



COURT OF JUSTICE  
OF THE EUROPEAN UNION

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# Multilingual postcards

Camille de Toledo

Stefan Tafrov

José Antonio Pascual

Tomáš Duběda

Anne Lise Kjær

Isolde Burr-Haase

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## If on a winter's night a traveler ...

### — Camille de Toledo

Camille de Toledo is a writer, with a doctorate in comparative literature. He teaches at the Atelier des écritures contemporaines (contemporary writing workshop) of the École nationale supérieure des arts visuels (ENSAV) (La Cambre) in Brussels and at Aix-Marseille University. His books include *Le Hêtre et le Bouleau, essai sur la tristesse européenne* (2009), *Vies potentielles* (2010), *L'Inquiétude d'être au monde* (2012) and *Le livre de la faim et de la soif* (2017). He has studied history, law, political sciences and literature. In 2004, he received a grant from the French Academy in Rome - Villa Medici. In 2008, he founded the European Society of Authors in order to promote translation as language'. In 2012, he moved to Berlin following the deaths of his brother, his mother and his father. Committed to legal recognition of the elements of nature, he coordinated the holding of the Loire Parliament Hearings (2019 to 2020), with Pôle Arts et Urbanisme (Arts and Town Planning Centre); this gave rise to *Le fleuve qui voulait écrire*, which is the story of what he calls the legal uprising of the Earth'. His latest novel, *Thésée, sa vie nouvelle*, published by Verdier in 2020, received the Académie Française prize to support literary creation and the Franz Hessel Prize.

## *If on a winter's night a traveler ...*

These are the opening words of Italo Calvino's well-known book of meanderings, composed entirely of beginnings; but this is also how I first saw the tall parallel towers, two gold and one black, of the European Court of Justice emerge out of the misty darkness of a winter's night. And in hindsight, since that visit, it occurs to me that it is from there that we should start again, if we believe, if we still want to believe, in Europe. *If on a winter's night ...* we gathered there all together to address the question raised by that misty scene, in Luxembourg, and that imposing building:

How can we give Europe one law, a single, shared law, in every language?

How, from all the languages, from the different sensibilities they reveal, can we create a shared life, from the peaks of Scandinavia to the dry and rocky creeks of the Mediterranean?

And if there is no common horizon, will we manage to revive a *desire to converge*?

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It is a few months after the parliamentary elections, in the autumn of 2019, a day on which Berlin, the town in which I have found a haven, is celebrating the collapse of the Berlin Wall. And I have known since spring that the predicted destructive wave of nationalism and populism in France, Hungary, Italy, Spain, Poland ... has not swept everything away. Yet, I can see it, I can hear it, from the members of the Parliament to the Commission's directorates-general,

everybody is aware that the vessel is taking on water; the old peace project is running out of steam. The heart of the *European dreamers is heavy and everyone is quite sure that danger lurks and that it will never leave us.*

### *Welcome to the European Court of Justice!*

*Europe is an old dream which we would like to rejuvenate. But how? The desire for peace of the post-war years, the need to rebuild, faded long ago. The first breath of European unity lasted until the end of the 1980s, owing to the singular voice of a few heads of State. Those were the halcyon years of Franco-German dances. And at the end of the twentieth century, there was even renewed hope when the Berlin Wall came down. The desire for Europe seemed rekindled, with, as a counterpoint, like a bad omen, the Balkan Wars, brother killing brother again. You have to see *Ulysses' Gaze*, the film directed by Theo Angelopoulos, to remember that: the murky violence of this continent when national madness takes over ... But in spite of those hopes – 1989 – and those warnings – the war in the former Yugoslavia – the first breath of European unity was snuffed out. The *lyre of memory* no longer works nowadays. The times of symbolic acts – Willy Brandt kneeling in the Warsaw Ghetto, Mitterrand-Kohl, the fine speeches about reconciliation ... – are things of the past. We need to reinvent something, but what?*

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### *Entering the main courtroom ...*

I felt a remarkable emotion upon entering the main courtroom of the Court, under the translucent veil of the central illumination, when I saw the honourable judges take their seats, coming, as they do, from the four corners of Europe and each proficient in four or five languages. I was moved to discover, around the chamber, the interpreters' booths, ensuring that debate may be translated from the various languages of the European Union. For me it was like entering Babel, a Babel which is holding firm and resilient ... as if I were stepping through a looking glass, leaving behind the slogans, the polemics *for* or *against* Europe; far from politics which is invariably so disappointing. Sitting behind the glass of an interpreter's booth, I remembered my student days, that strange elation you feel when you leave the chatty, fuzzy sphere of *opinion* to concentrate on that dry, upright subject matter: Law.

I thought to myself: 'If European schoolchildren should be invited to this Court, all the children of the future; all those who want to understand, at first hand, the effort which our European theatre requires us to make.'

### *A stage for the law*

I say *theatre*, because the Court is a stage, on which the *law enjoyed in common*, that is to say, here, a shareable interpretation of the European rules, is developed, technically, laboriously. And the drama played out on that stage is the drama of divergence and convergence, of the effort to achieve unity and of the need for disparities; it is

the drama of *translation gaps*, of intentional and unintentional misunderstandings; of centripetal cultural pride and of centrifugal administrative obstinacy. It is a stage which, like a theatre, has its boxes: offices where, persistently, conscientiously, everyone is busy creating, from all the language pairs, *a (comm)unity*.

We know, there is Brussels, the political world of negotiations, compromise, where *the spirit of cooperation* runs out of steam; where a certain idea of community is eroded, where symbols and principles are cast aside; where national egoisms rearm and where painful dishonour flourishes. I'm thinking, here, of the cowardice and abandonment which have left thousands of migrants to die in the Mediterranean. Politics, in Europe, often seems to be a wreck; Brexit would be its hallmark, the rise of the extreme right its symptom, the entanglement of private and public interests its shadowy side and the weaknesses of foreign policy its signature. And it all contributes to the impression of devastation.

Conversely, there remains that less raucous stage of the law; there remains the effort made by justice to ensure that the common rules are observed; and that brings me back to the vertical towers of the Court of Justice of the European Union; from those towers you can see, when you reach the top, the walls of the old town and the Grand Duchy of Luxembourg, through the winter mist. And here rules are not created, it is ensured that they are applied. Here is *the spirit of laws*, and when so many principles are flouted on a daily basis, it does no harm to be reminded of that.

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## *The spirit of laws and of languages*

There is a link between the work of the Court of Justice of the European Union and History; which connects the effort to *produce unified law* with the *raison d'être* of the European project.

In 1945, the Allies, having triumphed over Nazism, wondered how to prosecute the Germans responsible. The Nuremberg trials would be their response. But, in order to prosecute, it was necessary to overcome the language barrier; to find the tools which would allow translingual proceedings. The judges were English, French, American, Russian; most of the evidence was in German. It was necessary to translate; and during the hearings, in *real time*, to render the words of the witnesses, victims and accused in the languages of the judges. No interpreter until then had practised simultaneous interpretation. Initially, many of the specialists called upon to meet the challenge referred to a human, insurmountable limit: a human being cannot hear, translate and speak in a single movement. However, that challenge was met. In Nuremberg an *achievable* solution was devised, that of a *translational technique* so that a translingual justice could be asserted over a disfigured continent.

Thus, Europe was born there, in that translation node between the languages, where the history of crime is intertwined with the folly of nations, the European civil war', in the words of the historian Ernst Nolte, and the need, through translation as language, to transcend identities *in order to state the law*.

That is what the Court of Justice of the European Union has inherited, a need for translation so that a *law in several languages* may be understood.

### *A European reality frequently overlooked*

It has always seemed to me that this multilingual reality of Europe has passed unnoticed by our political elite. I'm not saying that it is ignored, but it is never taken properly into account. The question of languages, of a *community of languages*, should be at the heart of a new concept of Europe: how can we create a public space to accommodate more than 550 language combinations? How can we connect citizens who are separated by so many languages and linguistic codes?

As the successive enlargements have given rise to a significant increase in the *translation workflows* – and here, at the Court, to new architectural expansions – the political elite have responded in three ways to that challenge: (a) there is, generally, a literary response, which consists in mobilising writers to celebrate the multiplicity of 'poetic expression'; (b) there is a pragmatic, *business-friendly* response, which ends up by applauding the triumph of English, a standpoint of resignation which Brexit may have disturbed by provoking an automatic decline of Globish as a pivot language of European affairs; (c) and lastly, since the beginning of the 2000s, and more specifically since the advent of 'neural machine translation' methods, there is a technical response, where some optimists

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imagine that, thanks to artificial intelligence – algorithm translation, *machine-learning and clouds* – *we shall soon be able to speak every language.*

Never, however, has the issue of the fragmentation of the judicial and social space as regards *language* been addressed *politically*. Everyone who has praised the idea of a united Europe, from Victor Hugo until today, has remained silent with regard to that challenge.

The great Victor envisioned the ‘United States of Europe’, ‘but in which language?’ I am tempted to add. How can we reconcile that word, *Union*, with the disunion of languages and therefore of cultures, emotions, memories? It seems that nobody wishes to address the issue head-on; because it would suddenly be necessary to think about Europe from the starting point of its conflicts, its intractable divides.

### *The model of the European Court of Justice*

Visiting the Court, and seeing how its departments are organised, I was able to say to myself: it is that immense *effort to provide translations in order to facilitate an understanding of the meaning of the law* which must be the starting point for our rethinking of a common horizon. From the models developed here, at the Court, for *translation techniques*, we can provide the concepts for future citizenship.

*Because it is on the basis of translation, I said to myself, that we will be able to teach the children of the future the politics of Diversity, Multiplicity*

*and Difference that we need more than ever: not on the basis of an ethic which hallows the Other – Levinas – not by pursuing the illusions of convergence or unity or, as it may have been called, of a shared destiny – using symbols and History ...*

The practical, experience-based expertise of the Court in establishing common rules in the various languages helps us to think of:

1.a *translational citizenship* always in tension between multiple loyalties, minority and regional cultures, and broader affiliations, both national and European.

2.a *translational citizenship* understood as an attempt to link what can never be unified.

This is the *beating heart* of what I have seen of the Court; the heart that you discover when going up the towers, traversing the gallery, passing the library ... There is not a single person here, or a single function, unaware of that challenge of dealing with the disparities.

Twenty-four languages. Non-reversible pairs. The language of deliberation, French. The pivot languages, English or German for example. The languages of the case: potentially 24. The translation of the judgments so that the European case-law flows back down to the various national legal systems. Lawyer-linguists from all four corners of the continent. Freelancers who work from afar; revisers who check the quality of the translations. And when disputes reach the hearing, the interpreters who take over; who must each time absorb a

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whole new semantic range. And the account I am given on the floor which houses the Directorate-General for Multilingualism (DGM) – from where I can see the red sun breaking through the mist, rolling tranquilly towards the evening above the nearby esplanade now covered by a fine layer of snow:

‘When lawyers of the Member States come to defend themselves against this or that European rule, sometimes some of them speak too quickly. The *speakers forget that behind those numerous glass panes which surround the Court, we are there to race after the words, so that they may be heard.*’

*A race to link languages*, to establish specifically a social and judicial sphere in the common language: translation, interpretation.

‘There’s a little button’, my interlocutrix continues. ‘The first time someone presses it, nothing happens. But if other interpreters, in other booths, also press it, a red light starts to flash on the judge’s desk. He then knows that, in the booths, they can no longer keep up. In such cases, the judge often asks the person speaking to go more slowly. That system was developed for the Nuremberg trials.’

So it’s all there, in that emergency procedure: the time it takes to *stride towards a shared law*. To understand each other, really understand each other. To go more slowly so that every ear, in every language, may interpret properly.

That is the European lesson that we can learn here, at the Court.

*Towards a public translation space*

On discovering the units: Planning and External Translation (UPT), Multilingualism Support Tools (OAM), Projects and Terminological Coordination (PCT), on learning about the human and technical resources deployed here, one starts to dream that they will also be made available to the broader public sphere: to translate not only EU law – often very far from the beating heart of our sensitivities – but also the press, works of literature, the humanities ... You'll tell me it's a writer's dream.

And yet, *the spirit of Europe*, the one we seek, is there:

-Europe needs one language; a language which binds us to our disparities and differences instead of splitting us asunder.

-and it needs one justice, one law, which may be recognised *in languages*.

In both cases, that involves translating, tirelessly, for each other. It is not a writer's dream. It is a *reality* with which the institutions come to terms. But it is a reality which from now on must be considered from a political point of view.

What would become of that European project if, in the image of the Court which produces more than one million pages a year, a *European translation service took on an equal number of pages in order to create a public language space, between languages? What would become of our affiliations, if such a multilingual space were created? How would our identities be*

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reformulated if Europe as a whole publicly recognised 'translation' as the only *official language*?

All our interwoven stories of exile, of entanglement, of amalgamation would then be recognised.

### *An immense shunting system*

To witness the work carried out by the Court is, of course, to face those millions of pages of case-law, those thousands of applications and requests on subjects which are sometimes extremely technical; it is to enter, to a large degree, into the heart of the competitive ideology of the European Union, in that quest to establish a *pure and perfect market*: it is therefore to face the application of the principles negotiated in the Treaties: here, the question of labels, here, the technical rules ...

I, for my part, profoundly disagree with that ideological basis; I always have. I think that it is necessary to prioritise development of the principles of *European social law*, of *environmental law*, rather than the principles of free competition.

But the Court does not create the law; it ensures that it is interpreted uniformly and translated well, included properly in national legislation, and watches over its interpretation. And if *politically* a more just, more humane and cultural direction were taken at the level of the Member States and the Commission, the judges of the Court would then have cause to defend another *spirit of the laws*.

It was also that other *spirit of the laws* that I started to dream about at the end of my visit.

What the Court of Justice of the European Union shows, and what I saw there, is above all that extraordinary capacity to organise *translation flows*. And there, you have to imagine an immense shunting system where the stations are languages. And between all those languages, thousands of pages which transit and circulate. From Romanian, Latvian, Finnish, Italian, Croatian, Slovak, Czech, Bulgarian, Danish, Polish, Estonian, Spanish, Maltese, Greek, Hungarian ... to the *pivot languages* or the *language of deliberation* and then back to that multitude.

The lives of those who work here in the various language units are often a reflection of that *language-network* of the Court. Polyglot, inhabitants of that multilingual reality, they lead a profoundly *European life*. A little like the interpreters at Nuremberg who invented *simultaneous translation* and whose profiles I would read the following day, on the train to Berlin. Born here, living there, often sons and daughters of parents of mixed origin ... That is the Europe which we have to reincarnate.

*And if De Gaulle had been wrong ...*

There is a statement by De Gaulle, often cited, which he made at a press conference on 15 May 1962:

I do not believe that Europe can ever be a living reality if it does not include France with its Frenchmen, Germany with its Germans, Italy

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with its Italians, and so on. Dante, Goethe, Chateaubriand belong to the whole of Europe for the very reason that they were pre-eminently Italian, German and French. They would have done Europe small service had they been stateless persons who thought and wrote in some integrated form of Esperanto or Volapük.'

This statement is effective, but it has lost sight of reality. It seeks to convince us that we are condemned to revert to our languages. But it glosses over the inescapable fact that neither Dante, nor Goethe, nor Chateaubriand would be what they are if translators had not helped them to move beyond the confines of their own countries. It also erases the immense contribution of refugee, exiled and stateless writers to European literature.

There is a common space – and literary fama – thanks only to translations.

The Court proves this every day in the sphere of laws. It gives a reality to what I have called a 'refuge of languages'. And it is to be hoped that, following the example of the Court, we will create in the future a textual, political and poetic language space, instead of always returning to the confines of our nations.

If on a winter's night

Now, night had fallen over the high towers of the Court. The darkness outside gave its massive bulk, the great many glass surfaces, a confusing, dizzying opaqueness; as if we were encircled by mirrors where office life was duplicated, where the reflections of the lights intertwined.

I left the Court, I turned back to look at its tall structure. Gigantic cranes like curious giants penetrated the thick downy veil of winter. I shivered, I was cold.

In a few months, the work on the third tower would be finished, then we would have to go through the dark months of the pandemic, ensuring a balance between the health and freedoms of Europeans. And while, throughout the world, there would be a greater urge for isolationism and violence, we would be glad to know that, far away, in the winter mists, a certain citadel with high towers, like one in a children's fairy tale, continues its efforts to ensure observance of the law without which nothing endures ... without which everything disintegrates.

Berlin, 9 November 2019, and Brussels, 2 January 2022.

# Multilingualism - my journey to freedom and Europe

— **Stefan Tafrov**

**Stefan Tafrov, born in Sofia (Bulgaria) in 1958, is a Bulgarian diplomat, politician, journalist and translator. A member of human rights organisations under the communist regime, he was responsible for the international relations of the democratic movement SDS ever since its foundation in 1990 and was the first foreign policy advisor to President Zhelyu Zhelev. He was the Ambassador to Italy, Malta, the United Kingdom, Ireland, France and UNESCO; Permanent Representative to the UN in New York (United States) for two terms; Deputy Minister of Foreign Affairs for two terms, and a Member of Parliament. He speaks French, English, Italian, Spanish, Polish and Russian. He has translated works by François Mauriac, André Gide, Jean-Paul Sartre, Claude Simon, Marguerite Duras, Umberto Eco and others into Bulgarian. He is a Commander of the Legion of Honour and an Officer of the Order of the Star of Italy.**

I was born in Bulgaria under communism, which had cut the country off from the rest of Europe almost entirely. Opportunities to travel to the other side of the Iron Curtain were rare, contact with foreigners aroused suspicion and, at best, could lead to inconvenience but was sometimes cause for persecution. The situation was particularly difficult for a family such as mine, to which the regime was ill disposed, mainly because of my father, who, as a young lawyer, had defended members of democratic opposition parties immediately after the war, until they were eventually banned in 1947. Arrested by the political police, persecuted in many ways, he was banned from working for 12 years, and it was not until shortly before I was born in 1958 that the ban was lifted. Until the end of their lives, neither he nor my mother was allowed to travel to the West. I crossed the Iron Curtain myself for the first time when I was 31, on 3 October 1989, shortly before the fall of the Berlin Wall. For the previous two years, the Bulgarian authorities had refused to grant me permission to travel to France at the invitation of the French Government – an invitation that I had received as a specialist in French literature and translator of works by François Mauriac, Jean-Paul Sartre, André Gide and Claude Simon, amongst others. They did not ‘permit’ me to go, as they said at the time – not only because I came from the ‘wrong sort’ of family, but also because I had been so bold as to join a number of human rights protection groups that had emerged in Bulgaria in the 1980s and that opposed the communist regime. Under those circumstances, for me and for the majority of my compatriots, our longing for the forbidden Europe was expressed through learning foreign languages. In the family and in my entire social environment, mastery of English, French or German, or of as many European languages as possible, was highly valued, practically to the point of having cult status; it was the mark of a truly educated person. My role models were relatives and friends who, thanks to their knowledge of foreign languages, had occasional access to Western countries, a privilege almost exclusively reserved for communist functionaries. Russian was compulsory at school. English, French or German were taught, but only for two hours a week and only at certain secondary schools. A lot of additional effort was required to learn a foreign language well. Various foreign-language courses were a popular choice, but they were only available in the big cities.

However, I was one of the privileged ones, not only because I lived in Sofia, but also because of my family’s firmly rooted francophone traditions: my grandmother had graduated in French literature in Geneva, and my father had lived and attended school in French-speaking Switzerland as a child and teenager and spoke excellent French. At home we had a library with many classics of French literature. I got my big chance when I was accepted at the French-language secondary school after taking difficult entrance

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exams in Bulgarian and mathematics in competition with hundreds of boys vying for a place. The school was part of a network of specialised, extremely selective foreign-language schools in the Bulgarian education system, which had been established in the 1960s and taught some of the main European languages – French, German, English, Russian and, from the 1980s onwards, Spanish. Education at that school began swiftly with a preparatory class devoted exclusively to learning the relevant foreign language, after which most subjects were taught in that language, in my case in French. To this day, many Bulgarians who have a very good command of a foreign language owe it to the foreign-language schools, a real achievement of the Bulgarian education system.

This is how my love of the French language, which continues to this day, blossomed during my school days. I owe this to my wonderful teachers, who not only taught us how to speak and write the language of Molière correctly, but also showed us how to make the most of its cultural possibilities and depth.

As soon as I had gained a better command of the language, I began to visit the small library of the Cultural Office of the French Embassy in Sofia on a regular basis, the only office of its kind of a Western State. Access to the cultural and political life of a free and democratic State through its press (French journalism was flourishing in the 70s and 80s) was crucial for my development as an individual and as a citizen for whom freedom, spirituality and human rights were to become supreme values. French helped me to understand myself as a European and made me realise how unnatural the isolation of my beloved homeland, an ancient European country and culture, from the rest of Europe was. A French proverb says that all free persons have two homelands, their own and France. My second homeland as a free person is the French language.

Starting from early childhood, I tirelessly learned English with the help of foreign language courses and some private tuition. As my knowledge was already good, I decided on Spanish instead of English when asked to choose a second foreign language at school. The teaching of Spanish at school was in its infancy in Bulgaria at the time. The newspapers of the big western communist parties could be found at the news stands, including the Italian 'L'Unità', with its high standard of journalism and fairly liberal outlook. I found that I could also understand Italian relatively easily because of my French; I bought an Italian grammar book and dictionary and independently learned enough in a short time to be able to read longer texts in this language that I loved so much.

It is the story of how my interest in the Polish language was awakened that is the most curious. Poland and its culture attracted me with its spirit of independence and freedom. Some of the outstanding Bulgarian intellectuals and my idols were

traditionally connected to Poland. So, in August 1980, as a student, I set off by train to the homeland of Mickiewicz and Chopin. The Poles on the train were very excited and heatedly discussing something, but I didn't understand what it was. Later, when the train was waiting at the station in Lublin, I witnessed a woman running along the platform, happily shouting to her compatriots on the train: 'Są strajki na wybrzeżu'. A Bulgarian woman who studied in Kraków translated it for me: 'There are strikes on the coast'. That was the start of the workers' strikes in Gdańsk. You would have to have been born in a communist state to understand the significance of that event, because strikes were strictly forbidden by the system. It was at the very moment when I understood what the Polish woman on the platform at Lublin railway station had shouted that I believed for the first time that communism would also depart from Bulgaria. I reached Gdańsk with the help of a Polish friend and was there when Lech Wałęsa and the government signed the Gdańsk Accords, which legalised the trade union Solidarity. The first thing I did when I returned to Sofia was enrol in a Polish course with the Polish Cultural Institute in Sofia. Like Bulgarian, Polish is a Slavic language, so the lexical aspect is not difficult for me, but the grammar, with its cases, is not easy for someone who is used to analytic languages like Bulgarian or to Romance languages.

I graduated in journalism from Sofia University. During my studies, I diligently studied English in the most advanced group, as well as Spanish and Italian. That was perhaps the most meaningful part of my otherwise very politicised university education. It gave me great pleasure to delve into the lexical, grammatical and stylistic intricacies of the languages, to compare them with each other and to see how the worlds they opened up for me became more and more interesting and stimulating. Multilingualism was my salvation from oppression, my way of living freely and in Europe, even before I could move freely in Europe.

After graduating, I started work as an editor for a literary weekly publication, writing about contemporary French and Italian literature. This is what brought me, in a completely natural way, to literary translation, which is an excellent means of understanding the most complicated mechanics of a foreign language. The works of the great authors that I translated taught me not only to unravel the mysteries of my mother tongue, but also to read complicated texts in depth. To this day, I can definitely say that I well and truly read the books that I translated. This is especially true of Claude Simon's experimental prose in his novel 'The Flanders Road', some of which consists of 20-page sentences full of participle phrases, a kind of cubist painting created using the French language. Translating that novel was my biggest challenge and took me to the limits of both French and Bulgarian.

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The communist dictatorship in Bulgaria fell at the same time as the Berlin Wall. The human rights organisations, of which I had been a member since the 1980s, joined forces with the restored political parties that had previously been banned by the regime in the 1940s, in a grand coalition that we called *Sayuz na demokratichnite sili* (Union of Democratic Forces; 'SDS'), in order to create a multi-party democracy. Tens of thousands of Bulgarian citizens took to the streets of the cities, with two main demands: democracy and a return to Europe – one unimaginable without the other. In addition to the Bulgarian national colours and the blue flags of the coalition, people were waving European flags that they had picked up from who knows where. So, people like me, people with foreign language skills who had been following world politics through the European press, suddenly found themselves at the centre of this common national effort. As co-founder of the SDS daily newspaper 'Demokratsia', I was responsible for its international news and, in parallel with that, I founded the SDS International Department. When our Chairman, Zhelyu Zhelev, was elected as Bulgaria's first non-communist President in August 1990, I became his first advisor on foreign policy, at a time when Bulgaria, under his leadership, was choosing European integration as the guiding principle not only for foreign policy but for its overall development.

A very important component of the country's European orientation was the promotion of multilingualism. Given the apparent global dominance of English, it was important for us to preserve and promote the national linguistic traditions that had been established during the period of Bulgarian National Revival in the 18<sup>th</sup> and 19<sup>th</sup> centuries, when French and German were the main foreign languages of the Bulgarian elite. It was precisely in order to preserve part of those traditions that Bulgaria joined the Organisation Internationale de la Francophonie back in 1994, by decision of President Zhelev.

In this context, there was a decisive turn in the development of my personal multilingualism. For the first time in my life, oral communication in the foreign languages that I had learned outweighed written communication. I spoke with foreign diplomats, politicians and journalists on a daily basis, first in Bulgaria, but then also during my increasingly frequent visits to European capitals. There was a huge amount of European interest in the events that had taken place behind the former Iron Curtain. When I was learning foreign languages back then, I had almost no access to native speakers. So now I had to adapt quickly to this new reality, where oral communication was paramount. This was a huge challenge for me, as I often met people of the highest rank, prominent European government officials, politicians and intellectuals. I never imagined that I would one day speak personally with François Mitterrand, Valéry Giscard d'Estaing, Jacques Chirac, Margaret Thatcher, Lech Wałęsa or Giulio Andreotti. In coping with the initial stress,

it was specifically my thorough linguistic preparation based on a good knowledge of grammar that helped me. Through extensive reading, my vocabulary had expanded considerably, so the transition to oral communication was easier than I would have expected. The traditional approach to foreign-language learning, carefully thought out, with lots of grammar, proved beneficial to me in the long run.

During my career as a diplomat, as Bulgarian Ambassador to Italy, Malta, the United Kingdom, Ireland, France and UNESCO, and as Permanent Representative to the UN in New York for two terms, multilingualism was and is a fundamental requirement for my efficiency as a diplomat, an irreplaceable work tool.

In diplomacy, a good command of the language of the interlocutor is a proven means of establishing rapport and securing support. When Karol Wojtyła, Pope John Paul II, received me as Ambassador to Italy in a private audience in 1992, I addressed him in his mother tongue. In surprise, he asked me: 'How is it, Mr Ambassador, that you speak Polish? Have you lived in Poland?'. Very emotionally, I told him the truth: 'Your Holiness, I decided to learn Polish because of the hope that the founding of Solidarity and, even before that, your election as Pope aroused among us in Bulgaria.' Visibly moved, John Paul II gave me some texts he had written in Polish, with a short personal dedication. After that, the numerous Poles in his entourage were my main support during my mission in Rome, where my main task was to change the image of Bulgaria for the better after decades of communist isolation.

I had my first close encounter with institutional multilingualism during my total of nine years as Permanent Representative of Bulgaria to the UN in New York, first from 2001 to 2006 and then from 2012 to 2016. By that, I mean a restricted form of multilingualism based on the global organisation's six official languages: English, French, Russian, Spanish, Arabic and Chinese, with English and French being the working languages of the Secretariat. The legal framework in place ensures that interpretation is provided during formal sessions of the bodies of the UN and that all documents of those bodies are translated into all six languages.

The UN's excellent interpretation and translation services ensure a secure basis for diplomats' work in the organisation and play a key role in facilitating political communication. A good translation is an indispensable means of unifying terminology, helping to clarify the message of a text or speech when the author or speaker uses complicated rhetoric overloaded with meaning-obscuring stylistic devices and cultural idiosyncrasies. This key role of translation motivates diplomats and politicians to use

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simplified, direct language in the written text of their oral communication during formal deliberations. An experienced UN diplomat foresees this ‘translation effect’ and takes it into account by writing ‘for’ the translator and speaking ‘for’ the simultaneous interpreter, so to speak. As a result, diplomatic communication loses stylistic diversity but gains clarity, which facilitates the decision-making process and policymaking.

Another important effect that underscores the central role of interpretation and translation services in improving political communication is that those services serve as a kind of instructor for diplomats and representatives who use a UN official language as a foreign language. As a general rule, diplomats regard interpreters and translators as a reliable source of linguistic accuracy. Therefore, the UN language services determine the terminology that is adopted by delegations as binding for practice. This is particularly valuable when drafting political documents, as it eliminates the risk of unclear language and ambiguous terms. In this way, representatives can be sure that an English word that they use will be translated into the other five languages and vice versa in an accurate and predictable manner. What is also impressive is the flexible communication within the language services, which quickly coordinate with each other on the accurate translation of new terms in the six languages, irrespective of which of those languages the new term appeared in.

Translation-related complaints from representatives are very rare. There has not, in recent decades, been a repeat of anything like the infamous example of the significant divergence between the English and French wording of the historic 1967 Security Council Resolution 242 on the Middle East. In that resolution, the English wording of Article 1(i) was: ‘withdrawal of Israel armed forces from territories occupied in recent conflict’ – instead of ‘THE territories ...’ – and the French wording was: ‘retrait des forces armées israéliennes DES territoires occupés au cours du récent conflit’. Sometimes, the simultaneous interpreters clarify their terminology while following the speeches of diplomats speaking in their mother tongue. During the Security Council’s non-public deliberations in 2001 and 2002, I witnessed how the then Permanent Representative of Russia, Sergei Lavrov, whose English is excellent, held the receiver to his ear during critical political questions concerning Iraq or the Middle East and carefully listened to the simultaneous interpretation of his statements from Russian into English, correcting the interpreter with what he felt was the correct English expression each time he disagreed with the transmission.

Nor has the UN been spared from the dominance of English, especially at its headquarters in New York, an English-speaking city. Informal consultations take place almost exclusively

in English. This also influences the formal sessions, as some delegates prefer to speak English because they feel that they are understood more easily and better in that language.

In my nine years as Ambassador to the UN, I have personally delivered my speeches in French, with very few exceptions, because I believe that the *protection of* multilingualism has a cultural and political importance that outweighs the actual or perceived advantages of using English alone. Thanks to the excellent simultaneous interpretation, I never felt that my messages were not understood or that my country and I, as its representative, lost anything in terms of communication. Of course, this was not always easy, especially when I had to improvise on complicated and politically sensitive issues in the non-public meetings of the Security Council because the documents and instructions sent to me only a short time before were drawn up in Bulgarian or English.

My personal multilingualism was my primary means of winning sympathies for my country at the UN. For example, it helped me a lot after I was elected as chairman of one of the six main committees of the General Assembly, the Third Committee, which deals with social, cultural and humanitarian issues, and human rights in particular. I believe that the fact that I used four official languages of the UN during my time as chairman contributed to a better atmosphere during meetings and helped me handle many delicate situations more effectively.

One of the most important tasks of diplomats at the UN is to campaign to the various bodies. This requires a great deal of their time and effort. Social and person-to-person contacts with the representatives of the countries whose support must be won in those campaigns are crucial to achieving the objective. For example, Bulgaria and Belarus applied in 2001 to become a non-permanent member of the UN Security Council. My competitor, the Permanent Representative of Belarus, who was formerly the Prime Minister of his country for many years, spoke only Russian and conducted his campaign with the help of young diplomats, whom he used as interpreters during his talks. By contrast, my personal multilingualism allowed me to communicate with many ambassadors, to whom I promoted the Bulgarian candidacy in their mother tongue. Bulgaria won already in the first round.

Article 22 of the Charter of Fundamental Rights of the European Union reads 'The Union shall respect cultural, religious and linguistic diversity'. The preceding article of the Charter, Article 21, expressly prohibits discrimination based on language. The Charter is a major source of institutional multilingualism in the European Union. It makes a value choice in favour of the preservation of linguistic diversity, which is the heritage

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of our thousand-year history and without which the most important achievement of European integration, its core, would be inconceivable: the creation and preservation of peace on the continent after the Second World War, the Pax Europaea, of which generations of great humanists have dreamed. Peace in Europe is not made possible by cultural and linguistic assimilation as in the American 'melting pot', but rather by the preservation and conflict-free coexistence of each European national identity, by achieving unity not despite, but through, that cultural and linguistic diversity, which is the heritage of our thousand-year history.

Within that regulatory and political framework, institutional multilingualism enshrines the inalienable right of every EU citizen to have access to official documents drawn up by the European authorities and institutions in his or her own language. It guarantees the right of citizens to ask questions and receive answers to those questions in the official language of the European Union of their choice, irrespective of their knowledge of foreign languages.

In the debate on Europe's future, it is often heard that the existing model of institutional multilingualism is expensive and ineffective from the point of view of good governance. The solution would be to designate one or at most two languages as official languages of the European Union, to be chosen according to demographic or economic criteria. Such a departure from the principles of non-discrimination enshrined in the Charter would undoubtedly lead to inequalities between EU citizens, open the way for a fundamentally oligarchic model of the functioning of the European institutions and thereby strengthen Eurosceptic sentiment in many Member States.

Judicial reform is currently the most important task facing Bulgarian society. In those efforts, my country relies on EU law and the EU institutions. Therefore, communication on legal issues between the Bulgarian courts, officials, politicians, NGOs, journalists and citizens, on the one hand, and the bodies and institutions of the European Union, on the other hand, unhindered by language barriers, is essential for the consolidation of the *rule of law* in Bulgaria. In 2021 alone, Bulgarian judges made 60 references for preliminary rulings to the Court of Justice of the European Union, and that number is growing every year. From a Bulgarian perspective, the work of the legal and linguistic experts at the Court of Justice of the European Union and the other European institutions is indispensable. Their work makes an important contribution to creating the image of a Europe that we need and love: open, diverse and standing in solidarity.

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## A philologist's thoughts on multilingualism

— José Antonio Pascual

**José Antonio Pascual is a philologist with an interest in the history of Spanish. He did most of his teaching as Professor of Spanish Language at the University of Salamanca. He is a member of the Real Academia Española (Royal Spanish Academy), of which he has been Vice-Director. He was awarded the Premio Nacional Menéndez Pidal de Investigación (Menéndez Pidal National Prize for Research). He holds honorary doctorates from the Universities of Paris XIII and León.**

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*Diferido estilete la palabra  
cuando en su entraña está negar lo que promete  
(A simple word becomes a concealed threat  
when the promise that it holds is not met)*

Pedro López Lara, *Meandros*, Madrid: Vitruvio 2021

## **1. Multilingualism as exemplified in the legal sphere of the European Union**

Multilingualism is here in front of our very eyes, in the everyday reality around us, as much a part of nature as the air, the sun, the seas and the forests. Languages are the embodiment of communication and it is through speaking languages that we are first able to make sense of reality, as it is through language that we build up the mysterious and endearing connection that occurs when, from childhood, we are able to identify the same things by the same names. We then turn to the language we have been given to express ourselves in good times and bad, to relate to our friends, to defend ourselves against those who intimidate us, or simply to live, to think, to entertain ourselves, even to lie ... We have every right in the world to express ourselves in our own language, which does not mean that it, or any other language, is any better or worse than the rest.

What I mean by this is that the *Démarche Multilinguisme* organised by the Directorate-General for Multilingualism of the Court of Justice of the European Union is intended to showcase the institution's ongoing awareness of the need to champion languages, a project to which it has been committed since its foundation, and which ultimately comes down to championing the freedom of speakers to choose the language or languages in which they wish to express themselves.

As an outsider with very little experience of events beyond a horizon which usually stretches no further than the pages of my books, I have the impression that, as a community of law, the EU has been deeply involved since its creation in the endeavour, in a context as important to democracy as law, to make it a reality, and not a mere wish, that the human, technical and organisational resources be made available to ensure that, in this babelisation of the EU, all individuals applying to the courts are able to express themselves in the language of their own country and all Member States are able

to defend their interests in their official language. This complicates matters, inasmuch as it entails an obligation to translate a substantial proportion of official documents into all the official languages and to provide interpretation in each of those languages during legal proceedings and in other situations. It is no small accomplishment, then, to my mind, that, in this complex network of translation and interpretation, it has been possible to achieve the level of quality required by the administration of justice, a point to which I shall refer shortly.

Far from choosing the paradise that would for some be represented by linguistic uniformity, the EU not only opted for multilingualism — the natural linguistic position for any philologist — at the outset, but continued to promote it through such soundly conceived measures as that which paved the way for exchanges of university professors and students from its Member States, under programmes such as Erasmus and other programmes of varying scope in the field of teaching and research, which acted as an incentive for the promotion, both within the EU and beyond, of parallel initiatives with non-European countries.

## **2. The essential need for good-quality translation**

It would be impossible for communication between individuals living together in a multilingual environment not to give rise to exchanges between the languages they speak. A distinction must be drawn, however, between the more spontaneous and close exchanges that take place in the changing reality of everyday life and those which belong to other distant, if not entirely alien, realities in the field of law and public administration, where concepts must be expressed as clearly as possible. Those who work in the EU institutions have to be able to incorporate the peculiarities of EU law, which extends across the EU, into their everyday work. Those peculiarities make it necessary to appropriate foreign terms (or to host them, if that is a better expression) and to do so with a precision that is not easy to achieve given the constant changes of meaning to which legal terms are subject. Such changes explain the difficulties associated with translation in this field, a task where the day-to-day work carried out in the EU gives rise to legal literature.

Such literature is, for a philologist at least, especially one with any interest in lexicography, a veritable treasure trove of information, to be found both in the databases of the EU institutions and in the technical commentaries contained in their documents and publications. I shall demonstrate this by way of certain translation problems the

answers to which I have been discovering (and which would have warranted the effort of drawing up a full typology):

1. *The simplest approach is to find a more comprehensible translation for a term. 'Rule of law', for example, is often more transparently rendered by imperio de la ley than by Estado de derecho. This approach can lead to problems, of course, but these are easily remedied. This is the case where, notwithstanding the existence in the target language of a cognate for the source-language term, a technical meaning cannot readily be ascribed to the everyday term because of the difference in register between the new meaning and the old one. For instance, the English forensic term frivolous, the translation of which into Spanish by frívolo may be more precise in certain legal contexts than terms such as infundado, despite the contrast in register between the traditional meaning and the new one.*
2. In many cases, the problem stems from the need to make clear by means of different words the variations of meanings conveyed by a term such as *big data*: translated as *macrodatos* or *datos masivos*, but also as *ciencia de los datos* or *inteligencia de datos*. Similarly, the English *remedies* is usually rendered by *acciones*, *vías de recurso* or simply *recursos*, when (as it usually does) this term describes the means of seeking recognition of a right or a claim. In other contexts, however, translations such as *tutela*, *amparo*, *medidas de tutela*, *medidas cautelares* (where the reference is to a means of obtaining preventive measures) or *reparación* o *resarcimiento* (in reference to compensatory measures) are preferable.
3. The proximity between signifiers may even detract from the difference in the meaning of a neologism. Thus, in the EU negotiations on Brexit, the term *backstop*, which, in the field of sport, refers to a type of barrier, gave rise to the expression *backstop solution*, used to describe the notion that the territory of Northern Ireland would remain within the EU customs union. It was translated into Spanish, in much the same way as it was translated into other languages, as *(solución del) mecanismo de protección*, *(solución de) salvaguardia*, *solución de última instancia* and *solución de último recurso* (the latter two forms being preferable to the first two, which refer to a specifically financial term used, in another context and with another meaning, in the financial crisis that began in 2008).
4. No less worthy of consideration are the changes of mentality which have taken place in society and the influence these have had on changes of terminology,

the former making it advisable on some occasions to translate *illegal* not by *ilegal* but by *irregular*. This is also true of the double meaning (in reference either to the global budgetary context or strictly to matters of taxation) which the term *fiscal* has acquired over the years in the financial sphere in both English and Spanish. The problem here lies in the complexity of meaning. That complexity should be a prompt to specify the values which these terms ought to have when used in a legal sense in the various languages concerned.

Examples such as these, which I found in a publication by an EU institution, are proof of the careful attention that is paid to translation within the EU's legal bodies and in the work of lawyer linguists and interpreters. This explains why the Court of Justice is a point of reference in this field for this type of institution both within the EU and beyond it, a fact due ultimately to its having prioritised quality in the performance of its work, in the belief that any attention paid to translation is a small price to pay in order to be able to administer justice in a multilingual setting. That quality is achieved, first, through the provision of initial training for translators and interpreters, then through the selection process applicable to them, next through their continuous improvement throughout their professional careers and, finally, through the daily preparation of their work, to which end they have access to the relevant files and some time to study them.

### **3. Plurilingualism is not a barrier to bringing together the realities that underpin languages**

Following this inevitable digression on quality, I come back to the relationship between the languages that coexist in the tempestuous sea of contrasting mentalities to be found in the various countries of the EU. Some speakers have come to believe that their way of doing things — be this their language or their religion, for example — is preferable to everyone else's, and in this they find justification for putting up every manner of barrier to the introduction of loanwords. Others, conversely, are of the view that all it should take for a word to leap from one language to another is for speakers of the language to want this to happen. This explains the two customary approaches to loanwords, which, if looked upon favourably, seek, according to the first approach, self-affirmation on the part of a speaker who does not wish to break down the scaffolding on which his or her own language has been built, and, according to the second, look to deprovincialise that language by bringing it closer to others.

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When conducting the balancing act between those two extremes which we have experienced throughout history, we should leave aside the highly topical fear that our languages, to the despair of many of their speakers, are destined to be invaded by barbarians (in the etymological sense of the word). If we look back in time, we can see that what seemed at the time to be an unbearable invasion of words from other languages ended with most of them disappearing, because speakers successfully put linguistic ecology in practice, recycling many of those insufferable expressions by moving them to the incinerator, where the souls of speakers reduce the excesses to ashes.

