S. Wronkowska, M. Zieliński, Z. Ziemiński, *Czynności konwencjonalne w prawie* [Eng. *Conventional Acts in Law*], “Studia Prawnicze”, 1972/33, pp. 73–99; see also M. Zieliński, Z. Ziemiński, *Uzasadnienie twierdzeń, ocen i norm w prawnictwie* [Eng. *Substantiation of Propositions, Assessments, and Norms in Jurisprudence*], Warszawa 1988, p. 60ff; Z. Ziemiński, M. Zieliński, *Dyrektywy i sposób ich wypowiedzenia* [Eng. *Directives and How To Express Them*], Warszawa 1992, p. 46ff), taking into account the clarification of the substance of the term “conventional act” offered by Stanisław Czepita (S. Czepita, *Reguły konstytutywne a zagadnienia prawnictwa* [Eng. *Constitutive Rules in the Context of Issues of Jurisprudence*], Szczecin 1996, pp. 145–147). The conception of conventional acts, developed in general theory of law, is successfully used as theoretical and methodological foundation in detailed legal studies, including procedural law studies (see e.g. K. Markiewicz, *Zasady orzekania w postępowaniu nieprocesowym* [Eng. *Principles of Adjudication in Non-Litigious Proceedings*], Warszawa 2013, p. 21ff). See also the elaborate definition of an “act in criminal procedure” developed by Barbara Janusz-Pohl, taking into account the conception of conventional acts in law (B. Janusz-Pohl, *Formalizacja i konwencjonalizacja jako instrumenty analizy czynności karnoprosesowych w prawie polskim* [Eng. *Formalization and Conventionalization as Instruments for Analysing Acts in Criminal Procedure*], Poznań 2017, p. 92) and this author’s proposal of applying this conception to analysing issues from the area of criminal procedure.

²⁴ As defined by S. Czepita, among the rules of performance of conventional acts and the rules determining the consequences of performance of a conventional act, constitutive rules are those whose violation means that a given act is not recognized as a conventional act of a certain type, because of the linguistic content (connotation) of its name. See S. Czepita, *Reguły...*, p. 151 and 155; S. Czepita, *Formalizacja a konwencjonalizacja działań w prawie* [Eng. *Formalization and Conventionalization of Actions in Law*], in: S. Czepita (ed.), *Konwencjonalne i formalne aspekty prawa* [Eng. *Conventional and Formal Aspects of Law*], Szczecin 2006, p. 13.

procedural acts are at least double-conventionalized acts. In this paper it is adopted that the lowest level of conventionalization is that of a speech act²⁵, while that of a procedural act is a higher level.

The **process of recognizing the sense** of procedural acts is viewed in this article as a process of identifying (recognizing) the acts of certain actors as procedural acts of a given type. It is also assumed that one of the elements of this process is intentional explanation²⁶ of the creation of the material substrate of that act, that is, answering the question **why (for what purpose)** a certain actor took (or omitted to take) a certain action²⁷. Naturally, making the above assumption presupposes another assumption, namely, that conventional acts are performed in an intentional manner, or that they are co-constituted by intention²⁸. The term “co-constituted” is meant to draw the reader’s attention to the fact that an intentional explanation of the creation of the material substrate of a procedural act is a necessary, though not sufficient, element for identifying a given act as a procedural act (or more broadly, a conventional act).

The procedural acts discussed in this paper are at the same time communicative actions, performed and identified in the process of communication. So it is time to reveal, in a possibly concise manner, what assumptions relating to the phenomenon of communication are made in this article. It is recognized here that the term “communication” means a complex process which is (simultaneously) interpersonal²⁹, socio-cultural, symbolic, intentional, and which performs or at least is capable of performing various functions³⁰. The essence of communication lies in communicative actions which, in this article, are perceived as conventional acts (as described above), which follow the aforementioned assumptions concerning the process of communication³¹.

²⁵ Although it is imaginable that a procedural act (or at least a fragment of an act) is performed by means of a code other than language, e.g. by nodding one’s head.

²⁶ In this text, the term “intentional explanation” is used as defined by Olgierd Bogucki. See: O. Bogucki, *O konstytutywnej współzależności wyjaśniania i identyfikowania czynności konwencjonalnych* [Eng. *On Constitutive Co-Dependency of Explaining and Identifying Conventional Acts*], “Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2019/2. This mechanism, which serves to identify speech acts, is also brought to attention in pragmalinguistics, although it is not referred to by the aforementioned term. See e.g. A. Awdziejew, G. Habrajska, *Komponowanie sensu w procesie odbioru komunikatów* [Eng. *Composing Sense in the Process of Message Reception*], Łódź 2010, p. 219.