Exchanges of words — in whatever form — are just the tip of an iceberg which, as it emerges, puts us on the trail of the exchanges of ideas (and, therefore, of the mentalities through which those ideas flow) that take place through the languages of speakers. This process forms part of what we know as culture, which encompasses traditions, behaviours, ideas, beliefs, prejudices, rituals, fashions and even laws.

These are the bridges between coexisting languages which have facilitated the developments we have seen in the linguistic and philological disciplines (through grammars, dictionaries, thesauri and so on), and allowed educated people to delve more deeply into the intricacies of *other* languages. At the same time, computational linguists and data analysts have been able to build what is somewhat imprecisely known as machine translation — forms of which range from statistical models to the most recent versions based on neural networks (NMT) —, to which many of us turn on a daily basis. Incidentally, the use of those technologies within Curia has alerted bodies outside the EU institutions to the advantages of using them, provided, of course, that their use comes with a careful process of revision. It is important to bear in mind, in that regard, that translators are still the central actors in these activities, in which machines are excellent collaborators, but collaborators nonetheless, at the end of the day.

The foregoing does not preclude the possibility of contributing towards greater permeability between the languages of the EU with regard to the use of concepts relating to law. A work such as the *Diccionario Panhispánico del Español Jurídico* of the Real Academia Española offers good examples of versatility and precision in the handling of language. It incorporates the entire legal lexicon, common words and territorial variants of Spain and the Spanish-speaking countries of America. The dictionary allows users to look up immediately, from each of its entries, how a term is used by the legislature in each of the countries concerned. This information allows for extensive intercommunication between all Spanish-speaking countries. It is the first step towards the establishment of an information community to which the databases of the EU and other European

countries, regardless of the language in which they were compiled, will soon be linked. This will make it possible to look up the variants of a term within the Spanish-American and European arena without leaving the same system and irrespective of the language in which those variants are formulated.

I am referring to a type of work whose structure would lend itself to the laws of the judicial and administrative networks of the countries of the EU. Indeed, the dictionary already points to this possibility, inasmuch as it contains not only terms relating exclusively to Spain (for example, *Consejo de la Guardia Civil*, from the field of public administration, or *censo vitalicio*, from the civil law applicable in Catalonia) and Spanish-American countries (for example, *casación en forma de oficio* or *conducta ministerial* in Chile; *caución de no ofender*, in Mexico), but also those directly associated with European institutions (*comercialización transfronteriza* or *Convenio de Bruselas*). This work thus showcases one possible means of collaboration among the institutions of European countries in matters of language and law that would lend strong support to the practice of multilingualism in the field of law.

My reference to the various possible approaches to neology prompts me to mention the need for access to the means to move ever more confidently through the complex reality of differences between countries and individuals of which words represent only one part. This is a step which we Europeans must take in order to give effect to the meaning underlying the term *union* that appears in the syntagma *European Union* and to spread among ourselves the improvements that we may find in other people's realities by incorporating them into a society, 'our' society, which nobody can think should be content with believing that it has achieved perfection.

#### **4. A philologist's disagreements with some understandings of multilingualism**

At this point, I still stand by my position on multilingualism to the effect that the status of languages is such that they are all on an equal footing. I also understand, however, that, in the current situation, those who dispense justice and those — judges, translators and interpreters — who assist with such functions need to have a language for deliberation which will act as a vehicle for their discussions and in which the version of a document deemed to be 'the original' is drafted. This was an idea compelled not by the principles of philology but by the institution's need to have a language that would facilitate the work which people who speak different languages have to carry out without intermediaries.

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The choice which some institutions made to have three working languages, the consequence of a political negotiation in which I imagine many factors unrelated to languages would have played a part, seems reasonable. I now have a sneaking suspicion that, because of Brexit, it may come to be felt that this is the time to reduce the power of English in the EU, a feeling that may be reinforced by the serious illness from which that language suffers as a result of the poor quality specifically brought about by its internationalisation. If this were in the offing, I would be so bold as to ask, first of all, whether the United Kingdom is the only country in the EU with English as its native language, and whether we should be forgetting how important its status as an international language actually is. I would also ask whether such *poor quality* would not affect any language used in the same circumstances, and even in others. It is no coincidence that someone referred to my language as *angloñol*, and the reference to French as *franglais* does not appear to have been an attempt at praise.

The advisable and prudent thing for a philologist to do would be to disengage from these matters, particularly if he or she felt that the actions taken by the EU to promote multilingualism might be aimed more at reinforcing bilingualism than at supporting multilingualism, thus carrying on a tradition in which languages have competed with each other for a position of prominence based on the notion that one might be more suited to abstraction, to irony, to conveying the conditions of the soul, or even, as I read recently, to maintaining a higher ethical standard, than the others. All of which has even prompted the thought that, in the world in which languages coexist, it is the vocation of some of them to carry on their shoulders the difficult task of having to fulfil a destiny. As if they were directed towards that destiny by the laws of nature, in collusion with the laws of history, as a distinguished French philosopher, for whose work, incidentally, I have enormous respect, believes to be the case: 'Chacune des trois grandes langues à vocation fédératrice de l'Europe a un rôle à jouer, que lui fixe un certain destin. 'Le développement des exigences culturelles, en réaction de lassitude face à l'insolente frénésie du profit, donne toutes ses chances au français. Et il peut, dans divers domaines où l'anglais et l'allemand sont moins présents, devenir par une heureuse complémentarité, un facteur d'équilibre trilingue en fédérant les aspirations' (Each of the three major unifying languages of Europe has a role to play, created for it to some extent by destiny. The growth of cultural demands, in weary response to the insolent frenzy of profit, puts French in a very strong position. And, in a number of fields in which English and German are less present, it has the capacity to become, in a relationship of happy complementarity, a trilingual balancing factor in the unification of aspirations). Is this not one of those cases in which 'le plaisir qu'il y a à comprendre

certaines raisonnements délicats dispose l'esprit en faveur de leurs conclusions' (the pleasure to be found in understanding certain thought processes predisposes the mind towards the conclusions to those thought processes)?

In my view, it makes sense to some extent that French should today be the working language at the Court of Justice. This does not place it in the paradise which some of us human beings aspire to reach one day, since there is no room for languages in paradise. French is simply in the place to which history led it when the foundations for the EU edifice were laid, the point at which the alternation we have inherited between French and German, on the one hand, and English, on the other, was first created. French achieved that status following a political negotiation in which reliance was placed on an abundance of non-linguistic advantages drawn from the quality of education in France, the well-known tradition of discourse that has existed there since before the Enlightenment, the significance of its science and culture, the strength of its diplomacy and the importance of its law. These factors supported the use of French in a situation in which it was reasonable for an institution to have only a limited number of working languages, given that full multilingualism was unsustainable.

Those within the EU may see things differently and may be able to identify what can be done to promote and improve plurilingualism. As a philologist, I have no comment to make in this regard, as this is something on which politicians must reach agreement in respect of a practical reality – that of languages. In that reality, Spanish has a well-known strong case, as do other languages.

In conclusion (and I say this less with hope than with conviction), I should like the opportunity that we now have to promote plurilingualism in the EU to be used to bolster the use of EU languages, not to restrict the use of any of them.

## References

I felt it unnecessary to explain the reasons for the essential equality between languages, to which I refer at several points throughout the text. To save on explanations, I shall simply mention the excellent Spanish version of David Crystal's book *Enciclopedia del lenguaje*, edited by J.C. Moreno Cabrera, Madrid: Taurus 1994 [original English title: *The Cambridge Encyclopedia of Language*, 1987], pp. 6 and 7.

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The idea of the connection that comes, as children, from identifying the same things by the same names, which is attributed to Carlos Fuentes, was taken from Juan Cruz, *El País*, 26.11.1984.

I wanted to alternate the traditional use of *loan* and *lending* with that of *guest* and *hosting*, in keeping with Paul Ricoeur's well-intentioned creation of the syntagma *hospitalité langagière*, (linguistic hospitality), although the philosopher, in his attempt to improve reality through the creation of that concept, contributes very little to the matter at hand.

The references to the ways of translating the English terms *rule of law*, *frivolous*, *remedies*, *backstop* and *illegal*, and of rendering the various senses of *big data* and the meanings which the term *fiscal* has acquired over the years in *English and Spanish*, were taken from various editions of *puntoycoma*, *boletín de los traductores españoles*.

The image of recycling words that are put into the incinerator of the soul comes from J.J. Millás, *El País*, 3.12.2021.

The *Diccionario panhispánico del español jurídico* of the Real Academia Española, edited by Santiago Muñoz Machado, is published in Madrid: Santillana 2017, and is available online: <https://dpej.rae.es>.

The creation of the term *angloñol* was found in Francisco Javier Muñoz Martín, [https://ec.europa.eu/translation/spanish/magazine/documents/pyc\\_172\\_es.pdf](https://ec.europa.eu/translation/spanish/magazine/documents/pyc_172_es.pdf).

It is more than half a century since René Etiemble published *Parlez-vous français?*, Paris: Gallimard 1964.

The linguist I disagree with, even though I admire him, is Claude Hagège, author of *Le souffle de la langue*, Paris: Odile Jacob 2000.

The relationship between intricate thought processes and their conclusions is taken from Paul Valéry, *Oeuvres*, II, 'Autres rhumbs', edited by Hytier, J., Paris: Gallimard (Bibliothèque de la Pléiade) 1960, p. 693.

The phrase 'less with hope than with conviction' is borrowed from the title of the book by Ángel González, *Sin esperanza, con convencimiento*, Barcelona: Literaturas 1961.

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# Lawyer-linguists at the Court of Justice of the European Union and Court Translators in the Czech Republic – Two Different Worlds?

— **Tomáš Duběda**

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## Introduction

A legal system and the language that is its mode of expression are two closely intertwined attributes of a particular human community. Law develops in symbiosis with language, appropriating and transforming it, so as to best fit its needs. According to G. Cornu,<sup>1</sup> contributing to this 'inseparable connection of law and language' is the fact that both phenomena are of a conventional nature, are historically determined, evolve over time, and belong to the cultural sphere.

The translation of legal texts, which, according to M. Chromá<sup>2</sup> 'is a process in which one dual semiotic system (the original system of law and the original language) is to be rendered in another dual semiotic system (the target system of law and the target language)', can then be understood as a certain disruption of the natural connection between law and language: a contract concluded under Czech law can of course be translated from Czech into French (after all, this happens daily), but when reading the translation, a French lawyer can unmistakably tell after a few lines that the text belongs to a different legal system than the one to which he is accustomed. In the case of multilingual jurisdictions, the process of translation is made easier by the fact that the transposition is between two languages, but within a single legal system for which both languages are authentic – Swiss federal law would be a good example. A third possibility is where the same language serves two or more legal systems, as in the case of German. The umbrella term 'legal German' thus contains several partially distinct varieties (German, Austrian, Swiss, and others).

How has the adoption of European law changed the relationship between legal systems and legal languages? First of all, it must be noted that each official EU language has acquired one new variety: the language of European law. Languages previously firmly linked to a single legal order, which include Czech, can now boast of being authentic languages of not one but two legal orders – domestic and European. Through fixed terminology and text-forming conventions, these varieties have been linked to the expanding European legal system and hence to one another. But given that European law forms part of the national law of the Member States, these European varieties are now returning full circle to the domestic legal systems and gradually growing back into them.

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1 | Cornu, G., *L'union intime du droit et de la langue.*, *Linguistique juridique*, Montchrestien, Paris, 2005, p. 4.

2 | Chromá, M., *Právní překlad v teorii a praxi. Nový občanský zákoník*, Karolinum, Prague, 2014, p. 22.

The creation and application of European law would be unthinkable without legal translation. But even monolingual national systems cannot do without translation – court-appointed translators play an indispensable role in translating official documents, in actions taken by the police, and in court hearings. At first glance, it might seem that the lawyer-linguists who translate texts of the Court of Justice of the EU and court-appointed translators who are called upon by national courts do essentially the same job; however, when we compare their work in greater detail, we find a number of differences arising from the type and purpose of the translation, the translators' remits and their working conditions. It is those differences that form the subject of the following discussion.

Type of translation – the same activity, but a completely different practice

Legal translation comes in many forms, which can be distinguished from each other by several criteria – these are, in particular, the type of text (legal regulation, judgement, registry document, contract, etc.), the originator and recipient (public administrative body, party to legal proceedings, commercial corporation, legal theorist, the general public, etc.), the binding nature of the translation (binding vs. informative translation), the direction of translation (into one's native vs. into a foreign language), and the translator's socio-professional profile (in particular expertise and working conditions).

Lawyer-linguists at the CJEU translate all types of documents related to proceedings before the Court, in particular applications, actions, opinions, and judgments, but also national legislation, if taken into account in the decision-making process. A large part of the translation is intended for publication in the European Court Reports, which are available on the EUR-Lex database. Although in the case of judgments only the version in the language of the case is the operative version, the documents must be translated such that they are fully functional, i.e., that their interpretation be identical to that of the original. Translation takes place both within the EU legal system and between that system and national systems; for that purpose, the extensive IATE database is available to translators, which includes terminology of EU law and, to some extent, national law terms of the Member States. In the vast majority of cases, translation is into the translator's mother tongue.

Court-appointed translators in the Czech Republic are called upon to translate a far broader range of documents (court submissions and decisions, charges, police documents, instructions, registry documents, identification documents, certificates, etc.). The referential legal system is Czech law. Translations must be functional, as the competent persons or authorities legitimately base their decisions on them, but they

are almost never published. No binding terminology is specified, which means that translators use various types of sources (dictionaries, databases, corpora, etc.) or they create terminological equivalents themselves. Very often a translation into a foreign language is required.

## Terminology – looking for the needle in the haystack

Terminology is not the only constitutive element of legal language, but according to M. Chromá,<sup>3</sup> it is the most visible element and therefore also essential for translators. The terminology of European law is binding and can easily be found in the IATE database; only when translating national texts do translators have to find their own terminological solutions, as IATE provides only partial help in this respect. No binding terminological conventions apply to court translation in the Czech Republic – whether from foreign languages into Czech or vice versa. Hence, translators use print or electronic sources of varying degrees of authority at their own discretion, consult with colleagues or legal experts, and apply their own terminological solutions. Although translation is *ex definitione* a creative activity, and there is a consensus that every text can be translated in many different ways that can be declared correct, in the case of terminological systems it is intuitively obvious that creativity leading to the coexistence of different, competing solutions is rather detrimental, even taking into account the fact that court translations play only a marginal role in the operation of Czech law.

A survey conducted in 2020 among 14 court-appointed translators for the French language<sup>4</sup> showed very high terminological fragmentation in the translation of system-specific terms of Czech law (e.g., *dohoda o provedení práce* (agreement to complete a specific job), *soudní exekutor* (bailiff), *výpis z katastru nemovitostí* (extract from the land register), *IČO* (personal identification number for business purposes), *rodné číslo* (identification number referring to one's date of birth), *Městský soud v Praze* (Prague City Court)): the average number of various equivalents per term is 8, the lowest recorded number is 2, and the highest is 14 (this number coincides with the number of respondents, which

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3 | Chromá, M., 'Traps of English as a Target Language in Legal Translation', *Comparative Legilinguistics*, 26, 2016, pp. 71-97.

4 | Duběda, T., 'Soudní překladatelé a terminologické nástrahy. Průzkum k překladu právních termínů z češtiny do francouzštiny' (Part 1 and Part 2), *Soudní tlumočnick 2/2020*, 2020, pp. 25-28, *Soudní tlumočnick 1/2021*, 2020, pp. 30-32.

means, in simple terms, that everyone submitted their 'original' equivalent). Naturally, the variability of the data is also high because it involved translation into a foreign language and deliberately tested terms that are difficult to translate; however, the survey fully brings to light the reality of court translation as a field in which terminological consistency is difficult to achieve. Needless to say, such a situation would be fatal to the translation practice of the Court of Justice of the EU.

Can terminological consistency in court translation be improved? Probably, but only to a certain extent, as achieving a situation close to that we know of from multilingual jurisdictions would be possible only with the intervention of public authorities. Partial success – meaning at least a reduction in the chronic variation of translation equivalents – can be achieved through the natural authority of legal lexicographers, professional organisations, lecturers offering specialised courses and government institutions with a multilingual agenda. At the same time, a responsible and self-critical approach on the part of the court-appointed translators themselves and their ability to communicate with each other are essential.

One way to partially standardise the terminology of Czech law is to produce high-quality and, if possible, publicly accessible translations of Czech legislation. Some public institutions have already taken this route, by having foreign language (mainly English) versions of selected laws produced. Special mention should also be made of the recent translation into four foreign languages (English, German, French, and Russian) of three important items of private-law legislation – the New Civil Code, the Law on Business Corporations and the Law on Private International Law. The English and French translations have been partially evaluated in peer reviews;<sup>5</sup> it must be noted that the French translation is so problematic that its terminological authoritativeness is out of the question.

Translation direction – making a virtue of necessity

The British translation theorist P. Newmark, reflecting on the quality of non-native translation, aptly remarked that it '*contributes greatly to many people's hilarity*'.<sup>6</sup> He thus sides with those who recommend entrusting the translation to a native translator

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5 | Duběda, T., 'Francouzský překlad nového občanského zákoníku'. *Soudní tlumočnick*, 2015, 2015, pp. 39-42.  
Klbal, O., 'Anglický překlad zákona o obchodních korporacích', *Soudní tlumočnick*, 2015, 2015, pp. 35-39.

6 | Newmark, P, *A Textbook of Translation*, Prentice Hall, London, 1988, p. 3.

to ensure a flawless linguistic, and especially stylistic, level of translation. The terms 'mother tongue' or 'native translator', however, have increasingly blurred contours in the contemporary world and it is therefore appropriate to include cases where the translator has acquired a foreign language at a level comparable to a native speaker. Moreover, a number of translation theorists have recently pointed out that the realities of translation practice do not allow for complete adherence to the mother tongue principle. According to an IAPTI <sup>7</sup> [report, the share of non-native](https://www.iapti.org/files/surveys/2/IAPTI_non-native_report.pdf) translation in European markets varies considerably: while among native English speakers only 18% of translators translate into foreign languages, the figure is as high as 85% among native speakers of Slavic languages. In the case of the Czech market, the practice of non-native translation is stimulated by the limited international spread of the Czech language, the low availability of native translators to the major Western languages, but also by the diametrically different financial conditions in the Czech and Western European translation markets.

The Court of Justice of the EU avoids the term 'mother tongue' when recruiting lawyer-linguists and instead requires an 'excellent knowledge' of the target language and graduation from legal studies in that language; there is also a requirement to know two source languages. The Czech Law on Court-appointed Interpreters and Translators uses the term 'mother tongue' but quietly assumes that a court-appointed translator will translate to an adequate quality in both directions. Practice offers us much evidence that this is not the case.

A 2021 survey <sup>8</sup> involving 44 legal translators (the vast majority of whom were court-appointed translators) revealed that, for 41% of the respondents, translation into a foreign language accounts for more than half of their work. Just under a half of the translators surveyed believe that non-native translation is inevitable and acceptable in principle, precisely half believe it is inevitable but potentially risky, and only 5% believe that legal translators should translate only into their mother tongue.

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7 | IAPTI, *Translation into a non-native language*, 2015. Available at <[https://www.iapti.org/files/surveys/2/IAPTI\\_non-native\\_report.pdf](https://www.iapti.org/files/surveys/2/IAPTI_non-native_report.pdf)>

8 | Duběda, T. (in preparation). 'Risk perception and risk management in legal translation'.

## Qualifications and working conditions – not everyone benefits in equal measure

The translation of legal texts does not lie solely in linguistic manipulation – as J.-C. Gémar<sup>9</sup> says, the translation of texts of a legal nature or legal scope is an act of comparative law combined nevertheless with a translation operation. This fact is also reflected in the personnel policy of the Court of Justice of the EU, which recruits exclusively candidates with legal training for the position of lawyer-linguist. By contrast, the vast majority of Czech court-appointed translators are language graduates and legal training is an exception among them. The implementing regulation to the Law on Court-appointed Interpreters and Translators requires them to complete only the general part of the supplementary study of law for translators and interpreters (70 hours of instruction) and the language-specific part of this study (also 70 hours), if it is offered for the language concerned. There is no obligation to undertake further training after official appointment.

While translators at the Court of Justice of the EU have the opportunity to consult their solutions and their translations are subject to revision, Czech court-appointed translators mostly perform their assignments themselves and are personally responsible for them to public authorities. Feedback is minimal, especially in the case of translations into a foreign language – there, the recipient of the translation is very often a foreign party to the proceedings before the Czech police or judicial authority who has no legal training and will accept even a linguistically problematic translation if it assists them in a difficult situation.

Three-quarters of the legal translators who took part in the survey mentioned above perceive legal translation as riskier than other types of translation. At the same time, however, it is becoming apparent that if the risk does lead to poorer translation quality, the recipient either does not detect these shortcomings or tolerates them. That fact is evidenced by the answers to the question ‘Has a client (whether a private or a public entity) ever complained about your legal translation?’ Only about a quarter of the translators interviewed had encountered a complaint (most often a single one, in only three cases was it two or more) in their translation practice. In verbal comments,

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9 | ... *traduire des textes de nature ou de portée juridique revient à accomplir un acte de droit comparé, mais couplé à une opération traduisante*. Gémar, J.-C., ‘De la traduction juridique à la jurilinguistique: la quête de l'équivalence’. *Meta* 60/3, 2015, pp. 476-493.

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respondents stated that the shortcoming could usually be remedied easily and quickly; they did not mention any case of sanctions or claims for damages. Thus, despite the potential riskiness of legal translation, cases where a translator is held liable for the poor quality of his work seem to be very rare. According to J. Byrne, this also applies to other branches of professional translation.<sup>10</sup>

The quality of the legal translation practice is also influenced by the remuneration to which the translator is entitled. A lawyer-linguist starting out at the CJEU receives a gross salary that is slightly higher than the average Luxembourg salary. With a regular flow of work, a Czech court-appointed translator can achieve even rather above-average earnings; however this situation tends to be the exception, especially for less commonly-used languages. The comparison must also take into account the purchasing power of the average wage, which differs significantly between the two countries.

## Conclusion

If we are to attempt to take a comprehensive look at the similarities and differences between the two socio-professional communities under examination, we may conclude that, even though they are engaged in the same narrowly-defined professional activity, that is to say, legal translation, there are significant differences in terms of the specific tasks involved in their work. Hence, we could answer the question posed in the title of this article by saying that lawyer-linguists at the Court of Justice of the EU and court-appointed translators in the Czech Republic represent two worlds united by the same mission – to ensure the multilingual functioning of the judiciary – but at the same time, worlds rather different in terms of their everyday reality.

The comparison functions largely to the detriment of Czech court-appointed translators, who do not usually have legal training, do not have a binding terminology available to them, work individually, lack feedback, have to translate in both directions and do not have the certainty of a regular supply of work. Whereas the working conditions set up for translators at the Court of Justice are probably the best possible (perhaps with the exception of a lesser emphasis on language training), recruitment as a court-appointed

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10 | Byrne, J., 'Caveat translator: Understanding the legal consequences of errors in professional translation', *Journal of Specialised Translation* 7, 2007, pp. 2-24.

translator in the Czech Republic inevitably means a translator will undertake highly-responsible work in an imperfect system.

How can the current situation be changed for the better? As regards the legislative framework within which the work of court-appointed translators takes place, the recently adopted Czech Law on Court-appointed Interpreters and Translators has brought about certain improvements, thanks to the work of, among others, the newly formed working group comprising representatives of the profession. The working group has initiated cooperation with the Ministry of Justice, which promises further changes in the future. The requirement of a university degree in law is unrealistic, as is the general requirement to take a language-specific course in legal language (such courses are difficult to organise for more than a few of the world's major languages). Less commonly used or marginal languages will thus continue to be at a disadvantage, due to the small number of appointed translators, the comparatively limited opportunities for professional development and lesser availability of lexicographical resources. The obligation to pursue continuing training advocated by the working group was not enshrined in legislation, since, among other reasons, it would have required the introduction of a reporting system. The idea of systematic quality control, which would provide insight into the process of court translation and reveal the weaknesses which it undoubtedly masks, is also difficult to implement.

The high degree of autonomy demanded of Czech court-appointed translators must therefore be balanced, in the interests of quality, by their own conscientiousness, stimulated by professional associations and other authorities. Working conditions such as those at the Court of Justice of the EU cannot be a realistic goal for the Czech court-appointed translators' community, but they can at least serve as inspiration.

# Interpretation of EU law by the Danish courts: lack of focus on linguistic differences

— **Anne Lise Kjær**

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## Introduction

Danish courts do not seem to pay much heed to the European Union's language regime and the particular difficulties encountered with the interpretation of sources of EU law due to the equality of the 24 official languages. This is true of all Danish courts, including those which have a particular obligation to compare language versions, where doubts have arisen in the course of proceedings as to the correct interpretation of EU law.

In the famous 1982 judgment in Case 283/81, *Cilfit*,<sup>1</sup> the specific conditions for the interpretation of EU law were laid down by the Court of Justice of the European Union ('the Court of Justice') and, although 40 years have elapsed since the delivery of that judgment, those '*Cilfit* criteria' continue to guide the interpretation of sources of EU law. Of particular interest in that regard is paragraph 18 of that judgment, according to which 'an interpretation of a provision of Community law' can only be made after 'a comparison of the different language versions', given that 'Community legislation is drafted in several languages' and that 'the different language versions are all equally authentic'.

Nevertheless, it is very rare for Danish courts to compare the language versions of a provision of EU law. A search of the Court of Justice's online case-law database, InfoCuria,<sup>2</sup> shows that Danish courts have referred only 21 cases to the Court of Justice for a preliminary ruling involving an analysis of different language versions. The relevant Danish court itself highlighted a divergence between the language versions in only eight of these cases.

However, we do not know how often the parties to proceedings before a Danish court have attempted to claim that a divergence between the various official language versions gives rise to uncertainty as to the interpretation of EU law and should therefore lead to a reference for a preliminary ruling to the Court of Justice. Such cases come to the attention of the public only exceptionally.

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1 | Judgment of the Court of 6 October 1982, Case 283/81, *CILFIT v Ministero della Sanità*, ECLI:EU:C:1982:335.

2 | InfoCuria contains all publicly available information about the cases brought before the Court of Justice, the General Court and the Civil Service Tribunal. The database provides access mainly to judgments, opinions, orders and notices in the *Official Journal of the European Union* in all official languages, which can be searched according to a number of criteria, including the 'source of a question referred for a preliminary ruling'.

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It is one such exception that I would like to comment on in these remarks. In a case before the Højesteret (Supreme Court, Denmark), the lawyer representing the defendant had noted that the different language versions of an EU directive, which was a source of law in the case, were not worded in the same way. This lawyer contacted me because she wanted me to provide my expert opinion on the proper approach to interpreting sources of EU law in the event of a divergence between the language versions.

There are two interesting aspects in this case: first, how the Anklagemyndigheden (Public Prosecutor, Denmark) understood the system of multilingual interpretation and, secondly, the reason why the Højesteret (Supreme Court) did not refer the matter to the Court of Justice.

I will first set out briefly the subject matter of the case and the course of the proceedings.

### **Anklagemyndigheden (Public Prosecutor) v Toyota Danmark A/S** <sup>3</sup>

In this case, Toyota Danmark was accused of having infringed the provisions of the Markedsføringsloven (Marketing Practices Act 'the MFL') concerning credit agreements. Under Section 18(2) of the MFL, the cost of consumer credit must be advertised in such a way that certain standard information on interest rates and other terms appears in a 'concise, clear and prominent way' and is supported by a representative example given in the advertisement. There are therefore two requirements arising from this: *which* standard information should be provided and *how* it should be provided.

In an advertisement published in Metroexpress in January and March 2015, Toyota Danmark promoted the financed purchase of a Toyota Aygo X Play. The title of the advertisement featured in capital letters 'DKK 995/month', whereas the legally required standard information about financing appeared in the smallest text size in the advertisement at the bottom of the page following a closing line and after the details about the car's fuel consumption and CO<sub>2</sub> emissions.

The point at issue concerned the interpretation of the requirement set out in Article 18(2) of the MFL that the standard information must be presented 'in a prominent way'.

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3 | Judgment of the Højesteret (Supreme Court) of 9 January 2019 October, Case 85/2018.

The case was brought before the Retten i Glostrup (Glostrup District Court) which, in its judgment of 15 March 2017, ordered Toyota Danmark to pay a fine of DKK 140 000. Toyota lodged an appeal against that judgment before the Østre Landsret (High Court of Eastern Denmark), seeking the dismissal, reduction or remission of the penalty. The Anklagemyndigheden (Public Prosecutor) cross-appealed, claiming that the fine should be increased to DKK 190 000. In its judgment of 2 November 2017, the Landsret reduced the fine to DKK 50 000, but also noted that, in its view, there were no mitigating circumstances such as to justify a remission of the penalty.

After being granted leave by the Danish Appeals Permission Board, Toyota Danmark appealed against that judgment to the Højesteret (Supreme Court), which, in its ruling of 9 January 2019, increased the penalty, with a majority of three judges to two ordering Toyota to pay a fine of DKK 190 000.

What aroused my interest in this case was the fact that Section 18 of the MFL transposes a provision of EU law, specifically Article 4(2) of Directive 2008/48/EC of the European Parliament and of the Council on credit agreements for consumers. A dispute about the wording of Section 18(2) of the MFL therefore concerns the wording of the underlying EU law provision in all the official language versions.

## **Divergence between language versions**

While preparing the case before the Højesteret (Supreme Court), Toyota's lawyer noted that the wording of the various language versions of Article 4(2) was inconsistent.

The wording of the Danish version is as follows: 'The standard information shall specify in a clear, concise and prominent way with the help of a representative example:' (italics added). However, several of the other languages use different words, including 'visible', which is used in the French version.

This is what made the lawyer contact me about the rules for the multilingual interpretation of EU law, which I have written about several times, including in *Juristen* in 2003<sup>4</sup> and,

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4 | 'EU's flersprogsordning i praksis: Ret, sprog og virkelighed for de danske fjerkræavlere ved udbrud af Newcastle disease', *Juristen*, volume 85 (2003), n°2, pp. 45-59.

most recently, in *Skriftlig Jura* in 2020.<sup>5</sup> I referred to the equivalence of the language versions resulting from the EU language regime,<sup>6</sup> to the *Cilfit* criteria and to the settled case-law of the Court of Justice concerning the interpretation of EU law. I stressed in particular the principle that none of the language versions can be regarded as more essential than the others, but that the relevant provision must be interpreted in the light of all the language versions. This principle has already been established early on in the case-law of the Court of Justice, for the first time in 1967 in Case C-19/67 (*van der Vecht*),<sup>7</sup> where it is stated in paragraph 1:

*'The need for a uniform interpretation of Community regulations prevents the text of a provision from being considered in isolation, but in cases of doubt requires it to be interpreted and applied in the light of the versions existing in the other three languages.'*

This principle has been reaffirmed by the Court of Justice in numerous judgments right up to the present day.

The lawyer in the *Toyota* case then decided to ask sworn translators to translate all the language versions into Danish so that she could compare the wording in the different languages. The task was difficult because the translators had to be made to understand that they needed to produce very literal translations – in other words, they had to produce a translation which reproduced the exact wording of the source text.

Based on the translators' certified translations of 20 of the language versions, the lawyer classified the wordings corresponding to the Danish expression *på en fremtrædende måde* [in a prominent way] into six categories of meaning: *visible, prominent, clear, eye-catching, easily understood and graphically illustrated*. With this wide range of wording, the lawyer considered that there was such doubt as to the correct interpretation of the

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5 | 'Internationale retstekster: sprog, oversættelse og fortolkning', in Thomas Riis & Jan Trzaskowski (ed.), *Skriftlig jura den juridiske fremstilling*, 2nd edition 2020, pp. 803-832.

6 | Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community, *OJ 17 of 6.10.1958*, pp. 385 and 386 (*English Special Edition 1952-1958 (I)*, p. 59).

7 | Judgment of the Court of 5 December 1967, Case C-19/67, *Soziale Verzekeeringsbank v Van Der Vecht*, [ECLI:EU:C:1967:49](https://eur-lex.europa.eu/eli/1967/49).

Directive that she asked the Højesteret (Supreme Court) to stay the proceedings and to refer the following question to the Court of Justice:

*2) Can the purpose of Article 4(2) of the Consumer Credit Directive be achieved with standard information being provided only in a 'visible' and 'clear' way, so that the information does not need to be provided in a 'prominent' way?*

I subsequently compared all 24 official language versions and found the following distribution in terms of the categories of meaning which Toyota's lawyer set out in her request for a preliminary ruling, and also identified even more semantic nuances:

- 'a visible way': used in five language versions (French, Finnish, Portuguese, Polish and Romanian)
- 'a prominent way' used in five language versions (Danish, English, Swedish, Spanish and Croatian)
- 'a clear way': used in three language versions (Czech, Lithuanian and Maltese)
- 'an eye-catching way': used in five language versions (German, Dutch, Greek, Hungarian and Bulgarian)
- 'a clearly identifiable way': used in the Estonian version
- 'a transparent way': used in the Slovenian version
- 'an unambiguous way': used in the Slovak version
- 'an easily understood way': used in the Latvian version
- 'a graphically prominent way' used in the Italian version.

The President of the Højesteret (Supreme Court) (Thomas Rørdam) decided that the question of a reference for a preliminary ruling to the Court of Justice should be dealt with in the course of the proceedings and ordered the Anklagemyndigheden (Public Prosecutor) to lodge a supplementary summary procedural document on the question of a reference for a preliminary ruling.

## **Interpretation by the Anklagemyndigheden (Public Prosecutor)**

The Anklagemyndigheden (Public Prosecutor) rejected the view that the authentic language versions of Article 4(2) of the Consumer Credit Directive raised any doubt as to its interpretation. In that regard, the Anklagemyndigheden (Public Prosecutor) referred to what it called the ‘procedural languages’ – the English, French and German language versions – which use the terms ‘prominent’, ‘visible’ and ‘auffallend’. All those words can be translated, in the view of the Anklagemyndigheden (Public Prosecutor), as ‘prominent’ or ‘eye-catching’, corresponding to the expression ‘på en fremtrædende måde’ [in a prominent way] used in the Danish version. On the basis of this analysis, the Anklagemyndigheden (Public Prosecutor) concluded that the provision had to be interpreted as meaning that standard information must be ‘made prominent or visible to the recipient’.

This interpretation of the wording by the Anklagemyndigheden (Public Prosecutor) is flawed for two reasons. First, it is not correct that the words ‘prominent’, ‘visible’ and ‘auffallend’ have the same meaning. These words do not convey the same understanding of how standard information must be presented in order to meet the requirements of the Consumer Credit Directive. The term ‘visible’ stands out in particular. Secondly, the Anklagemyndigheden (Public Prosecutor) is mistaken in its view that the European Commission’s working languages take precedence when it comes to interpreting EU law provisions. The Anklagemyndigheden (Public Prosecutor) seems to be unaware of the rules on multilingual interpretation and the fundamental principle of equality of all languages.

## **Interpretation by the Højesteret (Supreme Court)**

The interpretation by the Højesteret (Supreme Court) also fails to recognise the importance of comparing the language versions of the provision of the Consumer Credit Directive at issue. It is worth noting in particular the reason given by the Højesteret (Supreme Court) for rejecting the lawyer’s request for a reference for a preliminary ruling to the Court of Justice. The reason given is that there can be no doubt that the expression ‘in a prominent way’ correctly transposes Article 4(2) of the Consumer Credit Directive.

The Højesteret (Supreme Court) thus appears to conflate two legal issues: to the question of the correct transposition of an EU Directive and the question of the interpretation of the directive. Where there is doubt as to the interpretation of a national source of law

transposing an EU Directive (i.e. Article 18(2) of the MFL in the Toyota case), the wording of the Directive in all the authentic language versions must be taken into account. The requirement for a linguistic comparison also applies where there is doubt as to whether the relevant directive has been correctly transposed.

Consequently, the reason given by the Højesteret (Supreme Court) is misleading.

## Concluding remarks

A number of Advocates General have proposed revising the *Cilfit* criteria in their Opinions over the years and have touched on the unreasonableness of requiring a national interpreter to compare all the language versions. That applies to F.G. Jacobs in Case C-338/95 (*Wiener*),<sup>8</sup> A. Tizzano in Case C-99/00 (*Lyckeskog*),<sup>9</sup> D. Ruiz-Jarabo Colomer in Case C-461/03 (*Gaston Schul*),<sup>10</sup> C. Stix-Hackl in Case C-495/03 (*Intermodal Transports*),<sup>11</sup> N. Wahl in Joined Cases C-72/14 and C-197/14 (*van Dijk*)<sup>12</sup> and, more recently, M. Bobek in Case C-561/19.<sup>13</sup>

Following the judgment of the Højesteret (Supreme Court) in the Toyota case, the Court of Justice again ruled on the *Cilfit* criteria. That ruling was issued in the Court of Justice's judgment in Case C-561/19, in which the Grand Chamber of the Court held, on 6 October 2021, that the principles of interpretation set out in the 1982 *Cilfit judgment* are still applicable today.

In paragraph 44 of that judgment, the Court of Justice refers directly to the linguistic challenge facing national courts when interpreting EU law. It is worth noting on this point

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8 | Opinion of Advocate General Jacobs in *Wiener v Hauptzollamt Emmerich*, C-338/95, ECLI:[EU:C:1997:352](#).

9 | Opinion of Advocate General Tizzano in *Lyckeskog*, C-99/00, ECLI:[EU:C:2002:108](#).

10 | Opinion of Advocate General Ruiz-Jarabo Colomer in *Gaston Schul Douane-expediteur*, C-461/03, ECLI:[EU:C:2005:415](#).

11 | Opinion of Advocate General Stix-Hackl in *Intermodal Transports*, C-495/03, ECLI:[EU:C:2005:552](#).

12 | Opinion of Advocate General Wahl in Joined Cases *X* and *van Dijk*, C-72/14 and C-197/14, ECLI:[EU:C:2015:319](#).

13 | Opinion of Advocate General Bobek in *Consorzio Italian Management and Catania Multiservizi*, C-561/19, ECLI:[EU:C:2021:291](#).

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that the Court of Justice requires national courts to take account of the divergences between the language versions of which they are aware, particularly where those divergences have been highlighted by the parties:

*44 While a national court or tribunal of last instance cannot be required to examine, in that regard, each of the language versions of the provision in question, the fact remains that it must bear in mind those divergences between the various language versions of that provision of which it is aware, in particular when those divergences are set out by the parties and are verified.*

In the light of that confirmation of the principle of equality of language versions and of the requirement for linguistic comparison, the interpretation by the Højesteret (Supreme Court) of Article 4(2) of the Consumer Credit Directive is surprising. Toyota's lawyer had highlighted and established considerable divergences between the language versions. However, the Højesteret (Supreme Court) disregarded those divergences when interpreting the provision and refused, citing a spurious reason relating to the 'correct transposition' of the Directive, to refer the issue of interpretation to the Court of Justice.

The Toyota case illustrates that not all national judges and lawyers have sufficient knowledge of the EU's multilingual system. This is why it is vital that the Court of Justice continues to stress the importance of the basic choice of multilingualism and the equality of languages which has existed since the Council adopted its very first regulation in 1958. Multilingualism is a cornerstone of EU law and is of paramount importance for the key elements of EU law, namely the direct applicability and direct effect of EU law in the Member States' legal systems. For reasons of legal certainty, rules which citizens or businesses are bound by need to be available in an authentic version in their own language. Moreover, the direct implementation of EU law in all the Member States must necessarily be accompanied by the principle of equality of all language versions. In the absence of this principle, Member States could base the interpretation of EU law on their own language versions, thereby jeopardising the uniform application of EU law.

An essential condition for the continuing legitimacy of the Court of Justice is the recognition of the equal value of all languages. Therefore, Member States should be aware of the importance of training and retraining national lawyers in the EU's multilingual system and the principles of multilingual interpretation.

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## Official multilingualism – A political issue from the outset

Discussions on the issue of languages in the context of the ECSC Treaty

— **Isolde Burr-Haase**

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## 1. A look at the French version of the ECSC Treaty from a German perspective

On 11 January 1952, the German *Bundestag* (Federal Parliament) passed the bill ratifying the Treaty establishing the European Coal and Steel Community (ECSC), with 378 votes in favour and 143 against, including those of the Communists and Social Democrats. The *Bundestag* had been the scene of some lively debates the day before,<sup>1</sup> in which legal-linguistic issues concerning multilingualism, in particular questions relating to translation, were addressed, amongst other things.

The German translation of the ECSC Treaty (of 18 April 1951) was scrutinised in a lengthy exchange of blows between Gerhard Kreyssig (SPD), member of parliament, and Walter Hallstein, State Secretary at the Foreign Office and Head of the German delegation at the Schuman Plan negotiations in Paris. It had already led to a 12 pages' worth of corrections by the *Bundestagsausschuss für Besatzungsstatut und Auswärtige Angelegenheiten* (Bundestag Committee on the Occupation Statute and Foreign Affairs) in December 1951, the rapporteur of which, Victor-Emanuel Preusker (FDP), subsequently making the following criticism to Kreyssig: 'The Committee would have welcomed a German translation of the Schuman Plan which was more precise in some places, so that, in those places, the Committee would not have had to work out the true meaning of the treaty on the basis of the French text.' Among the series of remaining mistranslations with serious consequences, Kreyssig cites examples from Article 21 (with omission of text), Article 33, Article 83 and Article 61. The issue with Article 33 of the ECSC Treaty concerned the translation of '*détournement de pouvoir*' (usurpation of authority, acting *ultra vires*), and the translation chosen for that term was '*Ermessensmissbrauch*' [misuse of powers], which, according to Preusker, significantly lowered the hurdle for recourse to the Court of Justice. The term '*saisir*' (to seize an institution in certain legal conditions) in Articles 37 and 61 did not have the same legal meaning as '*befassen*' [to bring a matter before] or '*sich wenden an*' [to turn to]. Hallstein's statements on the alleged mistranslation of '*détournement de pouvoir*' is worth highlighting in this regard:

'The only point on which I have to admit that the translation was problematic, and on which I can therefore report that the translation itself caused us extraordinary difficulties, is the translation of the phrase "*détournement de pouvoir*". Although

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1 | Minutes of the 183rd Session of the First German Bundestag – Plenarprotokoll, Thursday, 10 January 1952, pp. 7744-7747.