²⁷ Using the example of an act of leave-taking, the explanation of the material substrate of the act consists in answering the question **why (for what purpose)** a certain person spoke the word “Goodbye!” or waved their hand (because they wanted to take their leave), rather than the question **why (for what purpose)** this person took their leave (e.g. because they wanted to be seen as a person with good manners, because the norms of linguistic etiquette so require). In the latter case we have an intentional explanation of the performance of a conventional act, not its material substrate. However, in case of acts that are at least double-conventionalized acts, the intentional explanation can refer to an act at the lower level of conventionalization (e.g. a speech act) if one has been identified.

²⁸ In philosophy, including the philosophy of language, various approaches to the phenomenon referred to as “**intention**” are proposed, but due to space constraints, they cannot be presented in this paper. For the purposes of this paper, it is enough to state that here intention is seen as a mental phenomenon which is not directly knowable for the receiver and about which the receiver can make inferences on the basis of the given person’s perceivable behaviour. In particular, having a certain intention is substantiated by the very fact of performing the act, in accordance with the rules of performing it (thus in: O. Bogucki, *O konstytutywnej współzależności...*, p. 59). This view of intention in the context of conventional acts has certain important consequences. We can imagine that an actor who performed a specific act will invoke lack of the relevant intention to perform it, which – however – cannot be finally verified. But whether or not such an “invocation” is successful is decided by certain rules (e.g. ones defined at the level of the legal system), which O. Bogucki called “rules of falsification” (O. Bogucki, *O konstytutywnej współzależności...*, p. 60). Thus a situation is possible where a given act will operate as a conventional act of a given type without actually being one (due to lack of the constitutive element).

²⁹ In this context, the receiver of a communicative action does not have to become actualized. But the sender has at least to assume the existence of one.

³⁰ Each of these elements is discussed in: K. Gmerek, *Rozprawa...*, p. 42ff.

³¹ Broadly on this subject, see K. Gmerek, *Rozprawa...*, p. 48ff.

Viewed in this way, speech acts are communicative actions (thus conventional acts) that are performed using the linguistic code. With respect to speech acts, in the context of achievements of the philosophy of language and pragmalinguistics, references are mainly made to the tradition of John L. Austin and John R. Searle, as the tradition whose assumptions best correspond to those of the concept of conventional acts in law³². Theoretical grounds of the analysis presented in this article also have strong roots in communicative grammar³³.

At the end of section 3, we should also draw attention to two issues. The way they are viewed in this paper is a consequence of the theoretical assumptions described above. Firstly, in this paper it is assumed that in the process of identifying procedural acts (as well as other conventional acts) an important role is played by both internalist and externalist³⁴ elements. Consequently, it is not predetermined, at the level of theoretical assumptions, that in the process of identifying conventional acts a certain element plays a key role³⁵. Thus the approach presented in this paper cannot be classified as exclusively internalist or externalist³⁶. Secondly, the issues discussed in this text do not belong to the field of legal interpretation. In Polish jurisprudence, including the theory of law, legal interpretation concepts were developed independently of the concepts of interpretation of declarations of intent or procedural statements³⁷. Naturally, this is a consequence of the particular features of a legislative text, including its normative status, compared to other texts typical of the legal sphere in general.

³² This concerns mainly the assumption relating to the normative consequences of performing a conventional act (S. Czepita) and speech acts (e.g. J.L. Austin and J.R. Searle). On the concept of speech acts, where special emphasis is on the normative consequences, see: M. Witek, *Akty mowy* [Eng. *Speech Acts*], in: J. Odrowąż-Sypniewska (ed.), *Przewodnik po filozofii języka* [Eng. *A Guide to the Philosophy of Language*], Kraków 2016, p. 20. See also: M. Witek, *Mechanisms of Illocutionary Games*, "Language and Communication", 2015/42, p. 14.

³³ The assumptions made in this paper are connected with the so-called interactive level of communication (standard interpretation, intentional explanation), where a speech act constitutes the smallest unit of communication. This theoretical conception called by the authors "communicative grammar" was developed by Aleksy Awdiejew and Grażyna Habrajska. They discuss it in numerous publications. See e.g. A. Awdiejew, G. Habrajska, *Wprowadzenie do gramatyki komunikacyjnej* [Eng. *Introduction to Communicative Grammar*], vol. 1, Łask 2004; A. Awdiejew, G. Habrajska, *Wprowadzenie do gramatyki komunikacyjnej* [Eng. *Introduction to Communicative Grammar*], vol. 2, Łask 2006; A. Awdiejew, G. Habrajska, *Komponowanie...*; A. Awdiejew, *Gramatyka interakcji werbalnej* [Eng. *The Grammar of Verbal Interaction*], Kraków 2007. Furthermore, the assumptions taken from communicative grammar are consistent with other theoretical assumptions adopted in the paper.

³⁴ In brief: the rules of performing conventional acts (including speech acts) are internalist in nature if they concern the mental states of actors who are, generally speaking, involved in a given conventional act; they are externalist when they concern elements of the situational context that are external vis-a-vis the actors. The theory of speech acts has its own version of the internalism–externalism debate, where the concepts of J.L. Austin and J.R. Searle are the main ones mentioned among those taking into account both types of rules. See: R.M. Harnish, *Externalism and Internalism in Speech Act Theory*, "Lodz Papers in Pragmatics" 2009/1, p. 28.

³⁵ This methodological approach seems to be more and more noticeable and noticed in contemporary philosophy of language or pragmalinguistics. In this context, it is pointed out that some concepts, e.g. that of P. Grice, overlapped the importance of intentions or other elements in the process of interpreting communicative actions, see: K.M. Jaszczolt, *On Unimaginative Imagination and Conventional Conventions: Response to Lepore and Stone*, "Polish Journal of Philosophy" 2016/1, p. 90ff. In this context, it should be remembered that recognizing specific elements as having an important role in the process of identification of conventional acts is not tantamount to stating that these are the constitutive elements for the performance of the given act. This issue is discussed in more detail, for instance, in: K. Gmerek, *Sens czynności konwencjonalnych w prawie* [Eng. *The Sense of Conventional Acts in Law*] (forthcoming); K. Gmerek, *Treść czynności konwencjonalnych w prawie* [Eng. *The Substance of Conventional Acts in Law*] (forthcoming).

³⁶ Unless we agree on a division assuming that the internalist approach is confirmed by the very fact of viewing intentions (or other internal or cognitive requirements) as a co-constitutive element of a conventional act (including a speech act). See: J. Navarro-Reyes, *Speech Acts, Criteria and Intentions*, "Lodz Papers in Pragmatics" 2010/1, p. 147.

³⁷ The situation is different in case of some foreign works where a single paper on legal interpretation or interpretation in law combines both issues relating to legal interpretation and, for instance, interpretation of declarations of intent. See e.g. A. Barak, *Purposive Interpretation in Law*, Princeton 2005.

In this paper, this approach is considered methodologically important. Therefore the findings presented in this paper should not be treated as ones that enrich in any way the concepts of legal interpretation³⁸.

4. The process of identifying acts performed during the hearing as procedural acts of a certain type

As mentioned in the introduction, focus of interest of this paper is certain mechanisms used in the process of identifying acts of participants in proceedings as procedural acts of a certain type, performed in direct contact during a court hearing. These mechanisms include: standard interpretation, intentional explanation, as well as determining and confirming the sense of the performed act. These mechanisms are not, obviously, the only ones applied in the process of identifying conventional acts (including procedural ones). Yet, due to space constraints, this paper does not attempt to present an exhaustive diagram of the process whereby procedural acts are identified, be it in the descriptive, model or normative approach. On the one hand, the selection of the presented mechanisms takes into account whether or not they were the subject of reflection in jurisprudence³⁹. On the other hand, it takes into account the fact that mechanisms chosen for analysis can in some aspects be considered to be opposite. Standard interpretation and intentional explanation are treated in this paper as universal mechanisms, i.e. ones used in the process of identifying any conventional act. In the case of standard interpretation this is because we make such interpretation after coming into contact with the form of the act (this is discussed in more detail in section 4.1). Meanwhile in the case of intentional explanation this is justified by the assumption relating to conventional acts being co-constituted by intentions⁴⁰. Conversely, the mechanisms of determining and confirming the sense of the performed acts (as they are characterized in section 4.2) are not universal in the sense defined above. If they are introduced into the process of identifying a conventional act, this usually proves the failure of attempts at identification by means of universal mechanisms, or at least lack of certainty as to the result of this process⁴¹. They can also be characterized as more explicit than the universal mechanisms described above. In the dialogues analysed for the purposes of this paper, we can indicate specific statements that demonstrate that a specified mechanism has been used. The above characteristics enables us also to determine a chronological relation between the identified mechanisms. Thus the paper assumes that in the process of identifying procedural acts it is universal mechanisms that are applied in the first place, standard

³⁸ For the same reason, this paper does not present any assumptions fundamental for legal interpretation, such as the concept of a legal norm. The choices made in this paper regarding the identification of procedural acts are independent of the assumptions made in concepts of legal interpretation, although they are undoubtedly most consistent with the assumptions underlying the derivational concept of legal interpretation in its current form (M. Zieliński, *Wykładnia...*), especially when the discursive nature of these assumptions is emphasised, as in: A. Choduń, *Aspekty językowe derywacyjnej koncepcji wykładni prawa* [Eng. *Linguistic Aspects of Derivational Concept of Statutory Interpretation*], Szczecin 2018. It should also be stressed that the process of interpreting a legislative text is not the process of identification (of a legal norm), as defined in this paper. This subject will be expanded on in a separate paper.

³⁹ So far, reflection in jurisprudence has been revolving mainly around questions of recognizing elements of situational context (authorization to perform an act or its relationship to other complex or simple conventional acts, e.g. the existence of court proceedings), as well as the content and special form of the acts.