I consider that the honourable gentleman's view that "*détournement de pouvoir*" means "*Amtsmaßung*" [usurpation of authority] is incorrect, I must concede that German legal terminology does not contain a legal *terminus technicus* that precisely reflects the meaning of the word "*détournement*". However, the difference between, on the one hand, the expression "*détournement de pouvoir*" in French administrative law and the language of the administrative courts and, on the other hand, the expression "*Ermessensmissbrauch*" [misuse of powers] which is familiar to German administrative lawyers is so slight that we believed that we could justify rendering the one expression with the other. The sole difference resides in the fact that "*détournement de pouvoir*" relates to an act in which a certain administrative power conferred on an authority for the sake of certain objectives has been exercised in a way that does not serve those very objectives on which the law is based, whereas the word "*Ermessensmissbrauch*" in German legal language has a certain different connotation in so far as it refers to an act carried out by an administrative authority on improper grounds not covered by the law.' (p. 7746b)

The deliberate coining of a concept under Community law has endured to this day: the second paragraph of Article 263 TFEU reads *détournement de pouvoir* in French and *Ermessensmissbrauch* in German [and 'misuse of powers' in English].

The SPD members highlighted as a particular shortcoming the fact that only the French language version of the ECSC Treaty was binding. Such an observation was certainly made in a political context that indicates a one-sided, less supranational view:

'The fact that what has happened here with the treaty which the *Bundestag* is being asked to ratify and which will bind Germany for over fifty years, that German delegates are thus voting on a F r e n c h text here, is, I believe, unique in history.'

Hallstein countered that reproach by pointing to the limited time available in which, in addition to a German text, the authentic parallel texts in Italian and 'Hollandish' also had to be drafted. This would have entailed further discussion concerning the possible problem of contradictions. In addition, he decisively rejected the view from the French chamber debate, referred to above, according to which the French text, as the only binding one, should also be determinative for the purposes of interpretation, in particular by the Court of Justice.

Five months earlier, in 1951, Carl Bilfinger had already advocated for a 'multilingual version of the ECSC Treaty' in his expert report:

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‘Since the institutions of the Coal and Steel Community will have to refer to the text of the Coal and Steel Community Treaty time and time again in their activities, and only the French text is currently available to them, it will not be possible to achieve full equivalence of other official languages, even if the institutions use those other official languages. It would therefore be desirable for a multilingual version of the ECSC Treaty to be drawn up, and for the Member States to establish, by agreement, that all texts are to be regarded as authentic and equivalent, without one taking precedence over the others.’<sup>2</sup>

## 2. The road to signature on 18 April 1951

The fact that, by the time of the signing ceremony on 18 April 1951, the French-language version of the ECSC Treaty was established as the only binding text was due to its development and also to the great extent to which the editing and debate took place in French. In his governmental declaration of 9 May 1950, the French Foreign Minister Robert Schuman had put forward the plan for a common supranational authority for coal and steel. On 20 June 1950, intergovernmental negotiations for a European Coal and Steel Community began in Paris, with representatives of the Benelux States and Italy taking part alongside the French and German delegations – the latter being headed by Walter Hallstein. Jean Monnet, as the chief ECSC negotiator on the French side, had already submitted a draft treaty of 40 articles reflecting French proposals on 24 June 1950 and passed it on to the other delegation members for comment. After some tough negotiations, in which translation services also participated, Hallstein aimed for the ‘final editing of the German text of the treaty’ to take place in early December 1950 in Paris.<sup>3</sup> In preparation for the initialling on 19 March 1951, drafts with ‘non-official’ German translations were prepared in consultation with the French delegation, several

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2 | In: expert report of Prof. Bilfinger, Director of the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, of 9 August 1951 at the request of the *Sekretariat für Fragen des Schuman-Plans* (Secretariat for matters relating to the Schuman Plan) of 11 July 1951, PAA AA\_B015\_135\_003—0035, *ibid.* 0035.

3 | See letter of 22 November 1950 from Walter Hallstein concerning the secondment of another linguistic staff member from Bonn to Paris for editorial translation work. PAA AA\_B015\_001\_117.

versions of which provided for an article dealing with languages.<sup>4</sup> On 6 February 1951, Article 85 was drafted as follows, with French as the original text: *'Le Traité est fait en langue allemande, française, italienne et néerlandaise, le texte français étant le texte original. Les mêmes langues peuvent être utilisées pour les travaux de la Communauté. Les publications officielles de la Communauté seront faites en français et en allemand'*. However, discussions on the issue of language would continue, resulting in calls for, at the least, greater equality for the Italian and Dutch language versions. Since a consensus could not be reached, the decision regarding that article on languages, which at this point was merely given the article number 89 in the initialled draft, was handed over to the Ministerial Conference. It now merely stated the following, without any further content: *[Sprache: Der Ministerkonferenz vorbehalten] [Langue: question réservée à la Conférence des Ministres] [Language: Matter for the Ministerial Conference]*. A consensus-based solution could not be reached at the Ministerial Conference of 12 to 15 April 1951, however. On 18 April 1951, the text of the ECSC Treaty was signed without an article on languages. Only Article 100 of the ECSC Treaty refers to French as the sole Treaty language: *'Le présent Traité, rédigé en un seul exemplaire, sera déposé dans les archives du gouvernement de la République Française qui en remettra une copie conforme à chacun des gouvernements des États signataires'*.

### 3. Language arrangements at another level: the role of the Interim Commission and the Committee of Jurists

The need for language arrangements in a supranational organisation – as distinct from an international organisation – remained. Albeit at the level of recommendations and proposals to the governments of the Member States, the decision was made at that same Ministerial Conference on 18 April 1951 to set up an Interim Commission,<sup>5</sup> which

4 | On 28 January 1951, the *Délégation Allemande concernant le projet de Traité* made the following proposal for an 'Article 85. Question de langue: a) *Le Traité est fait en langues allemande, française, italienne et néerlandaise; b) Langues officielles de la Communauté: allemande et français. Langues pour les travaux de la Communauté: allemande, française'*. PA AA\_B015\_292\_016.

5 | From the minutes of the Ministerial Conference of 18 April 1951: 'The delegations which participated in the drafting of the Treaty will meet at regular intervals in the form of an Interim Commission during the period between the signing of the Treaty and the assumption of official duties by the institutions of the Community. [...] They will examine, in particular, the question of the seat of the institutions and the questions concerning the provisions applicable to the Community from a linguistic point of view, and they will make reasoned proposals to the governments.' French version in: *Hemblenne 1992*, p. 112.

met a total of four times.<sup>6</sup> At the very first meeting, the handling of the language issue was entrusted to a newly established Committee of Jurists, which met in Paris from 30 to 31 May 1951. The report prepared on that subject<sup>7</sup> first set out fundamental considerations based on an examination of the language arrangements of ‘international precedents’ (UN, International Court of Justice, OEEC, Council of Europe and Nato). It was stated that one could be guided by those arrangements to a certain extent, but, ‘on the other hand, it is necessary in some cases to create new solutions that meet the demands of the organisation of the institutions of the Schuman Plan’. In that respect, attention should be drawn to the specific nature of the addressees:

‘We are addressing individuals and not exclusively representatives of States. We are in a community, not an organisation of the usual international type. It is necessary that the individuals affected by the work of the institutions are in no way inhibited in their use of languages; they must feel “at home” in this Community.’<sup>8</sup>

As a general guide for the language arrangements, a certain degree of flexibility is provided for:

‘... that it is advisable, in order to find appropriate solutions, to entrust the matter to a certain extent to the rules of procedure of the various institutions and to custom.’

The Committee of Jurists had reached a consensus on the general equivalence of French, German, Italian and Dutch as ‘official languages’. However, there was significant disagreement between the French and German delegations on the question of ‘implementing provisions and decisions of a general nature’ and ‘decisions of the Court of Justice’. The French representatives deduced from the fact that the Treaty was drafted in French that it was ‘inevitable that the provisions serving to implement the Treaty and the decisions serving to interpret it should also be drafted in that language, at least as far as the authoritative original version is concerned’. That view was shared by the Belgian, Italian, Luxembourg and Netherlands representatives. That was not the

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6 | 17 to 19 May 1951 in Unkel (Bonn), 25 to 28 June 1951 in Rome, 12 to 14 June 1952 in The Hague and 4 to 5 July 1952 in Brussels; Hemblenne 1992, 112; Van der Jeught 2015, p. 56.

7 | See Interim Committee: Report of the Committee of Jurists on language arrangements in the Community. 1 June 1951, PA AA\_B015\_236\_011-018; Hemblenne 1992, pp. 112-114; Pfeil 1996a, pp. 12-13.

8 | PA AA\_B015\_236\_015f.

case with the German representatives, ‘who take the view that the general provisions and decisions of the Court of Justice should be drafted in all official languages, with no version being authoritative vis-à-vis the other versions.’<sup>9</sup>

The different points of view remained unchanged at the second meeting of the Interim Committee from 25 to 28 June 1951. The French side insisted on the continuity of case-law, which could be provided only by way of French as the sole authentic language of judgments.<sup>10</sup> The German representative countered that with the argument as to the Community’s own terminology, which, he stated, could not be tied exclusively to the legal language of one Member State:

‘The case-law of the Court should not be developed solely on the basis of the legal concepts of one Member State. The fact that the Treaty is authentic only in French has no bearing on the question of the language of judgments. The Court will be forced to use numerous legal concepts which are not regulated in the Treaty (e.g. the concept of causality).’<sup>11</sup>

In the meantime, the first steps on the rocky road to ratification had been taken and it was not until June/July 1952 that the subject of language arrangements in the European Coal and Steel Community was brought before the Interim Commission again. At the third meeting, held from 12 to 14 June 1952, agreement was reached on the language issue, account being taken of the German proposals and the objections of the Belgian and Italian delegations, which also wanted Dutch and Italian to be recognised as working languages. The four official languages of the six Member States were established as official and working languages of the Community, all with equal status. Every national language would also be able to serve as the language of proceedings before the Court. In the case of doubt as to interpretation, it should be possible to refer to all four language versions of the legal texts.<sup>12</sup> After final questions had been settled, a fourth meeting of the Committee of Jurists was held to prepare a draft protocol. That protocol was confirmed at the Conference of Foreign Ministers of the Member States held in Paris from 23 to 25 July (see below).

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9 | PA AA\_B015\_236\_016.

10 | Pfeil 1996a, p. 12.

11 | Pfeil 1996a, p. 12.

12 | Hemblenne 1992, p. 114; Van der Jeught 2015, p. 57.

#### 4. Two expert reports from Heidelberg and Tübingen in support of the German negotiating position

In order to strengthen the German delegation with regard to the problem of languages at the Court of Justice and, more generally, the principle of language equality in a supranational organisation, the German Secretariat for matters relating to the Schuman Plan<sup>13</sup> had commissioned two expert reports in July and August 1951, respectively. Both were delivered in Bonn on 18 August 1951.<sup>14</sup>

In his expert report, Karl Heinz Neumayer of the Max Planck Institute for Comparative and International Private Law in Tübingen presents his '*Untersuchung über die Regelung der Sprachenfrage in mehrsprachigen Ländern*' ['Study on language arrangements in multilingual countries']. The study related to language arrangements in Belgium, Switzerland, Canada – Province of Quebec, Finland, the Czechoslovak Republic from 1918 to 1938, South Tyrol, Ireland, in private law in Old Livonia, Estonia and Courland, and in the Treaty of Versailles. The author comes to the following conclusion regarding the equivalence of official languages:

'That overview indicates that wherever languages of equal political and cultural importance encounter one another in a national territory, a rule requiring absolute equality between those languages has been established and the primacy of one over the other has been ruled out. [...] By contrast, in countries with a single national language, officially recognised minority languages have been dominated by the general national language in minority areas.'<sup>15</sup>

The report provides a clear analogy of the principle of language equality with supranational law, without expressly stating it.

A different view is taken in the '*Gutachten zur Regelung der Sprachenfrage in der Europäischen Gemeinschaft für Kohle und Stahl (Montan-Union)*' ['Expert report on language arrangements in the European Coal and Steel Community ("Montan Union")']

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13 | This secretariat had been set up in the Foreign Affairs Department on 7 July 1950 to deal with all matters relating to the Schuman Plan. PAA AA\_B015\_339\_030.

14 | Both expert reports are in the *Politisches Archiv des Auswärtigen Amtes* (Political Archive of the Foreign Office). PAA AA\_B015\_135\_001-052. See Pfeil 1996a, pp. 12-13.

15 | PAA AA\_B015\_135\_051.

by Carl Bilfinger, Director of the Max Planck Institute for Comparative Public Law and International Law in Heidelberg. Although the national practice of multilingual countries (Switzerland, Belgium, Canada and South Africa) in legislation, administration and case-law and international practice in multilingual organisations (UN) are used for comparison, the fundamental concern of supranational arrangements is the focus:

‘The arrangement must take into account that the activity of the organisation is intended to create a new, common, “supranational” law in the sector of the coal and steel industry for all the contracting States and that the validity of a legal norm is essentially dependent on its being expressed in a manner which is comprehensible for those concerned, that is to say, in the language in which they are accustomed to thinking and acting.’<sup>16</sup>

With the ‘*Vorschlägen für die Regelung der Montan-Union*’ [‘Proposals for the language arrangements of the European Coal and Steel Community’],<sup>17</sup> the expert provided an important line of argument for the German delegation. Accordingly, each of the four languages – German, French, Dutch and Italian – should be allowed as a language of negotiation before all bodies. Equality of the official languages should also apply before the Court of Justice.

‘The decisive principle in that regard must be that each participating state, or in particular each participating undertaking, has the right to be heard in the language to which it is accustomed, since it is only in that way that it is possible to achieve true equality between all parties of the European Coal and Steel Community.’<sup>18</sup>

Both expert reports would become historical testimonies expressing fundamental ideas underlying a specific instance of official multilingualism, which also remains an essential characteristic of the European Union today.

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16 | PAA AA\_B015\_135\_01-06.

17 | PAA AA\_B015\_135\_01-031-34.

18 | *Ibid.*

## 5. The Interim Commission's draft protocol of 24 July 1952 on language arrangements in the European Coal and Steel Community: basis for further political action as well as anchoring in the Rules of Procedure of the Court of Justice and the Statute of the Common Assembly

Although the signatory states were unable to settle the language issue under treaty law in the ECSC Treaty of 18 April 1951, the mandate to establish future language arrangements remained. The draft protocol of the newly formed Interim Commission,<sup>19</sup> which came about in various stages and was approved by the Paris Conference of Foreign Ministers from 23 to 25 July 1952, served that purpose. That 'language protocol', the text of which was never officially published, could not have become part of the ECSC Treaty – such as, for example, as provisions of the Treaty or its Annexes, of the Protocols annexed thereto or of the Convention on the Transitional Provisions – including as a matter to be regulated in a future protocol (such as the relations between the institutions of the Community and the Council of Europe under Article 94 of the ECSC Treaty) and as a result its legal categorisation is unclear. However, that protocol of 24 July 1952 appeared in the respective government acts of the Member States<sup>20</sup> and served as the basis for further politico-legal and administrative action.

The four official languages of the six Member States were to be both official and working languages of the Community (Article 1: '*Les langues officielles et les langues de travail de la Communauté sont: français, allemand, italien et néerlandais*'). In individual decisions and other communication, the choice of official language was based on that of the parties involved, including undertakings. In addition, the language of correspondence sent to the institutions was to be any one of the official languages selected by the sender (Articles 2 and 3), and the reply was to be drafted in the same language. Legal acts of general application (Article 6: '*Les règlements, décisions générales et autres délibérations générales des institutions de la Communauté*') was to be published in the Official Journal of the Community in all four languages. The Official Journal *de facto* appeared in all four official languages of the Community from its first issue in 1952. In the case of Member States with official multilingualism, the choice of language was to be determined by the legislative requirements of the State in question (Article 7: '*... l'usage de la langue sera, à la demande de l'Etat intéressé, déterminé suivant les règles générales découlant de la législation de cet*

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19 | PA AA\_B015\_235\_038-039.

20 | PA AA\_B015\_235\_038f.

*État.*). With regard to language arrangements in the Common Assembly, the predecessor of the European Parliament, reference is made to self-regulation, provided that each member is able to speak in one of the official languages (Article 4). This led to its direct implementation in the Rules of Procedure of the Common Assembly, which were discussed and adopted at the inaugural session of the Common Assembly of 10-12 September 1952. Article 15 of the Rules of Procedure designates the four official languages, – German, French, Italian and Dutch – as the official languages of the Assembly in which all official documents are to be drawn up. Article 16 provided for simultaneous interpretation from and into the four official languages, which could be reduced by mutual agreement (Article 17).<sup>21</sup> In more detailed form, the Protocol (Article 5(a) to (e)) is devoted, inter alia, to the language arrangements for the Court of Justice, in particular the potential languages of proceedings from among the four official languages, their use in written and spoken form, and publication practice. They were incorporated into the Rules of Procedure of 7 March 1953 of the Court of Justice, established in December 1952, and form the basis of the Court of Justice of the European Union, which today is characterised by its multilingualism.<sup>22</sup>

## 6. Prospect of the next stage of official multilingualism in European integration

After the establishment of the ECSC, European integration was to gain further momentum with a focus on the economic sector. At the Messina Conference in June 1955, plans for a Common Market and an Atomic Energy Community were discussed and a committee was set up with the task of preparing draft treaty texts for the European Economic Community (EEC) and the European Atomic Energy Community (EAEC). Language arrangements did not become the subject of discussion until 1956 and were fiercely debated in the drafting groups.<sup>23</sup> When drawing up the treaty texts, the various drafting groups did not work exclusively on a French text, but rather incorporated elements of

21 | European Coal and Steel Community, Rules of Procedure of the Common Assembly, no place of publication given, March 1953; Hemblenne 1992, 127-128, Gaedke 1954, pp. 289 et seq.

22 | Rules of Procedure of the Court of Justice of 4 March 1953, OJ 1953, No 3, p. 37 et seq.

23 | Hemblenne 1992, p. 130; Schübel-Pfister 2004, pp. 55-56.; Van der Jeught 2015, pp. 60-61.

co-editorial work <sup>24</sup> – an approach that certainly had an influence on the development of all four language versions. Unlike the ECSC Treaty, the Treaties establishing the EEC and the EAEC applied the principle that all Treaty languages were equal. All official languages of the Member States – or at least one if there are several official languages – are also given that status at the level of Community law, with the explicit stipulation that they are authentic. ‘This Treaty, drawn up in a single original in the Dutch, French, German, and Italian languages, all four texts being equally authentic ...’ (Article 248 of the EEC Treaty/Article 225 of the EAEC Treaty). Unlike the usual practice in international law, the number of Treaty languages is not limited. This characteristic of European supranational law led to today’s number of 24 Treaty languages, which are expressly set out in Article 55(1) TEU and by reference in Article 358 TFEU. As in the Treaties of Rome, all Treaty languages continue to have unrestricted binding force. <sup>25</sup>

With regard to the official and working languages, no solution for a language regime was mutually agreed during the preparatory work for the Treaties of Rome, due to objections from the individual States. It was only shortly before the signing of the Treaty on 23 March 1957 that that question was reserved for secondary legislation by way of Article 217 of the EEC Treaty. This article provides that, without prejudice to the provisions contained in the Rules of Procedure of the Court of Justice, the rules governing the languages of the institutions of the Community are to be determined by the Council, acting unanimously. Such a reservation under primary law also remained in the Lisbon Treaty, which states the following in Article 342 TFEU: ‘The rules governing the languages of the institutions of the Union shall, without prejudice to the provisions contained in the Statute of the Court of Justice of the European Union, be determined by the Council, acting unanimously by means of regulations.’

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24 | Burr 2013, paragraphs 19, 20.

25 | However, it cannot be denied that the topic continues to be highly volatile. It was not without reason that the Secretary General of the Constitutional Convention, Sir John Kerr, ruled out a discussion on the Treaty languages at the opening of the deliberations on the Constitutional Convention in 2002/03; Burr 2013, paragraph 21.

In implementation of that basic rule laid down in 1957, the Council adopted, on 15 April 1958, its first regulation<sup>26</sup> determining the languages to be used, which is based, in essence, on the ECSC Protocol of July 1952 and is still in force today. The principle of language equality remains the fundamental proposition. The equal treatment of official and working languages (Article 1 of Regulation N°1/1958) may have a symbolic character; it provides the possibility, but not the obligation, to use the official languages as working languages.<sup>27</sup> Regulations and documents of general application are to be drafted in the official languages and notified in those languages in the Official Journal, which is published in the official languages (Articles 4 and 5 of Regulation N°1/1958). Unlike the language protocol of the ECSC, which contained more detailed information on language arrangements in the Court of Justice, Article 7 of Regulation N°1/1958 merely included a reference to the provisions in the Rules of Procedure of the Court of Justice. Such a general shift of language-related legal powers in the institutions to the level of rules of procedure (Article 6 of Regulation N°1/1958) is cited in legal academic writing as being novel compared to the ECSC Protocol,<sup>28</sup> but the recommendation that language arrangements be left 'to the rules of procedure of the various institutions and to custom' can already be found in the statements of the Committee of Jurists of the Schuman Plan, established in 1951 (see Section 3 above).

There was little public response to the unpublished ECSC Protocol of 1952, but it is now used time and time again to interpret Regulation N°1/1958. The mere statement that the ECSC Treaty is available only in French fails to take into account important arguments that played a role in the discussions and debates on the ECSC Treaty. It is worth consulting the materials that document in various ways the politico-legal approach taken to create a supranational treaty. Yet even today, in 2022, they make clear to us the special features and obligations of a supranational organisation whose significance is far greater than being merely economic.

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26 | EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385–386 (English special edition: Series I Volume 1952-1958 p. 59). Analogous to the European Atomic Energy Community OJ 1958, No 17, p. 401.

27 | Ringe 2022, p. 86; Schübel-Pfister 2004, pp. 58 et seq.

28 | Van der Jeught 2015, pp. 62-63.

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## In Sango, molengue means 'the apple of one's eye'

On endeavouring to exploit the wealth of languages for education.

— **Univ.-Professor Eva Vetter**

Since 2011, Eva Vetter has been working as a professor of subject didactics/ language teaching and learning research at the University of Vienna (Centre for Teacher Education and Department of Linguistics). From 2013 to 2018, she acted as Deputy Head of the Centre for Teacher Education, and from 2012 onwards, as Co-Editor of the International Journal of Multilingualism. Her research areas are multilingualism, classroom research, discourse analysis, language teaching and learning research, language contact and conflict research, and the Francophonie.

## By way of introduction: the joy of language

'Molengue', also 'molengué' or 'molenge', is a noun in Sango, the national language of the Central African Republic. In dictionaries, it is translated as 'child', which is also the meaning ascribed to this word in conversations between Sango speakers. Helmut Buchegger, who lived for a long time as a missionary in Central Africa, has considered what lies behind this contemporary meaning (Buchegger, 2021). His interpretation of 'molenge' proceeds in the same way as for other compound words, by analysing its elements: 'mo' is the form of address for the second person, 'le' means eye and also pearl, and finally the third word 'nge' means small or skinny. It is uncommon in languages for terms that mean 'child' to be composed of these or similar elements. The French term 'enfant' begins with a negation derived from the Latin 'infans' (Brachet, 1874, p. 205). It is the Latin verb 'fari', which comes from the Greek 'phaô', that is being negated. Although there is no longer any reference to that negation in the meaning 'child' that is generally given to the linguistic sign 'enfant', the elements of the French word still suggest someone who cannot (yet) speak.

Languages provide a perspective on the way the world is. Each one is based on an – often entirely different – set of rules. The way in which a language encodes the world is closely linked to the conditions in which its speakers live. If the function of a given object is of importance to a community, that community will come up with a larger number of different terms for it than for an object to which it attaches minimal significance. For reindeer herders in northern Europe, it was of vital importance for them to observe and familiarise themselves with snow conditions; the survival of the herd could even depend on it. As a result, Northern Sami has more than 20 expressions to describe the different types of snow (Haarmann, 2021, p. 73).

Although language suggests a certain view of the world, we as humans are not necessarily constrained by that perspective. No language is a self-contained, immutable system that is readily identifiable to non-users. Languages evolve, as do the needs of the humans that use them. Moreover, every single person has the ability to learn and use several languages, allowing us to quickly immerse ourselves in their multidimensional nature. It all starts with counting. Those who are familiar with the decimal system often do not have to look far at all before encountering the vigesimal system, which is different in that it involves counting in twenties: Irish is based on vigesimal counting, while Breton is based on the decimal system. Both Celtic languages are not too far removed from one another in geographical terms. The question as to whether this counting system developed as a result of – for whatever reason – the toes being counted in addition to

the fingers or something as simple as the hands being turned around to get to 20 on the fingers will likely remain a mystery (Haarmann, 2021, p. 99).

Someone who perfects language learning and uses a particularly large number of languages to a very high level of fluency is called a polyglot. The most famous polyglot is Cardinal Mezzofanti (1774 to 1849), who is reported to have known 72 languages and to have been able to converse fluently in 39 of them (Hudson, 2008, p. 90). Polyglots undoubtedly share a love of languages. Even among less remarkable language users, joy can be found in exploring the wide range of possibilities for shaping the world using linguistic signs.

### **Tarnished joy**

Linguistic diversity (meaning multilingualism of both individuals and societies) is not always seen as an exclusively positive thing. This is also true in the field of education, to which this paper is devoted. Sometimes multilingualism amongst young people is even regarded as having an adverse effect, if we think about it in terms of interpreting PISA results. In many school systems in Europe, students who use languages other than the teaching language at home perform worse than so-called monolingual students. Therefore, that multilingualism is interpreted as a disadvantage. In the United States, too, multilingualism was viewed as a barrier. One example is the official name of the New York education authority, which changed from the Office of Bilingual Education of the New York City Board of Education to the Office of English Language Learners of the New York City Department of Education in 2002, and subsequently to the Chief Achievement Office: Students with Disabilities and English Language Learners in 2009 (García, 2011, p. 140).

In Europe, the trend towards the language of instruction and the majority language has grown noticeably, particularly in the last 15 years. It is the focus of everyone's attention, almost giving the impression that the joy of multilingualism has disappeared from public debate. An incomplete understanding of this teaching language is associated with disadvantages and delays to the educational pathway. In some places, language prohibitions and bans are the subject of fierce – and occasionally even politically charged – debate (Netzwerk Sprachenrechte, 2021). This can be interpreted as a continuation of the monolingual habitus described by Gogolin in 1994, despite the fact that the students are multilingual.

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What is often overlooked in debates such as these is that multilingualism is an issue with which education systems have been wrestling for some time. Models for successful institutional implementation have evolved throughout history and continue to develop in the present day. These are discussed below. The models chosen were those that are not primarily linked to financial resources (e.g. of the parents) or those already mentioned in the report on innovative models for multilingualism in Europe (Le Pichon-Vorstman et al., 2020, pp. 42-95). Thus, the following text will discuss the *utraquist* – or bilingual – schools of the Austro-Hungarian Empire, minority schools in Europe, and multilingual schools in urban areas.

### **A quick look into the history books: the *utraquist* schools<sup>1</sup> of the Austro-Hungarian Empire**

Even in the past, geographical regions were seldom truly monolingual. Exceptions to this rule are isolated peoples and communities that refuse outside contact for various different reasons. What is far more common is for people who use different languages to not only encounter one other but to also live together and share geographical and political spaces. In order to provide education in multilingual regions, institutions known as *utraquist* schools began to emerge in Europe. This was also the case in the multi-ethnic state of the Austro-Hungarian Empire: bilingual and multilingual schools were prevalent throughout this mixed-language region in the 19<sup>th</sup> century, with German as one of the teaching languages. Many non-German parents, thinking ahead to their children's future career advancement, preferred these schools over monolingual ones (Urbanitsch, 1980, p. 81). In *utraquist* schools, specialist subjects were taught in different languages. It was also possible for one and the same subject to be taught in several different languages at the same school. The teaching language thus changed depending on the subject matter (and circumstances, such as the languages spoken by teachers).

A good example of how this *utraquist* model works is the city of Plzeň (Pilsen) in 19<sup>th</sup>-century Bohemia. Bohemia's second-largest city was the capital of a large and important industrial district, the west of which was inhabited mainly by German speakers and the east by Czech speakers. The city was thus the point where the two languages met and

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1 | '*Utraquist School*' became established during the Austro-Hungarian Empire as a term for bilingual schools in which the various languages of the children were used as languages of instruction and successively replaced by the other national language, so, for example German or Italian (Stourzh 1980, 1136).

acted as an important centre of education for Czech and German speakers. Even in the 19<sup>th</sup> century, Czech was the majority language used in the city itself. These conclusions are based on official statistics (Newerkla, 2003).

However, the city's population in the 19<sup>th</sup> century was in fact bilingual: Czech speakers who had a good understanding of German could reap social and economic benefits. German speakers needed to have a corresponding level of understanding for day-to-day dealings with the Czech-speaking majority. By analysing the oldest school in the city, we can gain an insight into the way in which the utraquist system worked: in the grammar school, for example, which was called a Czech grammar school from 1883 onwards, mathematics, physics, chemistry and mechanics were taught in German and literature, history, geography and sciences (arithmetic too in the lower grades) were taught in Czech. The remaining subjects were taught in both languages. The school, referred to as 'German' from 1890 onwards, also had a bilingual branch in the mid-19<sup>th</sup> century, in which some subjects were taught in one language and the remaining subjects in the other. It should be noted that this arrangement came about as a result of the efforts of the city itself, whose citizens were eager to equip the next generation with the necessary language skills to coexist peacefully with one another. Burgeoning nationalism (Vetter, 2003) and the so-called language prohibition set out in Article 19(3) of the Constitution (1867) led to a linguistic and nationalistic separation of the schools (Stourzh, 1980). The utraquist system was all but forgotten.

### **Minority schools as models for contemporary multilingualism**

European Member States are known to have a problem with linguistic diversity; in terms of their self-image, they consider themselves monolingual, picking up where the French Revolution left off. The teaching language is therefore the national language. A lack of legal and financial support results in all other languages being suppressed. This also applies to the education system. During the 1970s, grassroots movements emerged in several European countries, which networked with each other and advocated for languages that had been crowded out of the school systems. Since then, these schools have not only gained more students, but have also gained significant influence. One indication of this development is the history of the Diwan Breton language schools (Vetter, 2013).

The history of the founding of the Diwan federation is encapsulated in a famous photograph of its first professor – a Breton musician – with five children. He had been hired only the day before and began teaching in a room not designed for that purpose.

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Today, 4 030 children attend Diwan schools (Public Office for the Breton Language, with respect to the 2021/22 academic year). The not-for-profit association operates 48 schools (écoles), six middle schools (collèges) and two secondary schools (lycées). Since 1977, teaching has been based on the immersion model, borrowed from Canada. The teachers speak Breton from kindergarten onwards. The children learn to read and write in Breton. These skills are transferred to French. The language of the school is Breton, and this 'linguistic immersion' aims to set it on a par with French. French is the dominant language in society, and many parents either do not know or do not yet know Breton themselves when they enrol their children in a Diwan school. The aim of the immersion model is to impart as balanced an understanding as possible of both languages (Osterkorn, Vetter, 2015).

In the more than four decades of its existence, Diwan has remained a grassroots movement that has worked consistently towards becoming a professional organisation. Teacher training programmes have been developed, teaching materials have been created, and an official network with other minority schools has been established. However, the opening of new schools remains dependent on the initiative of parents.

Diwan's success can also be shown in figures: students at Diwan schools are more successful in the *Matura* (school leavers') examination than the average student both in France as a whole and in the Finistère department specifically. In 2020, as in a number of previous years, all students at the secondary school in Carhaix passed the *Matura* examination (L'Internaute). Diwan not only offers the most successful model for learning the minority language Breton, the immersion model is also an example of the fact that knowledge of two languages is a good basis for learning further languages, such as with English and, subsequently, German or Spanish, as well as language studies for other minority languages.

### **Super diverse: Urban multilingualism**

The unique thing about urbanity is that you can find an extremely high level of complexity and diversity within a defined area. In Vienna, that diversity is the result of the city's history as the capital of a multilingual empire, whose inhabitants introduced their languages to the city over the course of centuries. Today, societal multilingualism is shaped by the labour migration of the 1960s. Bosnian, Croatian, Serbian, Turkish, Albanian, Polish and Romanian are also strongly represented in Vienna, in addition to German. In 2015, the war in Syria triggered a forced migration that brought more languages such as Arabic and Persian to the city. More than half of students also use another language outside

of school, often together with German. Although linguistic diversity may be stronger or weaker depending on the type of school, day-to-day multilingualism is firmly established as a key characteristic of students today.

Special strategies to make the most out of this multilingualism have been developed in some locations. Many of these strategies can be seen in the school's linguistic landscape, as inscriptions, signs or posters. For example, on the gate at one school, the word 'Welcome' can be found in all the languages spoken by its students, on another the inscription '40 languages – one school'. At another, the inscription 'Peace' in several different languages can be found throughout the entire school building. Multilingual learning posters indicate that German is not the only teaching language (Vetter, 2021).

Some schools go beyond such tokens of appreciation by developing strategies to incorporate multilingualism into linguistic activities at the school. These include poems in the language of the heart, which may be different for each student, or research work undertaken in different languages that opens up new perspectives. The lack of control that is often feared by teachers is countered by an increase in self-control and positive emotions on the part of their students. In addition, the transfer of information that has been researched in different languages into a shared language is practised.

Multilingual teaching contravenes the monolingual orientation of education. Multilingualism is not only made visible, but is treated as a part of or as a starting point for the learning experience. Even if multilingualism is still seen as something of a challenge in many places, the growing number of materials suggests a turning point has been reached. The Mercator Institute for Language Development and German as a Second Language has also published a handout for teachers entitled 'Multilingual elements of teaching' and the European Union has committed itself to the future of language education under the mantle of multilingualism (Le Pichon-Vorstman, 2020).

## **A conclusion**

In 2021, Jim Cummins analysed research from past decades on the educational achievements of multilingual students, leading him to criticise strongly the interpretation of the PISA results: the poorer performance of children who use a language other than the majority language at home can be attributed to the fact that those children have too little opportunity to learn the majority language. Cummins again emphasises that the PISA results do not offer any evidence of a causal link between the use of languages at home, the opportunity to learn the majority language, and below-average test results (Cummins, 2021, p. 96). On the other hand, he shows, on the basis of extensive studies,

that drawing on students' linguistic resources helps them to compose and understand text in the language being learned, allows them to incorporate their existing knowledge, and stimulates an awareness of the differences between languages. Cummins also highlights the effect of empowering strategies that help learners to view themselves positively when it comes to academic matters.

Although the three models presented use different approaches to achieve this empowering educational effect, what they have in common is that they view language not only as a means of learning, but also as a component of education in its own right. Another shared characteristic is that they are driven by committed people. The models differ in that they delve into the world of languages to different degrees. Perhaps we will see 'molengue' on a school poster one day, or perhaps former students of Diwan schools will further expand their repertoire of (at least) four languages – whatever the case may be, all three models have a shared love of language and seek to enrich through diversity.

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# The Estonian language in the European Union from the perspective of a Member of the European Parliament

— **Marina Kaljurand**

**Marina Kaljurand has been a Member of the European Parliament since 2019. From 1991 to 2015, she held various positions in the Estonian Foreign Service, serving as Estonian ambassador to various countries, including the Russian Federation, the United States of America and Israel. Marina Kaljurand was Estonia's Minister of Foreign Affairs in 2015-2016, and was elected as a Member of the Estonian Parliament in 2019. She has participated as an expert in the activities of several international organisations, has been a lecturer in diplomacy at the University of Tartu and the Estonian School of Diplomacy, and has published several articles on cybersecurity, international law and politics.**

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In 2004, Estonia joined the European Union. This was preceded by a long period of raising in-depth awareness and an accession referendum in 2003. Estonia had regained its independence only 12 years earlier, and some sections of society feared the prospect of joining the ‘new Union’. It was feared that Brussels would start issuing orders instead of Moscow, and that the European Union would suppress the Estonian language, which had been preserved and protected throughout the Soviet era. I remember that in our meetings with people we cited the example of Ireland, which had joined the European Union (then the European Economic Community) in 1973 and, within a few decades, with the support of the European Union, had not only developed its economy but also significantly increased awareness of Irish culture and knowledge of the Irish language. It could be said – with little exaggeration – that the European Union was the godfather of the Irish language’s revival. Little did we know at that time that Irish would become an official language of the European Union in 2007.

Estonians’ concern for the survival of the language was only too understandable, as even some experts took the view that a language spoken by fewer than a million people was doomed to extinction. If that concern is coupled with the experience of Sovietisation in the Soviet Union, it is understandable why the European Union was seen as a threat to Estonian language and culture. Unlike Irish, Estonian fared better right from the start: it became an official language of the European Union upon accession.

It is interesting to note that Estonians today acknowledge the role of the European Union, including the European Parliament, in protecting Estonian culture (and the Estonian language). According to a Eurobarometer survey published at the beginning of 2022,<sup>1</sup> the Estonians surveyed consider it to be particularly important that the European Parliament protect freedom of movement (29%) and national traditions and cultures (26%). Those figures differ significantly from the EU average, where the European Parliament is considered to be primarily responsible for protecting democracy (32%), protecting freedom of speech and thought (27%) and protecting human rights (25%). This means that 18 years after joining the European Union, the mindset of Estonians has completely changed: the European Union institutions are seen as protectors of Estonian culture and language, not as a threat to them.

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1 | | <https://europa.eu/eurobarometer/surveys/detail/2612>.

Linguistic diversity is seen as one Europe's assets, and the multilingualism of the EU institutions is exceptional. This does of course come at a price, in the truest sense of the word.

Critics of multilingualism often point to the financial side of translation, claiming that it is too costly, that there are too many translations and that it is a pointless waste of money, as well as to the argument that the European Union could cost less and function more easily if it had one or, at most, two or three official languages. It is true that a multilingual European Union is not cheap. But not everything can or must be cheap. There are symbols and values that are more precious than money.

I have participated in a wide variety of meetings in the European Union institutions over the course of my career, including as Minister of Foreign Affairs in the Foreign Affairs Council and currently as a Member of the European Parliament. I have used interpreters and spoken in English and have been very satisfied with the quality of the interpretation, albeit less so in some cases. However, I have always appreciated having the option of speaking in Estonian in the institutions of the European Union. For the following reasons, I consider that to be more important than the financial costs associated with the translation service, and even the occasional fluctuation in translation quality.

First, having the option to use the language of one's own country is important for people's self-confidence, self-assurance and dignity. The fact that the European Union recognises the Estonian language as equal to the languages of the large countries certainly adds to our pride in the Estonian language.

In that sense, the European Union serves as a role model for the use and appreciation of the Estonian language. Figuratively speaking, if it is possible to speak Estonian in Brussels, it should be possible to do so in any Estonian company, authority, university, etc. Of course, this is not something that is easy to achieve or which is to be implemented unconditionally, for example in the case of international companies, but it is something to strive for.

On 29 June 2016, I spoke at the conference 'The Estonian Language and Culture in the World'<sup>2</sup> as Minister of Foreign Affairs. I said: 'It is believed that there are more than 6 000 languages in the world, but only around 200 of them are developed to such an

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2] <https://vm.ee/et/uudised/valisminister-marina-kaljuranna-kone-konverentsil-eesti-keel-ja-kultuur-maailmas>.

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extent that they can be used for university studies, scientific research, literary works, computer software, etc'.

The same number of languages are spoken by more than a million people. Estonian has been one of the official languages of the European Union since 2004. In that respect, Estonian is in a fairly good position. Our language is so important to us that it is enshrined in the Constitution: Article 6 – The official language of Estonia is Estonian.

It is the duty of the State to ensure the preservation of the Estonian nation, language and culture through the ages. The survival of a language depends largely on the attitude towards it of the people who speak and use it. It is the responsibility of all of us to keep the Estonian language beautiful and pure. However, language is not only a piece of heritage, but also something which serves to be used extensively on an everyday basis and should also be developed. Language conveys identity and thought patterns and reflects our values'.

Against that background, it is worth bearing in mind that language preservation is a much broader issue than the use of Estonian in the EU institutions. For a small country, it is vital to develop a scientific language in the mother tongue and to keep up with new topics and fields so that the language does not remain at the level of a 'kitchen language'. To that end, it is necessary to strike a balance between the use of the Estonian language and the use of foreign languages in universities, research institutions and the digital world. This entails preserving the mother tongue in an increasingly globalised world where, on the one hand, there is great pressure to internationalise and, on the other hand, a risk of falling victim to the 'frog pond effect'.

Second, having the option of communicating with the European institutions in one's mother tongue, including when speaking in the European Parliament, makes it easier for people to communicate and brings Brussels (as well as Strasbourg and Luxembourg) closer to Estonians.

For the ordinary citizen, the European Union is, generally speaking, distant and bureaucratic. Against that background, having the option of communicating in one's mother tongue and reading legislation in Estonian is a huge advantage. That does not mean that legal texts in a person's mother tongue will always be easy for that person to understand. Far from it. As a lawyer, I have to admit that some legal texts in Estonian are more difficult to read than those in English. That may be the case, for example, when familiar Estonian vocabulary has not been developed in an area, or the terms

that have been developed are too artificial. For example, I could mention cybersecurity as one of the areas where Estonian vocabulary did not begin to emerge until a decade or so ago. The European Union undoubtedly has a role to play in the development of a contemporary and relevant Estonian language. Ultimately, all legal texts of the European Union have to be translated into Estonian, and that means that new Estonian words and terms have to be created and introduced.

I dare say that the European Parliament differs from the other EU institutions in its obligation to ensure the highest possible degree of multilingualism. Every European citizen has the right to stand for election to the European Parliament. It would be unreasonable to require MEPs to have a perfect command of one of the more frequently used languages, such as French or English. The right of each Member to read and write parliamentary documents, follow debates and speak in his or her own language is expressly recognised in the Rules of Procedure of the European Parliament.