⁴⁰ As already mentioned, both mechanisms are described also in communicative grammar.

⁴¹ Attention is also drawn to this fact in procedural law studies, see K. Markiewicz, A. Torbus, *O wykładni...*, p. 21.

interpretation being seen as the primary method. The remaining mechanisms (both or one of them) are applied at a later stage, if at all.

4.1. Standard interpretation and intentional explanation

Let us begin by quoting several actual utterances of participants of court proceedings, which were not explicit for the performance of a specific procedural act, but which were identified by the court as procedural acts:

- 1) **Participant**⁴²: “Your Honour, **we would like to ask** for extending the thesis also to include the expert witness (...);”
- 2) **Claimant**: “**I would like**, Your Honour, if I may, to submit after all the photocopies of these documents that were sent to me by email by the persons who had been deceived (...);”
- 3) **Witness**: “But today, **could there be** some kind of confirmation I was here?”

For each of the above utterances we are able, on the basis of its wording, to identify a specific speech act:

Table 1. Standard interpretation at the level of speech acts – examples	
Standard form used	Standard situation when used
“Your Honour, we would like to ask (...)”	request
“ I would like , Your Honor (...)”	wish (optative utterance)
“But today, could there be (...)”	request expressed in a polite and indirect manner ⁴³

Source: own materials.

The mechanism that enables doing so is referred to in pragmalinguistics as **standard interpretation**. It consists in linking the standard form of use⁴⁴ of a given speech act with the standard situation in which the given form is used⁴⁵. The form of utterance used in the above examples directs the receiver to the level of speech acts, rather than directly to the level of procedural acts⁴⁶, therefore it is not explicit for performing these acts. The process of identifying a procedural act that uses the mechanism of standard interpretation would then be as follows with respect to the above utterances:

⁴² Participant in non-litigious civil proceedings.

⁴³ A request expressed as a question is treated in the philosophy of language as a classic example of an indirect speech act (J.R. Searle, *Expression and Meaning. Studies in the Theory of Speech Acts*, Cambridge 1979, p. 30). More recent papers point out in this context that expressing a request in the form of a question is so common (both in English and in other Indo-European languages) that this form can also be considered the standard one for the act of requesting (A. Awdiejew, *Gramatyka...*, pp. 58 and 158).

⁴⁴ In this case the term “form used” refers to the wording of the utterance or its fragment.

⁴⁵ This is how the mechanism of standard interpretation is explained in communicative grammar. It is considered a universal mechanism and a primary mechanism in the process of interpreting utterances, because it is triggered upon contact with the linguistic form of the utterance, while applying it does not require taking into account any elements of the situational context. See A. Awdiejew, *Gramatyka...*, pp. 44–45.

⁴⁶ Standard interpretation will refer directly to the level of procedural acts when it is made using specific explicit formulae, e.g. “Your Honour, **I withdraw my motion to adduce evidence**”.

Utterance	Standard interpretation (level of speech acts)	Non-standard interpretation⁴⁷ (level of procedural acts)
1) Participant: “Your Honour, we would like to ask for extending the thesis also to include the expert witness (...)”	request	extension of the evidentiary thesis (modification of motion to adduce evidence)
2) Claimant: “ I would like , Your Honour, if I may, to submit after all the photocopies of these documents that were sent to me by email by the persons who had been deceived (...)”;	wish	motion to adduce evidence
3) Witness: “But today, could there be some kind of confirmation I was here?”	request expressed in an indirect way	request to be issued confirmation of appearance at the hearing

Source: own materials.

In the case of the analysed utterances, standard interpretation might lead to identifying procedural acts of a given type for at least two reasons. Firstly, the use of the form of a specific speech act is not a constitutive rule for performing these procedural acts. Secondly, the result of standard interpretation did not block the possibility of identifying the acts performed by participants as procedural acts of a certain type. Because if the participant’s utterance, e.g. an answer to the judge’s question whether a confirmation of appearance in court was necessary, were as follows:

Witness: “Your Honour, **I do not need** a confirmation today, I happen to be on a leave”,

the standard interpretation, whereby the speech act is identified as **negation** of the assumption expressed in the question, would block further interpretation towards identifying this utterance as a request for confirmation of appearance at the hearing.

The mechanism of standard interpretation enables us to recognize a specific speech act on the basis of the wording of the utterance, when the procedural act is performed in a non-explicit manner. Due to the fact that standard interpretation is made on the basis of the wording of an utterance, we can say that it has a primary character in the process of identifying procedural acts. It is the result of this thought process that determines whether further interpretation aimed at identifying a given procedural act will be possible. Consequently, even though some procedural acts can be performed using several typologically different speech acts⁴⁸, the choice is not unlimited, because it depends on the possibilities of standard interpretation.

⁴⁷ Non-standard interpretation in this case means interpretation that takes into account the rules of performance or rules as to consequences of procedural acts contained in instruments regulating the procedure.

⁴⁸ A particularly long list of potentially useful speech acts exists for procedural acts having the nature of motions/applications. These can be mainly such speech acts as: request, request expressed in an indirect manner (as a question), motion/application, demand or wish.

The mechanism of intentional explanation is connected with the assumption made in this paper that one of the elements of identification of a given act as a conventional act of a certain type is the process of intentional explanation of the created material substrate of this act, alternatively an act recognized at a lower level of conventionalization (e.g. a speech act recognized by means of standard interpretation). The importance of using this mechanism in the process of identifying procedural acts becomes particularly clear when we are dealing with procedural acts performed in a non-explicit way.

Let us return to the aforementioned examples of utterances of participants in the proceedings. As the acts were performed by non-professional participants in proceedings, we cannot be certain that they formulated their utterances with an intention of the force typical of the identified procedural act. The force of a given conventional act (including a speech act) is determined mainly by its normative effects, which create a certain normative structure for the actors “entangled” – to use a general and pictorial word – in the act⁴⁹. We can thus assume that participants in proceedings performed the above acts (formulated their utterances) with the intention and awareness of the force of the given act adequate to the force of the speech act, respectively: (1) request; (2) wish, and (3) request (expressed in an indirect way), or adequate for the force of the procedural act, respectively: (1) extension of the evidentiary thesis (modification of a motion to adduce evidence); (2) a motion to adduce evidence, and (3) request for confirmation of appearance at the hearing. Let us illustrate the issue by analysing another utterance of a participant in the proceedings:

Table 3. Normative structures determined by the level of speech acts and the level of procedural acts	
The interested person ⁵⁰ : “Your Honour, can we also apply for a refund of costs?”	
level of speech acts: request expressed in an indirect way	level of procedural acts: motion for reimbursement of the costs of proceedings
normative structure: determined by the rules of linguistic communication: the sender gives the receiver full freedom as to whether to grant the request (lower position of the sender and dominant position of the receiver) ⁵¹	normative structure: determined by the applicable legal norms, which shape for the applicant the situation of authorization and entitlement ⁵² , placing the applicant in this way in a dominant position vis-a-vis the receiver, i.e. the judge

Source: own materials.

⁴⁹ With respect to speech acts, see M. Witek, *Mechanisms...*, p. 14. This is particularly visible in Searle’s concept of pragmatic conditions whose combination creates a sort of obligation between participants of the communication act, J.R. Searle, *Speech Acts. An Essay in the Philosophy of Language*, Cambridge 1969, pp. 60–62.

⁵⁰ The interested party in proceedings concerning social security matters.

⁵¹ More on the factors determining the structure of dominance of participants in the communication process in general, see: A. Awdziejew, *Gramatyka...*, p. 65, and with respect to communication within the court hearing in: K. Gmerek, *Rozprawa...*, p. 179ff. See also, on the consequences of using certain forms of utterances in relation to the specific structure of dominance, in: P.M. Tiersma, L.M. Solan, *Cops and Robbers: Selective Literalism in American Criminal Law*, “Law and Society Review” 2004/2, p. 229ff.

⁵² The interested party in proceedings relating to social security is the entity authorized to apply for reimbursement of the costs of proceedings, which authorization is matched by the court’s duty to examine the motion. The interested party is also the entity authorized to obtain reimbursement of the costs of proceedings, which authorization naturally is realized in the circumstances specified in procedural norms.

Taking into account the fact that both the utterance presented in the above table and the utterances of participants of proceedings quoted above were identified by judges as procedural acts of a certain type, we can assume that they could have been made with an intention whose force was inadequate to the force typical of a procedural act of a certain type. Hence a question arises: the recognition of what intention (with what force) is necessary/sufficient for identification of a procedural act of a given type and how to do that? The answer to this complex question may be intentional explanation⁵³ which takes into account the propositional content of an utterance⁵⁴. The propositional content of an utterance can concern e.g. a future act relating to evidence, reimbursement of costs of proceedings or issue of a confirmation of appearance at the hearing. Taking the above into consideration, let us analyse again the utterance of the interested person, quoted above:

Table 4. Process of identifying a procedural act taking into account intentional explanation
The interested person: “Your Honour, can we apply for a refund of costs as well?”
1) standard interpretation: a) standard form of speech act used: “(...) can we apply for a refund of costs as well?” b) standard situation when this form is used: request expressed in an indirect way
2) intentional explanation taking into account the propositional content of the utterance: will (intention) to bring about a state of fact in the form of reimbursement of the costs of proceedings
3) other elements of the context in which the utterance is made: consistent with the rules of performance of the act of applying for reimbursement of costs of proceedings
4) non-standard interpretation: motion for reimbursement of the costs of proceedings

Source: own materials.