The European Parliament is guided by the principle that all EU citizens must be able to read legislation affecting them in the language of their own country. As a co-legislator, the European Parliament has a duty to ensure that the linguistic quality of all laws it adopts is flawless in all official languages. Under EU law, Europeans are entitled to follow the Parliament's work, ask questions and receive replies in their own language.<sup>3</sup>

According to the European Parliament's translation service, the European Parliament employs approximately 700 translators, in addition to around 500 assistants and technical staff.<sup>4</sup> Given that there are 24 official languages, there is a total of 552 language combinations, since each language can be translated into the 23 others. Considering that the population of the European Union is approximately 450 million, 700 European Parliament translators is not a large number or cost factor. This is particularly true given the positive aspects that multilingualism brings. I believe that the same can be said of all the institutions of the European Union.

The COVID-19 pandemic showed how a lack of translation services paralysed the work of the European Parliament. For a few months at the beginning of the pandemic, the European Parliament worked only remotely and without any interpretation, that is

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3 | [https://www.europarl.europa.eu/doceo/document/RULES-9-2021-09-13-RULE-167\\_EN.html](https://www.europarl.europa.eu/doceo/document/RULES-9-2021-09-13-RULE-167_EN.html).

4 | <https://www.europarl.europa.eu/translation/en/translation-at-the-european-parliament/organisation>.

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to say only in English. The obstacle was the technical capacity, or rather the lack of capacity, which meant that it was not possible to provide continuous interpretation into all languages, even during plenary sittings. At some point, the situation began to improve, and the interpretation service for plenary sittings, committees and political groups was gradually restored.

However, that does not change the fact that, for a number of months, the European Parliament was not able to do its job as expected and as it should. The MEPs who did not speak any foreign languages and who worked only in their own language before the pandemic (which they were fully entitled to do) were in a very bad situation. On the one hand, it was sad to see them being excluded from debates or having to participate with their own personal interpreter, who may not have been a professional and may not have been familiar with all the issues being discussed. On the other hand, it was a very fundamental issue, as the MEPs were put in a situation where they could not perform their work properly. It is understandable that it was a crisis for which no country or institution was prepared. Lessons have now been learned and conclusions drawn. The European Parliament will and must continue to be multilingual: MEPs must be able to work in their own languages and citizens must be able to communicate with the European Parliament in their own languages.

Personally, I also like the fact that the plenary sittings of the European Parliament are conducted in the language of the President or Vice-President. This is a sign of respect for all the official languages of the European Union and sets an excellent example both for the other institutions of the European Union and for the Member States and citizens.

The famous European Emperor Charles V, considered the greatest European statesman of the first half of the 16<sup>th</sup> century, is claimed to have once said that he spoke Spanish (or possibly Latin) to God, Italian to women, French to men, and German to his horses. One might say in jest that this was Charles V's interpretation of multilingualism. He would probably have been astonished had he known what would become of it five centuries later and how important Europe's role would be in preserving it. And he would probably have been proud of the multilingualism of Europe (that is to say, of the European Union).

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## Multilingualism: the citizen's viewpoint

— **Nikiforos Diamandouros**

**Nikiforos Diamandouros (PhD, Columbia University, 1972) is Emeritus Professor of Political Science at the University of Athens and has been a full member of the Greek Academy since 2014. He has served as European Ombudsman (2003-2013), as the first National Ombudsman of Greece (1998-2003) and as Director and Chairman of the Board of the Greek National Centre for Social Research (1998-2003). From 2012 to 2022 he served as Visiting Professor at the College of Europe (Bruges). He has received honorary doctorates from the Panteion University (2015) and the American College of Greece (2011). He has been decorated by the Presidents of France (Chevalier de la Légion d'Honneur – 2014), Poland (Gold Cross of Merit – 2010) and Greece (Order of the Phoenix – 2004). His publications focus on democracy, the rule of law, the institution of the ombudsman, public administration and the relationship between politics and culture.**

When I took up my duties as European Ombudsman in April 2003, I found myself immediately confronted with many of the theoretical and practical aspects of multilingualism<sup>1</sup>. At that time there were 12 official Treaty languages.<sup>2</sup> **My new role demanded that I be not only the European Ombudsman, but also, to give just a few examples, Médiateur européen, Europäischer Bürgerbeauftragter, Defensor del Pueblo Europeo, Provedor de Justiça Europeu and Europeiska ombudsmannen.** The enlargement of the European Union in 2004 brought a further nine languages and that of 2007 another three, so that I also became, to give just one more example, Europejski Rzecznik Praw Obywatelskich. The complaints that citizens addressed to me as Ombudsman made it clear that the 24 versions of the name of the institution reflected not only linguistic diversity but also a wide range of conceptions of the nature and operation of the institution of ombudsman. Some of these were well-developed, while others were, to a greater or lesser extent, rather basic. In order to be effective, the European Ombudsman must not only work in many languages, but also do so in a way that is sensitive to the cultural and social resonance of the issue in question and to the expectations of each complainant as to how the Ombudsman might be able to help.

It was also important for the Ombudsman to be able to communicate with possible complainants in order to raise their awareness of the Ombudsman's specific role and his powers. In all cases these differ, to a greater or lesser extent, from those of the national institutions with which citizens may be more familiar.

Fortunately, with the collaboration of the budgetary authority and the Commission, my predecessor, the first European Ombudsman, had put in place a functioning language regime for the office. The administrative services (budget, human resources, IT, etc.) worked in both French and English. Complaints were dealt with, in the main, by lawyers working either in their mother tongue or in a language in which they were proficient to an equivalent level. The language of the complaint was used in all documents sent to the complainant, including the decision closing a case. In order for the Ombudsman to be able to guide, correct and approve their drafts, the lawyers drew up a summary of

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1 | The author would like to thank Honorary Professor at the University of Sheffield, and Secretary of the OLAF (European Anti-Fraud Office) Supervisory Committee, for their most valuable assistance in preparing this text.

2 | Although Irish was not an official language at that time, it was a Treaty language. Citizens therefore had the right to submit complaints to the European Ombudsman in Irish.

each complaint, as well as proposals for solutions, recommendations and decisions, in a language understood by the Ombudsman himself. My predecessor had chosen English as this language, and I continued this policy for practical reasons. In addition, the other institutions and bodies of the European Union followed the good example of the Commission, which sent its replies to the Ombudsman in English, with a translation into the language of the complaint, if different. In this way, the institutions, bodies and services helped to avoid the misunderstandings that could have arisen if the Ombudsman's own services had been responsible for translating their replies into the language of the complaint.

In addition to the handling of complaints, there was often a need to translate documents into one or more other languages, for example when I was on a study visit to a Member State or in connection with submitting reports to the EU budgetary authority. These translations were usually done in house, by my colleagues. However, the drawing up of the European Ombudsman's annual report in the 24 language versions was far too big a task to handle in this way. Initially, we were assisted by the European Parliament's translation service, and later on we received help from the Translation Centre for the Bodies of the European Union. Whether carried out in house or outsourced, translation often generated a dialogue that led to a review of the source text's style, and even its substance. To use a maxim of the philosopher John Rawls, I liked to think of the final result of that re-examination as a 'reflective equilibrium', in which the process of translation not only ensured that all the language versions were of the highest possible quality, but also led to improvements in the quality of the source text.

Some of the complaints addressed to me as Ombudsman arose from disagreements relating to the status that had been granted or, conversely, not granted to regional or minority languages. In so far as these complaints were directed against the national authorities, they did not fall within my area of responsibility. Some complaints were, in substance, requests for intervention by the European institutions and bodies, for the intervention of bodies at national level or for correspondence with the complainant in a language other than the Treaty languages; for these complaints, I considered that there were no grounds for opening an inquiry, provided, of course, that the institution or body involved had properly explained the limited competence and responsibilities of the European Union in that field. In addition, following a request from the Spanish authorities, I signed an agreement with them that brought my office's practice into line with the conclusions of the EU Council of June 2005. Those conclusions made provision for the use of Catalan or Valencian, Galician and Basque, in order to facilitate communication by Spanish citizens with EU institutions. Under the agreement, the Spanish authorities

set up and funded a body responsible for the translation of complaints submitted in these languages and of the Ombudsman's decisions drawn up in Castilian Spanish on such complaints.

On the basis of the above framework for the organisation and development of my office's policies, I carried out three inquiries regarding complaints about different language regimes. The first complaint, which was submitted in 2006, related to the European Central Bank and, specifically, the limited range of languages it made available on its website.<sup>3</sup> Further complaints submitted in 2011 and 2012 related, respectively, to the range of languages in which the Commission conducted a public consultation and the restricted number of languages available on the website of the European Banking Authority.<sup>4</sup>

When I assessed the arguments of the complainants and the institutions in those cases, I found it useful to set out the main periods in the European Union's development with regard to language policy. In the first period – that of the common market and the European Communities, from the Treaty of Rome in 1957 to the Maastricht Treaty in 1992/93 – there were three basic factors that were highly significant. The first was the international nature of the European project and the principle of equality of Member States (originally six in number, increasing to 12 following successive enlargements). This meant that each State was able to ask for its language to have the same status as the others at Treaty level. The second factor was the principle of the rule of law. The Treaties lay down legal measures which are binding not only upon Member States, but also upon individuals. The rule of law requires persons bound by such measures to have the opportunity to have prior knowledge of them. This means that such measures must be published in a language that those persons can understand. The third factor is the practical need to ensure the efficient and effective internal functioning of the European institutions.

It is important to make clear that appraisals concerning efficiency and effectiveness do not always support reducing or restricting the number of languages that can be used. For example, when the participants in question do not share a common language, the

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3 | Inquiry 1008/2006/MHZ <https://www.ombudsman.europa.eu/en/decision/en/3135>.

4 | Inquiries 640/2011/AN <https://www.ombudsman.europa.eu/en/decision/en/12009>, 1363/2012/BEH <https://www.ombudsman.europa.eu/en/decision/en/49358>.

procedures for negotiating, taking and implementing decisions are likely to be slow and ineffective if insufficient provision is made for translation and interpreting. On the other hand, it is true that translation and interpreting involve costs in terms of both time and money. It follows that a balance must be sought, and the appropriate balance often depends, to a large extent, on the specific framework within which it is sought. It was, consequently, appropriate for the architects of the European institutions not to be overly prescriptive when, in 1958, they drew up the regulation governing the use of languages.<sup>5</sup>

In the case of the Court of Justice of the European Union, effectiveness demanded the use of just one working language. The language chosen was French. And it is probably for the same reasons of effectiveness that, every year since its establishment, the Court has decided to continue using French as its sole internal working language. On the other hand, when national courts submit references for preliminary ruling to the Court, and when applicants bring an action for annulment or for compensation, they have the right to use any of the official languages of the European Union. That language then becomes the official language of the Court's procedure. Moreover, in order for the Court to play its role as the constitutional court of the European Union, its judgments are, as a rule, made available in all the languages, so that their value as judicial precedent may be taken into account by national courts and lawyers in all the Member States.

In the second period, from the Maastricht Treaty to the Treaty of Lisbon (2009) more or less, the European Union gradually strengthened both the legal and the civil rights of natural persons vis-à-vis the institutions. The Maastricht Treaty introduced the concept of Union citizenship, as well as the European Ombudsman, to whom citizens could submit complaints concerning maladministration by the European institutions and agencies. The recognition of individuals as citizens added an additional layer to the issue of the importance of multilingualism, based on the concepts of citizenship, transparency and participation. My predecessor as Ombudsman played an important role in the realisation of these ambitions, notably with regard both to public access to documents and to the drafting of the Charter of Fundamental Rights of the European Union, in particular Article 41 thereof on good administration.<sup>6</sup>

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5 | Regulation No 1 determining the languages to be used by the European Economic Community, (OJ P 17, 6.10.1958, p. 385).

6 | Under Article 41(4), 'every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language'.

When I took on the role of Ombudsman, defending and promoting the rights and interests of European citizens, I thought it necessary and useful to stress to the institutions what I liked to call 'life beyond legality'. On the basis of this concept, the principle of good administration requires the European institutions not merely to avoid illegality but also to exercise their discretion (either expressly recognised in law or to be understood from omissions of the law) in such a way as to recognise the value of multilingual communication for both citizens and the European Union itself. This does not mean that such an approach results in a disregard for concerns about efficiency and effectiveness, which are often legitimate. The European Union spends more than EUR 1 billion every year on translation and interpreting in 24 languages in order to preserve multilingualism.<sup>7</sup> However, when examining complaints that raise such issues, it is necessary to weigh up not only the financial cost of multilingualism but also its benefits. These are the result of effectively publicising the European Union's goals and commitments, particularly – but not exclusively – as regards public participation and access to information.

One of the issues that I stressed as Ombudsman, both within my office and to other bodies and services, was the importance of using language that is as clear, accurate and concise as possible. This is often known as 'plain language'. As the well-known phrase of Pascal has it, you need to take time to write in such a way.<sup>8</sup> Drafting texts in 'plain language' leads to less time and cost when preparing translations. It follows that multilingualism, when properly organised, encourages the use of plain language, producing a dual benefit for citizens. When examining complaints that concerned the languages used on websites and in public consultations carried out by EU institutions, and primarily the Commission, I was fully aware of the case-law of the Court of Justice according to which the Treaty does not enshrine the equality of languages as an absolute principle of EU law and in any event does not impose an obligation for a version of anything that might affect a person's interests as a Union citizen to be drawn up in his or her language in all circumstances.<sup>9</sup> At the same time, as Ombudsman I considered that the institutions must exercise their discretion in this matter, taking due account

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7 | Ginsburg, V., 'Brexit and multilingualism in the European Union', Moreno-Terreno, J.D., *Metroeconomica*, vol. 73, issue 2, 2022, pp. 708-731.

8 | '...mes Lettres n'avaient pas accoutumé de se suivre de si près, ni d'être si étendues. ... Je n'ai fait celle-ci plus longue que parce que je n'ai pas eu le loisir de la faire plus courte.'

9 | I referred in particular to the Court's judgment of 9 September 2003, C-361/01 P, *Kik v OHIM*, [EU:C:2003:434](#), paragraph 82.

of the importance of communication with citizens and of ensuring that they have the opportunity to understand and participate fully in the European Union's activities. In general terms, my approach could be summarised as follows: 'I am fully aware that multilingualism puts a heavy burden on the EU administration and its limited resources. However, if the EU institutions want to be seen as engaging in a genuine dialogue with citizens and civil society, they must find ways of reaching out to citizens in their own language.'<sup>10</sup>

In cases concerning the languages in which the EU institutions provide information on their websites, I considered that it would constitute good administration if the EU institutions and agencies published of their own accord, i.e. on their own initiative, important information about their activities, legislation and their fundamental policy documents in all the languages. At the same time, I also made clear that multilingualism cannot be used as a basis for restricting the public's right of access to documents that exist in only one language or in a limited range of languages.

In a complaint concerning a public consultation which was conducted by the Commission in just a few languages,<sup>11</sup> I had no difficulty in supporting the complainant's argument that citizens cannot be expected to participate in a 'public' consultation if they are not in a position to understand what is asked of them. As has been pointed out by other analysts, social cohesion and common (European) citizenship demand common forms of communication and understanding, not monolingualism.<sup>12</sup> Therefore, I adopted the view that multilingualism is vital in order for citizens to be able to exercise their right to participate in the democratic life of the European Union and that the Commission's restrictive language policy constituted maladministration. On the basis of this finding, I asked the Commission, whenever public consultations are intended to gather and establish the views of the public on new policies or possible legislative proposals, to publish the public consultation documents in all the official languages or, where the

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10 | My speech to the seminar 'Europe in crisis: the challenge of winning citizens' trust', held on 24 April 2012 in Brussels, <https://www.ombudsman.europa.eu/en/speech/en/11504>.

11 | Inquiry 640/2011/AN, see footnote 3.

12 | 'The importance of language policies and multilingualism for cultural diversity', Lo Bianco, J., *International Social Science Journal*, 2010, Vol. 61, p. 37.

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public consultation is limited to technical issues or issues affecting a specific sector rather than citizens in general, at least to provide translations when requested to do so.

I note with interest that my successor as European Ombudsman continues to regard multilingualism as a question of vital importance. The guidelines drawn up in 2020 emphasise the importance for citizens of the opportunity to follow the work of the EU institutions in their own language, while at the same time recognising the need to take practical difficulties into account.<sup>13</sup>

With the benefit of hindsight, I am convinced that the last part of my term as European Ombudsman marked the start of the third period, which should be added to the two main periods I have described above. Having left the office of European Ombudsman, I no longer have the responsibility of balancing the various rights and interests relating to language regimes and the associated public policies. Nevertheless, as a citizen of the European Union and as an academic, I believe that, in this third period, the European Union's need for multilingualism has increased yet further.

Social, political and economic changes rarely occur on specific dates, even though social sciences often seek to point to specific events at emblematic points in time as signposts of the transition from one period to the next. Subject to that proviso, I think that the start of the third period occurred at about the time of the Treaty of Lisbon. The significance of the third period for multilingualism does not ensue, however, from the content of that Treaty, but from the need to deepen democracy at EU level, as a response to events affecting all the Member States: the financial crisis, the migration crisis, the SARS-CoV-2 pandemic and, at the time of writing, the return of war in Europe with Russia's attack on Ukraine.

There were rapid institutional and political developments (for example, in banking supervision, the ECB's bond market programmes, the transformation of Frontex and the development of common debt issuance). Of greater significance for the purposes of the present analysis is the fact that the European Council has become more active in fulfilling its remit, which consists of providing political leadership to the European Union. In my view, which, as I would like to stress once again, is now that of a citizen and an academic, the enhanced role of the European Council represents a fresh challenge

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13 | <https://www.ombudsman.europa.eu/en/doc/correspondence/en/129519>. The guidelines were published within the framework of the 'strategic initiative' (SI/98/2018/DDJ).

for multilingualism. It is necessary for European democracy to be deepened further, ensuring that the members of the European Council participate in dialogue not only with various national audiences but also with the public across the whole of Europe. In order to be effective, such a form of commitment and communication must necessarily be multilingual.

This proposal is rather unlikely to be received favourably by proponents of two particular schools of thought. The first continues to see the relationship between the governments of the Member States and the EU institutions in terms of a zero-sum game with regard to legitimacy. There is insufficient space here to challenge this view in depth. I would simply like to say that I believe that such an opinion disregards reality and the requirements of the European Union's historical development over the last quarter of a century.

The second school of thought liable to show scepticism for my proposal emerged when, in 2005, voters rejected the draft Constitution for Europe. Briefly, according to this viewpoint, transparency, participative democracy and other elements of the people's Europe have failed, because they have not buttressed trust in the European Union and its institutions. Once again, this is not the place to challenge this viewpoint in depth. All I will say is that we are in danger of creating a vicious circle, in which the disappointment of the elite with the idea of a people's Europe further promotes citizens' alienation from the European project.

Instead of new or revised obligations, either enshrined in law or developed as aspects of good administration, I would urge the members of the European Council to systematically make the political choice to welcome and cooperate with citizens in as many Member States as possible. Specifically, this could be done through media broadcasts and the use of social media, and articles in newspapers in the language of the relevant Member State. What is needed is the will to make an effort. If the result is failure, the experiment will disappear spontaneously. However, it could simply take root and develop organically, especially if national leaders avoid platitudes and present genuine political arguments.

To conclude, this brief essay has focused on multilingualism as an aspect of good administration and, in particular, as a political imperative for the future development of democracy at European level. The cultural importance of multilingualism and the specific legal rights and obligations attached to it will without doubt be examined by other authors in this volume. My key message is the following: in the unique context of the European Union and at its current stage of development, multilingualism is not a restriction on effectiveness and efficiency, but, on the contrary, a precondition for

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achieving them. In other words, multilingualism is one of Europe's defining characteristics and must remain so in the continuously developing model of its political structure. Therefore, the aim must be not solely to defend multilingualism where it already exists, but to extend it to new areas in order to contribute to the consolidation and deepening of European democracy.

Let us hope this comes to pass.

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## In support of multilingualism

— **Christos Artemides**

**Christos Artemides was born in Nicosia, Cyprus. He read law in London, and practised in Cyprus for approximately five years before his appointment as a District Court Judge in 1972. He was promoted to Senior District Court Judge and President of the District Court before his appointment to the Supreme Court in 1988. He was subsequently named President of the Supreme Court in 2004, remaining in that post until 2008 when he retired on reaching the age of 68, as required under the Constitution of Cyprus. He has not engaged in any law-related profession or occupation since his retirement; however, he does pursue other interests which have always appealed to him, such as poetry, painting and music, of which he has been especially fond from an early age. He has organised six art exhibitions, and published two novels and 12 collections of poetry.**

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Language: that magnificent and unique invention of humankind. Humans alone have this advantage over every other creature on Earth. In turn, the world and everything in it are born of language and time. In the beginning, there were the noises first made by humans using their vocal chords. Those noises became fluctuating sounds and, gradually, words were born by combining those sounds. Words attach names to things, but they also convey the highest of human thoughts, emotions and intellect.

However, the nations of the world do not all speak the same language, each nation having its own. In fact, many nations or tribes have their own dialect or patois, which do not always come under the usually narrow definition of 'language'. The European Union – that bastion of Western civilisation, as democratic States have come to be known – comprises 27 Member States, each of which has its own language, with the exception of Cyprus and Greece, which share the Greek language, and Germany and Austria, which share German.

If I may be so bold, we Greeks are immensely proud of our history and our language, especially as it is an acknowledged fact that the achievements of the Ancient Greeks formed the bedrock of Western civilisation, primarily in the period known as the Golden Age of Pericles from the 5<sup>th</sup> to the 4<sup>th</sup> century BCE. The works of Homer, the Iliad and the Odyssey; Plato's Dialogues; the works of Aristotle; the tragedies of Aeschylus, Sophocles and Euripides; the achievements of every distinguished Greek artist, scientist and philosopher, and Ancient Greek writings in general, are also part of the intellectual heritage of those nations which adopted the ideas and principles developed in Ancient Greece.

I mentioned a little earlier that we Greeks are 'immensely' proud of the achievements of our forebears. Permit me try to explain what I mean by that statement. Every nation and every race has its own civilisation and its own gradually unfolding history. If we only hold on to the good things that happen to us, then mutual respect, co-existence and a common understanding between all the nations on Earth will help to establish peace and progress on our planet.

Forgive me if I am long-winded – I may even have wandered off-topic – but these humble thoughts will, I hope, lead me directly to the subject matter at the heart of this paper. Were it not for the Herculean work of translators, we would be ignorant of the cultural and scientific achievements of the Greeks and of every other nation or ethnic group. Without translators and interpreters, spoken and written languages would serve only those who understand them, and communication with anyone not proficient in the

same language would be impossible, as would any common understanding, including any common intellectual and cultural understanding. There would be a total breakdown in communication.

My belief is that translators and interpreters ought to be given the respect that is their due for the colossal task they perform. Although we tend to use the term 'translator' or 'interpreter' as a professional attribute, an achievement like any other, I believe that the work of translators and interpreters should be viewed in its true dimension. Translators and interpreters bridge the communication divide between different languages, conveying and transmitting both the written and spoken word.

Thus, we Greeks, along with every other ethnic group, need truly to understand that, without translators and interpreters, we would know nothing about each other. People would need to learn multiple languages in order to exchange views – and nowadays many people do. Knowledge of different languages is a blessing.

Greek is the main language in my country. It is the language of the majority of the population, brought by the Greeks who settled in Cyprus in around 1200 BCE. The island was conquered by the Ottoman Empire in 1571. Ottoman warriors remained in Cyprus during and after the siege. In 1878, it was handed over to the then United Kingdom of Great Britain and Ireland. In the meantime, however, Turks from Asia Minor and other lands conquered by the Ottoman Empire arrived during the Turkish occupation.

In 1955, Cypriot Greeks took up arms against the British, who eventually agreed to pull out of the country; the Zurich and London Agreements were signed between the United Kingdom, Greece, Turkey and the leaders of the Greek and Turkish communities in Cyprus. Those agreements gave rise to the 1960 Constitution of the Republic of Cyprus, which proclaimed Greek and Turkish to be the official languages of the new Republic.

The institutions of the Cypriot State operated normally for a brief period up to 1963. The courts in particular conducted proceedings in Greek and Turkish, depending on the parties' ethnicity. However, English, which is spoken widely throughout Cyprus, was the common language used, by tacit consent, in order to simplify proceedings.

In 1963, Turkish Cypriots abandoned their posts in the public sector and the courts. The Republic of Cyprus continued to function and to be recognised internationally even after the Turkish invasion in 1974. In order to complete the partitioning of the island, Turkey moved all Turkish Cypriots scattered across Cyprus to the occupied northern

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part of the island. In addition, thousands of Turks moved from Turkey and settled in that same part of Cyprus, thereby altering the country's demographics.

My apologies for discussing this at some length, but those tragic events are linked to the subject matter of this paper. If we are to achieve mutual respect and peaceful coexistence, multilingualism in the European Union and around the world should encourage people to try to communicate by learning other languages or resorting to translations of foreign languages. That is what originally happened in my country. Almost every Turkish Cypriot spoke Greek and many Greek Cypriots spoke Turkish. They lived in mixed villages and as neighbours in the towns. The courts rarely had recourse to interpreters.

Nowadays, things have changed. With the passage of time, especially since its accession to the European Union, Cyprus has become an attractive destination. Aside from those who settle lawfully on the island, many of the tens of thousands of migrants and asylum seekers arriving in Cyprus have remained there unlawfully.

Government departments and the judicial authorities operate strictly within the framework of the principle of equality and the need to safeguard the fundamental individual rights enshrined in the Constitution and in EU law, to which the Constitution itself gives precedence. Multilingualism in Cyprus extends well beyond the languages of the EU Member States; it encompasses African, Middle Eastern, Far Eastern and Asian languages and dialects. The languages spoken by different nations are at an apparent disadvantage compared to other cultural activities and achievements. Language is the most important cultural element proof of a nation's identity. Unlike languages, music and the visual and other arts do not require translation, hence the expression that 'music is the universal language'. Western music, especially classical music, is enjoyed the world over. At the same time, famous musicians and world-renowned performers hail from all over the planet, and Eastern and Asian music is often performed at European concert venues. The beauty of the polyphonic, melodic songs of the Maori people of New Zealand touches hearts everywhere.

However, as an intellectual invention, an unknown language is unintelligible without the assistance of a translator or an interpreter. This leads me back to what I said a little earlier, that the disadvantage of language is apparent: each nation's language is the most important element of its identity, the point of reference for its origins and culture; as such, it deserves absolute respect.

The European Union generally, and the Court of Justice of the European Union specifically, take an open-minded approach to multilingualism and, with due regard for that fact, the Court allows questions of law referred by the national courts of the Member States and applications from natural and legal persons in all the official languages of the European Union. That procedure is not merely the formalistic application of rules of procedure: it is a reflection of the deliberate recognition of absolute equality between the Member States and their citizens, and of the conviction that that respect for the different languages of the EU Member States brings about peaceful co-existence between, and prosperity for, nations.

Difficulties arise for judges where foreign-language litigants or defendants from countries outside the EU, such as the Middle East, Far East and Asia, are involved in proceedings, and particularly criminal proceedings, since professional translators and interpreters are rarely available in such cases and translation or interpreting is generally provided by fellow nationals of the parties involved. The courts are keen to ensure that they have been properly apprised of the facts of the case as relayed by the available translation, especially where evidence is taken from witnesses. Although that process is torturous and time-consuming, it illustrates the noble mission of the courts to turn language into a fundamental individual right respected by every State which observes and applies human rights.

Although every effort is dutifully made to ensure that all proceedings involving foreign-language parties proceed satisfactorily, professional translators and interpreters simply do not exist for all these combinations of languages and dialects.

If I might make an observation: it would be helpful, in terms of the role played by language in cooperation, if brevity and accuracy prevailed in both the spoken and written word. My belief is that reading the works of leading authors and writers helps to cultivate such language. It is they who create language: elegant, accurate and simple language. That would be helpful to translators and interpreters, and support mutual understanding and peaceful coexistence.

If you would bear with me a moment longer, I would like to describe an imaginary episode. If Mozart had heard the songs of the Maori tribe, his sublime talent and genius would have driven him directly to the piano to set them to a composition of superlative melodic/rhythmic music with perfect counterpoint. The resulting music, abstract though it might be, would touch the hearts of every nation on Earth, although no-one would know any of the lyrics. Although language is an intellectual creation, its concepts can

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be recognised if they are translated. So a Maori native appearing before a court that applies fundamental rights will be able to speak his or her own tribal language. The beacon of justice shines bright, like the music of Mozart, albeit on a smaller geographical and ethnic scale.

The Court of Justice of the European Union, which works in the 24 languages of the 27 Member States, is at the vanguard of this supreme idea of multilingualism as a means of ensuring an individual human right of communication and mutual respect between cultures. This supreme idea is enshrined in Article 22 of the Charter of Fundamental Rights of the European Union. The Court of Justice has the largest translation department in the world, and thus has at its disposal a priceless tool with which to make a success of its unique work.

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## Multilingualism: expressing unity through diversity

— **Roberta Metsola**

**Born in 1979, Roberta Metsola graduated from the University of Malta as a lawyer and obtained her master from the College of Europe in Bruges, specialising in European law and politics. Prior to her election as an MEP, she served within the Permanent Representation of Malta to the EU and as the legal advisor to the High Representative of the EU for Foreign Affairs and Security Policy. She was first elected to the European Parliament in 2013, and has subsequently been re-elected. As an MEP, she was rapporteur on the European Border and Coastguard Regulation. She also co-authored Parliament's own-initiative report on the need to protect journalists in the European Union from Strategic lawsuits against public participation (SLAPP). In 2020 she was elected European Parliament's First Vice-President. Since January 2022, she has been the President of the European Parliament.**

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Language is a vital means of communication. It helps transmit thoughts, feelings, actions, desires, strategies, and the many and variegated realities of the human condition. It is a bridge between persons and a vehicle for members of a community to feel closer to each other as they share a common, recognisable medium of conversation. A national language, a regional dialect, a local parlance, are identifiers, a source of commonality and a powerful agent of cohesion. One may even go as far as to consider the development of languages to be one of the greatest achievements of humankind. It is for this reason that languages remain essential as humankind continues to evolve, develop and move on in the quest for a more fulfilling life and a better world.

The European Union is a community of languages. The 24 official languages represent the multivariate composition of the European Union, or more precisely, the millions of people that compose it. It is undeniable that languages facilitate inclusivity, wider knowledge, deeper familiarity and a sense of rapprochement among peoples, nations and states. This is why multilingualism is the order of the day in the functions, events, activities, communications, and operations of the European Union's institutions, agencies and bodies. Indeed, the motto that the European Union has adopted, 'united in diversity', is epitomised in its multilingual policy.

The European Union recognises and affirms that languages unite those communities which comprise it and considers the medium of language as essential for accessing cultures and for the promotion of intercultural understanding. Undoubtedly, learning and speaking various languages offers individuals a better prospect of employability, higher possibilities for mobility between EU Member States, a safer stay in different countries and contact with diverse societies. It is for this reason that there is a commitment from the Member States to enhance cooperation in the field of multilingualism, including through the promotion of language teaching programmes in schools. The European Union is working closely with national governments that have committed to giving all European citizens the possibility to start learning at least two foreign languages from a very young age. In fact, the European Union is seeking to render more effective legislation in sectors that strengthen the existence of a cohesive multilingual society.

For a multicultural community to function efficiently, the entire population – every single citizen – must benefit from the manifest acceptance of cultural diversity. This is the only way to bring about the harmonious coexistence of the many cultures that enrich the EU: unity in diversity in practice. Multilingualism is, therefore, the quintessential means by which to bring about such cohesion and respect for one and all.

In the European Parliament, all official languages are given the same weight and importance. Every parliamentary document can be read in any of the EU languages, while all Members of the European Parliament are able to speak and write in any one (or more) of the 24 official EU languages. Such a rich variety of languages offers wider accessibility and fuller participation in the work of the European Parliament. Official languages are not tied to the size of the state or the number of citizens residing in it. Each state has the same equal standing, the same equal rights and the same opportunities. When the predecessor of the European Union was established, only four languages were used. Now, 24 official EU languages are heard during vibrant European Parliamentary debates, discussions and deliberations. This is proof of how far we have come.

Naturally, the simultaneous use of all these languages could provide linguistic challenges. To address potential obstacles, a strong translation service has been created and is continuously reinforced to ensure that multilingual written and electronic communications properly facilitate the work of the European Union. As European Union legislation affects more than 447 million citizens, the European Parliament maintains high translation standards by ensuring faithful and clear translations in all the official languages. To this effect, the linguistic and legal quality of such texts is carefully scrutinised by the European Parliament's lawyer-linguists.

The European Union also has a robust corps of interpreters to help mitigate any issues arising from the multilingual reality of the EU's day-to-day work. This facilitates smoother discussions and negotiations within the European Parliament and other EU bodies, allowing Members of the European Parliament and other officials to carry out their duties without any language barrier concerns.

Our multilingual facility is accordingly ensuring transparency and providing a real connection between all citizens of the European Union and the various European Union entities. This aims at fostering a closer relationship between the centre and the periphery at all levels of our Union.

Those who do not treat it with respect and patience may consider multilingualism as an impediment to communication, creating possibilities for confusion and interrupting the smooth flow of proceedings; but, if considered an asset, the multilingual environment is an enticing and positively challenging milieu. Bringing together cultures, and respecting and understanding them better, is what makes the world a better place. Humanity should seek to find ways to come closer together, and understanding each other

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through language is the first step in this direction. Having a multilingual community is like having a product made from many components – diverse, yet each one essential for the success of the whole. This is how we should consider the diversity of languages; this is reminiscent of the phrase ‘variety is the spice of life’. They produce taste, bring about vitality, and display a splash of colour. A multilingual society is a canvas of different hues and feelings – however, in the end, it is one picture.

## 'Plus d'une langue' – both more than a language and no more of a language

— **Barbara Cassin**

Barbara Cassin, holder of the médaille d'or from the Centre national de la recherche scientifique (National Centre for Scientific Research) (CNRS) and member of the Académie française, is a philologist and philosopher. A specialist in ancient Greece, she studies the power of words. Amongst other things, she was editor-in-chief of the *Vocabulaire européen des philosophies, Dictionnaire des intraduisibles* (Seuil-Robert, 2004), which has in turn been translated into 10 languages (or in other words reinvented in those languages). She was curator of the *Après Babel, traduire* exhibition (Mucem, 2016-2017), which has also been reinvented elsewhere (Fondation Bodmer, 2017-2018, Immigration Museum of Buenos Aires, 2022), and in 2022 is presenting an exhibition at the Vieille Charité de Marseille on *Les Objets migrants*.

### Recent publications

*Le bonheur, sa dent douce à la mort*, Fayard, 2020

*Les Maisons de la sagesse-Traduire, une nouvelle aventure*, with Danièle Wozny, Bayard, 2021

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Let me give you a personal account of what you might call a personal paradox. It relates to my own experience of multilingualism within an institution I belong to first and foremost within my own country: the Académie française.

Created by Richelieu in 1635, this venerable society of ‘immortals’ has the task of ‘labouring with the utmost care and diligence to endow our language with clear and certain rules and to render it pure, eloquent and capable of treating the arts and sciences’ (Article 24 of its constitution). ‘Our language’, meaning French. The Académie is thus an institution of monolingualism par excellence. It inherits the very consciously political relationship between power and language in our country, France. It all began with the ordinance of Villers-Cotterêts, promulgated by François I in August 1539, and Article 111 of that ordinance, which states: ‘We desire that all judgments, together with all other proceedings ..., shall henceforth be pronounced, recorded and delivered to the parties in the French mother tongue, and not otherwise.’ This is echoed in Article 2 of the Constitution of the French Republic of 25 June 1992: ‘The language of the Republic is French.’ Two key phrases almost five centuries apart. They both proclaim loud and clear that the French language is central to the machinery of the French State. As usual in matters of language – and therefore politics – we are walking a tightrope. When François I ensured that everybody was in a position to understand what was happening to them, he created a nation free of the grasp of clerical and scholarly Latin. But what then happens to those speaking, not Latin, but a ‘patois’ – one of the regional dialects that the French Revolution sought to eradicate? As for the ‘Toubon Law’, a consequence of the Constitution, it requires the use of French, but too often the belief that it requires the exclusive use of French is not accompanied by the understanding that it promotes terminological enrichment and translation. Even if, in reality, all nation states have one – or several – national language(s), we understand all too well the distrust felt by European institutions, which are multilingual by definition and to their core, towards a State claiming – to borrow an expression Arnaldo Momigliano was fond of using about Greece – to be ‘proudly monolingual’.

### **The paradox as it currently stands.**

Every member of the academy must acquire a sword – obviously, the election of female members, unthinkable until Marguerite Yourcenar was elected in 1980, has complicated matters, and Jacqueline de Romilly, for example, preferred a handbag – and on that sword the member must have engraved a motto. My sword is deliberately non-lethal, made of resin and leather; the guard is made up of a mini-computer, like a smartwatch, which

gives virtual access to all the world's books. The pommel is a reproduction of a small figurine, but not just any figurine: a 'barbarian' statuette, dating from three millennia before the Common Era, of a curvaceous woman, a mother or goddess, with breasts, earrings and golden boots. It was found during the excavation of a tomb in Alaca Höyük, in the exact spot where Schliemann put Troy – the woman is a barbarian par excellence. We should not forget that the word 'barbarian' was formed by onomatopoeia, like 'Babel' or 'blah blah blah', and was used by the Greeks to refer to anybody who did not speak Greek. On the sword, I chose to have inscribed using fibre optics, in bright and highly visible letters, a phrase used by the philosopher Jacques Derrida that I have taken as my motto: '*Plus d'une langue*' – both more than a language and no more of a language.

'Our language' it may be, but '*plus d'une langue*'. Monolingualism *and, or not without* multilingualism. That is precisely the experience – and how common it is – that interests me. It is called 'translation'. It is important, I think, never to forget Umberto Eco's very simple observation – simultaneously a precept – that 'the language of Europe is translation'.<sup>1</sup>

At the Académie Française we speak French. We even produce a French dictionary. But our society has members hailing from Georgia, Russia, Libya, China, England, Haiti and Italy, not to overlook a number with knowledge of Spanish, Basque, Corsican, Creole, Modern Standard Arabic, Latin and Greek: each of us gives life to several languages, be they 'major' or 'minor', and practically all of us are also translators. What does that mean? Simply that no language exists in isolation and is self-supporting; one language exists only in concert with others. And may this be known to all, including those few French speakers charged with making the French language more illustrious.

I believe that I owe my membership of the Académie française, at least in part, to the *Vocabulaire européen de philosophies. Dictionnaire des intraduisibles*,<sup>2</sup> a somewhat outrageous work put together by 150 authors over a decade, containing entries encompassing around 15 languages (constitutive) of Europe. What I mean by '*intraduisible*' – or untranslatable – is a symptom of the differences between languages, be it semantic

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1 | U. Eco is said to have made this statement in the seminar he gave at the *Assises de la traduction littéraire* in Arles, on Sunday 14 November 1993, and it appears in the inaugural lesson he delivered at the Collège de France, on 2 October 1992.

2 | Seuil-Le Robert, 2004, 2nd Ed., with new entries derived from translation-adaptations of the French dictionary, 2019.

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or syntactical: not something that is not translated, but something that we go on (not) translating. The term does not refer simply to equivocal or ambiguous homonyms – these can be clarified by the context – but to what is meant by words in languages. When, why, and in what way are words and the networks to which they belong non-alignable? What impact do ways of saying and thinking ‘truth’, ‘justice’ or ‘liberty’ have on ways of feeling and behaving in relation to communication problems, or more broadly to the potential for cultural and political interaction? Take the word *dette* in French and the Romance languages: *debitum* – we pay what is owed, and the debt is extinguished. But in German, *Schuld* refers simultaneously to debt and to fault; it is a weight on one’s shoulders and, thanks to Weber, following Luther, is felt as such. It is conceivable that recognising this difference may be important for Europe. Similarly, the observation that the distinction between *law* and *right* corresponds very imperfectly to that between *loi* and *droit* is far from an aside. To investigate these distortions is to address misunderstandings which, if they went unnoticed, would be dangerous. It is not so easy to understand that we are misunderstanding each other.

It will be argued that the ‘global language’ is there to ward off this danger. But, in doing so, it leads us into another danger, which, in my view, is no less serious. Globish,<sup>3</sup> or *global English*, is indissociably linked with English as a language of empire, that of American diplomacy and the American economy. But it is the practical Esperanto used today – like it or not – for tenders submitted not only in Brussels but also in Paris, and by French people. We are all required to submit *case-studies* or *identify issues* or *deliverables* to the experts of our *knowledge-based society*, who, generally speaking, would not understand Oxford English. No doubt, we have all experienced this type of conference. In the face of *Globish*, the languages of culture which make up Europe are all, henceforth, merely *parochial – dialects to be spoken at home and protected like endangered species though a heritage policy; relics for the Digital Humanities. Globish plus dialects* – that, for me, is one of the catastrophic scenarios threatening Europe.

As a matter of fact, the *Dictionnaire des intraduisibles* was conceived of from the outset as a weapon, not merely philosophical but political and real, to defend against two potential catastrophes: Globish and linguistic nationalism. That other catastrophe, the mirror image of Globish, has to do with the troublesome idea of ‘the genius of

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3 | This term was invented by Jean-Paul Nerrière, then a Vice-President of IBM USA, to refer to the very limited but highly effective variety of English used by *non-native speakers* in an international business context, where they were proving to be much better negotiators – the Chinese and Indians in particular – than *native speakers* (see for example *Don’t speak English, parlez Globish*, Paris, Eyrolles, 2004 to 2006).

languages', which makes vernacular languages sacred – some more than others – and places them in a hierarchy of 'minor' and 'major' languages. Philosophers are familiar with this danger, an echo of the Greek *logos*, a word so universal or 'universalising' (translated by Latin speakers as *ratio* and *oratio*) that it referred at one and the same time to reason, language and the archetypal language, Greek. Thus, Rivarol equates French with 'natural logic' and 'common sense': 'it is no longer the French language; it is the Human language'.<sup>4</sup> In the same way, for Heidegger, German – more Greek even than Greek – is a 'genuine language' in the highest degree, a degree which 'depends on the depth and power of the people who speak the language and exist within it'.<sup>5</sup> We realise just how much danger lies in the appropriation of the universal via the conflation of language, race and nation.