In the above case, the result of standard interpretation, i.e. identification of the act of making a request on the basis of the wording of the utterance, did not block the possibility of further interpretation in order to identify the aforementioned procedural act. The decisive issue (apart from recognition of specific elements of the context in which the utterance was made, e.g. the character of the entity performing the act) was thus the intentional explanation of the interested person’s behaviour, taking into account mainly the propositional content of the utterance, because it pointed to the future act of reimbursement of the costs of proceedings.

⁵³ The question of intention and intentional explanation, as presented here, remains an epistemic (or interpretive) issue. It concerns what enables the entity identifying a given act to assume that the person performing said act “proved” an intention which was necessary/sufficient for the act to be recognized as a conventional act of a given type. Yet, this issue also has an ontological (constitutive) aspect relating to the question with what intention, awareness an entity has (or, possibly, does not have) to act in order to perform a specific conventional act. This issue was expanded on, e.g. with respect to acts in the criminal procedure. On the topic of “intellectual and volitional aspects in the definition of an act within the criminal procedure”, see: B. Janusz-Pohl, *Formalizacja...*, p. 82ff. These two aspects (the epistemic one and the ontological one) are not independent of each other. First of all, certain epistemic decisions depend on the ontological assumptions.

⁵⁴ The propositional content of an utterance is referred to in this article as the message communicated by the utterance which, as objectivized content, can be interpreted regardless of the interactive (illocutionary) sense of the utterance (see A. Awdziejew, *Gramatyka...*, p. 44). This way of understanding the “propositional content” does not correspond to the meaning in which the term “content” in various word combinations (e.g. “content of a document”) is used in studies on procedural law or in case law, which meaning is broader. Apart from the propositional content of an utterance (or, in other words, its sense at the locutionary or ideational level, depending on the terminological tradition) this meaning also covers its sense at the interactive level. To illustrate it, the scope of the term “content of a document” and similar terms covers not only **what** (propositional content) the participant in proceedings applies **for**, **what** he/she states or **what** he/she demands, but also that he/she **applies for**, **asks for** something, **states** something, or **demands** something (interactive, illocutionary sense). For a synthetic approach to the issue of content of a procedural act in civil procedural studies, see: M. Plebanek, *Nadużycie...*, pp. 36–38.

Therefore it seems justified to assume (on the basis of an analysis of the above utterance and other utterances of participants, which cannot be quoted here due to space constraints) that in order to identify a participant's act as a procedural act of a given type performed in a non-explicit manner, with an illocutionary force inadequate to the force of a procedural act, it is sufficient to recognize, taking into consideration the propositional content of the utterance, that the participant intentionally strives to bring about (make happen) a certain state of fact, regardless of whether he/she "asks", "applies" for it, "demands" it, etc.

4.2. Determining and confirming the sense of the performed act

Performing procedural acts during a court hearing, therefore, in direct contact, is conducive to both applying the mechanisms mentioned in the title of this section and their recognition by an external observer, because they take the form of specific utterances, like in the examples below.

Let us start by quoting the following dialogue:

Presiding Judge: "Right, please tell us, you failed to file your reply to the statement of claim on time, so please tell us what your stance is in this case, do you challenge the assertions contained in the statement of claim or do you agree with them?"

Respondent: "Yes, I agree (...) I can accept it all as my fault, because this anyway..."

Presiding Judge: "Do you admit the claim? The full claim?"

Respondent: "Yes."

This dialogue is an example of using, in the process of identifying a procedural act, **the mechanism of determining the sense of the performed act**. Taking into consideration the universal mechanisms discussed above and the mechanism discussed in this section, the process of identifying a procedural act that the respondent is performing can be presented as follows:

Table 5. Process of identifying a procedural act taking into account the mechanism of determining the sense of an act: first example
Presiding Judge: "Right, please tell us, you failed to file your reply to the statement of claim on time, so please tell us what your stance is in this case, do you challenge the assertions contained in the statement of claim or do you agree with them?"
Respondent: Yes, I agree (...) I can accept it all as my fault, because this anyway...
1) standard interpretation: a) standard form of speech act used: "Yes, I agree (...) I can accept it all as my fault (...)" b) standard situation when this form is used: acceptance (of the suggested action)
2) intentional explanation taking into account the propositional content of the utterance: will (intention) to bring about a state of fact described in the statement of claim ⁵⁵
3) other elements of the context in which the utterance is made: consistent with the rules of performance of the act of admitting the claim
4) preliminary non-standard interpretation: admission of (the full) claim

⁵⁵ In this case, determining the propositional content requires taking into account an intertextual reference to the content of the statement of claim. For more on intertextual references in court hearings, see: K. Gmerek, *Przejawy intertekstualności w rozprawie sądowej* [Eng. *Manifestations of Intertextuality in Court Hearings*], "Archiwum Filozofii Prawa i Filozofii Społecznej" 2017/1, p. 34ff.

<p>5) determining the sense of the act: Presiding Judge: “Do you admit the claim? The full claim?” Respondent: “Yes.”</p>
<p>6) standard interpretation: admission of the (full) claim</p>

Source: own materials.

In the analysis presented in Table 5 above, the mechanism of determining the sense of a procedural act was placed before the moment of making the non-standard interpretation, that is, the moment of final identification of a participant’s act as a procedural act of a certain type. The steps taken by the presiding judge before determining with the participant the sense of the act performed thereby do not permit us to assume that the judge finally identified the procedural act⁵⁶. However, the presiding judge undoubtedly made a preliminary identification of the participant’s act as a procedural act of a given type (which is demonstrated by the assumption in the question asked of the respondent).

Let us analyse one more dialogue between participants in the proceedings:

Claimant: “I uphold [my motions] Your Honour and I’d still like to supplement this testimony of mine, due to the fact that I (...) received the respondent’s reply, so I’d like, very briefly...”

Presiding Judge: “Do you want to submit a document or do you want to be interviewed?”

Claimant: “No, because I did not write any document”

Presiding Judge: “So you would like the court to interview you again?”

<p>Table 6. Process of identifying a procedural act taking into account the mechanism of determining the sense of an act: second example</p>
<p>Claimant: “I uphold [my motions] Your Honour and I’d still like to supplement this testimony of mine, due to the fact that I (...) received the respondent’s reply, so I’d like, very briefly...”</p>
<p>1) standard interpretation: a) standard form of speech act used: “(...) I’d still like to supplement this testimony of mine (...)” b) standard situation when this form is used: wish (optative utterance)</p>
<p>2) intentional explanation taking into account the propositional content of the utterance: will (intention) to bring about a state of fact in the form of supplementing the testimony given so far</p>
<p>3) other elements of the context in which the utterance is made: consistent with the rules of performance of the act of applying for the order relating to submission of a procedural document/supplementary interview of a party</p>
<p>4) preliminary non-standard interpretation: motion for the order relating to submission of a procedural document/supplementary interview of a party</p>
<p>5) determining the sense of the act: Presiding Judge: “Do you want to submit a document or do you want to be interviewed?”</p>
<p>6) indication of the sense of the act: Claimant: “No, because I did not write any document”</p>
<p>7) confirming the sense indicated by the claimant: Presiding Judge: “So you would like the court to interview you again?”</p>
<p>8) non-standard interpretation: request for a supplementary interview of a party</p>

Source: own materials.

⁵⁶ This would have been the case if e.g. the presiding judge had started dictating to the recording clerk the respondent’s statement on admission of claim to be recorded.

In the above case, the analysis of the process of identifying a procedural act of the participant was conducted in a similar manner as in the earlier example and it also demonstrated application of the mechanism of determining the sense of the procedural act. But this example does exhibit certain particular features. Firstly, when determining the sense of the act, the presiding judge took into account in the assumption of the question addressed to the claimant at least two typologically different procedural acts, thus limiting, at least in communicative terms, the “choice” of senses of the performed act. Secondly, the presiding judge additionally confirmed the sense of the act as indicated by the claimant, most likely because the claimant’s utterance was inconclusive (“No, because I did not write any document”).

At the end of this section, let us analyse a dialogue between participants in the proceedings, where the **mechanism of confirming** the recognized sense of the participant’s act was applied:

Witness: “Your Honour, today I did not make it to be off work, so would a pass...?”

Presiding Judge: “In our office, I would like you to (...) then the secretary will note it down for you everything that is required to confirm your presence here, because this is what you mean, isn’t it? Right.”

Table 7. Process of identifying a procedural act taking into account the mechanism of confirming the sense of an act
Witness: “Your Honour, today I did not make it to be off work, so would a pass...?”
1) standard interpretation:
a) standard form of speech act used: “(...) would a pass...?”
b) standard situation when this form is used: request expressed in an indirect way (in the form of a question)
2) intentional explanation taking into account the propositional content of the utterance: will (intention) to bring about a state of fact in the form of confirming appearance at the hearing
3) other elements of the context in which the utterance is made: consistent with the rules of performance of the act of applying for confirmation of appearance at the hearing
4) non-standard interpretation: application for confirmation of appearance at the hearing
5) confirming the recognized sense of the act:
Presiding Judge: “In our office, I would like you to (...) then the secretary will note it down for you everything that is required to confirm your presence here, because this is what you mean, isn’t it? Right. ”

Source: own materials.