If neither *Globish* nor linguistic nationalism – which, to speak like Heidegger, we might call 'ontological' – then what, exactly? Translation, understood as respecting diversity and knowing how to deal with differences. The great German linguist and diplomat of the late 19<sup>th</sup> century, Wilhelm von Humboldt, can enlighten us on this point. In his writings, we do not encounter language in the abstract, but actual languages: 'Language only manifests itself in reality as diversity',<sup>6</sup> and they form a Pantheon rather than a church. He likes to evoke the idea that there may be as many languages on Earth as there are people: 'The diversity of languages is the immediate condition of an increase for us in the wealth of the world ...; in this way the arena of human existence is simultaneously enlarged, and new ways of thinking and feeling propose themselves to us, in forms definite and real'.<sup>7</sup> A radical hyper-Babel in which happiness reigns, thanks to a Pentecost: translation. It was when I was putting together the *Après Babel, traduire*<sup>8</sup> exhibition that I understood, I think, the meaning of the little tongues of fire on religious images that had intrigued me so much as a child. They are not indicating that the apostles

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4 | 'Discours sur l'universalité de la langue française' in *Pensées diverses*, Desjonquères, 1998, p. 134.

5 | Heidegger, M., *The essence of human freedom: An introduction to philosophy* [1930], translated by Sadler, T., Continuum, 2002, pp. 35-36.

6 | Von Humboldt, W., 'Über die Verschiedenheiten des menschlichen Sprachbaues', in *Gesammelte Schriften*, Leitzmann, A. (ed.), Berlin, Behr, 1907, vol. VI, first part, p. 240.

7 | Von Humboldt, W., cited in Caussat, P., Adamski, D., and Crépon, M., *La langue comme source de la nation*, Mardaga, 1999, p. 433.

8 | Musée des Civilisations de l'Europe et de la Méditerranée (MUCEM), and Actes Sud-Mucem catalogue, 2016.

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have the gift of languages – that they speak all languages – but that all those present understand them because they hear them speaking in their own language, regardless of the language in which the apostles are actually addressing them. In other words God, or the Holy Spirit, was the first translator.

Let us return to our Europe and to the Court of Justice of the European Union ('the CJEU'). The time I have been able to spend there has left a strong and lasting impression. I am thinking especially about one of the tasks entrusted to me: representing the Académie française on the scientific commission of the Cité internationale de la langue française in Villers-Cotterêts, a project which symbolises the importance attached by the French Republic and its president to language. At the CJEU, multilingualism is entirely at home, both *de facto* and *de jure*. Proceedings may be brought before the Court in any of the 24 official languages of the European Union. However, judicial deliberations must be confidential, as in all democratic countries, which means that interpreters cannot be present. After the Second World War, the judges decided to use the French language, partly because it was the common language of three of the six founding States and partly in recognition of the place occupied by Roman law. As for the judgment, however, this must be delivered in the language of the case, and it is that version that is authentic. The judgment is therefore translated into the other 23 languages of the European Union, usually by the date on which it is delivered. The case-law therefore exists, and in the same way, in all the languages of the European Union, ensuring equality before the law. It seems to me that this ensures, for the Villers-Cotterêts edict, the most important of consequences: each person is judged in his or her own language, and in each case, only that language is authentic. There will not be a situation like that created by UN Resolution 242, which, between 'withdrawal ... from territories occupied' and the 'retrait ... des territoires occupés', led to two significantly different maps. The question we must ask is this: what is the equivalent of Villers-Cotterêts, today and beyond, in Europe or on other continents? It seems to me that one answer could be: the CJEU, a magnificent machine operating at the centre of our lives as Europeans, for – if I'm not mistaken – something like the price of a sugar a day in each citizen's coffee. What is at stake is the very meaning of Europe, defined as unified in diversity.

As this is a report of my own experience, I would like to end by describing two types of work that are currently under way.

The first operates at a practical, everyday level. It concerns new arrivals and the reception period. I work in an association, Maisons de la sagesse-Traduire, which, with the support of the French Ministry of the Interior and the French Ministry of Culture, is producing a series of *Glossaires bilingues de l'administration française* of a

new kind. For me, the starting point was the realisation, which I had during the *Après Babel, traduire* exhibition, that the most basic questions in the dozens of questionnaires that new arrivals must complete, either electronically on paper, as soon as they set foot on French soil, are permeated by centuries of French administrative practice. Surname, first name, date of birth, title – none of this is self-evident to a new arrival. The way in which names are given, family relationships designated, the day and year of birth – all of this differs from culture to culture. Sometimes it is necessary to invent new words in a particular language to refer to what are, for us, self-evident realities – for us but not for everybody. Once again, it is not so simple to understand that we are not understanding each other. Whence exasperation on one side, irritation and silence on the other, and powerlessness on both.

Our glossaries aim to ease the process of learning this basic reciprocity. With the help, in particular, of what we call, between ourselves, 'culture jabs', in reference to the interludes needed to explain whatever it is that may obstruct mutual comprehension, or lead to confusion because of discrepancies in the customs, practices, rights and rules in force here and elsewhere. All of these questionnaires are in small print, full of the most everyday words, but suddenly also full of technical or specialised terms, some very abstract and others quite the opposite, relating to law, health, work, accommodation, benefits or taxes, which do not exist as such in the other language, which do not refer to anything or do not have an exact equivalent. 'Divorced', 'in a civil partnership', you say? What is that? Do you mean the 'extended family' or the 'immediate family'? What is a 'tax household' to a Soninke person or a Syrian? How do we convey that 'nationality' and 'citizenship' do not have the same meaning in Russia as in France? Of course, the questionnaires are translated, generally very well, and of course there are interpreters, but it is on a more substantive level, from culture to culture and language to language, that it can be difficult to understand each other. Sometimes it is necessary to coin new words in the other language, and trust the linguistic instinct and natural aptitude of its speakers, in just the same way as, in our French language, we have gone on importing and coining new words over time. Translation is more than knowledge, more than an art; it is a slice of life.

The other project, which is very ambitious, takes a top-down approach. How do we ensure that Europe remains rich in languages? How do we create the means to promote linguistic diversity, an attribute of Europe by definition? Here are some possibilities that we are exploring through the project we call, to give credit where it is due, *Projet ECO*.

To make an asset of what might seem a liability – our 24 languages – we must first capitalise on their global status. English, Spanish, French and Portuguese are amongst

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the most widely spoken languages in the world, not to forget the languages spoken alongside national languages, such as Arabic, the second language of France. Europe's languages are the most peaceful of its weapons of conquest.

A project of this kind is at the heart of current concerns and recommendations. It requires structuring of digital humanities worthy of the name; not merely adding to the number of digitised corpora – as interesting as they can be – but interconnecting them on the basis of a guiding principle so as to form an accessible whole, and create a European repository of untranslatable terms together with a European translation engine.

It is also at the heart of the communication of tomorrow: neural machine translation. The repository, leveraging the considerable linguistic skills and terminological knowledge of the interpreters, translators and lawyer-linguists of the European institutions, is used to feed deep machine learning. It is designed to use the 552 language pairs, and to be open to the contributions and experiences of citizens. Along the way, it poses some important questions: does a machine learn like a child? What is the relationship between quantity and quality? How are new connections made? What is the status of these all-pervasive metaphors?

The progress to be expected is not solely dependent on corpus quality and diversity. It also depends on the design of the algorithm. The aim of developing the ECO engine is to exploit the considerable potential of neural network technology, while taking care to ensure that the process itself is not a source of errors and enabling the trained systems to express doubt, so as to put the end user in control and build confidence in this innovative translation tool. Neural machine translation can then serve to alert the user to difficulties and biases.

I began with a phrase used by Jacques Derrida: '*Plus d'une langue*'.

For Derrida, that phrase defines what he calls 'deconstruction', or the constant reconsideration of philosophy and its history as recounted by tradition (which comes from the Latin *tradere*, to transmit) – *although I could say, with a sisterly wink, that the fortunes of that word have changed*. 'If I had to risk a single definition of deconstruction, one as brief, elliptical, and economical as a password, I would say simply and without overstatement: *plus d'une langue* – both more than a language and no more of a language', he wrote in *Memoires for Paul de Man*.<sup>9</sup>

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9 | Columbia University Press, 1989, p. 15, translated by Lindsay, C.

As I understand the phrase, it describes the very movement behind the construction of Europe and European citizenship. It describes the energy that sets something in motion, and drives the constant reconsideration that is necessary for any sustainable institution.

# Multilingualism before the Luxembourg courts

## — Jean-Claude Wiwinius

**Jean-Claude Wiwinius was President of the High Court of Justice and the Constitutional Court of Luxembourg from 2016 to 2021. From 2019 to 2021, he served as president of the Network of the Presidents of the Supreme Courts of the European Union. He has held various positions of authority within the judiciary of Luxembourg, at the Court of Cassation, the Court of Appeal, the Public Prosecutor's Office and the District Court of Luxembourg. He taught private international law and civil procedure at the University of Luxembourg for 25 years. He is the author of the reference book '*Le droit international privé au Grand-Duché de Luxembourg*'.**

Luxembourg is a country which is **open to all kinds of cultures and a wide range of nationalities**. It knows how to integrate this multiculturalism in a way in which few other societies are capable.

Multilingualism and cultural diversity are intrinsic to the history and identity of many countries. Luxembourg is a living example of this. The country is multilingual, welcomes a significant number of residents originating in other countries, employs cross-border workers and shares its borders with Germany, Belgium and France. The Grand Duchy is enlivened by a large international community which endows it with a range of cultures, religions and social backgrounds.

### **Trilingualism in Luxembourg**

The language regime was laid down in legislation in Luxembourg by the Law of 24 February 1984. It states:

'Art 1 – National language

The national language of Luxembourgers is Luxembourgish.

**Art 2** – Language of legislation

Legislative acts and their implementing regulations shall be written in French. Where legislative and regulatory acts are accompanied by a translation, only the French text is authentic.

...

**Art 3** – Administrative and court languages

In administrative, contentious or non-contentious matters and in legal proceedings, the French, German or the Luxembourgish languages may be used, without prejudice to special provisions in respect of certain matters.

**Art 4** Administrative requests

Where a request is written in Luxembourgish, French or German, the administration must, in so far as possible, use the language chosen by the person making the request for its reply'.

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The Law of 1984 therefore created a special position for 'trilingualism' in Luxembourg, French and German being, historically, the administrative languages in Luxembourg, French currently being the only language for legislation. In 1984, the local language of Luxembourgish became the sole national language of the country. Multilingualism in the Grand Duchy is a fact, with a population using three languages on a daily basis, the language of integration still being Luxembourgish. The use of Luxembourgish has continued in the population, in part cementing national identity (*eis Sprooch*, 'our language').

This special feature is a product of the country's small size and of the history of the Grand Duchy, which is located at the crossroads of French and German-speaking areas. The numerous exchanges between Luxembourg and its neighbours, and in particular, since the 1970s, emigration to Luxembourg to find work, has caused the two neighbouring languages now to be widely spoken in the country.

Unlike other multilingual countries, such as Switzerland, Canada or Belgium, where languages are distributed based on geography, in Luxembourg they are distributed based on function, meaning that the use of one or another language depends on the situation involved. In general, parallel trilingualism is accepted. Everyone may speak in his or her own language, but must understand the other two, without requiring a translation.

During schooling, it is compulsory to learn the three languages. All pupils must study German from the age of 6, French from the age of 7 and English from the age of 14.

In the **école** fondamentale (primary school), lessons are given in German and explanations are often given in Luxembourgish. In secondary education, the lower grades receive mainstream education in German, whereas the higher grades use French. In technical education, for the lower grades, all subjects are taught in German, except for mathematics, while at the higher level, lessons are mainly in French, but explanations often continue to be given in Luxembourgish.

## MULTILINGUALISM IN LUXEMBOURG

More than 200 languages are currently spoken in Luxembourg. Luxembourgish is the most widely spoken with just over 55%, followed by Portuguese (16%) and French (12 %).

According to Luxembourgers, in 2012, apart from their mother tongue, the other languages which were the most useful for their personal development were French (72%), German (47%) and English (40%). It is not, however, impossible that this proportion could change in the near to medium term. By way of anecdote, this author, on making the suggestion that he repeat the pronominal verbs with his 11-year-old grandson, is told by the young man (in Luxembourgish): 'But, Grandad, all of this is completely useless, as later in my working life, I won't need French anymore - it will be enough to use English.' So much for the francophonie often boasted about in the Grand Duchy.

Multilingualism is also strengthened by the presence of many French-speaking (75%) and German-speaking (25%) cross-border workers. These border workers represent almost half of the country's workers. The use of English and Portuguese must be added to the three official languages: close to 18% of the population is Portuguese, making a strong community where Portuguese remains the language in use even though the second generation speaks Luxembourgish. The very strong development of the banking sector has meant that the English has become frequently used as a working language.

**The national press** mainly writes in German and partly in French, articles not being translated into the other language. There are also a few parts written in Luxembourgish: letters to the editor, personal announcements (obituaries, various notices, etc.). For some years there have also been weekly newspapers in English and Portuguese.

In the **Chambre des Députés** (the Luxembourg Parliament), the everyday language is Luxembourgish, with French being used occasionally for citing legal texts. By contrast, French is spoken at the plenary meetings of the Conseil d'État (Council of State).

How is all of this experienced **in every day life** in the Grand Duchy? Here are a few examples, cited at random, encountered by this author over the course of the two weeks preceding this contribution being finalised. The town of Esch-sur-Alzette – 2022 European Capital of Culture, where, in addition to Luxembourgish, French and German, Italian and Portuguese are spoken by the many families of steelworkers with a migrant background – is devoting one of its projects - a 'polyglot' theatre work in which the actors express themselves in their respective mother tongues – to the problems but also the humour in the situations born of that linguistic melting pot. A flyer from this author's

local Municipal Administration gives details of the forthcoming collection of large items of waste in six languages. The author of a letter to the editor of a Luxembourgish daily newspaper complains that announcements on the trams are made only in French and English, and not also in German and Luxembourgish. The wife returning from choir rehearsal remarks that she had to use five different languages to speak with her choir friends. In another example, this author who lost his mobile phone while hiking, when retracing his steps, had to ask three other walkers in three different languages if they had found his phone. The list of such examples is endless. No one in Luxembourg is surprised by this and, above all, no one takes offence.

## LUXEMBOURGISH

The Luxembourgish language has benefited from this multilingual environment.

Luxembourgish (*Lëtzebuergesch*), the only national language of Luxembourgers, is an Indo-European language of the Germanic family (Moselle Frankish) spoken mainly in Luxembourg and in some neighbouring communes in Belgium, France and Germany. It is estimated that approximately 600,000 people worldwide speak Luxembourgish.

The recognised status of the **national language** of Luxembourg attests to a reality that the Luxembourgish language is not a dialect. Luxembourgers speak only Luxembourgish among themselves, at all levels and in all situations. They speak, therefore, 'their language'.

Work has been underway for many years to **revise the Constitution** of Luxembourg. The final stage has just begun. In Chapter 1, entitled 'The State, its Territory and its Inhabitants', and more specifically in Section 1, entitled 'The State, its Political Form and its Sovereignty', Article 4(1) provides: 'The language of Luxembourg is Luxembourgish. The law sets out rules regarding the use of the Luxembourgish, French and German languages.'

The commentary to that text indicates that, like other European constitutions, Article 4 refers to the symbols of the State, which are the language, the national emblem, the coat of arms and the national anthem. As regards the linguistic regime, the form of wording, which includes the Luxembourgish language seeks to retain a degree of flexibility in the rules concerning the use of the Luxembourgish, French and German languages via legislative means. During the debates in the Chambre des Députés sitting as a Constitutional Assembly, the speakers took the view that anchoring both the Luxembourgish language and multilingualism in the Constitution testifies to the

country's attachment to multilingualism, which is an asset for the country and makes it possible to defend Luxembourg's importance in the world.

## Multilingualism and the judiciary

### Magistrates

Article 2 of **the amended law of 7 June 2012 on attachés de justice** ('judicial officers') provides, for judicial officers recruited by means of a competitive examination, that in order to be admitted to that examination, various conditions must be fulfilled, including, being of Luxembourgish nationality, but especially - in the present context - **having an adequate knowledge of the three administrative and court languages**, as defined by Article 3 of the Law of 24 February 1984 on the language regime.

A review of **language competency** is laid down in Articles 3 and 4 of a Grand-Ducal regulation of 25 June 2021 on the recruitment and training of judicial officers. In principle, all candidates who have completed their secondary education at a lycée in Luxembourg are exempt from a language examination, unless the diploma was issued by a French lycée or a German lycée in the Grand Duchy. In that situation, an examination in Luxembourgish and, as appropriate, in German or French will be required. Even though the text of Article 2 refers to 'adequate' knowledge, it is acknowledged that Luxembourgish magistrates are to have a 'perfect' command of the three languages. In the last three years, six candidates have been rejected by the Commission for the recruitment and training of judicial officers (three in 2019, one in 2020 and two in 2021) due to insufficient language skills. Sometimes the unsuccessful candidate puts him or herself forward the following year after having successfully completed intensive courses in Luxembourgish or German.

### Lawyers

In a publication on 'The Free Movement of Lawyers in Luxembourg' from around ten years ago, the Luxembourgish judge of the Court of Justice of the European Union, François Biltgen, made a detailed examination of the history of the problems encountered by the two Luxembourgish bars, which have a very large number of non-Luxembourgish lawyer members, as regards the language skills of those foreign lawyers and the review of those skills in the light of the relevant provisions of EU law. The author set out the

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background to the Law of 13 June 2013, amending the Law of 10 August 1991 on the profession of lawyer, and recalled the infringement procedure initiated by the European Commission in 2011, under Article 258 TFEU, concerning the admission conditions for European lawyers registered on List IV of the Bar Register for lawyers who apply for registration on List I of that list ('assimilation clause').

According to the provisions of **Article 31-1 of the aforementioned Law on the profession of lawyer**, currently 'lawyers registered on an individual basis must be proficient in the language of the legislation as provided for in the Law of 24 February 1984 on the language regime, as well as any other language necessary for the exercise of their professional activities, without prejudice to Article 6(1)(d). Lawyers registered on List II must also be proficient in the administrative and court languages of the Grand Duchy of Luxembourg which are necessary to fulfil their obligations resulting from the judicial training period. A lawyer who accepts a case must have the necessary professional and linguistic skills, or he or she will be subject to the disciplinary sanctions provided for.'

**Registration on List II** (trainee lawyers) of the Bar Register is possible only if the candidate can attest to a proficiency in Luxembourgish, French and German. As regards the **transition from List IV to List I** (lawyer at the Court), a court circular from the President of the Bar (No. 1 2013/2014) provides that the lawyer must give a sworn statement that he or she will confine himself or herself to practising exclusively in the languages in which he or she is proficient, with an indication of those languages of proficiency. A regulation of 8 June 2016 was adopted by the Conseil de l'Ordre (Bar Register) to clarify various points. It declares, first, that the levels to be attained in terms of language proficiency are those set by law. That regulation then specifies that the successful completion of complementary courses in Luxembourgish law gives rise to a presumption of proficiency in French as provided for in the law. Candidates who have received primary or secondary education in a Luxembourgish or German education system and who have obtained, in that system, a diploma allowing access to higher education studies, insofar as the education leading to that diploma was given in Luxembourgish or German are deemed to be proficient in the Luxembourgish or German language as provided for by the law. Other candidates must produce a certificate, issued by an approved professional, attesting to the level of proficiency in Luxembourgish or German required by law.

These relatively recent texts are not, however, always followed in practice.

While, as has just been explained, the Luxembourgish Bar has, in recent years, demonstrated a somewhat strict approach to reviewing its members' language skills by making it, quite rightly, a **question of the profession's ethics**, that has not always been the case.

This author recalls the time, in 1984-1989, when as a **magistrate in Esch-sur-Alzette**, he was sometimes confronted with situations bordering on the ridiculous. In cases concerning leases and employment law at first instance, where the amounts involved are not that high (currently below EUR 15,000) as individual can appear before the magistrate without the assistance of a lawyer. On more than one occasion, this author had to take on the role of interpreter in addition to that of judge, when explaining to a Luxembourgish individual what had just been argued by the opposing, francophone, lawyer who could not express himself in Luxembourgish. Even more bizarre was the situation where he had to explain to the lawyer what his opponent had just argued in Luxembourgish. Clearly, this is not the role of the judge. However, as a 'juge de proximité' and also having, according to the law, the role of conciliator, just like his colleagues, this author preferred to act so as to avoid, first, the case being postponed in order to allow a party to find a Luxembourgish speaking lawyer and, second, the possibly unnecessary costs of an interpreter, such costs risking to exceed the amount claimed. Another solution, of course, would have been to say to the lawyer: 'Hard luck on you – and your client – if you cannot understand what is said in Court.'

It appears that, despite the new rules set out above, the situation regarding the use of languages - at least before the Magistrates' Courts - has not changed everywhere, otherwise it would not have been necessary to distribute a **circular from the Magistrates' Courts of Luxembourg and the Luxembourgish bar**, signed very recently on 22 March 2022. Under the heading 'Use of Languages', after stating Article 31-1 of the amended Law on the profession of lawyer: 'At hearings, the Luxembourgish, French and German languages are ... assumed to be sufficiently well-known to understand, speak, and make oral argument in these languages. It is not within the remit of the Magistrates' Courts, assessors or the court registry to carry out translations. Lawyers must be proficient in the spoken language of the person speaking, whether a lawyer or a private individual. Failing that, lawyers must be assisted by a colleague with the required language skills.'

## Hearings

As was explained in the introduction to this contribution, Article 3 of the Law of 24 February 1984 mentioned above, authorises, in a broad manner, the use of French, German and Luxembourgish in judicial matters. In principle, **trilingualism is fully observed**.

In fact, in all cases involving a **written procedure** and requiring the assistance of a lawyer (that is to say, cases before the Constitutional Court, the Court of Cassation, the Higher Administrative Court, the Civil, Commercial and Employment Law chambers of the Court of Appeal and before the District Courts in civil matters), written documents are **in French**. If, at the hearing, explanations are needed, these are also (usually) given in French.

In all **other cases** (namely criminal cases before all courts, before the District Courts (apart from in civil cases), before the Administrative Court and before the Magistrates' Courts), where an individual may appear without the assistance of a lawyer, **oral arguments may be made in one of the three official languages** of the country. In those cases, even the lawyers do not always make their oral arguments in French. And it works.

Obviously, not everyone knows (or wants) to express themselves in one of these three languages. They have the right to express themselves in the language of their choice and to be assisted by an interpreter. This author, who presided over a criminal chamber of the Court of Appeal for several years, believes that an interpreter is used in **almost 50% of criminal cases**.

On that point, reference should be made to the Law of 8 March 2017 strengthening procedural guarantees in criminal matters and transposing, inter alia, Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the **right to interpretation and translation** in criminal proceedings, which introduced Articles 3-2 to 3-5 to the Code of Criminal Procedure.

These articles provide that a person who does not speak or understand the language of the proceedings is entitled to the assistance of an interpreter when he is questioned at no cost (Article 3-2 of the Code of Criminal Procedure) and is entitled to a translation in a language he understands of all documents served on him at no cost (Article 3-3 of that code). The same goes for victims and civil parties (Articles 3-4 and 3-5 of the same code).

There are a number of observations to be made on that point. First, due to the large number of foreign residents in the Grand Duchy and the diversity of languages spoken, there are often serious problems in finding available interpreters or translators for the desired language, given most of those people have another main occupation, which limits their availability. The judicial authorities would need a real 'Translation Service' to remedy these practical problems. It can also happen that a lawyer will request the assistance of an interpreter in order to be able to talk to his own client. Unfortunately, the quality of interpreting often leaves much to be desired. Requests for interpretation, whether or not vexatious, are sometimes made at the last moment before the hearing, resulting in the case being postponed.

Of course, translation and interpreting costs are exorbitant. In 2021, the judicial authorities paid EUR 577 600 for interpreters for the police, EUR 300 647.62 for **court interpreters**, and EUR 980 940 for translations of documents, making a total of EUR 1 859 187.62.

As an anecdote, it is interesting to refer to a circular from the Public Prosecutor's Office dated 16 September 1879 concerning the use of German and French in the administration of justice, which is - officially - still in force. According to that circular, 'in the administration of civil and commercial justice, French is used where the parties are represented by 'avocats-avoués' (lawyers), while magistrates and officers of the judicial police use German in all documents relating to criminal justice'. An addition was made that 'magistrates must therefore always draw up the judgments they render as criminal judges in German, and registrars of Magistrates' Courts shall use that language in the summary notes they must draw up in criminal matters in implementation of legal provisions'.

The latter requirement is, however, no longer followed in practice by magistrates. During five years of sitting as a criminal judge in the Magistrate's Courts, this author can recall only one decision which had to be drafted in German, and that was done at the express request of the defendant.

Both the ordinary and administrative courts have developed interesting case-law concerning, first, **the reply to a request written in a language other** than the three official languages and, second, **the obligation to reply in the language chosen by the person concerned**.

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Accordingly, it was decided that '[While] it is true that neither the Law of 24 February 1984 nor any other legal provision explicitly makes inadmissible an application drafted in a language other than the three official languages of the Grand Duchy of Luxembourg which are capable of being used in judicial matters, it remains the case, however, that drafting an application initiating proceedings in a language other than one of the three official languages laid down in Article 3 of the Law of 1984, unless accompanied by a translation into one of the three official languages, is not only capable of prejudicing the defendant's rights of defence and, where applicable, of an interested third party to the proceedings, but also prevents the judge from gaining a good and comprehensive understanding of the case, since drafting the application initiating proceedings in one of the three official languages of the country is the guarantee of such comprehensive understanding of the case, with the result that such an action is inadmissible' (see TA 12 February 2020, No 42194).

It has also been decided that 'the obligation imposed on authorities by the Law of 24 February 1984 on the language regime does not apply to the courts; they are free to use French, which is traditionally used for drafting judicial decisions' (see Cass 30 June 2011, Pas 2012, p.592; TA 23 September 2015, No 35036).

As regards lodging documents in a non-official language, it is, under the case-law, a question of observing the rights of the defence.

Accordingly, the Court of Appeal, after recalling that the Law of 1984, which provides that French, German or Luxembourgish are to be used before the courts, applies only to judicial acts themselves, that is to say, court decisions and submissions exchanged between parties to the dispute, to the exclusion of documents which by definition pre-date the trial and which are maintained in the proceedings insofar as the participants in the trial understand their content, rejected a plea to exclude from the proceedings documents drafted in English (see Court 11 December 2019 CAL-2017-71).

Similarly, the District Court of Luxembourg, after pointing out that judicial matters were expressly included, following the proposal from the Council of State, in the Law of 1984 mentioned above, held that, in that field, there was no freedom as to the use of languages, since the law provided only for the option of using French, German or Luxembourgish. Given that, in the instant case, the documents cited were not everyday documents written in everyday English with easily understandable content, but rather documents of a legal nature, drafted in legal English, the interpretation of which could be open to dispute, and that, in addition, those documents were decisive elements for

the court's decision, the court decided that those documents could not be taken into consideration, unless they were drafted in one of the languages provided for judicial matters. Therefore, the court asked the parties to provide a certified translation of those documents (see TAL, 14 November 2017, No 228/2017)

In tax matters, the Administrative Court has held that 'the particular features of Luxembourgish tax law, in particular given its partly German origin, may justify, in addition to that linked to the identity of the parties or to a given case, the use of German before the competent judicial authorities, even if French is traditionally used, at least for procedural documents' (see TA, 4 February 1998, No 9850).

In civil and criminal investigations, the judge usually questions the witness in Luxembourgish, records the statements in German and writes the judgment in French.

Administrative judges, competent in tax matters, after having - usually - heard oral argument in French, will deliberate in their mother tongue, Luxembourgish, on a text drafted in German, the *Abgabenordnung*, in order, ultimately, to draft a judgment in French. That is not bad.

## The last word

From 2023 onwards, the open space at the foot of the third tower of the Court of Justice of the European Union, seat of the Court's lawyers and lawyer-linguists, will be transformed into a garden to green that densely urbanised part of the plateau. Named the 'Garden of Multilingualism', because of, inter alia, its proximity to the Court's lawyer-linguists who transpose decisions in the 24 official languages of the Union (Luxembourgish is not one of them), the future green space is to be 'a miniaturisation of the wooded hillsides and agricultural fields of the Luxembourgish landscape', according to the description of the French landscape architect.

According to the Luxembourgish judge François Biltgen, President of the Court's buildings committee, the garden is also a tribute to Luxembourg, which has welcomed the institution since its inception and has a centuries-old tradition of multilingualism.

Let us bring this contribution to a close with a reflection from that same judge when the work on the garden began: 'Multilingualism is like a garden, it must be nurtured.'

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## Irish in Europe

### — Michael D. Higgins

**Contribution from the Michael D. Higgins, the President of Ireland since 2011 (he was re-elected in 2018). Before that he served as a Senator (25 years) and as a Teachta Dála [member of the Irish Parliament] (9 years). He was the first Minister for the Arts from 1993 to 1997 and he established Teilifís na Gaeilge [Irish-language television channel] during that period. As Minister he had direct responsibility for the promotion of the Irish language for the economic and social development of Irish-speaking areas. He was Lord Mayor of Galway on two occasions and before he was a politician he was a lecturer at third level. Michael D. Higgins is a poet, writer, academic, a human rights advocate and a promotor of inclusive citizenship.**

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Multilingualism is at the heart of Irish society and I am immensely proud of the multilingual communities across this island. It is fitting that in marking 70 years of existence, the Court of Justice of the European Union has chosen to recognise in this special way the value of multilingualism not only in its own work, but in the lives of so many EU citizens. It gives me tremendous pleasure to have been invited to contribute to this publication and I would like to commend and to thank the organisers.

Fostering multilingualism is not always an easy feat. It is, however, an important one which speaks to our value of unity in diversity in Europe. The Court of Justice deserves enormous credit for 70 years as a multilingual institution. The context in which the Court operates has changed considerably since its establishment in 1952 as part of the European Coal and Steel Community. Who might have envisaged then that in 2022 the Court would be successfully carrying out its core mandate of ensuring uniformity of interpretation and application of EU law across 27 member states in no fewer than 24 official languages? The transformation of the EU judicial system in recent decades as a result of the entry into force of successive Treaties and multiple enlargements has no doubt come with challenges. A significant broadening of such a union carries with it a risk of diluting of the connection felt by citizens to the central institutions. A core element of ensuring that connection remains firm is to ensure that institutions are accessible to all citizens equally regardless of where they live or the language they speak. Thus, while there is naturally a financial cost to conducting the business of the Union in 24 languages, the importance of this investment cannot be overstated.

When reflecting on the value of multilingualism in today's European Union, I am struck by four key arguments in its favour. Firstly, as mentioned above, for a *sui generis* supranational being such as the EU to prosper, it is fundamental that citizens feel invested in the Union and a part of the Union. To achieve this, they must be able to understand the business of the Union, access the benefits of the Union, and engage with the institutions and agencies of the Union in the language that feels most comfortable to them. In the case of the Irish language, great strides have been made in this respect in recent years. It was a source of pride in Ireland to see the ECJ hear its first case in Irish in 2020 (*An tAire Talmhaíochta Bia agus Mara and Others*). It was symbolic for the court to issue its judgment in this case in Irish on our national holiday, Saint Patrick's Day, 2021. Mere weeks after the end of the derogation on Irish in January this year, the European Parliament saw the proposal of its first ever legislative amendment in Irish. These positive steps enhance the opportunities for Irish speakers to engage with the EU and it is my hope that these examples will encourage more to do likewise in the future.

The second advantage of multilingualism in the EU is the differing perspectives speakers of diverse languages can bring to the Union's decision making process. It is often said by those who are multilingual that while speaking a certain language, they tend to think in a certain way. Indeed, language offers us the lens through which we view and understand the world around us. Much like diversity in all forms is known to enrich decision making structures, the varied linguistic backgrounds of decision-makers in the EU can act as a safeguard against groupthink and facilitate the consideration of multiple nuanced perspectives.

Thirdly, language tells the story of where a people has come from and where it is going. In a European context, languages can serve to remind us of the interconnectedness of our continent throughout the centuries, and indeed millennia. For example, while Irish is a Celtic language, sharing roots with Scots Gaelic, Welsh, Breton, Manx and Cornish, friends across Europe may be interested to learn the impact that many of their own languages have had on Irish. Irish words relating to sea-faring and commerce, for instance, often originate from Scandinavian languages as a result of contact with the Vikings between 900-1200 AD. Some examples of this include 'pingin' (penny) and 'margadh' (market). Similarly, the impact of French on the Irish language can be clearly seen in words such 'seomra' (room, chamber) and 'séipéal' (chapel) which are understood to have their roots in the Norman arrival in Ireland from 1169.

I am pleased that this linguistic interconnectedness with our European neighbours has only grown in recent years, with Irish being studied today in universities in France, Poland, the Czech Republic, Sweden, Slovakia, Germany and Austria.

Finally, and importantly, language forms an intrinsic element of a nation's identity. The recognition of all official languages of the EU is a reminder that all countries, whether large or small, are equal in the Union.

## **Irish in Europe**

Like the Court of Justice, Ireland is celebrating a number of important milestones this year. 2022 marks 50 years since the signing of the Treaty of Accession 1972, providing for Ireland's accession to the European Communities. The anniversary of the signing of this treaty, which was the first step on Ireland's journey toward full EU membership, coincided with the ending of the derogation on Irish in the EU in January this year. It is easy, when looking back on these dates, to think that the work only begins after these

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milestones, that getting to these first major steps is straightforward. In Ireland's case, on both counts, this was not so.

When Ireland first applied to join the European Economic Community in 1961, the application was effectively blocked when General de Gaulle vetoed the United Kingdom's application. A second application to the European Communities six years later met a similar fate and in December 1967, the European Commission announced that it would not be proceeding with Ireland's application to join. Ireland's protectionist economic policies after independence seemed at odds with the EC's goal of free trade between Member States. However, the Irish government believed that Ireland's future was at the heart of Europe and worked hard to persuade the then members to allow Ireland to join. The fruit of this labour came in the form of the Treaty of Accession 1972 which was ratified by 83% of votes in a referendum in May of that year.

This story of perseverance and commitment to the European project is reflected in the fortunes of the Irish language throughout Ireland's membership of the EU. From 1973, Irish was a treaty language, meaning that only EU treaties were translated into Irish. In 2005, the Government applied for Irish to become an official and working language of the Union, a status it attained on 1 January 2007. However, a shortage of qualified translators as well as technological resources meant that a derogation was placed on the language for five years. This derogation was extended twice, as concerns remained about the availability of staff with the requisite Irish language skills. From 2017, a Council Regulation allowed for an incremental increase in the categories of legislation to be translated into Irish by the EU institutions. Indeed, over those five years, the capacity for translation of Irish in the EU dramatically increased. Credit for this is due in large part to the work of the Department of Tourism, Culture, Arts, Gaeltacht,<sup>1</sup> Sport and Media to increase staff numbers through the Advanced Irish Language Skills Initiative as well as digital and technological initiatives. The results of these efforts soon became clear: the volume of material available in Irish rose almost six fold between 2016 and 2021 and the number of Irish language staff in the EU institutions' language services rose from 58 to almost 200 between January 2016 and January 2022.

Today, Irish stands with the other 23 languages of the EU as a full official language, meaning that all European legislation enacted is now translated into Irish. The end

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1 | Areas where Irish is spoken as the primary language.

of the derogation has made the services of the EU more accessible for Irish speakers at home and abroad. This represents a crucial step forward, not only in Europe but also in Ireland, as our national language takes its place on an international stage. The prospects of developing the Irish language further are made brighter by its official status within the EU.

## Irish in Ireland

Of course, Irish as a part of the EU is a mere fraction of its wider storied history on the island of Ireland. The story of the Irish language is one familiar to many colonised peoples around the world. For centuries, Irish was our island's lingua franca, despite continued efforts to promote English. It was the Great Famine from 1845 to 1850 that led to the eventual decline of the language. As waves of people emigrated from the West of Ireland, native Irish speakers were forced to learn English in order to integrate into British and North American society. Even for many of those who stayed in Ireland, the land could no longer sustain their families and they were pushed to towns and cities where English was increasingly the language of business. It has been estimated that almost half of people born in Ireland in the first half of the 19<sup>th</sup> century were raised as Irish speakers, but by the 1891 census, only 3.5% of the population were brought up through Irish. Arnold, in *On the Study of Celtic Literature*, wrote that Irish was 'the badge of a beaten race'.

In the 130 years since, concerted efforts have been made to preserve the language. Among the earliest of these was the Gaelic League, a social and cultural organisation set up in 1893 to promote the Irish language in Ireland and around the world. The League had a number of early successes, not limited to the recognition of St. Patrick's Day as a national holiday and the introduction of Irish into the national school curriculum. As time went on, the cause of the League became intertwined with the cause for an independent Ireland: for those original pioneers of the movement to revitalise Irish, the language needed an independent State to develop fully and, likewise, an independent State would need its own language in order to flourish. As Patrick Pearse put it, '*Chan amháin saor ach Gaelach chomh maith. Chan amháin Gaelach ach saor chomh maith*'.

However, it was difficult for a fledging Irish State to establish itself on the world stage without making use of English. As an official language of the League of Nations, English was, in many ways, key to making the case for Irish statehood. For a state born out of violence and still closely linked to the British Empire, Ireland made very effective use of

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the English language to communicate and build relations with international partners. As Ireland's economy grew during the latter half of the 20<sup>th</sup> century, the English language was a useful tool for developing trade links around the world and looking outward, rather than inward. Opening Ireland's economy and society in this period ushered in a new era for the nation, including the reversal of population decline for the first time since the Famine.

This is not to say that Ireland's success has come at the expense of the Irish language or that Ireland owes what it has achieved to speaking English. In tandem with the early efforts in English to develop internationally, there have long been measures to promote the Irish language at home. I myself had the privilege of serving as Minister for Arts, Culture and the Gaeltacht between 1993 and 1997. During this time, I established Teilifís na Gaeilge, now TG4, the national Irish language television station. TG4 now boasts 650,000 viewers per day and broadcasts hours of new Irish language programming every day. As well as Irish language media, I recently signed the Official Languages (Amendment) Act 2021, which will improve the availability of public services in Irish. I have no doubt that this legislation will have a profound impact on the usage of Irish in our country over the coming years, as will the growing numbers of parents in Ireland choosing to educate their children through the medium of Irish, thereby giving them the gift of bilingualism.

I will conclude with the following thought the learning and speaking of multiple languages is not a zero sum game. There are no negatives to the acquisition of an additional language. Ireland's first President, Dubhghlas de hÍde, spoke seven languages and was founder of the language rights group Conradh na Gaeilge. He didn't find that his affinity for Irish interfered with his ability to speak German to his wife, to speak Hebrew, to be familiar with Latin and Greek texts or to speak French. Likewise, the introduction of new official languages in the EU causes no detriment to those which are already established. As we celebrate the diversity of Europe's many languages and linguistic traditions, I would encourage all to embrace the many opportunities for enrichment that multilingualism can bring.

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# On the Importance of Multilingualism in Law

— **Marin Mrčela**

**Marin Mrčela is a judge of the Vrhovni sud Republike Hrvatske (Supreme Court of the Republic of Croatia), Associate Professor at the Faculty of Law in Osijek, and President of the Group of States against Corruption (GRECO) of the Council of Europe.**

## I. Introduction

1. Language is of special importance in law. 'Language is the means by which law is expressed'.<sup>1</sup> Without language, there is no law, for it is through language that legal norms are communicated and applied in particular cases and in everyday life. Law defines the relationships between people, the rights and duties of individuals within the community and often human liberties as well. It is therefore not only the way in which the norms in question are worded that is important, but also the way in which they are applied in court rulings. This is because those norms, and especially their application in court rulings, should be understood by the persons to whom they are addressed. Litigants and members of the legal profession, as well as the general public, should understand the reasons for the rulings given by courts. The way in which those rulings are worded is therefore especially important.
2. The use of language can be analysed on many levels. Each professional or scientific discipline has its own rules, which are often described in technical terms, frequently known only to practitioners in the given field. This is also the case with law, except that the general characteristic of law is that it applies to everyone, since even a ruling resolving a dispute between specific parties may be relevant to other persons in the same or a similar legal situation. For reasons of space, this piece will focus on only two aspects of the use of language in law.<sup>2</sup> The first aspect concerns the use of language in court rulings, and the second concerns multilingualism, including foreign legal terminology, which enters domestic law through the adoption of foreign legal measures, and rulings by transnational courts.

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1 | Barbić, J., 'Jezik u propisima', *Okrugli stol „Jezik u pravu”*, Croatian Academy of Sciences and Arts, Modernizacija prava, vol. 20, Zagreb 2013, p. 49.

2 | The use of language in laws and other regulations is a separate issue that cannot be touched upon in this piece, although it is of particular importance. I would therefore like to refer readers to the publication mentioned in the previous footnote, which discusses this topic in more detail.

## II. On the language of court rulings

3. The drafting of court rulings is a skill which is often not afforded due importance. The general belief is that it is what is written, rather than the way in which it is written, that is important. This is particularly evident in the grounds of judgments, which are sometimes excessively long because of unnecessary repetition. The *Sudski poslovnik* (Court Rules of Procedure) contain a provision which states that 'court rulings and other pleadings should be clear and concise'.<sup>3</sup> 'Concise' means that court rulings should contain only what is provided for in the law and, in legal terms, only what is necessary from the point of view of the legal issue in question. Conciseness depends primarily on knowledge of the law and of what is relevant to the legal aspect of the ruling. 'Clear' means that the ruling must be understandable not only to lawyers, but also to the parties and to anyone else who reads it. Clarity is largely influenced by style, choice of vocabulary and the correct use of standard Croatian, which contains rules and norms concerning different (orthographic, grammatical, lexical and stylistic) aspects of the language.
4. Court rulings must use legal terminology or, as the SP puts it, 'the use of statutory terms is mandatory'.<sup>4</sup> This is understandable because court rulings are meant to apply the law, and legal terminology is clear in terms of both its content and its meaning. Therefore, it is not advisable to write 'vještvo' in court rulings, since the official term for an expert opinion is 'vještačenje'. Similarly, an autopsy is not referred to as 'razudba' but rather as 'obdukcija', reasoning is not 'obrazložba' but 'obrazloženje', and the main hearing in civil proceedings is not 'dokončana' (completed) but 'zaključena' (concluded).
- 4.1 However, in addition to legal terminology, the use of standard Croatian is also important in order for court rulings to be understandable. The use of standard language ensures that all speakers of Croatian understand one another. While the use of regionalisms is not prohibited, the meaning of such regionalisms should be explained in rulings so that all users of the

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3| Article 59(1) of the *Sudski poslovnik* (Court Rules of Procedure) (*Narodne novine* (Official Gazette) N°37/2014, 49/2014, 8/2015, 35/2015, 123/2015, 45/2016, 29/2017, 33/2017 – amendment, 34/2017, 57/2017, 101/2018, 119/2018, 81/2019, 128/2019, 39/2020, 47/2020, 138/2020, 147/2020, 70/2021, 99/2021, 145/2021) ('the SP').

4| Article 59(4) of the SP.

language can understand them. The use, in a court ruling, of the expression 'baltica je pronađena u ganjku' (a small axe was found on the porch) will be understandable to Croatian speakers in the Hrvatsko Zagorje and Prigorje regions, but not necessarily in the Dalmatia or coastal regions. Conversely, the expressions 'pucao je iza štekata' (he was shooting from behind the terrace of a café) or 'droga je bila u buži ispod pitara' (the drugs were in a hole under a pot) will be clear in Dalmatia, but not necessarily in Zagorje or Slavonija. This is why it is so important to use standard Croatian, which, thanks to its standard expressions and rules, enables legal texts to be properly expressed and understood.

5. The rules of standard Croatian have to be learned. As a prominent Croatian linguist once said jokingly, 'Ničija baba ne govori hrvatski standardni jezik' (no one's grandmother speaks standard Croatian). Unfortunately, there are no classes offered within the framework of the Croatian system for the training of lawyers at university level in which future lawyers would learn the rules of standard Croatian and the importance of legal wording. The Pravosudna akademija (Judicial Academy) holds workshops on the correct use of legal terminology and standard Croatian. The workshops are intended for judicial officials (judges, prosecutors and advisers).<sup>5</sup>
6. In standard Croatian, there are five functional styles: literary/artistic, conversational, journalistic, administrative and scientific. Legal texts are written using the administrative functional style, which is characterised by 'matter-of-factness, objectivity, accuracy, clarity, simplicity, logic, conciseness, transparency, analyticity, neutrality, and compliance with the norms of standard Croatian'.<sup>6</sup>
7. The administrative functional style should also be followed in court rulings. However, this is not always the case. The way sentences are constructed in such rulings can create particular problems. Long sentences are common, which are difficult for non-lawyers and even lawyers to follow, let alone

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5 | <https://www.pak.hr/iz-godisnjeg-kalendar-programa-pa-2/>.

6 | Mrčela, M., Lewis, K., 'I u pravu treba biti u pravu – o jeziku hrvatskih pravnih tekstova', *Hrvatski jezik*, Institute of Croatian Language and Linguistics, Zagreb 2017, N'3, p. 32.

understand. A sentence that runs on for an entire page is virtually unreadable and unintelligible. For this reason, sentences in legal texts, and especially in court rulings, should be short and clear. 'A person who thinks in an orderly fashion will find it easy to express himself or herself clearly'.<sup>7</sup> It is said that presenting legal arguments in a manner that is clear and concise is an art. Presenting legal arguments clearly and concisely is a skill that is learned and developed.

- 7.1 Descriptions of facts in criminal cases, especially those involving economic crimes, pose a particular problem. They are often several pages long and contain passages that are unnecessary from a legal point of view. It would be advisable to abandon the tradition of setting out the facts in a single sentence and move towards a model where facts are presented in several sentences, making the description clearer. This would also facilitate proceedings, especially the taking of evidence and the establishment of facts.
- 7.2 Long sentences are not particular to Croatian legal practice. They can also be found in the rulings of the Court of Justice of the European Union.<sup>8</sup> Of course, there are also examples of rulings which contain mostly short sentences and are all the clearer for it.<sup>9</sup>
8. Apart from long sentences, court rulings often contain distracting expressions (syntagms). Pleonasms such as *no međutim* (literally: but however), *čak štoviše* (literally: even moreover), *kako i na koji način* (literally: how and in what way), *zato jer* (literally: because because), *javno objaviti* (literally: publicly publish),

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| 7| Opačić, N., <https://slobodnadalmacija.hr/vijesti/hrvatska/nives-opacic-poplava-stranah-izraza-lakse-siri-kod-ljudi-koji-pate-od-sindroma-manje-vrijednosti-a-da-je-hrvate-briga-za-pravopis-odavno-bi-ga-naucili-1082177>.

8| One example is the operative part of the judgment [15 October 2019, *Dorobantu*, C-128/18, [EU:C:2019:857](#)]. That operative part consists of four paragraphs, and the first sentence of the first paragraph is 13 lines long.

9| For instance, the judgment of the Westminster Magistrates' Court of 23 April 2018 is 17 pages long and is divided into 86 paragraphs. The longest paragraph spans 13 lines, but it contains seven sentences. Moreover, although the judgment is obviously in English, it is worded in such a manner that it can easily be understood even by a non-native speaker with an average knowledge of English. It contains just one expression that might need to be looked up in a dictionary: 'That sort of case is a far cry from the fraud alleged in this case' ('a far cry' being something that is notably different).

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and vremensko razdoblje or, even worse, vremenski period (literally: temporal period) may not affect understanding in the legal sense, but they certainly shed some light on the person drafting the ruling.

### III. Foreign legal terminology and multilingualism

9. This issue can be analysed on three levels: the permeation of foreign (legal) terminology into the Croatian legal system, the translation of foreign legal texts into Croatian and vice versa, and multilingualism, particularly in the application of EU law.
10. The use of foreign legal terminology primarily concerns foreign words that are introduced into Croatian legal texts. One example is the word ‘transparentan’ (transparent), which has many meanings in Croatian: ‘transparent, translucent, easy to see, bright, clear’, and, when used in a figurative sense, ‘easy to understand’. Numerous translations of pieces of EU legislation contain this word.<sup>10</sup> Not surprisingly, it can be encountered, for example, in the Croatian Zakon o tržištu kapitala (Law on Capital Markets), which stipulates that ‘the market shall have clear and transparent rules’.<sup>11</sup> The purpose of that provision is to make those rules available to the public, and that is how it should have been worded.

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10| Direktiva 2004/109/EZ Europskog parlamenta i Vijeća od 15. prosinca 2004. o usklađivanju zahtjeva za **transparentnošću** u vezi s informacijama o izdavateljima čiji su vrijednosni papiri uvršteni za trgovanje na uređenom tržištu (Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of **transparency** requirements in relation to information about issuers whose securities are admitted to trading on a regulated market), Uredba (EU) 2017/2402 Europskog parlamenta i Vijeća od 12. prosinca 2017. o utvrđivanju općeg okvira za sekuritizaciju i o uspostavi specifičnog okvira za jednostavnu, **transparentnu** i standardiziranu sekuritizaciju (Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, **transparent** and standardised securitisation), and so on. I shall not discuss here in detail the concept of ‘sekuritizacija’ (securitisation) as the transformation of non-marketable financial instruments into marketable ones, that is, securities.

11| Article 110(3)(2) of the Law on Capital Markets.

10.1 In both spoken and written Croatian, ‘implementacija’ (implementation) and ‘transponiranje’ (transposition) are often used, although it is not clear what is wrong with the Croatian words ‘primjena’ (application) and ‘prenošenje’ (transfer), since what is described is precisely the application of EU legislation within the Croatian legal system or the transfer of that legislation into that system.

10.2 The use of foreign words in the titles of Croatian laws is a particular problem. Thus, we have the *Zakon o faktoringu* (Law on Factoring), in which the English word ‘factoring’ has simply been transplanted into Croatian.<sup>12</sup> Still worse is where no attempt has been made to properly transfer the English word into Croatian: *Zakon o leasingu* (Law on Leasing).<sup>13</sup> It is true that it would probably be impossible to convey the legal meaning of each of those English words using a single Croatian word. However, it is not known whether any attempt was made to find suitable words in Croatian that could be used in the titles of those laws. This would be advisable given that, among other things, the *Ustav Republike Hrvatske* (Constitution of the Republic of Croatia) contains a provision stipulating that the official language of the Republic of Croatia is Croatian.<sup>14</sup> Thus, it appears that the title of the law in question is incompatible with the Croatian Constitution.

11. The Europeanisation of Croatian law, that is to say, its alignment with the European *acquis*, required many pieces of national legislation to be translated into English. The work was rushed, as was the enactment of laws, many of which were adopted on an emergency basis. That rush resulted in some amusing translations. For instance, in one draft, the *Vrhovni sud* (Supreme Court) was rendered as the ‘*Vrhunsko igralište*’ (literally: top-quality playground). In the first translation of the SP provision on combining the pages of a court ruling by sewing or gluing them together, ‘pages’ was translated as ‘leaves’ (meaning that the court ruling appeared to be comprised of foliage).

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12| *Zakon o faktoringu* (Law on Factoring), *Narodne novine* (Official Gazette) Nos<sup>o</sup> 94/2014, 85/2015, and 41/2016.

13| *Narodne novine* (Official Gazette) N<sup>o</sup> 141/2013.

14| Article 12 of the *Ustav Republike Hrvatske* (Constitution of the Republic of Croatia), <https://www.usud.hr/hr/ustav-RH>.

11.1 As regards translations into Croatian, in addition to the awkward equivalents of the English terms ‘transparent’, ‘implementing’ and ‘transposing’, more serious problems arise. For example, it is unclear why ‘Advocate General’ (German: ‘*Generalanwalt*’, French: ‘*avocat général*’) has been translated as ‘nezavisni odvjetnik’ (independent lawyer). The role of an *Advocate General* is to assist the Court.<sup>15</sup> In doing so, he or she must act ‘with complete impartiality and independence’.<sup>16</sup> An Advocate General is therefore an assistant or adviser to the Court rather than an *independent lawyer* (German: ‘*Unabhängiger Anwalt*’, French: ‘*avocat indépendant*’).

11.2 A major problem for judicial practice has been caused by the mistranslation of the first paragraph of Article 267 of the Treaty on the Functioning of the European Union (TFEU). In English, that provision reads as follows: ‘*The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning ...*’. In French, it reads: ‘*La Cour de justice de l’Union européenne est compétente pour statuer, à titre préjudiciel ...*’. The German version reads: ‘*Der Gerichtshof der Europäischen Union entscheidet im Wege der Vorabentscheidung ...*’. Thus, all three versions refer to the jurisdiction of the Court of Justice of the European Union to give preliminary rulings.

11.2.1. In contrast, the Croatian translation of that provision reads: ‘*Sud Europske unije nadležan je odlučivati o prethodnim pitanjima koja se tiču ...*’ (‘*The Court of Justice of the European Union shall have jurisdiction to rule on preliminary questions concerning ...*’). This mistranslation led to that provision of EU law being transferred into the Zakon o kaznenom postupku (Croatian Law on Criminal Procedure) and erroneously included in the provision on preliminary questions (Article 18 of that law). This resulted in the misapplication of EU law in national judicial practice, which was corrected by the subsequent interpretation and amendment of the national law in question.<sup>17</sup>

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15 | Article 19(2) TEU, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016M019>.

16 | Second paragraph of Article 252 TFEU.

17 | For more on this topic, see: Mrčela, M., ‘Utjecaj odluka europskih sudova na odluke hrvatskih sudova u kaznenim predmetima’, *Okrugli stol „Europska budućnost hrvatskoga kaznenog pravosuđa”*, Croatian Academy of Sciences and Arts, Modernizacija prava, vol. 44, Zagreb 2018, pp. 69–77. As a result of the amendment of the law in question, requests for a preliminary ruling were separated from Article 18, which deals with preliminary questions, and moved to a separate Article 18a (*Narodne novine* (Official Gazette) N<sup>o</sup>126/2019).

12. Lastly, the importance of multilingualism has become particularly acute since the judgment of the Court of Justice in *CILFIT II*.<sup>18</sup> In that case, the Court found that when deciding whether to make a reference for a preliminary ruling, a national court or tribunal must ‘bear in mind ... divergences between the various language versions’ of the provision of EU law at issue. It remains to be seen how this will be applied in practice, that is to say, how a Greek judge, for instance, will take into account the Estonian language version of a given provision.

#### IV. Conclusion

13. The issue of the use of language in law is a sensitive and important one. In this piece, only a few problems have been indicated: solving these problems could contribute to a better interpretation and application of the law, as well as to a better understanding of court rulings. The starting point is awareness that change is needed, for instance with regard to the correct interpretation and use of legal expressions, but also of language styles and rules. It is recommended that rulings be drafted clearly and concisely. A good starting point could be the use of short sentences in accordance with the ‘one thought, one sentence’ principle. However, the proper use of language in law requires the cooperation of lawyers and linguists. This is not about occasional cooperation in professional and scientific work, but rather about continuous education for practitioners in the judiciary. In addition, it appears that there is a need to introduce systemic training for future lawyers, with law faculties providing special classes on the correct use of language and legal terminology.

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18 | Judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, [EU:C:2021:799](#).

## Multilingual life

### — Prof. Barbara Pozzo

**Barbara Pozzo has been a Professor of Comparative Law since 2001 at the University of Insubria (Como, Italy), where she has been Director of the Department of Law, Economics and Culture (2015-2021) and where she is currently the Gender Equality and Equal Opportunities Representative appointed by the Rector. Since 2016, she has been the Coordinator of the international, interdisciplinary PhD programme in Law and Human Sciences. In 2018, she was awarded the UNESCO Chair on Gender Equality and Women's Rights in the Multicultural Society. She is a Titular Member of the International Academy of Comparative Law (IACL), and is a Member of the Board of Governors of the Italian Society of Comparative Law (SIRD) and of the Italian Board of Governors of the Association Capitant - Amis de la Culture Juridique Française.**

## Prologue

I have often wondered whether the decision to become involved with multilingualism as part of my academic work, as a professor of comparative private law, was not due – at least in part – to growing up in a multilingual environment. This background had its advantages and disadvantages over time, but it has always undeniably fascinated me.

Born in Kolkata, for reasons related to my parents' work choices, I was brought up in Milan and Rome and attended the Swiss School from kindergarten to high school. In that institution, the primary teaching language was German, followed by French and English. The decision to send me to this particular school was not taken because of some distant Swiss ancestry, but rather because of my parents' conviction that knowledge of foreign languages was the prerequisite of a good education.

I soon recognised the potential benefits of knowing a foreign language. At home, if my parents wanted to tell each other something that would not be understood by their daughters, they would speak in Hindi. But soon we daughters learned to use the same tool and, if we wanted something to be our secret, we spoke to each other in German, a language my parents did not know. This was upsetting, in particular for my mother, who saw her investment working against her.

Studying as an Italian in Italy but in a foreign school had – as you can imagine – pros and cons. It meant learning a complex language like German from an early age through fun activities, without really noticing. However, because I could not engage with my parents in German, it also meant a certain disorientation when the linguistic discourse started to become more complex and it was no longer enough to memorise some little song taught in kindergarten but, rather, to get to grips with texts by Goethe and Schiller, and later Mann, Dürrenmatt and many others. Not to mention the fact that, from junior secondary school onwards, we also started a Latin course taught by a native German speaker. Overall, it was a very demanding school, with class all mornings and some afternoons, and was genuinely challenging for many students, especially for those of us who spoke Italian only at home.

Despite my inevitable teenage remonstrations against a particularly strict and demanding environment, as an adult I have come to recognise that my background has been very enriching: the realisation that different languages have different sounds definitely forged my curiosity and willingness to understand otherness/difference. As a child, thinking about how in Italian and French you are *hungry like a wolf* (*having fame da lupi* or *faim de*

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*loup*) while in German real hunger is the hunger of a bear (*Bärenhunger*), helped me to understand that there can be different perspectives about not having enough food. In the mind of a child who is learning an idiom for the first time, such idioms are often matched with images so that their origins can be understood, but also so that comparisons can be made: thus, whereas the Italian rendition of an expression meaning to struggle with the simplest of problems, *perdersi in un bicchier d'acqua* (translated literally as *to get lost in a glass of water*), may seem comical, its German equivalent, someone who *drowns in a puddle* (*affoghi in una pozzanghera* or *in einer Pfütze ertrinken*), is much more tragic.

One memory that often comes to my mind is when I was eleven years old and in secondary school; my mother would check that I had done all my homework and, above all, that I was attentive in class. To be honest, it was not always easy to explain in Italian what we had done at school in German because the more we progressed, the more we encountered abstract and complex terms in specific subjects that I had never come across in colloquial Italian; sometimes I lacked words in what could be considered to all intents and purposes my mother tongue but I knew the technical term in German. With the innate spirit of a Prussian *Feldmarschall*, my mother would ask me about what we had covered in my lessons and I knew that a swift, precise reply was always my best option. On one such occasion, I remembered very well that the teacher had explained the *Völkerwanderungen* (*the Migration Period*) to us, and I had understood clearly what it was, but I did not immediately know how to transpose the concept into Italian. So, I resorted to a rough translation of the two terms that made up the word and translated to my mother that we were studying the period when the people (*Völker*) were wandering (*wandern*) through Europe.

'What do you mean wandering? What people?' asked my mother, intrigued.

'Really!' – I replied promptly – 'there were the Visigoths and Ostrogoths and Burgundians and Franks "wandering" around Europe.'

Increasingly surprised, my mother asked: 'Wasn't the professor explaining the barbarian invasions to you?'

'No! They weren't invasions or barbarians! They were people who moved around because they had to!'

'Perhaps from their point of view, but for those who were on the other end of these "wanderings", they were real invasions.'

But, in spite of my mother's rebuke, driven by the lessons she had herself followed in her time in the Italian school system, I could not find in the beautiful, almost poetic, 'neutral' word *Wanderungen*, with its echoes of languid strolls through wooded groves, the same hostility and aggression that the word 'invasion' aroused in me.

It took time for me to understand the importance of perspective and how words conceal deep meanings, layered over the centuries, such that a literal translation from one language to another is not always able to convey the set of values that have shaped its terms and concepts. Even today, if you look up the term *Völkerwanderungen* in Wikipedia and then the corresponding term in Italian, you will find an article entitled *Invasioni barbariche*. For the French, the term is *invasions barbares* and for the Spanish *invasiones bárbaras*, an indication that the experience of the peoples of southern Europe of these 'wanderings' was much more dramatic than that of the Germanic folk involved.

Working with several languages from an early age creates a wealth of experience and emotions that opens up new horizons and enriches one's whole life, whatever profession one wishes to pursue, including the law, a field into which I decided to venture after completing my secondary school education.

### **Languages, law, comparative studies**

In the classical setting of the Faculty of Law, as I experienced it in the 1980s, there was not much room for the study of foreign languages. The students were, in general, classically trained and may perhaps have been more proficient in Greek and Latin than in any modern European languages. The Erasmus project was still a long way off and the idea of being able to complete part of the curriculum abroad seemed to be nothing short of a fantasy. Most of the focus was on knowledge of national law in order to train future judges, lawyers and notaries.

However, the comparative law courses that were becoming increasingly popular in those years – and then became compulsory for all Italian students – soon made it clear that venturing into the analysis and study of any foreign legal system involved a language filter.

The luckiest among us were able to attend the *Faculté Internationale de Droit Comparé* in Strasbourg, encouraged by a few enlightened professors, where we had the opportunity to meet German, English, French, Belgian, but also Polish, Czechoslovakian and Hungarian professors and students, who were not yet European citizens. We were thus able to

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engage with not just legal but cultural, linguistic and political realities that were completely different from those we knew.

At that particular moment in history, in the mid-1980s, when interest in comparative studies was blossoming, those who already spoke a few foreign languages were certainly at an advantage in their pursuit of an academic career in this field. It is no coincidence that the comparative study experts who were trained in that context developed a great interest in the subject of legal translation, since in the study of *otherness* and *difference* within the law, they were the first to be confronted – naturally and necessarily – with the issue of language.

In the study of legal translation, comparative and historical perspectives converged. In the first place, an understanding of the evolution of legal terminology and the development of the different national legal languages – from an historical perspective – provided the key to understanding existing translation difficulties. In the second place, it was through historical perspective that it was possible to understand how certain words had acquired or lost a specific value, highlighting how legal language could only be fully understood with reference to a particular cultural context.

With the consolidation of the Erasmus programme at the end of the 1980s and, subsequently, with the growth of double degrees – namely courses of study organised by universities in two different countries – the teaching of foreign languages gradually became more and more important, even in law faculties.

At the same time, the European dimension of the law filtered into all areas of legal education, fostering a focus on the linguistic aspects that arise whenever national legislators are confronted with the need to transpose European law into their national languages. This is an aspect that has become increasingly complicated – especially since the accession of ten further countries to the European Union in 2004, the progressive increase in the number of official languages to 24, and the recent end of the derogation for the Irish language.

In Italy, law degree courses now include legal language courses and – albeit more rarely – legal translation courses, which enable students to address the increasingly supranational dimension of our laws, developing an understanding not just of the difficulties involved in dialogue between different legal cultures but also of the undeniable intellectual interest this dialogue creates. At post-graduate level, legal translation courses dedicated to specific areas of law are becoming more common, while in PhD programmes an

interdisciplinary approach is creating dialogue between legal and language experts. Compared with a few decades ago, the training of Italian lawyers has increasingly taken on a European dimension, to which multilingualism is a corollary.

### **Teaching multilingualism to tomorrow's lawyers**

In this new iteration of law courses that now cross national borders, it is important for those involved in the training of young lawyers to convey the difficulties and the potential of European multilingualism.

On the one hand, it is necessary to make people understand the joys and trials of legal translation, the complexity of translating from one language into another technical terms that have developed over centuries, and to warn them against false friends, emphasising the irreducibility and appeal of certain terms that are and remain untranslatable. How, for example, is it possible to translate the concept of *'interessi legittimi'*, which for us Italians designates the dividing criteria between the jurisdiction of administrative courts compared to that of ordinary courts, into any other European language?

On the other hand, however, it is also important to highlight the political role of language in the process of harmonising law in Europe. Translation in a multilingual context is not a merely a process consisting in compiling a number of translations between different European languages, it must instead pursue the same aims as multilingual legislation itself, and in particular the harmonisation of law.

The model that exists today therefore goes beyond the binary logic of those who translate from one language to another: an operation that, although complex, is now supported by thousands of years of experience. The challenge that multilingualism presents for new generations is different; It starts from the premiss that European rules, once drawn up in the 24 official languages and once transposed into the law of the 28 (27, alas, after Brexit) Member States, will achieve the same result everywhere, conferring equal rights on all European citizens.

The multilingual context of our European home is rich and complex. It rests, on the one hand, on a solid foundation. First and foremost, the affirmation of the principle of 'official multilingualism', namely the equality of languages, is the obvious consequence of the principle that each official language has the same standing as the others regardless of the number of speakers, and which implies not only that legislative texts must be adopted in all the official languages but also that the different language versions of the

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same legislative act have equal weight. The Court of Justice itself has held, in settled case-law, that the version in one language of an EU legal text cannot be regarded as superior to versions in other languages, since the uniform application of EU law requires that the interpretation also take account of the other linguistic versions (see judgments of 12 November 1969, *Stauder*, 29/69, [EU:C:1969:57](#), paragraph 3, and of 17 July 1997, *Ferriere Nord v Commission*, C-219/95 P, [EU:C:1997:375](#), paragraph 15).

On the other hand, it should also be borne in mind that, in most cases, official multilingualism is based on a legal fiction, and in particular on the presumption that all language versions are drafted simultaneously and are identical in nature, which is hardly ever the case in reality. Conversely, because multilingual drafting should seek to produce a text that expresses the meaning and produces the effects intended by the European legislature, and because the reliability of an authentic text is measured by its interpretation and application in practice, the aim of multilingual drafting should be to produce texts that are interpreted and applied uniformly by the courts in all the different national contexts. However, the likelihood that those interpreting a legal act will attribute the same meaning to its different language versions is lower where the different texts do not share the same reference system, regardless of the language used. Further, a common reference system in Europe is not a given: we are still building it.

European multilingualism is a unique adventure. It is unique because never in the past has a legal system operated with 24 official languages in which 552 language combinations are possible, since each language can and must be translated into the other 23. It is unique, but it is also possible. It is possible because we Europeans believe in it, united in diversity.

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## The Latvian language and multilingualism in Latvia

### — Professor Sanita Osipova

**Sanita Osipova is a judge and university professor and holds a doctorate in law. Between August 2011 and February 2022, she served as a judge at the Constitutional Court of the Republic of Latvia, as Vice-president of that court and, from October 2020 to February 2022, as President of that court. In 2006, Sanita Osipova was appointed professor and chair of the theory and history of law department at the University of Latvia's faculty of law. Her academic work includes presenting papers at national and international academic conferences, and she has authored more than 100 publications on the theory and history of law, constitutional law, the sociology of law and legal ethics. In 2020, Sanita Osipova was named '2020 European of the Year in Latvia'. On 19 January 2021 she was awarded the Arveds Švābe prize for Latvian history by the Latvian Academy of Sciences, for her collection of articles 'Nation, Language, Rule of Law: Towards Tomorrow'. Since 2021, she has been a Corresponding Member of the Latvian Academy of Sciences.**

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*'... one of the greatest miracles: THE JOY OF WRITING.  
The hand scribbles down all kinds of signs, tracing vertical and horizontal lines.  
From these, complex constructions of thought accessible to billions of people are formed'.*

Zenta Mauriņa<sup>1</sup>

Latvians talk about 'homeland and mother tongue'. This expresses our conviction that the foundations of an individual's personality are formed by the land, which they inherit from their ancestors, and by language, which integrates the individual into their people. These two components – land and language – are the guarantors of the nation's continuity and sustainability. They build a bridge between the past and the future, connecting what a person inherits from their parents and what they themselves create during their lives to pass on to their children.

It is difficult to overstate the importance of language for personal and social development. It is language that transforms a biological being into a social being: it configures their personality, lays the foundations of their thinking, enables them to communicate with others, and opens up to them a world in which many things can be conveyed into words by name and by description. Language, in which thought finds its expression and in which people shape the subtle norms of relationships and alliances, is a precondition for the creation and the existence of any organised society. Language unites different individuals in a collective and unified whole and allows them to share, work together, sympathise, rejoice, and to grieve. This forms a collective conscience in which the great thoughts, intense feelings and bitter experiences that give a culture its unique characteristics all find their place. A language differentiates itself from other languages not only by unique markers such as its sound and structure, but also by concepts known only to that society – language holds a mirror up to a society. Language separates a society from the rest of the world; unifying it into a people, unifying it into a nation. There are words that are not easy to translate into other languages. For example, in Latvian, one such word is 'talka', which refers to the tradition of helping neighbours to carry out important chores – such as harvesting hay or potatoes – for free. Language enables a nation to create its own unique consciousness that only it understands and that can be passed on to future generations.

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1 | Zenta Mauriņa 'Sirds mozaīka'. Atbalsis. Rīga: Jumava, 2019, p. 50. Writer and translator Zenta Mauriņa (1897–1978) founded and compiled the Latvian literary and philosophical essay genre.

'Footbridges laid by their parents' parents,  
Crossed by the children's children;  
As the children cross them  
They last a lifetime.'  
Latvian folk song <sup>2</sup>

Language is the key to a nation's soul. Meanwhile, each new language that we learn opens the door to a unique and colourful world shaped by another culture.

Niklas Luhmann wrote that 'society cannot transcend the frontiers established in language'. <sup>3</sup> At the same time, society continually complements language and continues to expand those frontiers. Mastering one's mother tongue is a lifelong learning process, because with each new experience we add new words to the language and open up new frontiers in our understanding. Further, each new language we learn opens up broader horizons for our minds.

It is clear that language is an essential characteristic – a unifying element – and a value that sustains a society. Losing that language would also mean losing an important part of one's identity and cultural heritage. An important part of every culture is connected to words: folklore, literature, films, songs. This includes the entire field of law, encompassing legal rules, case-law and doctrine, which are all formulated using words. To lose one's own language is also to lose a part of collective memory.

Language is particularly important to the Latvian nation because, for centuries, it is only language that has united us as Latvians. Our history offers an explanation for this. Although the historical roots of the Latvian people go back more than 1000 years, the Republic of Latvia, which now unites and protects the nation, has only just celebrated its centenary. It should also be noted that Latvia was occupied for half of those 100 years. Throughout history, Latvian and Livonian land has been included in the territories of

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2| The expression 'folk song' (from the German 'Volkslied') was introduced into the international cultural mainstream with the writings of Enlightenment philosopher and writer Johann Gottfried Herder (first mentioned in 1773). In a broader sense, Latvian folk songs are all sung folklore transmitted orally within the village, but the concept is normally used to refer to the oldest part of sung folklore: the so-called traditional popular songs, a synonym for which is *dainas* [from the Lithuanian 'dainà' (song)].

3| Луман, Н. Общество как система. Москва: Логос, 2004, с. 45.

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Livonia, Poland-Lithuania, Sweden and the Russian Empire, and Latvia was occupied by the Union of Soviet Socialist Republics, while Livonia's cities were members of the Hanseatic League in the Middle Ages. Ever since the 13<sup>th</sup> century, at the foundation of the first State in what is now Latvia, the authorities have spoken to the people in a foreign language. Latin, German, Swedish, Polish and Russian were successively introduced to Latvian and Livonian territory by its conquerors. At one time, our ancestors were not the subjects of a single public authority, because they were all divided between different countries. For example, in the 17<sup>th</sup> century, the citizens of our ancestral lands spoke partly in Polish and partly in Swedish, while the conquerors respected the privileges of the local nobility, which included using German in local administration. In the 18<sup>th</sup> century, while incorporated into the Russian Empire, our ancestors were divided into different regions. In the Baltic regions, in recognition of local traditions, German was the official language until the second half of the 19<sup>th</sup> century, while for eastern Latvians – the Latgalian, including in the Vitebsk region – the official language was Russian. In the Middle Ages, the Catholic Church addressed the faithful in Latin. The Latvian language did not enter the Church until the 16<sup>th</sup> century when, after the Reformation, Latvian congregations formed in the Lutheran Church and the first translations of the Sacred Scriptures into Latvian emerged.

Latvians' historical experience is varied, multicultural and multilingual, because for centuries we have endeavoured to speak in foreign languages. It is only the Latvian language and the cultural heritage created within it, including the *dainas* (or folk songs), that have helped us to maintain some unity through the centuries – to nurture and preserve our own identity without it becoming diluted; to go from being Baltic tribes to becoming a nation; to finally recognise (perhaps too late) the right of the Finno-Ugric people – the Livonians – to their own identity and to accept the many minorities that have remained in Latvia throughout history and, lastly, to conceive and fulfil the dream of a State of our own. The Latvian language, as a constitutional value and the basis for Latvian constitutional identity, is enshrined in the Constitution of the Republic of Latvia, whose preamble states: <sup>4</sup> 'Since ancient times, the identity of Latvia in the European cultural space has been shaped by Latvian and Liv traditions, Latvian folk wisdom, the Latvian language and universal human and Christian values'.

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4| On 15 February 1922, the Constitutional Assembly of Latvia approved the Fundamental Law of the Republic of Latvia (the Constitution), which determines the constitutional foundations of the Latvian State, the organisation of the State and the relationship between the individual and the State.

Meanwhile, the Latvian people have developed over time but have always existed within a multilingual space. Traditionally, until the second half of the 20<sup>th</sup> century, those languages were Latvian, German and Russian. Now, due to globalisation, German is losing ground to English. But why these languages? Latvian because, since the founding of the Republic of Latvia in 1918, it has been designated as the country's official language used by Latvians and members of various minority groups to communicate. German because, for almost 700 years, it was the language of public administration across most of Latvian territory, the language of judicial proceedings and also the language used in educational institutions. In addition, until 1939, Latvia had a large Baltic German minority. Russian, because it was used as the country's official language from the late 19<sup>th</sup> century until the Latvian State was founded. Russian people have also historically been a significant minority, together with Estonians, Lithuanians, Polish, Jewish and Roma people.

Throughout history, Latvians have coexisted with members of other minority communities within Latvia. Latvia's national culture, which had already developed before the Latvian State was established, became the basis for the culture of the independent State. Latvian minority cultures began to develop in their own unique way after 18 November 1918, when ethno cultural groups were recognised as national minorities and their members became Latvian citizens. The rights of these minorities have been respected in the Republic of Latvia since the Republic of Latvia was established. Building on these foundations, on 17 November 1918 the policy document for the People's Council of Latvia was adopted,<sup>5</sup> which stipulated: 'The cultural and national rights of the national groups will be guaranteed in the fundamental laws'.

After the Republic of Latvia was created, although the State language was Latvian, the State communicated with its citizens in three languages: Latvian, German and Russian. These three languages were also heard within the legislature, since national minorities were represented on the Constitutional Assembly<sup>6</sup> and subsequently in the

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5] The first and highest temporary legislative body of the Republic of Latvia from 1918 to 1920 (until the Constitutional Assembly of Latvia was convened).

6] The first elected Parliament, which operated from 1 May 1920 until 7 November 1922, marked the beginning of parliamentary democracy in the Republic of Latvia.

*Saeima*.<sup>7</sup> Latvian jurists studied mainly in German in Tartu, in Russian at the universities of Moscow, Saint Petersburg and other universities in the Russian Empire, in French outside the Russian Empire, for example in Paris, while the Baltic Germans studied at German universities. Latvian legal terminology was still in its fledgling stage and legal literature in Latvian was sparse. In addition, in order to practice law in Latvia lawyers were required to be fluent in all three languages, since their clients were of different nationalities. By the time of the first Congress of Latvian Jurists, which in 1932 brought together Latvian jurists of all nationalities, a resolution was adopted on legal training, which stated: 'Taking into account the specific needs of studying legal literature, and Latvia's particular circumstances, the section on legal training and on the professional status of jurists expresses the wish that graduates of the law school of the University of Latvia should have good knowledge of German and Russian'.<sup>8</sup> Multilingualism in public administration and in education continued in Latvia until 1934, when a coup d'état<sup>9</sup> by Kārlis Ulmanis led to the consolidation of a nation-state that used only the Latvian language.

During the Soviet occupation, Latvian territory was subjected to forced multilingualism. Although the Soviet Union continued the policy of Russification already begun by the Russian Empire in the second half of the 19<sup>th</sup> century and the population was forced to learn Russian in all occupied territories, the population in the united republics retained the right to use their mother tongue, including in the legislative process and during judicial proceedings. At school, children in the Latvian Soviet Socialist Republic learned Russian and Latvian, plus a foreign language – most commonly German or English, and less commonly French.

After restoring its independence, while also strengthening the status of Latvian by making Latvian the official language of the State, Latvia also championed minority cultures and multilingualism. The Constitutional Court stated: 'Article 114 of the Constitution refers to the principle of dignity of national minorities enshrined in the preamble to the Constitution. Therefore, together with

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7| Body representing the Latvian people (parliament) with legislative functions and consisting of 100 representatives of the people (members of the *Saeima*).

8| Jurovska, O. Pirmais juristu kongress. *Atreferējums. Jurists*, 1932, No 1 (35), p. 10.

9| On the night of 15 to 16 May 1934, a group of conspirators led by Prime Minister Kārlis Ulmanis staged a coup d'état. As a result, the Constitution was suspended, the *Saeima* was dissolved, the government was reorganised and martial law was imposed. An authoritarian regime was established in the Republic of Latvia.

Latvian values, the unique identities of national minorities are also protected'.<sup>10</sup> Latvia recognises that the State must guarantee the rights of children belonging to a national minority to learn their mother tongue at an early stage in their education. This means that the State must guarantee children the opportunity to communicate with each other in their mother tongue. This can be ensured by allowing children to learn their mother tongue, or to be educated in their mother tongue in preschool and primary education.<sup>11</sup>

With Latvia's accession to the European Union, Latvian has become one of the official languages of the European Union. Latvia continues to cultivate a tradition of multilingualism, but now in the context of the fundamental freedoms of the European Union and the democratic rule of law. The interaction between Latvian citizens and other citizens of the European Union, and free movement within the European Union, offers an incentive for Latvian citizens who choose to maintain Latvia's long tradition of speaking several languages.

Throughout history, Latvians have preserved their national identity, speaking Latvian while also learning foreign languages – whether under duress, subject to rule by foreign masters, or voluntarily – to expand knowledge, do business, travel freely around the world, collaborate in science and culture, or simply to better understand neighbours belonging to national minorities. Multilingualism is the only way, in a multicultural society, of creating an egalitarian dialogue in which the identity of each participant is not only preserved but also enhanced; by knowing foreign languages, we also expand our linguistic horizons.

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10| Judgment of the Constitutional Court of the Republic of Latvia of 23 April 2019 in Case N°2018-12-01, paragraph 23.

11| Judgment of the Constitutional Court of the Republic of Latvia of 19 June 2020 in Case No 2019-20-03, paragraph 18.1.

# The official language and the interpretation of constitutional guarantees relating to its status in the case-law of the Constitutional Court of the Republic of Lithuania

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## Introduction

Built on linguistic diversity,<sup>1</sup> the European Union is based on, among other things, the constitutional traditions of its Member States, and one of those constitutional traditions is to ensure that the national or official language has legal protection in the Member States.

At the same time, however, the protection of the national or official language in the legal systems of the Member States of the European Union, including at constitutional level, must not jeopardise the general principle of non-discrimination and equality between persons, which applies in both the law of the European Union and in the national legal systems of its Member States, ensuring non-discrimination of persons on the basis of language, as well as guaranteeing the values of a democratic society such as tolerance, justice and respect for human dignity.

In this context, it should be noted that Article 2 of the Treaty on European Union states that the European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. Those values are common to the Member States in a society in which non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Moreover, Article 3(3) of the Treaty on European Union highlights, among other things, that the European Union is to respect its rich cultural and linguistic diversity, and is to ensure that Europe's cultural heritage is safeguarded and enhanced. Respect for, among other things, linguistic diversity in the European Union is therefore one of the fundamental principles which its Member States must also take into account by establishing in their constitutional systems certain measures for the protection of the national or official language (*inter alia* at the level of the Constitution).

Thus, in protecting and fostering their national or official language, the Member States of the European Union must uphold those fundamental values upon which the European Union itself is founded, while also promoting respect for, *inter alia*, linguistic diversity in the European Union.

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1 | Kalbų įvairovės svarba ('Importance of linguistic diversity'), [https://ec.europa.eu/info/sites/default/files/file\\_import/lt\\_lithuanian\\_24.pdf](https://ec.europa.eu/info/sites/default/files/file_import/lt_lithuanian_24.pdf).

In the Member States of the European Union, constitutional provisions concerning the national or official language and/or specific human rights and freedoms related to the use of language and their guarantees are interpreted by constitutional judicial institutions. The Republic of Lithuania is no exception, and here the Constitutional Court of the Republic of Lithuania ('the Constitutional Court' or 'the Court') has, on a number of occasions, been called upon to interpret the guarantees relating to the constitutional status of the national language in Lithuania.

It should be noted that the Constitution of the Republic of Lithuania ('the Constitution') establishes guarantees for the protection of the national language, while the Constitutional Court has, on the basis of the Constitution, already considered a number of constitutional law cases in which it has interpreted those guarantees and gradually developed the official constitutional legal position on the protection of the national language and its guarantees.

Accordingly, the present article will, first of all, review the interpretation of the status of the Lithuanian language as the official language in the constitutional case-law of the Constitutional Court. That case-law] also clarifies two further constitutional guarantees related to the constitutional status of the national language: first, the general guarantee of non-discrimination between persons on the basis of language (or the prohibition of discrimination on the basis of language) and, second, the specific procedural guarantee of the right to an interpreter.

Those constitutional guarantees have been and continue to be of particular relevance in ensuring the rights of national minorities <sup>2</sup> in Lithuania, also in the light of the increasing number of foreign nationals residing in Lithuania (both foreign nationals legally present

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2 | According to the 2011 general population census, Lithuanians accounted for 84.2% of the population of Lithuania, Poles – 6.6%, Russians – 5.8%, Belarusians, Ukrainians and people of other nationalities – 2.3%. The national language was indicated as their mother tongue by, for example, 77.1% of Poles and 87.2% of Russians. Data of the Lithuanian Department of Statistics, [https://osp.stat.gov.lt/documents/10180/217110/Gyv\\_kalba\\_tikyba.pdf/1d9dac9a-3d45-4798-93f5-941fed00503f](https://osp.stat.gov.lt/documents/10180/217110/Gyv_kalba_tikyba.pdf/1d9dac9a-3d45-4798-93f5-941fed00503f). According to the 2021 population and housing census, 84.6% of the population are Lithuanians by ethnicity (in 2011 – 84.2%); Poles remain the largest national minority in the country and make up 6.5%, Russians – 5%, Belarusians – 1%. See <https://osp.stat.gov.lt/informaciniai-pranesimai?eventId=288049>. From a historical viewpoint, in line with N. Girasoli's division of national minorities into national minorities with historical roots and ethnic national minorities, in G. Potašenko's opinion, for example, the Polish and Russian minorities in Lithuania belong to the former. S. Katuoka et al. *Tautinių mažumų apsauga: tarptautinės teisės aspektai* ('Protection of minorities: aspects of international law'). Vilnius: Mykolas Romeris University, 2013, p. 14.

and third-country nationals who have illegally crossed the Lithuanian border<sup>3</sup>) and, consequently, the growing importance of the use of languages other than Lithuanian (that is to say, foreign languages) in society and in public life. These guarantees can also be regarded as ensuring multilingualism<sup>4</sup> of individuals, and also as promoting respect for, *inter alia*, linguistic diversity in the European Union.

## I. Interpretation of the status of the Lithuanian language as the official language in constitutional case-law

While administering constitutional justice and guaranteeing the supremacy of the Constitution in the legal system and constitutional legality, the Constitutional Court is the protector and promoter of constitutional values, ensuring that they remain in balance in specific constitutional disputes. One of the constitutional values upon which the Constitution adopted by the citizens of the Republic of Lithuania in the referendum of 25 October 1992 is based, and the actual consolidation, defence and protection of which form the *raison d'être*<sup>5</sup> of the State itself, is the official language enshrined in Article 14 of the Constitution.