The utterance of the witness from the above dialogue, by means of which he performed a procedural act of a given type, was non-explicit for this act for twofold reasons. Not only did its wording not direct the listener to the right level of conventionalization (i.e. the level of procedural acts), but even determining the propositional content required special interpretive effort, taking into account the situational context in which the utterance was made (it mentioned a “pass”, rather than “confirmation of appearance at the hearing”). Nevertheless, the witness’ act was identified by the presiding judge as an application for confirmation of appearance at the hearing, as demonstrated by the presiding judge providing information on how the witness can obtain such a confirmation. The presiding judge’s additional question about the sense of the act was addressed to the witness already after it had been identified as a procedural act of the

given type. So in principle the mechanism consisting in confirming the sense of the acts performed by the participants in the proceedings is “triggered” after completion of the process of identification of such acts as specific procedural acts. Yet, the decision to use it is a sign of uncertainty, to some extent, as to the selected option. Meanwhile the result of applying this mechanism modifies the level of acceptance of this option by the entity identifying the given act. In this sense, the mechanism is obviously connected with the process of identifying conventional acts (including procedural ones).

5. Conclusion

The process of identifying certain acts as conventional acts of a given type is a complex thought process which, like any other thought process, is prone to cognitive and inferential errors⁵⁷. Though in reality it is usually conducted in an instant and without reflection (thanks to long socialization training connected with participation in communication), on the basis of certain assumptions developed in science, as well as externalized elements of this process it is possible to indicate specific mechanisms that are used in the process.

The mechanisms described in the article have different particularities and different functions in the process of identifying procedural acts. The mechanism of standard interpretation is described in pragmalinguistics as a universal mechanism for interpreting speech acts, because it is triggered once we have learnt the wording of an utterance. In the process of identifying acts of participants in the proceedings as procedural acts of a given type, this mechanism sets the further interpretation trajectory, taking into account the rules specified at the level of the legal system. In the case of acts performed in a non-explicit manner (which were discussed in this paper) the identification process is mediated by recognition of the level of speech act on the basis of standard interpretation. In the case of explicit utterances (see examples in n. 3) standard interpretation points directly to the level of procedural acts. In turn attention is drawn to the mechanism of intentional explanation both in pragmalinguistics (with respect to speech acts) and in general theory of law (with respect to conventional acts). With respect to the process of identifying procedural acts, this mechanism enables us to determine, in particular after taking into account the propositional content of the utterance, the intention with which the participant is acting and whether this intention is sufficient to perform a procedural act of a specific type.

Mechanisms of determining and confirming the sense of the conventional act being performed take the form of various utterances co-creating the communicative event which is an emanation of the process of identifying a given conventional act (including a procedural one). Resorting to those mechanisms proves that the person is uncertain as to the sense of the act being identified, while the result of their application enables them to remove such doubts.

Naturally, the process of identifying procedural acts as a whole and the described mechanisms that are used in this process are not the whole spectrum of questions relating to identifying procedural acts (let alone identifying conventional acts in general). One of the reasons is that the issues discussed in this paper concern procedural acts

⁵⁷ And, being a process of interpretation of linguistic actions, it is also fallible, especially when it requires using fallible pragmatic inferences, e.g. in the form of developing a conversational implicature as defined by Paul Grice (P. Grice, *Studies in the Way of Words*, Cambridge 1989, p. 26).

performed in speech (in the conditions of direct contact during the hearing)⁵⁸. Suffice it to say that thorough analysis is needed of those issues that were just outlined in general terms in this paper, such as the process of determining the propositional content of utterances. The reflections presented in this paper, though limited in terms of subject, do however enable us to systematize some terms used also in legal scholarship and case law (sometimes without proper reflection) by ascribing to them specific meanings, references, while ascribing to their designates specific functions in the processes described above. They also enable partial explanation how various forms of utterances of non-professional participants of court proceedings are identified as performance of a procedural act of a certain type. Meanwhile the fact that some mechanisms are described in this paper as universal for the process of identifying conventional acts in general (or at least those performed by means of linguistic code) delineates the potential scope of future reflections.

Identification of Procedural Acts Performed at the Hearing: Considerations in the Context of the Actual Utterances of Non-professional Participants of Court Proceedings

Abstract: The empirical research of the communication process at the hearings which were held in ordinary courts indicated, in particular, that the utterances of hearing participants, despite their varied verbal forms, were identified as procedural acts. In addition, these verbal forms were often significantly different from the explicit forms where proper legal terms were used. The aforementioned results of the analysis lead the author to pose the following question: what thought processes (mechanisms) allow for the identification of procedural acts based on the utterances which are not explicit for the performance of these acts. The aim of this paper is to describe these types of mechanisms. The utterances of participants of hearings illustrate the issues taken into consideration in this paper.

Keywords: conventional acts, procedural acts, identification of procedural acts, hearing, interpretation of procedural statements

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⁵⁸ Referring the reflections presented here to procedural acts performed in writing would require taking into account the differences between the processes of communication between participants in proceedings in the conditions of direct contact and in writing. On some differences in the scope of interpretation of texts produced in direct contact and written texts, see A. Choduń, *Aspekty...*, pp. 160–162.

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