After emphasising in the preamble to the Constitution that the Lithuanian nation adopts and proclaims that that Constitution has preserved, among other things, its native language and writing, the status of the Lithuanian language as the official language *expressis verbis* is further clarified in Chapter I of the Constitution, entitled 'The State of Lithuania', the provisions of which are afforded a higher level of constitutional protection

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3 | Illegal migration flows (a total of 4 309 migrants) recorded since 1 January 2021 in Lithuania show that, by declared citizenship, the majority are citizens from Iraq (2 858), Congo (203), Syria (170), Cameroon (135), Belarus (102) and Afghanistan (101). Data from the Lithuanian Department of Statistics as of 13 December 2021, <https://ls-osp-sdg.maps.arcgis.com/apps/dashboards/9b0a008b1fff41a88c5efcc61a876be2>.

4 | Although the Council of Europe makes a distinction between multilingualism, as the presence of various languages used in a given geographical area, and plurilingualism (or individual multilingualism), as the repertoire of individual languages (or varieties therefore) used by a speaker, the European Union uses the term 'multilingualism' for both (sometimes emphasising 'multilingualism of the individual'). *Language Rich Europe: Trends in policies and practices for multilingualism in Europe* (editors: G. Extra and K. Yağmu), 2012, [https://www.teachingenglish.org.uk/sites/teacheng/files/pub\\_LRE\\_English\\_version\\_final\\_01.pdf](https://www.teachingenglish.org.uk/sites/teacheng/files/pub_LRE_English_version_final_01.pdf).

5 | Rulings of the Constitutional Court of 19 August 2006 (Žin. (Official Gazette *Valstybės žinios*), 2006, N°90-3529), of 24 September 2009 (*ibid.*, 2009, N°115-4888), and of 24 January 2014 (TAR (Register of Legal Acts), 2014-01-24, N°478).

since they establish special, fundamental constitutional values (those provisions may be amended only by referendum (second paragraph of Article 148 of the Constitution)).

Article 14 in Chapter I of the Constitution provides that 'Lithuanian shall be the official language'.<sup>6</sup> In the legal literature, this provision is, due to its establishment and significance, also regarded as a primary constitutional principle.<sup>7</sup>

In the context of interpreting Article 14 of the Constitution, the Constitutional Court has noted on numerous occasions that the Lithuanian language is a special constitutional value, it is the basis of the ethnic and cultural distinctiveness of the Lithuanian nation, the guarantee of the identity and survival of the nation; the official language – the standard Lithuanian language – is a means of legitimising the sovereignty of the nation and its dignified communication with the world.<sup>8</sup>

The first ruling of the Constitutional Court illustrating the interpretation of the status of the Lithuanian language as the official language was adopted on 21 October 1999.<sup>9</sup> It concerns the manner of writing, in a Lithuanian citizen's passport, of personal names of citizens belonging to ethnic groups.

In a civil action before a particular court, the applicant in that constitutional case requested that the police commissariat be ordered to enter the applicant's forename and surname in his native (Polish) language in a new Lithuanian citizen passport issued to him. The court hearing the applicant's case had doubts as to whether the provision in the Resolution of the then Supreme Council<sup>10</sup> of 31 January 1991 concerning the

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6 | Constitution of the Republic of Lithuania (Žin., 1992, No 33-1014; 1996, No 64-1501, 122-2863; 2002, No 65-2629; 2003, No 14-540, 32-1315, 32-1316; 2004, No 111-1423, 111-4124; 2006, No 48-1701; TAR, 2019-04-02, No 5330).

7 | The principle of the official language is enshrined in a single provision of the Constitution; 'nothing more than a reference to this provision is needed to establish its existence'. E. Kūris. *Konstituciniai principai ir Konstitucijos tekstas ('Constitutional principles and the text of the Constitution')* (2). *Jurisprudencija (Case-law)*, 2002, v. 24 (16), p. 59.

8 | Ruling of the Constitutional Court of 5 May 2007 (Žin., 2007, N°52-2025) and decision of 27 February 2014 (TAR, 2014-02-28, N°2336).

9 | Žin., 1999, N°90-2662.

10 | Also the Reconstituent Seimas (1990 to 1992); now – the Seimas of the Republic of Lithuania.

entry of forenames and surnames in passports of citizens of the Republic of Lithuania, <sup>11</sup> according to which forenames and surnames of citizens of the Republic of Lithuania who are of non-Lithuanian nationality must also be written in Lithuanian characters, was compatible with, *inter alia*, Article 22 of the Constitution establishing the individual's right to privacy, Article 29 laying down the constitutional principle of equality between persons, and Article 37 guaranteeing the right of citizens belonging to ethnic communities to promote, among other things, their language.

When examining the constitutionality of that provision, the Constitutional Court highlighted the significance of the official language arising from the status of the official language being established in the Constitution, namely that the official language preserves the nation's identity, contributes to the integration of a civil nation, and ensures the expression of national sovereignty, the integrity and indivisibility of the State, and the proper functioning of State and municipal bodies, while also providing important guarantees for the equality of citizens, permitting all citizens to interact with the State and municipal bodies on an equal footing and to exercise their rights and legitimate interests.

In that constitutional case, the Constitutional Court also highlighted the fact that, as a result of the official language having that status, the legislature must establish by law how the use of that language is to be ensured in public life, and must lay down measures to protect it.

Hence, it follows from that ruling of the Constitutional Court that the **constitutional status of the official language means that use of Lithuanian is mandatory only in Lithuania's public life**. According to the Constitutional Court, the Lithuanian language is mandatory in the following public spheres: in all State and municipal institutions, all bodies, enterprises and organisations located in Lithuania; laws and other legislation must be published in the official language; office-work, accounting, reporting and financial documents must be processed in Lithuanian; State and municipal institutions, bodies, enterprises and organisations must correspond with each other in the official

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11 | That resolution was repealed by Law No XIV-903 of the Republic of Lithuania on the entry of an individual's forename and surname in documents adopted by the Seimas on 18 January 2022, which enters into force on 1 May 2022 (subject to an exception regarding the preparation of implementing legislation for that law). A group of members of the Seimas filed an application on 20 January 2022 with the Constitutional Court concerning the compliance of specific provisions of that resolution with the Constitution (notably its Articles 14 and 29).

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language. It should be emphasised, however, that in other spheres of life people are free to use any language acceptable to them.

In the ruling of 21 October 1999 mentioned above, the Constitutional Court held, with regard to citizens belonging to ethnic groups, that the act of making entries in a Lithuanian citizen's passport in the official language does not deny the right of citizens belonging to various ethnic groups to write their forenames and surnames in any other language in so far as that does not concern the sphere of use of the official language established by the law. In addition, that ruling pointed out that the passport of a citizen of the Republic of Lithuania is an official document certifying a permanent legal relationship between an individual and the State, that is to say, the citizenship of an individual, and the relations of citizenship belong to the sphere of the public life of the State; therefore, according to the Constitutional Court, an individual's forename and surname must be written in a citizen's passport in the official language. To do otherwise would be to disregard the constitutional status of the official language.

It should be noted, nevertheless, that these issues related to the entry, in a Lithuanian citizen's passport, of personal names of citizens belonging to various national minorities (groups) have long been a sensitive topic of discussion in society, and the Constitutional Court has examined them in a number of interpretations of the provisions formulated in the ruling of 21 October 1999 mentioned above and/or seeking to clarify them further.

In the context of interpreting the provisions of the ruling of 21 October 1999, including that an individual's forename and surname must be entered in a citizen's passport in the official language, when a question arose concerning the possibility of making additional entries in a Lithuanian citizen's passport, that is to say, entering personal names of individuals belonging to ethnic groups in non-Lithuanian characters and in non-grammaticised form, the Constitutional Court reached a particularly important conclusion in its **decision of 6 November 2009** that, once the forename and surname of an individual have been entered in a Lithuanian citizen's passport in the official language the individual's forename and surname may be entered in other, non-Lithuanian, characters and in non-grammaticised form in the 'other entries' section of the same passport, if the individual so requests. In such cases, according to the Court, there would be no basis for maintaining that the requirements stemming from the Constitution that 'the forename and surname of an individual must be entered in a citizen's passport in the official language' and that the official language must be used in the public life of the State would be disregarded.

Therefore, the decision of the Constitutional Court of 6 November 2009 is particularly important in terms of promoting multilingualism in the European Union and fostering linguistic diversity; that ruling clarified that other entries may be made in a Lithuanian citizen's passport where personal names of individuals belonging to ethnic groups are written in non-Lithuanian characters and in non-grammaticised form. Thus, the decision mentioned above not only promotes multilingualism in respect of those groups of people, but also creates (albeit somewhat limited) conditions for the use of their mother tongue in the public life of Lithuania.

Such an incentive could also be regarded as the possibility to establish (at the discretion of the legislature or on behalf of a special State institution authorised by it) rules regarding the entry of an individual's forename and surname in a Lithuanian citizen's passport other than the rules that personal names must be written in Lithuanian characters and according to Lithuanian pronunciation (namely that non-Lithuanian forenames and surnames can be written using not only the letters of the Lithuanian alphabet but also other exclusively Latin-based characters)<sup>12</sup>; however, in so doing, regard must be had to the constitutional requirement to protect the official Lithuanian language.

That possibility was addressed by the Constitutional Court in its **decision of 27 February 2014**, which also interpreted the provisions of the ruling of 21 October 1999 concerning the entry of personal names in a Lithuanian citizen's passport, while further considering the issue of Lithuanian characters and aspects related to their use.

Another situation concerning the use of minority languages can be seen in the Constitutional Court's **ruling of 10 May 2006**. This raised an issue concerning the use of those languages by certain groups of citizens of the Republic of Lithuania when exercising their constitutional right to vote in a referendum. The Constitutional Court ruled on the compliance with Articles 14 and 29 of the Constitution of the provision of the Law of the Republic of Lithuania on the Central Electoral Commission, disputed by the applicant, which provided for the printing of referendum ballot papers in the official language and also their translation into the language of a national minority traditionally

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12 | It should be noted that writing in that fashion continues to give rise to intense debate among politicians, various scholars, language specialists, legal practitioners and in society in general. Furthermore, disagreements also arise concerning, for example, the writing of place names.

residing in the municipal territory in significant numbers.<sup>13</sup> In that context, it should be noted that, as the group of members of the Seimas of the Republic of Lithuania argued in support of their application in that constitutional case, Lithuania has traditionally been home to a large concentration of national minorities using Polish and Russian.<sup>14</sup>

Having emphasised in the ruling mentioned above that the official language is a prerequisite and a necessary condition for the fully fledged participation of citizens in the governance of the State (and for the exercise of the constitutional right of every citizen to vote in referenda), the Constitutional Court reiterated its earlier position with regard to the use outside the public life of Lithuania of any language acceptable to individuals and pointed out that 'the fact that official documents are written in the official language does not disregard the rights of citizens belonging to national minorities to write, read and communicate in any other language in so far as that does not concern the sphere of use of the official language determined by the Constitution'.

Consequently, the Constitutional Court expressly underlined in this ruling that referendum ballot papers must be printed only in the official Lithuanian language. Otherwise, as the Constitutional Court held, the constitutional concept of the official language, which presupposes clearly the use of the official language when making decisions of national significance, would be disregarded, and Article 14 of the Constitution would thereby be infringed.

However, the Constitutional Court did not find that the provision of the Law on the Central Electoral Commission in question was contrary to Article 29 of the Constitution. In that case, the Constitutional Court ruled, in particular, that the establishment of the

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13 | The provisions of Article 3(6) of the Law on the Central Electoral Commission (version of 10 April 2003; Žin., 2003, No 38-1737) concerning the printing of referendum ballot papers in the official language and their translation into the language of a national minority traditionally residing in the municipal territory in significant numbers: 'When conducting referenda [...] the Central Electoral Commission shall [...] (5) organise an additional printing of ballot papers for a referendum on the participation of the Republic of Lithuania in international organisations. Such ballot papers shall, along with the text of a referendum ballot paper in the State language, contain the translation of that text into the language of a national minority traditionally residing in the municipal territory in significant numbers. These ballot papers shall be used for voting in those referendum districts in which traditionally a national minority is residing in significant numbers, as well as for voting at city and district post offices.'

14 | According to the Lithuanian Department of Statistics, ethnic communities are mainly concentrated in certain areas in south-eastern Lithuania – Vilnius district, Švenčionys, Švenčionėliai, Visaginas, Trakai district, as well as Klaipėda.

official language in the Constitution, the requirement to have regard to the constitutional importance of the official language, *inter alia*, when decisions of national significance are being taken, cannot be interpreted as infringing the rights of national minorities. On the contrary, as already mentioned, it is knowledge of the official language which ensures the equality of all citizens of the State.

Thus, a review of the case-law of the Constitutional Court shows clearly two trends: on the one hand, the Constitutional Court defends the constitutional status of the official Lithuanian language by emphasising the universal obligation resting on all citizens of the Republic of Lithuania (irrespective of their ethnic origin, membership of a particular national minority, etc.) to use the Lithuanian language in the public life of the Lithuanian State; on the other hand, it does not permit the interpretation that the constitutional importance of the official language infringes the rights of national minorities. That trend is illustrated, for example, by the fact that it is permitted, once the forename and surname of an individual have been entered in a Lithuanian citizen's passport in the official language, for the individual's forename and surname to be entered in other, non-Lithuanian, characters and in non-grammaticised form in the section for other entries in that passport, if the individual so requests.

It can therefore be concluded that, having ensured the use of the official language in various spheres of public life in Lithuania (such as entry of personal names of citizens of the Republic of Lithuania in their passport and the exercise by those persons of the constitutional right to vote in a referendum), the Constitutional Court, while protecting and safeguarding the constitutional status of the official language, has also ensured the equality of all citizens of the Republic of Lithuania by underlining that the requirement for knowledge of the official language in the public life of the State applies to all citizens without distinction, irrespective of, for example, whether or not they belong to a particular national minority. Thus, the Constitutional Court endeavours to strike a balance between the spheres of public life and other spheres, such as the private life of those belonging to certain national minorities, in order to achieve an appropriate balance between conflicting interests so as to ensure that, among other things, the rights of national minorities, including their ability to use their mother tongue in areas other than the public life of the State (and also in the public life of the State to the extent permitted by constitutional case-law), are not undermined. Those guarantees must be the subject of a more detailed analysis.

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## II. Constitutional guarantees relevant for ensuring the use of languages other than the official language

Other constitutional guarantees directly related to the use of minority and foreign languages are also important for safeguarding the rights of national minorities and of the increasing number of foreign nationals in Lithuania.

For instance, Chapter II of the Constitution, entitled 'Persons and the State', lays down the human rights which must be guaranteed for all individuals (with certain exceptions, for example, Article 32 of the Constitution, which grants citizens, *inter alia*, the right to leave Lithuania freely and prohibits a citizen from being prevented from returning to Lithuania, or Articles 33 and 34 of the Constitution, which grant citizens certain political rights, including the right to participate in the governance of their State and the right to vote) within the jurisdiction of the Republic of Lithuania. Article 37, which features in that chapter, contains a particularly important provision which presupposes that the rights of national minorities are protected and respected, stating that 'citizens belonging to ethnic communities shall have the right to foster their language, culture, and customs'.

When interpreting that provision, the Constitutional Court has previously stated, in its ruling of 21 October 1999, that that constitutional norm guarantees the preservation of ethnic identity, cultural continuity and national self-expression for all ethnic communities residing in the territory of Lithuania.

It should also be noted that the abovementioned provision of Article 37 of the Constitution undoubtedly ensures such a concept of human rights and freedoms contained in the Constitution where the rights and freedoms of one person coexist with the rights and freedoms of other persons,<sup>15</sup> since human rights and freedoms enshrined in the Constitution constitute a single coherent system.<sup>16</sup> Accordingly, the rights of persons belonging to national minorities form an integral part of the human rights framework guaranteed by that Constitution.

While the preamble to the Constitution emphasises that the Lithuanian nation adopts and proclaims that Constitution in the interest of fostering national harmony in Lithuania, it should also be noted that the Constitutional Court has previously pointed out that

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15 | Ruling of the Constitutional Court of 29 December 2004 (Žin., 2005, No 1-7).

16 | *Ibid.*

the fostering of national harmony, and accordingly harmony with national minorities, in Lithuania is a historical tradition of the State of Lithuania.

In its ruling of 13 November 2006 on citizenship of the Republic of Lithuania, the Constitutional Court previously emphasised the peaceful co-existence of the Lithuanian nation and other ethnic communities residing in the territory of Lithuania, as well as mutual forbearance and tolerance of people of different nations: ‘... non-Lithuanians – people of other ethnic nations – have also resided on the lands of Lithuania since ancient times. Together with Lithuanians, they created and defended the State of Lithuania, provided stewardship for its future. Thus, the pattern of life of the Lithuanian nation has long been based on the peaceful coexistence of the Lithuanian nation and other ethnic communities living in the territory of Lithuania and on the forbearance and tolerance of people of various nations in respect of each other [...]’

A precondition for such tolerance, which is also significant from the point of view of the use of language, is the principle of equality guaranteed in Article 29 of the Constitution, which ensures non-discrimination between persons. Although the list of bases on which there may be no discrimination established in the text of the Constitution (in the second paragraph of Article 29) (see, similarly, European Union legislation on non-discrimination<sup>17</sup>) is not exhaustive,<sup>18</sup> the Constitutional Court has made it clear in its case-law that, in essence, the Constitution does not permit discrimination on any basis. Article 29 of the Constitution prohibits discrimination on the basis of language (the prohibition of discrimination on the basis of language is explicitly referred to in the second paragraph of Article 29 of the Constitution).<sup>19</sup>

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17 | Handbook on European non-discrimination law, 2018 edition, <https://op.europa.eu/en/publication-detail/-/publication/494aec98-2803-11e8-ac73-01aa75ed71a1>.

18 | The second paragraph of Article 29 of the Constitution provides: ‘The rights of a person may not be restricted, nor may any privileges be granted, on grounds of gender, race, nationality, language, origin, social status, faith, beliefs or opinions.’

19 | Conclusion of the Constitutional Court of 24 January 1995 (Žin., 1995, No 9-199). Furthermore, as stated in the ruling of the Constitutional Court of 19 December 2017: ‘The prohibition of discrimination against persons on the grounds of gender, race, nationality, language, origin, social status, faith, beliefs, or opinions, which arises from Article 29 of the Constitution, which establishes the principle of equality between persons, should also be regarded as an element of the constitutional protection of human dignity.’

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It should be mentioned that the ruling of the Constitutional Court of 13 December 2004 points out that there may be no discrimination against citizens, nor may they be granted any privileges on the bases specified *expressis verbis* in the second paragraph of Article 29 of the Constitution or on any other bases not justified by the Constitution.

In that context, it should also be noted that Article 21 of the Charter of Fundamental Rights of the European Union also prohibits any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. Discrimination on the basis of, *inter alia*, language is also prohibited by the International Covenant on Civil and Political Rights adopted by the United Nations in 1966, Article 26 of which provides that all persons are equal before the law and are entitled to the equal protection of the law without any discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. It should be noted that the Republic of Lithuania is a State party to this universal international treaty and, therefore, its provisions are binding on it.

Moreover, in order to ensure equality and non-discrimination between persons and to guarantee a balance between the principle of the official language and the protection of rights of minorities as well as the use of foreign languages, certain specific procedural guarantees established in the Constitution assume particular importance.

For instance, Chapter IX of the Constitution, entitled 'The Court', concerns the constitutional foundations of the judicial system. The second paragraph of Article 117, which features in that chapter, provides that 'in the Republic of Lithuania, court proceedings shall be conducted in the official language', while the third paragraph of that article establishes that 'persons who do not have knowledge of the Lithuanian language shall be guaranteed the right to participate in investigations and court proceedings by means of an interpreter'.

Although the content of that right to assistance from an interpreter in a case where a person does not understand or speak the official – Lithuanian – language used in pre-trial investigations or court proceedings has not yet been clarified in the constitutional case-law, it is beyond doubt that the aforesaid constitutional provision in Lithuania ensures the possibility to use minority and foreign languages in the specified areas, *inter alia*, through the guarantee of interpretation into the official language during the investigations or judicial proceedings.

In conclusion, it may be stated that, by maintaining the balance between the values enshrined in the Constitution and by interpreting the Constitution as an integral act (Article 6 of the Constitution) not only on the basis of the linguistic interpretation, but also, and above all, on the basis of the systematic interpretation of the Constitution, in specific constitutional cases the Constitutional Court not only protects the status of the Lithuanian language as the official language and the guarantees deriving from that status, but also promotes the rights of individuals, including those belonging to national minorities or foreign nationals residing in Lithuania. The promotion of multilingualism and respect for linguistic diversity are particularly significant values necessary both for ensuring constitutional equality between persons and for promoting tolerance in society and fostering peaceful coexistence of all persons in Lithuania.

## **Conclusions**

The special protection of the Lithuanian language as the official language is derived from, and ensured by, the Constitution (Article 14) and the relevant constitutional case-law. While protecting and safeguarding that status of the official language, which, pursuant to the Constitution, is the Lithuanian language, the Constitutional Court also ensures that the right of national minorities residing in Lithuania to foster their language, culture and customs (Article 37 of the Constitution) is not undermined, by clarifying constitutional guarantees which are important for assuring the use of those other languages in Lithuania. In its constitutional case-law, the Constitutional Court has stated clearly that that constitutional norm guarantees the preservation of ethnic identity, cultural continuity and national self-expression for all ethnic communities residing in the territory of Lithuania, while at the same time emphasising the peaceful coexistence between the Lithuanian nation and other ethnic communities residing in the territory of Lithuania, as well as mutual forbearance and tolerance of people of different nations.

The constitutional guarantees of the use of minority and foreign languages related to the status of the official language, as discussed in the present article, comprise in particular the guarantee of non-discrimination of persons on the basis of language, enshrined in Article 29 of the Constitution, and the guarantee of the right for a person without knowledge of the Lithuanian language to participate in investigations and court proceedings by means of an interpreter, enshrined in the third paragraph of Article 117.

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With regard to the entry, into a Lithuanian citizen's passport, of personal names of citizens belonging to ethnic groups, it should be noted that, although the distinction between the use of the official language in the public life of Lithuania and in the private life of individuals, as outlined in the constitutional case-law, remains significant, it is particularly crucial to emphasise that an entry in the official language in a passport can nevertheless be supplemented by writing the forename and surname of an individual also in his or her mother tongue in the section for other entries. That constitutional guarantee is extremely important for individuals belonging to national minorities, as the forename and surname of those individuals may be written in official documents in other, non-Lithuanian, characters and in non-grammaticised form, if so requested. It should also be pointed out that the Constitutional Court has stated on a number of occasions that 'the fact that official documents are written in the official language does not disregard the rights of citizens belonging to national minorities to write, read and communicate in any other language in so far as that does not concern the sphere of use of the official language determined by the Constitution'.

Thus, the constitutional establishment of the official language, and the requirement to have regard to the constitutional importance of the official language, *inter alia*, when decisions of national significance are made, cannot be construed as infringing the rights of national minorities in Lithuania. On the contrary, according to the Constitutional Court, uniform application to all citizens of the Republic of Lithuania of the requirement for knowledge of the official language and its use in public life ensures the equality of all citizens of the State.

Since the principle of the official language does not prohibit the use of any other acceptable language outside the public life of Lithuania, and as such use is also detailed in other constitutional provisions (for example, in Article 21 of the Constitution, guaranteeing, among other things, the protection of human dignity (second paragraph), and in Article 22, establishing the individual's right to privacy), there is considerable potential for further interpretation of the constitutional status of the official language in the case-law of the Constitutional Court, while at the same time promoting multilingualism and respect for linguistic diversity in the State, since Lithuanian society, as a pluralistic democracy, acknowledges both European Union law and judgments of the European Court of Justice interpreting that law .<sup>20</sup>

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20 | See, *inter alia*, rulings of the Constitutional Court of 11 January 2019 and of 8 November 2019.

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# Multilingual EU law in Hungarian case-law

— Réka Somssich

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Are national courts of last instance really required to compare (all) equally authentic language versions of EU law when considering whether the meaning of a provision of EU law can be determined without any reasonable doubt? That was the question posed by Advocate General Michal Bobek in one of his most recent Opinions, in which he proposed that the Court of Justice should review the *Cilfit* criteria, which he compared to a sleeping dragon.<sup>1</sup> The importance of this requirement, which is becoming increasingly difficult to achieve in an increasingly multilingual system of EU law, was clearly highlighted by the Advocate General in a 2008 article, long before his appointment, in which he wrote that the obligations weighing on national judges creates the image of a kind of European judicial Hercules – in the Dworkinian sense – who has a perfect knowledge not only of the relevant national law but also of EU law, which he or she applies *ex officio*, who reads the legislation in question in several languages, can comfortably carry out a comparison of the versions of that legislation in order to arrive at an interpretation of it, and has a clear idea of what the EU legislature's intentions were in enacting it.<sup>2</sup>

Those responsible for applying the law in the Member States obviously do not have all these skills. Neither can they, for objective reasons, carry out a comparison of all the official languages in the course of their interpretative activities, since even the most linguistically gifted of judges cannot know 23 languages, in addition to their mother tongue, at a level that would enable them to read complex legal texts and academic literature. This is nothing short of a pipe dream. Even so, it is important not to regard multilingualism in EU legislation and the possibility of studying it as being essentially a burden. It is, rather, a form of condition for the interpretation of EU law. It is a condition because the case-law of the Court of Justice not only expects the higher national courts to interpret EU law in the light of multilingualism, but has stated, as a matter of principle, that 'the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions'.<sup>3</sup> Consequently, consideration of the different language versions of an item of EU legislation is a form of general requirement, in that it is essential to the elimination by national legislatures of any unintentional drafting or translation errors.

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1 | See the Opinion of Advocate General Bobek in *Conorzio Italian Management and Catania Multiservizi* (C-561/19, [EU:C:2021:291](#), point 1).

2 | Bobek, M., 'On the Application of European Law in (Not Only) the Courts of the New Member States: "Don't Do as I Say"?' *Cambridge Yearbook of European Legal Studies*, 2007-2008, p. 1.

3 | See the judgment in *GSV* (C-74/13, [EU:C:2014:243](#), paragraph 27).

It is also clear that the analysing of texts in foreign languages differs depending on the background and linguistic environment of judges working in different Member States. It will be an easier task for a judge who has been educated in countries which themselves have several official languages, or who grew up or worked in a country distinguished by a high level of foreign language skills. The same is not true in those Member States where the level of knowledge of other languages is relatively low.

Hungary is not only a monolingual country, it is also linguistically isolated, and that lack or significant remoteness of a language family does not make it any easier to learn foreign languages. Although, according to a survey conducted in 2019, 70% of Hungarian students in secondary education study at least two foreign languages, which is above the EU average,<sup>4</sup> another survey conducted among 25-64 year olds in 2016 shows less encouraging results. According to the latter survey, Hungary ranked 26<sup>th</sup> in terms of the ability to communicate in at least one language other than one's mother tongue.<sup>5</sup>

All of the above factors must be taken into account when it comes to analysing the extent to which Hungarian judges have, since Hungary's accession to the European Union, applied the method of comparing the different language versions of legislation (the comparative method) when interpreting specific provisions of EU law. Although the number of such judgments identified from case-law databases is not high (we have only been able to find six), their relevance is not to be underestimated, since they actually contain rulings on very important issues. Three of these six judgments were handed down at last instance by the Hungarian supreme court, the Kúria, and, in them, that court applied the method of comparing different language versions in order to resolve questions relating to, inter alia, the determination of the specific meaning of the provisions of a directive in the event that the directive is to be given vertical direct effect, the unequivocal finding of a conflict between national law and EU law, or the question whether, in a customs procedure, a trader should have spotted a discrepancy in one of the language versions of the legislation in question and should therefore have interpreted it correctly.

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4 | See Eurostat survey: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Foreign\\_language\\_learning\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Foreign_language_learning_statistics).

5 | [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Foreign\\_language\\_skills\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Foreign_language_skills_statistics).

These three cases are briefly presented below to demonstrate that interpretation based on a comparison of different language versions of EU legislation is a method actively applied in Hungarian court proceedings.

## **I. Comparing different language versions in order to determine the direct effect of a directive**

The principle of guaranteeing the direct effect of the provisions of a directive places a heavy responsibility on those responsible for applying the law in the Member States, since it compels them to go beyond the scope of their national legal system. Indeed, it requires them to disapply provisions of national law which are contrary to the directive, thus supervising to some extent the work of the national legislature. The analysis of other language versions can play an important role here when it comes to determining the actual meaning of a directive. It did just that in 2015 in a case which has since frequently been cited as a reference. In a landmark judgment,<sup>6</sup> the Kúria had to decide, in short, how to resolve the contradiction between Article 77 of the Hungarian Law on VAT<sup>7</sup> and Article 90(1) of the VAT Directive.<sup>8</sup> The first of those two provisions allowed an *ex post* reduction of the taxable amount only in cases of invalidity (érvénytelenség) or defective performance (hibás teljesítés) of the transaction, whereas the latter provision, which the Hungarian legislation was intended to transpose, in its Hungarian version, cites among the circumstances necessarily entailing a reduction of the taxable amount cases of retroactive termination for non-performance (elállás) and impossibility of performance (teljesítés megghiúsulása). Before the Kúria gave its decision, it had made a reference to the Court of Justice for a preliminary ruling. In that ruling, the Court of Justice held that the aforementioned provision of the Directive must be interpreted as meaning that it covers all situations in which, after a transaction has been agreed, part or all of the consideration is not received by the taxable person. The Court of Justice nonetheless pointed out that it was for the national court to determine

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6 | EBH 2015. K11.

7 | 2007. évi CXXVII. törvény az általános forgalmi adóról (Law CXXVII of 2007 on Value Added Tax).

8 | Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; corrigendum in OJ 2007 L 335, p. 60 and in OJ 2015 L 323, p. 31).

that point.<sup>9</sup> In the Kúria's view, it was clear that invalidity (érvénytelenség) was a much narrower concept than the generic one provided for in Article 90(1) of the Directive. In order to determine the precise meaning of the latter provision, the Kúria relied on other language versions of the Directive. It took the view that this was particularly necessary given that the Hungarian language version of the Directive, in using the term 'elállás', which is customary in Hungarian law, also favours a narrower interpretation than that given in the judgment of the Court of Justice. For that reason, the Kúria had to establish whether Article 90 really refers not only to retroactive termination at the will of one of the parties (elállás), but also to those cases where such termination is the result of a mutual agreement between the parties (felbontás). To that end, it carried out a two-stage examination: first, it conducted a detailed terminological analysis taking into consideration the 'major languages' (French, German and English, in that order),<sup>10</sup> and then it compared the conclusions reached with the terminology used in other languages (Polish, Spanish, Finnish, Italian and Croatian).<sup>11</sup> The Kúria's choice not to begin with the English-language version was deliberate, since both the French and German versions of the provision in question had clearly made a greater effort to ensure that the terminology relating to the termination of the contract adequately covers the cases provided for in their respective legal systems, inasmuch as both languages used not two but three terms.<sup>12</sup> Conversely, the English-language version (on the basis of which the Hungarian-language version, which also used only two terms, was undoubtedly drafted), in using only two considerably more general terms, 'cancellation' and 'refusal', opens up a much more uncertain field of interpretation for lawyers reasoning on the basis of continental law. Relying also on the other five language versions, the Hungarian supreme court came to the conclusion that the aforementioned provision of the Directive covers both unilateral and bilateral contractual terminations and accordingly applied that provision as against the tax authority, disapplying the Hungarian provision.

The abovementioned judgment of the Kúria is commendable in a number of regards. Not only because the comparison of the different language versions clearly played an

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9 | Judgment in *Almos Agrárkülkereskedelmi* (C-337/13, [EU:C:2014:328](#)).

10 | See paragraph 26 of the judgment.

11 | See paragraph 27 of the judgment.

12 | *French uses the terms 'annulation', 'résiliation' and 'résolution', while German uses the terms 'Annullierung', 'Rückgängigmachung' and 'Auflösung'.*

important role in determining the actual meaning of the provision of a directive, but also because, to that end, the court conducted a material analysis of a large number of language versions (eight) other than Hungarian, which in itself is noteworthy. Moreover, the supreme court realised that, in this particular case, it should not rely on the English-language version in order to clarify the underlying meaning, given that it was in fact the languages that drew on the terminology used by the continental legal systems that offered precision as to the meaning of that provision.

## II. Where those applying the law are unable to resolve linguistic discrepancies

However, it is not always possible for those responsible for applying the law in the Member States to resolve discrepancies between the different language versions, since, in some cases, this is precluded by the principles of EU law itself. In a judgment in 2019,<sup>13</sup> for example, the Kúria concluded — rightly — that the prohibition of inverse vertical direct effect did not allow an extensive interpretation based on a directive to prevail over the narrower concept contained in the provision transposing it. The factual background to the case was that the Hungarian authorities had imposed a fine during a border control after ascertaining that the technical documentation for a trailer had expired. The person concerned challenged the legal basis of that fine, on the ground that the relevant Hungarian legislation<sup>14</sup> allowed a fine for invalidity of the technical documentation to be imposed only in the case of motor vehicles, and a trailer was not a motor vehicle but a type of vehicle similar to a motor vehicle. The second-tier administrative authority confirmed the fine imposed by the first-tier authority on the ground that, while the Hungarian-language version of the EU regulation which the Hungarian legislation was intended to apply also used the term ‘motor vehicle’ (*gépjármű*), the English-language version of that regulation (which used the word ‘vehicle’) clearly showed that the EU legislature had intended to include all types of vehicle, including

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13 | Kfv. 37.271/2019/4.

14 | A közúti árufuvarozáshoz, személyszállításhoz és a közúti közlekedéshez kapcsoló egyes rendelkezések megsértése esetén kiszabható bírságok összegéről, valamint a bírságolással összefüggő hatósági feladatokról szóló 156/2009. (VII. 29.) Korm. rendelet (Government Decree 156/2009 of 29 July 2009 on the amount of fines that may be imposed in the event of infringement of certain provisions in the fields of transport of goods and persons by road and road traffic, and on the tasks falling to the authorities in relation to the imposition of fines).

trailers, within its scope. The second-tier administrative authority likewise observed that the Hungarian-language version of the directive which served as the framework for that EU regulation,<sup>15</sup> clearly also uses the term '*jármű*' ('vehicle') leaving no doubt that this covers both motor vehicles and trailers. The person concerned brought an action for judicial review before the Szegedi Közigazgatási és Munkaügyi Bíróság (Administrative and Social Court, Szeged, Hungary), which annulled the administrative decision, ruling that the specific legal conditions governing the imposition of an administrative fine cannot be interpreted extensively in the light of EU law and that the authorities of a Member State cannot legitimately rely, as against an individual, on the fact that the national legislature has not properly transposed the provisions of a directive. It recalled in this regard that, because of the prohibition on inverse vertical direct effect, the authorities could not rely directly on EU law against an individual.<sup>16</sup> The judgment of the Szeged court was appealed in cassation before the Kúria, which, in its decision, examined, *inter alia*, the content of other language versions. It observed that both the Hungarian provision purporting to implement the relevant EU regulation and the Hungarian-language version of that regulation referred to the narrower concept of motor vehicle, whereas other language versions of the regulation either omitted the term or referred to the broader concept of vehicle. To that end, the Kúria examined not only the English version but also the French version. It nonetheless held that, in order to give substance to the concepts contained in the EU regulation, regard must be had to the definitions of terms set out in the directives, and those directives, in their English, French and even Hungarian versions, clearly referred to the concept of 'vehicle', i.e. the broader concept. Consequently, as the Kúria noted, the discrepancies found in the use of terms were relevant from the point of view of the transposition of EU law into national law,<sup>17</sup> and, notwithstanding that the correct interpretation showed that a fine could be imposed in the case of trailers too, the Kúria confirmed the judgment of the lower court and held that the authorities of the Member States cannot rely, as against individuals and to their detriment, on the provisions of a directive which have not been properly transposed.

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15 | Directive 2014/47/EU of the European Parliament and of the Council of 3 April 2014 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Union and repealing Directive 2000/30/EC (OJ 2014 L 127, p. 134; corrigendum in OJ 2014 L 197, p. 87 and in OJ 2019 L 219, p. 77).

16 | 11.K. 27.735/2018/9.

17 | See paragraphs 26 and 27.

The supreme court's judgment thus revealed a fundamental contradiction (between national law and EU law) arising from a linguistic disparity, one which could no longer be eliminated by those applying the law, but which could only be resolved by the legislature in the future. In its decision, the Kúria had to combine, or even set against each other, two interpretative principles of EU law: determination of the correct meaning by reference to the various language versions of the legislation and prohibition of the inverse vertical direct effect of directives.

### III. Obligation to consider different language versions in the customs procedure

The Hungarian courts have also helped enrich EU case-law concerning discrepancies between the official language versions of EU law. In this instance, moreover, the relevant judgment of the Court of Justice was followed by a raft of cases which ended up before the Kúria. In *GSV* (C-74/13),<sup>18</sup> the Hungarian authorities — overriding the declaration which had been made by the importing company — classified a glass fibre fabric under a tariff heading subject to anti-dumping duties, on the ground that the characteristics of the fabric corresponded to the description of that heading (*'hálós szövet'*, i.e. open mesh fabrics), but not to its Hungarian-language designation (*'szítaszövet'*, i.e. bolting cloth). That discrepancy, however, occurred only in the Hungarian-language version of the tariff heading. In the other languages, including English, both the description and the heading referred to open mesh fabrics. Consequently, in the Hungarian-language version, on which the importer based its claim, the tariff code for open mesh fabrics was not subject to anti-dumping duties. On a reference for a preliminary ruling from the Debreceni Közigazgatási és Munkaügyi Bíróság (Administrative and Social Court, Debrecen, Hungary), the Court of Justice held that, on the basis of all the other language versions of the code in question and the applicable EU regulations, the linguistic discrepancy in that case could not render void the customs authorities' classification of the product for tariff purposes under that code. That judgment, however, referred to the possibility of something of a loophole, based on Article 239 of the Customs Code, allowing for the possible repayment or remission of the anti-dumping duties thus collected by the customs authorities, provided that the conditions laid down in that provision were met.<sup>19</sup> In the

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18 | Reference cited in footnote 3.

19 | See paragraph 52 of the judgment.

light of the judgment delivered by the Court of Justice, the importer withdrew its action and brought a new claim, this time for repayment of the anti-dumping duties. Following two administrative decisions and an initial court judgment, the case finally came before the Kúria. In those proceedings, the administrative authorities and, subsequently, the judicial authorities no longer had to rule on the resolution of clear linguistic discrepancies, since these had already been dealt with by the Court of Justice, but they did have to decide whether, in the particular case, the special conditions for repayment were met, namely that there had been no deception or negligence on the part of the importer. During the proceedings, the applicant argued, *inter alia*, that the incorrect expression in Hungarian (which did not correspond to the products which it had imported) appeared not only in the tariff heading at issue, but also in the regulation imposing the anti-dumping duties itself, with the result that the applicant had had no reason to suppose that this was a translation error, since the expression appeared consistently in various sources of law. The competent first- and second-tier administrative authorities rejected the applicant's claim: although they considered that the discrepancy between the language versions constituted an extraordinary circumstance attributable to the functioning of the European Union and that there had been no deception on the part of the applicant, its conduct had to be classified as negligent. In support of their argument, the authorities argued that the provision containing the error could not be regarded as complicated and that mere reading of the texts published in the *Official Journal of the European Union* should have been sufficient to discover the error. They also considered relevant the fact that the applicant was an experienced importer that regularly purchased goods from third countries and conducted its business and concluded its contracts in English, as well as the fact that the designation given on the invoices which had been produced by the applicant, which were also in English, coincided with the English-language tariff classification of products subject to anti-dumping duties. In the light of all of the foregoing, the second-tier administrative authority concluded that the applicant knew, or should have known if it had exercised due diligence, the foreign-language designation of the imported goods, should have realised that the regulation imposing the anti-dumping duties contained an error in its Hungarian-language version and could therefore, in the light of the texts published in the Official Journal, have classified the goods correctly. The Debreceni Törvényszék (High Court, Debrecen, Hungary), which heard the action for judicial review of the latter decision, did not agree with the interpretation given by the administrative authority and took a very different view of the fact that the official Hungarian-language version of the EU regulation contained, for the purposes of the anti-dumping duties, a designation entirely unrelated to the goods imported by the applicant. On the basis of the Hungarian Basic Law, that court concluded that the requirement

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that, in Hungary, legislation must be available in Hungarian, as the official language of that country, constitutes a fundamental right forming one of the pillars of the rule of law and is an essential guarantee also extending to legal entities established under the law whose employees and managers are native Hungarian speakers. In the case of EU legislation, which is enacted uniformly in the various official languages of the EU, this meant that a discrepancy between the language versions could not cause a particular version, if correctly enacted, to be divested of its legal effects. If this were not the case, the aforementioned requirement, inferred from the Basic Law as having the value of an essential principle, would be devoid of substance. As regards the applicant's diligence, the Debrecen court held that the Hungarian language version was unambiguous and the applicant would have had no reason to be in any doubt about it.

On appeal in cassation, the Kúria disagreed with the judgment under appeal with respect to the very matters of the applicant's diligence and the complexity of the legislative context.<sup>20</sup> It pointed out that the degree of diligence that could be expected of the applicant, given its status as an experienced customs trader, was necessarily high. It noted in this regard that, in international trade, translation and communication in foreign languages, aimed at giving precise expression to the intentions of commercial partners, are part and parcel of everyday routine. In the applicant's case, goods designations had to be translated from English into Hungarian so that they could be entered in Hungarian-language customs declarations. When recording the designation in Hungarian, the applicant had omitted the word 'mesh' (*'háló'* in Hungarian), which defines an essential quality of the goods at issue, even though that word appeared in the equivalent designation in English, both on the invoices relating to the goods and in the English-language version of the relevant tariff code. In order to clarify the meaning of that term, the Kúria also consulted the best-known comprehensive English-Hungarian dictionary,<sup>21</sup> as an easily accessible source of reference and non-technical vocabulary, and this too makes the basic meaning of that word clear. In the light of all of the foregoing, the Kúria concluded that the translation could not be regarded as a complex task for the applicant, as a Hungarian importer actively involved in international trade. In the Kúria's view, therefore, the applicant had clearly been negligent, and its claim for reimbursement could not therefore succeed.

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20 | Kfv. 35.294/2015/3.

21 | Országh, L., and Magay, T., *Angol-magyar nagyszótár*, Akadémiai Kiadó, Budapest, 1999.

The Kúria also ruled on the argument set out in the judgment under appeal in relation to the essential guarantee inferred from the Basic Law. It pointed out that the conflict between the Basic Law and the multilingualism established by Council Regulation No 1 determining the languages to be used by the European Union has already been resolved by the case-law of the Court of Justice to the effect that a single language version cannot serve as the basis for interpretation, which thus precludes litigants from giving their own language primacy over the other official languages of the European Union. In other words, the requirement as to the uniformity of EU law takes precedence here over the principles of the rule of law and legal certainty, since to favour one particular language version in the event of a translation error would run directly counter to the requirement as to the uniform interpretation of EU law. The Court of Justice has shifted the boundaries of legal certainty for these purposes, inasmuch as only a lack of enactment can give rise to a breach of legal certainty, not an 'erroneous' enactment in one of the official languages.

#### IV. Summary

As Tony Weir observed back in 1995, in a Union that had just enlarged to fifteen Member States and had eleven official languages, one of the great questions of European law is whether the harmonisation of legislation will enable countries with different languages to act in the same way.<sup>22</sup> The reality of the uniformity of harmonised law will ultimately have to be measured by reference to the very people called upon to apply the law, who must face a whole series of new challenges in ensuring such uniformity, such as, for example, taking into account the multilingualism of harmonised law and not giving exclusive consideration to their own language versions of legislative texts. At the same time, the interpretative toolkit provided by national law comes with a new method for promoting correct interpretation.

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22 | Weir, T., 'Die Sprachen des europäischen Rechts - eine skeptische Betrachtung', *Zeitschrift für Europäisches Privatrecht*, 3, 1995, pp. 368-374.

# Multilingualism and small States

## — **Tonio Borg**

**Tonio Borg LL.D. Ph.D. K.O.M. was the European Commissioner entrusted with the health portfolio between 2012 and 2014. He was a Member of the Maltese Parliament between 1992 and 2012, as well as Vice Prime Minister (2004 to 2012), Minister for Internal Affairs (1995 to 1996 and 1998 to 2008), and Minister for Foreign Affairs (2008 to 2012). He is currently a senior lecturer in public law at the University of Malta. He is also a member of the management board of the European Medicines Agency (EMA) of the European Union. He is the author of several books of a legal nature as well as books dealing with political history.**

The existence of more than one official language of the European Union is a testament to the extent to which the European Union respects the sovereignty and identity of each Member State. It is therefore natural for small States like Malta to appreciate this fact as much as, if not more than, other countries.

I remember clearly the discussions within the Cabinet of Ministers, in the years preceding our 2004 entry to the European Union, about the importance of Maltese being recognised as an official language of the EU. The Commission, under President Romano Prodi, accepted ultimately during the negotiations to accord this recognition. It was an important moment for Malta.

We have two official languages in Malta, Maltese and English, but, according to our Constitution, we have only one national language, and that language is Maltese. Further, Maltese is the official language of our courts. Language, together with religion and other factors and traditions, were the means through which a small country, that always aspired to become sovereign and independent, could retain its identity. This was no easy task. When looking at a map of the Mediterranean Sea, it becomes clear that there are only two sovereign islands in this sea: Malta and Cyprus. Furthermore, with its 318 square kilometres (km<sup>2</sup>) and a population that has never exceeded half a million people, Malta is the smallest Member State of the European Union, one of the smallest sovereign States in the world, and in addition, has a very high population density of about 1,200 people per square kilometre.

The historical significance of the acceptance of the Maltese language as an official language of the European Union goes beyond the recognition that even the smallest Member State is entitled to its identity within the EU.

The Maltese language is the only official language of the European Union of Semitic origin. It is the only real all-Mediterranean language, having been enriched by influences from the north and from the south. When analysing in detail the essence of the Maltese language, we can clearly see that Arabic is the foundation of the language itself. A large part of its vocabulary is of Arabic origin: numbers, elements pertaining to nature, body parts, basic tools such as those used in agriculture, proverbs, the days of the week – these words are all derived from almost-identical Arabic words. This lexical heritage persists despite the fact that the majority of Maltese are Catholics, who pray to and worship Alla (God).

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However, given the fact that every power that colonised Malta, beginning in the year 1090, came from a European country and as Malta is located less than 100 kilometres (km) from Sicily, a body of words originating in Romance languages, most notably from Italian, came to enrich this Semitic foundation. Thus, for instance, words related to a more refined lifestyle such as *furketta* (fork), *tvalja* (tablecloth), *pożati* (tableware), *guardarobba* (wardrobe), *testiera* (headboard), and *gradenza* (chest of drawers), derive from Italian.

This fact strengthens the political, economic and cultural connections between Malta and countries in North Africa and the Arab world. When Malta became a Member of the European Union, the fear was expressed that membership of the European Union would weaken Malta's traditional connections with Arab countries. In reality the opposite occurred. The fact that the European Union respects the neutrality pursued by certain Member States means that Member States that have special relationships with neighbouring countries or with regions outside the European Union are able to contribute towards a reciprocal understanding of the needs and interests of Europe and those of other regions and countries.

I still remember when I was European Commissioner for Health, the Italian Presidency, and in particular, Beatrice Lorenzin, the Health Minister at that time, organised a conference in Rome for all Health Ministers of the Mediterranean region. This was in October of 2014, a short time before my mandate as Commissioner came to an end. I decided to use the first few minutes of my address to the conference to deliver a direct message in Maltese to the Arab countries. I remember how, while I was speaking, the Lebanese Minister was heard exclaiming 'fhimt kollox, fhimt kollox' ('I understood everything, I understood everything'). The fact that a European Commissioner was expressing himself in an official language of the European Union that used a sufficient number of Arabic words for a Lebanese Minister to be able to follow the speech, created a potential bridge for cooperation between the EU and the Arab world in that particular field.

Hearing my language, the language of a small country, among the 24 languages spoken in the highest institutions of the European Union, such as the Council of Ministers and the European Parliament, the European Union's main democratic forum, is a source of immense pride to me as a Maltese person. The situation is the same before the Court of Justice, which can be addressed in Maltese. However, in the internal deliberations between the Judges that lead to the decision taken by the Court of Justice, only the French language is used. I suspect that eventually this internal rule, which is not contained in the Treaties, will change. It made sense in the beginning, when three of

the six founding States spoke French as their national language. Given that today the Member States include two former British colonies as well as several Eastern European countries in which English is more widespread (with the exception of Romania), it has become necessary to employ at least three 'working languages', as is already the case within the European Commission (namely, French, English and German). After all, if this system works for deliberations within the executive branch of the EU, namely between the 27 Commission Members, why should it not work between 27 Judges within the Court of Justice in Luxembourg?

When it comes to the European Parliament, this institution offers the highest level of multilingualism. Every European citizen has the right to contest an election of the European Parliament. It would be unreasonable to expect a Member of the European Parliament possess complete knowledge of one or more of the most used languages, such as English and French. The right of every Member to read and write parliamentary documents, to follow discussions and to speak in his or her own language is recognised explicitly in the Parliament's Rules of Procedure. All European Union citizens should be in a position to read laws that concern them in their own country's language. As co-legislator, the European Parliament also has the duty to ensure the linguistic quality of all the pieces of legislation adopted by it, avoiding shortcomings and mistakes in all the official languages. European citizens have the right to follow the Parliament's work, to ask questions and to receive replies in their own language.

Undoubtedly, the use of several official languages entails a huge expense in terms of translation and interpretation, and perhaps there is a mechanism or a method that can help achieve rationalisations in his sector. However, just as, until now, the Member States have not renounced the fact of each Member State having a European Commissioner, I also think that, at least for principal occasions and within the main legislative institutions, the official languages of each Member State should retain their current status. This is the beauty of the European Union: united in diversity.

There is no doubt that any future enlargement of the European Union will put pressure on this system. Can the Commission function with more than 27 Members? Can the institutions, in particular the translation and interpretation services, cope with further enlargements? First of all, I think that, given the current political situation in Europe, there is still time to address this issue. Secondly, with essential question as fundamental as languages, the European Union needs to ensure that it does not give the impression that it is acceptable for the current Member States to follow one rule while new Member States must abide by different rules – a sort of second-class membership. Already a

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number of difficulties arise from the fact that some founding Members have certain privileges that the others do not.

I have to declare an interest here. I was always in favour of enlargement, as long as it is reasonable. If a country that is a candidate for membership, passes all the tests and satisfies all the requirements, why should it not join the European Union? A bigger union is a stronger union. If, let us say, the Balkan countries introduce sufficient reforms to join the European Union, and pass all the tests, why should they not be permitted to join? What is the point of recognising a country as a 'candidate' but if it passes all the tests, its status still does not change? Enlargement will also ensure peace in regions such as the Balkans, which, in recent memory have experienced wars and serious crimes against humanity. Enlargement enriches the European Union not only politically and economically but also culturally, with the intertwining of new cultures, languages and traditions with those already within the European Union. Furthermore, with the withdrawal of the United Kingdom from the EU it is necessary to send a message: although this withdrawal has harmed both sides, there is a list of countries that are willing to *join*, not leave, the EU. A moderate, reasonable and considered enlargement will communicate this message, a message that the European Union needs to improve trust in itself and in its future.

The use of several official languages does not create a Tower of Babel. With the current official languages, the European Union's politicians, members of parliament, bureaucrats and members of the civil service have always understood each other. Europe was the birthplace of the concept of the nation State. For long stretches of time, this caused unrest and wars. The two world wars from the last century started in Europe. Today, national identity does not cause tension. This has come to be because the EU was able to adapt itself to the times and to promote diversity instead of suffocating it, so long as everyone accepts the general and specific rules of the organisation. Diversity does not mean that everyone is free to do as they please. Rather, it means that, in this 'Federation of Sovereign States', as President Barroso liked to call the EU, there is room for everyone, with their traditions, their languages and their cultures, but all are required to practice these within a framework of norms and rules. I am sure that no one feels less Maltese, less French, or less Polish, because he or she is part of the European Union. For this to continue, it is imperative that multilingualism is preserved.

Multilingualism also means that the European Union encourages European citizens as much as possible to learn languages other their own. For us Maltese people, because of the small size of our country and because of the fact that Maltese is spoken only

by the Maltese, it is imperative to learn other languages, with English being the most widespread, followed by Italian (up to 1934 Italian was still an official language in Malta) and French. The fact that Europeans are encouraged to learn other languages strengthens connections and cooperation and helps us to understand each other better, not only as a means of communication but also in terms of concepts and ideas. So much so that, in its 2017 conclusions, the European Council declared that the European Union will work with a view to 'enhancing the learning of languages, so that more young people will speak at least two European languages in addition to their mother tongue'.

An important principle of the European Union is that, from a legal point of view, everyone is equal within the European Union. It is understandable that the larger countries enjoy rightly a certain power resulting from their size. Nobody expects that a country with half a million citizens should enjoy the same representation in the European Parliament as a country with 80 million citizens. However, proportionally, Malta enjoys a per capita representation that is better than, for instance, Germany. The same can be said with respect to the Council of Ministers. Although the European Union's rules rightly give more decision-making votes to States with a larger population and of a larger size, in practice a consensus is preferred to formal voting. In the Commission, both the large and the small Member States appoint one Commissioner who, although he or she does not represent the government that appointed them, participates within the Commission as an expert on issues that concern *'the country I know best'* – an expression we used within the Commission in order to avoid mentioning our country by name while emphasising that we were not representing it. It is therefore important to pursue, rather than to diminish, the use of several official languages. In this manner, everybody will feel welcome within the European Union and everybody will feel equal.

# European Union law in the Netherlands: Dutch as connector

— **Prof. Dr. J. W. van de Gronden**

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## Introduction

Everyone has probably had the following experience at some stage: you try to connect one device to another (for example, a computer to a monitor) and then come to the conclusion that the two devices have different connections. A connector offers a solution. By using a small connecting device both devices are suddenly able to work together.

In my opinion, the use of the Dutch language has a function similar to that of a connector. It is common knowledge that EU law exerts a major influence on the national legal orders of the Member States, including that of the Netherlands. In the development of European Union law, both English and French play a very important role. EU law of course also is to be applied in all Member States including the Netherlands. This process, which may give rise to complex issues, is facilitated by the availability of seminal legal texts, such as the legislation and case-law of the European Union, in all the official languages of the Member States, including Dutch. As a result, the Dutch language connects European and national law with each other in the Dutch legal order.

I shall further elaborate on the role of Dutch below. First, however, I would like to discuss the ever-growing influence of European Union law on Dutch law. Then I would like to consider briefly the problem of terms and concepts. In addition, as Professor of European Law, I would like to share my experiences in education, where a new generation of students is being trained to become lawyers.

## Influence of European law on the Dutch legal order

The ever-expanding role and influence of EU law is nothing short of spectacular. This process began with the emergence of certain now-classic doctrines, such as those of the primacy of EU law,<sup>1</sup> of direct effect and of free movement. One of the foundational judgments concerned a reference for a preliminary ruling made by the Netherlands: the judgment in *van Gend & Loos*.<sup>2</sup> It soon became clear that Dutch law could not be practised without a sound knowledge of European law.

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1| See, for example, judgment of 15 July 1964, *Costa*, 6/64, [EU:C:1964:66](#), and recently, judgment of 2 March 2021, *A.B. and Others* (Appointment of judges to the Supreme Court – Actions), C-824/18, [EU:C:2021:153](#).

2| Judgment of 5 February 1963, *van Gend & Loos*, 26/62, [EU:C:1963:1](#).

It was also of great importance that national procedural law was, and still is, influenced by European law. It became clear from the well-known judgments in *Rewe*<sup>3</sup> and *Comet*<sup>4</sup> that national procedural law may not render it (almost) impossible to exercise the rights derived from European Union regulations and may not treat those rights less favourably than rights derived from national regulations. That case-law represented the start of the development of more specific approaches to traditional national law concepts, such as *ex officio* review by the courts.<sup>5</sup> Procedural law plays an essential role for litigants who wish to benefit financially from their claims based on legal rules. Not for nothing is the right to an effective remedy before a court or tribunal enshrined in Article 47 of the Charter of Fundamental Rights of the European Union. The fact that EU law has not left procedural law unaffected, has created a legal infrastructure reflecting the impact of EU legislation.

Procedural law creates the routes for legal disputes and determines access to the courts. Furthermore, this branch of law is closely linked to the concept of a country's sovereignty. Language naturally plays an important role here. For Dutch procedural law, the Dutch language is obviously crucial. It should not be forgotten that Dutch is a legal language and that this language is used to settle disputes that are brought, inter alia, before the courts in the Netherlands. The influence of EU law on national procedural law has therefore also led to an intriguing interaction between the concepts of Dutch law and those of EU law.<sup>6</sup>

Another important development is related to the ever-growing extent of European harmonisation. The development of policy at the Union level leads to the creation of EU regulatory measures. The number of such measures adopted over the years is extremely large. Many EU regulations and directives apply to a wide variety of agreed of policy areas. As is well known, directives are to be transposed into national regulatory

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3 | Judgment of 16 December 1976, *Rewe-Zentralfinanz and Rewe-Zentral*, 33/76, [EU:C:1976:188](#).

4 | Judgment of 16 December 1976, *Comet*, 45/76, [EU:C:1976:191](#).

5 | See in that regard, for example, Prechal, S. and Widdershoven, R.J.G.M., *Inleiding tot het Europees bestuursrecht*, Nijmegen, 2017, p. 410 ff.

6 | This development is described, inter alia, in Prechal, S. and Widdershoven, R.J.G.M., *Inleiding tot het Europees bestuursrecht*, Nijmegen, 2017; Hessel, B., *Het recht van de EU voor decentrale overheden*, Nijmegen, 2016, and Hartkamp, A., *Vermogensrecht algemeen – Europees recht en Nederlands vermogensrecht*, Deventer, 2019.

measures.<sup>7</sup> For regulations, on the other hand, there is a prohibition on transposition.<sup>8</sup> However, this does not mean that no national legislative action is required in order to apply and enforce a regulation. On the contrary, both directives and regulations require the designation of competent national authorities (inter alia, for enforcement purposes), the adaptation of national rules (relating to procedural law, for example) and the elaboration of general concepts of EU law.<sup>9</sup> This indicates that, for its implementation, including application and enforcement, EU law depends heavily on the national legal systems of the Member States. Without a national legal framework, EU law is arguably toothless. In short, European standards and rules must take their place within such a national framework. Under Article 4(3) of the EU Treaty, the Member States must ensure that they comply with their obligations under EU law. For the Netherlands, this obviously means that the Dutch version of EU standards and rules must find its way into Dutch legislation. Through the Dutch language, the law developed in Brussels, Strasbourg and Luxembourg can also be utilised by the Dutch authorities. As already mentioned, there has been a great upsurge in European harmonisation – through directives, regulations and other measures. As a result, an ever-greater number of EU regulatory measures must be implemented in the national legal order. For the purposes of implementation, the Netherlands often uses its already existing bodies of national law, such as the Burgerlijk Wetboek (Civil Code), certain administrative laws (the Wet milieubeheer (Environmental Management Act), the Mededingingswet (Competition Act), etc.) and criminal legislation. This means that many EU rules and standards sit alongside provisions of Dutch law. In a certain sense, a sort of ‘osmosis’ takes place between the rules and standards of EU origin and those of Dutch origin. This fusion is possible thanks to the Dutch language. The official Dutch version of EU rules enables the Dutch authorities to apply European Union law alongside national law.

This ‘synchronous’ application is occurring ever more frequently because of increased European harmonisation and has become part of everyday practice for many legal practitioners. In my opinion, this also brings EU policy closer to the ordinary citizen.

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7| See Article 288, third paragraph, TFEU.

8| In, inter alia, judgment of 31 January 1978, *Zerbone*, 94/77, [EU:C:1978:17](#), the Court of Justice deduced this from Article 288, second paragraph, TFEU.

9| See, for example, judgment of 21 September 1983, *Deutsche Milchkontor and Others*, 205/82 to 215/82, [EU:C:1983:233](#), paragraph 17 and judgment of 28 October 2010, *SGS Belgium and Others*, C-367/09, [EU:C:2010:648](#), paragraph 33.

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By way of example, the guarantee to which a Dutch consumer is entitled when making a purchase is largely governed by rules of EU origin. There is, however, in my opinion, one point of note: by enabling European Union rules to merge seamlessly with national bodies of law, many citizens and even legal professionals no longer realise that these rules come from the European Union: at first sight, they may seem to originate on Dutch soil. It would therefore certainly do no harm if a process were to be set in motion to increase public awareness, enabling the general public to become better informed about this beautiful 'duet between European Union and Dutch law' with an (increased) understanding of the EU origin of many national laws.

### Terms and concepts

The Dutch language plays a crucial role with regard to the impact that European law has on the legal order in the Netherlands. In law, of course, considerable attention is paid to terms and concepts. Certain concepts in Dutch law may acquire a different substantive meaning thanks to European Union law. The fact that there is an official Dutch term for certain concepts of EU law means that changes can be implemented relatively simply in the Dutch legal order. An example from the past is the concept of 'waste'.<sup>10</sup> Initially, this term was understood in Dutch law to mean only objects that are permanently disposed of. However, the case-law of the Court of Justice of the European Union showed that this approach was overly narrow. Substances that can be reused should also be regarded as waste.<sup>11</sup> This is not a semantic issue but rather a question of whether legislation created to protect the environment and human beings is applicable. Thanks to the existence of the official Dutch version of the term 'waste' in EU law, which was included in the Dutch legislation, the interpretation given by the Court of Justice of the European Union quickly found its way into legal practice.

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10| See in this regard van de Gronden, J.W., *De Implementatie van het EG-milieurecht door Nederlandse decentrale overheden*, Deventer, 1998, pp. 260-266.

11| See, for example, judgment of 18 December 1997, *Inter-Environnement Wallonie*, C-129/96, [EU:C:1997:628](#), paragraph 31.

Another example relates to the concept of authorisation schemes. The Services Directive<sup>12</sup> deals with the authorisation schemes created by the Member States. Such schemes may, under certain conditions, lead to unjustified restrictions on the freedom to provide services. In English, the term ‘authorisation’ is used, while in French it is ‘autorisation’. The Dutch version of the Services Directive uses the Dutch word ‘vergunning’. This made it possible for the Dutch legislature, when implementing this directive, to utilise the term ‘vergunning’ which already exists in Dutch administrative law. This has simplified the implementation process in the Netherlands. It is clear to the competent authorities that national decisions that are described as ‘vergunningen’ in Dutch must be assessed in the light of the Services Directive. However, it is very important that the definition of the term ‘vergunning’ in the Services Directive be closely followed, which may lead to adjustments being made to the traditional term ‘vergunning’ in Dutch law. Article 4 of that directive contains a definition of the concept of authorisation scheme, also in the Dutch language version,<sup>13</sup> so that this definition can also find its way into Dutch legal practice. It is therefore no surprise that the *Dienstenwet* (Services Act) contains a definition of *vergunningstelsel* (authorisation scheme) which has been grafted onto the definition found in the directive.<sup>14</sup>

Due to the great strides made in the pursuit of European harmonisation, many terms from European law have been incorporated into Dutch law. From a legal perspective, this is a quite a challenge. A very favourable factor in that regard is undoubtedly the availability of important legal sources in the Dutch language. There are even examples of spontaneous harmonisation in the Netherlands. In such cases, the national legislature voluntarily seeks conformity with European law without the latter imposing any obligation to do so.

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12| Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, (OJ 2006 L 376, p. 36).

13| This definition reads as follows: ‘elke procedure die voor een dienstverrichter of afnemer de verplichting inhoudt bij een bevoegde instantie stappen te ondernemen ter verkrijging van een formele of stilzwijgende beslissing over de toegang tot of de uitoefening van een dienstenactiviteit’ (any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof).

14| Article 1 of the *Dienstenwet* defines *vergunningstelsel* as follows: ‘procedure die voor een dienstverrichter of afnemer de verplichting inhoudt bij een bevoegde instantie stappen te ondernemen ter verkrijging van een vergunning’ (procedure under which a provider or recipient is required to take steps in order to obtain from a competent authority an authorisation).

The best-known example in this regard is the Dutch Mededingingswet.<sup>15</sup> The substantive norms of this law are derived from Articles 101 and 102 TFEU and the EC Merger Regulation,<sup>16</sup> although Union law does not require this.<sup>17</sup> The fact that there is an official Dutch version of the Treaty on the Functioning of the European Union and the EC Merger Regulation has greatly facilitated this process as the accurate terms and concepts were already available in Dutch. The legislature has therefore been able to conform to certain key concepts of competition law, such as undertaking, agreement, dominant position and concentration. Certain terms even refer directly to the corresponding concepts in EU law: it is stipulated in fact that an undertaking and an agreement within the meaning of the Mededingingswet have the same meaning as the equivalent concepts in Article 101 TFEU. Consequently, the interpretation given in the case-law of the EU courts to terms such as agreement and undertaking, also automatically constitutes the interpretation given to the equivalent concepts in the Dutch Mededingingswet.<sup>18</sup>

#### Education in European Union law in Dutch

The increasing Europeanisation of law has led to education in European law acquiring a permanent place in the curriculum of law schools at Dutch universities, as indeed elsewhere. In addition, globalisation has put the internationalisation of legal education on the agenda. The question that has arisen in that regard is whether subjects in the field of EU law should be taught entirely in English. In my opinion, a nuanced approach should be adopted when answering that question. On the one hand, it is very important that lawyers are able to discuss important issues and questions with colleagues from other countries. On the other hand, their task is also to apply EU law in the national arena. Consequently, it is preferable for European law to be taught in both English and Dutch at universities in the Netherlands. In the first year, students can become acquainted with

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15| See Kamerstukken II, 24 707, N°3, p. 10.

16| Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1).

17| A number of enforcement matters in competition law are, however, subject to compulsory harmonisation. See Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (OJ 2019 L 11, p. 3).

18| For the different methods by which the Mededingingswet has sought to conform to European law, see Mok, M.R., *Kartelrecht I Nederland: de Mededingingswet*, Deventer, 2004, pp. 69-72.

EU law in their own language and can also relate this area of law to national law, which they will of course also encounter for the first time in this phase of their studies. At a later stage, students can become acquainted with EU law issues and topics in English. My experience with teaching at Radboud University in Nijmegen, where I teach European law myself, is that such multilingualism is enriching. In this way, students get a good insight into the multilingual dimension of EU law. It also becomes clear to them that the practice of EU law flourishes when attention is paid to the national legal framework. Even the students of the European Law School in Nijmegen are therefore taught the core components of Dutch law, alongside European and international law. As already mentioned, Dutch is a legal language because it is used in proceedings before the Dutch courts. It is of great importance that future specialists in European law have a good understanding of the national legal framework in which he or she is going to apply his or her specialism and of the language that is used in this framework. For example, it is important to know what constitutes a tort under Dutch law when considering whether a Dutch public body is liable for damage caused by an infringement of EU law on the basis of the *Francovich* case-law<sup>19</sup> of the Court of Justice of the European Union. Another example relates to the granting of a subsidy. If one seeks to challenge this grant on the grounds that it constitutes State aid contrary to EU law, it is important to establish whether this subsidy was granted in the form of a decision which is open to appeal before the Dutch administrative court.

In Nijmegen, multilingualism means paying attention not only to English and Dutch, but also to French. In the *European Law School* bachelor's programme, students can opt to take a specialist course in 'Legal Translation'. This specialisation aims to introduce students to the translation of legal texts from French into Dutch. Traditionally, French has played a central role in European law. As is well known, it is the working language at the Court of Justice of the European Union and at the General Court. Through the 'Legal Translation' specialisation, students become aware of the way in which European law is practised in the EU courts. Students receive lectures on translation and on important aspects of European law as well as concrete instructions on how to translate legal texts from French into Dutch. The lecturers involved have a wealth of practical experience. Koen Wolfs, head of the Dutch-language translation unit at the Court of Justice, also contributes to the course, both as a lecturer and as a source of inspiration. In my opinion, the addition

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19| See, inter alia, judgment of 19 November 1991, *Francovich and Others*, C-6/90 and C-9/90, [EU:C:1991:428](#), and judgment of 5 March 1996, *Brasserie du pêcheur and Factortame*, C-46/93 and C-48/93, [EU:C:1996:79](#).

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of French to the curriculum significantly enriches the programme of the *European Law School* in Nijmegen. The 'Legal Translation' specialisation highlights the transition that has to be made from the Union level to the national domain. Furthermore, the 'Legal Translation' specialisation gives students a taste of the translation profession. Those responsible for translating a judgment from French into Dutch, for example, make a contribution to the implementation of EU law in the national legal order that should not be underestimated. The European Union is based on multilingualism and translators therefore play a pivotal role.

In my opinion, the knowledge acquired can certainly be useful in all kinds of roles (besides that of translator). After all, students will have become familiar with the multilingualism of EU law. If, for example, they later find a job in the judiciary, knowledge of French may help them in the interpretation of certain judgments and provisions of EU law. It may also be the case that, in their role in the judiciary, they have to contribute to the formulation of questions to be referred for a preliminary ruling in a case involving questions of EU law. When formulating such questions, they could then take into account that those questions will have to be translated, *inter alia*, into French as well as all the other official languages of the EU. If they join a ministry as an official and are confronted with a problem of EU law, they can contribute to its resolution by consulting the relevant sources of law in French and, of course, in English or any other official EU language.

## **Conclusion**

The Dutch language is of great importance for the practice of European Union law. EU rules must be implemented in the national legal order and this implementation is therefore to a large extent dependent on national law. The official Dutch version of Union measures greatly facilitates the integration of EU law into the Dutch legal order and thus the effective implementation of those measures. This makes the Dutch language the connector between EU law and the national legal order in the Netherlands. Multilingualism is an important dimension of EU law. The availability of important sources of EU law in multiple languages brings the EU and its law based on the different legal traditions of the Member States closer both to ordinary citizens and to persons seeking justice.

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# The importance of multilingualism for the European university of the future

— Prof. Dr. Jan Wouters

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## Introduction

In this contribution, I would like to reflect on the importance of multilingualism for the European university of the future. This is a personal testimony of a professor who, throughout his career, has been inspired by European unification and by the rich cultural diversity of Europe. I have always been passionate about European Union law as a tool for facilitating integration, but I also see it as an ideal instrument of dialogue with the national and regional cultures and legal systems of the Member States, and also with international law, from which the European legal order originated.<sup>1</sup>

When I graduated from Antwerp University in July 1987, the Single European Act had only just entered into force. Many will not remember this, but this treaty signified a major relaunch of European unification, not only with a view to the ‘1992 project’ for the establishment of the internal market, but also for the European Political Co-operation (the precursor to the Common Foreign and Security Policy, the CFSP), European environmental policy, the expanding role of the European Parliament, and much more besides. My first publication in 1988 dealt with the liberalisation of the European movement of capital, which for many years had been the poor relation of the fundamental freedoms in the EEC Treaty. The Maastricht Treaty of 1992, in particular, represented a historic breakthrough in the unification of the European continent, bringing about both a significant deepening (with economic and monetary union acting as a ‘roof’ on the building of the customs union and the internal market) and a broadening (political union, with EU citizenship, the CFSP, cooperation in justice and internal affairs, etc.) of integration.

It was also the Maastricht Treaty that enriched the EC Treaty with a ‘culture chapter’. This is the origin of the beautiful formula which the Community – and later the Union – has to contribute ‘to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore’<sup>2</sup>: in short, unity in diversity! When writing a book about

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1 | Regrettably, there are certain points of tension between international law and EU law today. See an earlier contribution: J. Wouters, ‘The Tormented Relationship between International Law and EU Law’, in P.H.F. Bekker, R. Dolzer and M. Waibel (eds.), *Making Transnational Law Work in the Global Economy. Essays in Honour of Detlev Vagts*, Cambridge, Cambridge University Press, 2010, pp. 198-221.

2 | Now laid down in Article 167(1) of the Treaty on the Functioning of the European Union (TFEU).

the Maastricht Treaty<sup>3</sup> between 1994 and 1996, I used all the language versions of the Treaty that existed at the time. It made me very aware of the enormous power of legal multilingualism. And it only strengthened my admiration for EU translators: just try, for example, to translate the unruly definition of the principle of subsidiarity<sup>4</sup> uniformly into all of the official EU languages! My great respect for EU translators and interpreters dates back to my time as *référéndaire* at the Court of Justice between 1991 and 1994, when the translation services were feeling the strain of the sometimes voluminous draft Opinions (including the many footnotes) that we sent them with Advocate General Walter van Gerven.<sup>5</sup>

Since the end of 2017, I have also been strongly committed to the dynamics of 'European university alliances' and have helped lay the groundwork for one such alliance, *Una Europa*.<sup>6</sup> As part of that project, we have worked hard in recent years not only to build the foundations for the university of the future, in which multilingualism plays a central role, but also to establish a joint interdisciplinary bachelor's degree in European Studies, with multilingualism being one of the focal points. I would now like to elaborate on this.

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3 | See W. Devroe and J. Wouters, *De Europese Unie. Het Verdrag van Maastricht en zijn uitvoering: analyse en perspectieven*, Leuven, Peeters, 1996, awarded the Stibbe Prize.

4 | Now enshrined in Article 5(3) of the Treaty on European Union (TEU). In its original version, Article 3b of the Treaty establishing the European Community.

5 | On one occasion, the translation services protested, and an administrative meeting of the Court discussed a memorandum regarding the exuberant use of footnotes in the Opinions of certain Advocates General. Advocate General Walter van Gerven then circulated a note of his own, quoting from Peter Shaffer's play, *Amadeus*. It concerns Mozart's reply to the remark by Emperor Jozef II that his opera, *Die Entführung aus dem Serail*, had 'too many notes'. Mozart retorted: 'There are just as many notes, Majesty, as are required. Neither more nor less.'

6 | See <https://www.una-europa.eu/>.

## The European Universities Initiative and Una Europa

In his famous speech at the Sorbonne on 26 September 2017, French President Emmanuel Macron made a heartfelt appeal for European universities:

*'Je propose la création d'universités européennes qui seront un réseau d'universités de plusieurs pays d'Europe, mettant en place un parcours où chacun de leurs étudiants étudiera à l'étranger et suivra des cours dans deux langues au moins. Des universités européennes qui seront aussi des lieux d'innovation pédagogique, de recherche d'excellence. Nous devons nous fixer, d'ici à 2024, en construire au moins une vingtaine. Mais nous devons, dès la prochaine rentrée universitaire, structurer les premières, avec de véritables semestres européens et de véritables diplômes européens.'*<sup>7</sup>

The French President's proposal received support at the European summits in Gothenburg and Brussels in the autumn of 2017 and has become known as the 'European Universities Initiative'. Moreover, the conclusions of the European Council of 14 December 2017 state as an objective, immediately after the passage about European universities, 'enhancing the learning of languages, so that more young people will speak at least two European languages in addition to their mother tongue'.<sup>8</sup>

This initiative immediately fired our enthusiasm at KU Leuven. In the spring of 2018, we laid the foundations for a university alliance with meetings in Paris and Bologna, followed by in-depth discussions in Madrid and Berlin in the summer of that year. So was born Una Europa, now an alliance of nine prominent European universities: Freie Universität Berlin, Alma Mater Studiorum Università di Bologna, University of Edinburgh, Uniwersytet Jagielloński w Krakowie, Helsingin yliopisto/Helsingfors universitet, KU Leuven, Universidad Complutense de Madrid, Université Paris 1 Panthéon-Sorbonne and Universiteit Leiden.<sup>9</sup> The project's multilingual nature is immediately apparent from the names of the universities!

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7 | <https://www.elysee.fr/emmanuel-macron/2017/09/26/initiative-pour-l-europe-discours-d-emmanuel-macron-pour-une-europe-souveraine-unie-democratique>.

8 | <https://data.consilium.europa.eu/doc/document/ST-19-2017-REV-1/en/pdf>.

9 | Soon there will be a tenth and an eleventh partner, but at present I am bound by confidentiality on this matter.

Una Europa is not just another ‘consortium’ or ‘project’ between some European universities. Even the term ‘alliance’ does not do justice to its numerous dynamics. It is essentially about a unique, groundbreaking, ever closer commonality of purpose and integration of our work in a growing number of fields of research, education and social service: a true European university of the future. While we started with European studies, cultural heritage, sustainability, data science and artificial intelligence, fields such as health and future materials have been added in the meantime. We are no newcomers, either: most partner universities have hundreds of years – sometimes close to 1 000 years – of intellectual history under their belts, and together we teach around 450 000 students, not to mention digital learning groups (which number in the millions).

From the outset, Una Europa has resolutely opted for multilingualism; we use no fewer than nine languages in the partner institutions: German, English, Finnish, French, Italian, Dutch, Polish, Spanish and Swedish. It is worth reading the *Manifesto on the University of the Future* in which one is allowed to peer into Una Europa’s soul. This manifesto emphasises, among other things, that Una Europa ‘is not a place, but a body of knowledge, ideas, and values, evolving freely beyond borders, mediums and time’ and ‘a mirror of humanity in all its diversity, reflecting cultures and languages, conventions and disruptions’. <sup>10</sup> Multilingualism figures centrally among other core objectives, such as interdisciplinarity, inclusion, innovation, interactivity, impact and international openness.

Mindful of its commitment to multilingualism, Una Europa plans in the future to open up the language courses of all universities to each other’s students, create language tandems, <sup>11</sup> allow students to take courses in languages other than those of their home university via virtual mobility and the mobility of teaching staff, and create MOOCs <sup>12</sup> to encourage language learning at beginner level. I will address multilingualism in the new joint Bachelor of European Studies presently.

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10 | See <https://www.una-europa.eu/about>.

11 | Tandem language learning or conversation exchange is a method of language learning based on mutual language exchange between two persons who converse with each other in their respective (different) first language as the language that the other person wishes to learn.

12 | A MOOC, which stands for ‘massive open online course’, is a course designed with a view to mass participation, where the course material (which can include both written and audio-visual material) is delivered over the Internet, meaning that participants are not bound to a specific location.

Una Europa's vision is in line with the view of the Council of the EU, which on 22 May 2019 adopted a recommendation 'on a comprehensive approach to the teaching and learning of languages',<sup>13</sup> although that recommendation was mainly concerned with primary and secondary education and vocational training. Nevertheless, what the Council states about language awareness in schools could also be applied *mutatis mutandis* to university education:

'Language-awareness in schools could include awareness and understanding of the literacy and multilingual competences of all pupils, including competences in languages that are not taught in the school. Schools may distinguish between different levels of multilingual competence needed depending on context and purpose and corresponding to every learner's circumstances, needs, abilities and interests.'<sup>14</sup>

It is still somewhat surprising that, despite all the attention paid by European policymakers to the European Universities Initiative, there does not yet seem to be any policy document which addresses the issue of (the lack of) multilingualism at university level. It is true that, in its communication *Making the European Education Area a Reality by 2025* of 30 September 2020, the European Commission considers 'fostering language learning and multilingualism' to be part of the quality objective for the European Education Area; after all, 'being able to speak different languages is a condition for studying and working abroad, and fully discover Europe's cultural diversity. It enables learners and teachers to benefit from a genuine European learning space.'<sup>15</sup> However, the Commission is not developing any new proposals in the area, and essentially refers to the aforementioned 2019 Council recommendation, which is not aimed at university education.

Nor is the Erasmus+ 2022 call for proposals for European universities particularly specific in this respect.<sup>16</sup> While European universities are indeed asked to commit to the policy objectives of the European Education Area, including multilingualism, this call is no different from the initial call, in 2018, for proposals from European universities.

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13 | *Official Journal of the European Union*, 5 June 2019, C 189, p. 15.

14 | 16<sup>th</sup> recital in the preamble of the recommendation.

15 | European Commission, *Achieving the European Education Area by 2025*, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 30 September 2020, COM(2020) 625 final, p. 6.

16 | See <https://erasmus-plus.ec.europa.eu/nlnews/2022-erasmus-european-universities-call>.

The European Commission's vision of multilingualism therefore does not appear to have evolved significantly in recent years. For example, its communication *A European Strategy for Universities* of 18 January 2022 does not contain even a single reference to multilingualism or to specific initiatives or activities in this regard.<sup>17</sup>

## Joint Bachelor in European Studies

As of the 2022-2023 academic year, Una Europa universities offer a joint interdisciplinary 'Joint Bachelor of Arts in European Studies' (BAES).<sup>18</sup> To this end, they have undergone a demanding accreditation process, both via the so-called 'European Approach for Quality Assurance of Joint Programmes'<sup>19</sup> of the *Nederlands-Vlaamse Accreditatieorganisatie* (Accreditation Organisation of the Netherlands and Flanders (NVAO)) in 2021, and under various national procedures.

Our aim with the BAES is to educate students from Europe and the whole world about what 'Europe' stands for: its fundamental values, history, policies, institutions, economy, society, law, etc., but also its cultural identity and diversity. Multilingualism is explicitly included among the learning objectives of this new programme: at the end of the programme – which entails a three-year course totalling 180 ECTS under the European Credit Transfer and Accumulation System – students must be able to express themselves in at least one European language in addition to their first language and English so that they will be able to engage in the multilingual European reality. How do we intend to achieve this?

First and foremost, multilingualism is given a great deal of attention in the compulsory part of this bachelor's programme, the so-called *truncus communis*. This *truncus communis* is currently offered by four of the Una Europa universities (Bologna, Krakow, Leuven and Madrid). It is a powerful combination of, on the one hand, introductory courses in core disciplines of the human and social sciences, all taught from a European perspective

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17 | European Commission, *A European Strategy for Universities*, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 18 January 2022, COM(2022) 16 final.

18 | For further information, see <https://www.una-europa.eu/stories/introducing-the-una-europa-joint-bachelor-in-european-studies>, <https://baes.una-europa.eu/overview> and [www.jointbaes.eu](http://www.jointbaes.eu).

19 | [https://www.eqar.eu/assets/uploads/2018/04/02\\_European\\_Approach\\_QA\\_of\\_Joint\\_Programmes\\_v1\\_0.pdf](https://www.eqar.eu/assets/uploads/2018/04/02_European_Approach_QA_of_Joint_Programmes_v1_0.pdf).

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(economics, philosophy, history, political science, law, with further in-depth subjects on the European economy, international relations and European and international law), and, on the other hand, highly multidisciplinary subjects, including, in particular, two large modules on European cultures and societies and European integration, respectively. Considerable attention is also paid to the teaching of research skills and methodologies as, towards the end of their studies, students are required to draft a multidisciplinary bachelor's thesis. As part of the *truncus communis*, a joint language course is offered to ensure that students can express themselves in at least one European language in addition to their first language and English, and to enhance their ability to work and conduct research in a multilingual context.

But even beyond the *truncus communis*, multilingualism remains central, for this is followed by the phase of intra-European mobility. From the second academic year onwards, students will have to choose to continue studying at one, and possibly even two, other Una Europa universities. This, too, will benefit their knowledge of European languages and cultures, since all of these partner universities also offer subjects in the languages of these institutions.

Finally, as part of the specialisation required in years 2 and 3 of the BAES – students can choose from around 20 majors and 30 minors – with one of the options on offer being 'languages and culture'.

### **Some critical reflections**

Despite the extremely hard work on the future strategy of Una Europa and, in particular, on the planning and operationalisation of the BAES – one has to bear in mind that this programme had to be compatible with the national and/or regional legislation of all the Una Europa countries, which presented a huge challenge – it is important to keep a critical eye on the results achieved and the further planning required, including from the perspective of multilingualism.

Make no mistake: even after the departure of the United Kingdom from the European Union, English is the *lingua franca* for universities in Europe. It is the working language within Una Europa and its bodies. This is, of course, a choice made for reasons of efficiency, though it must be appreciated that not everyone's English is equally strong, and that, for many members of the university community within Una Europa, thinking, speaking and writing in English is a daunting task. However, a European university alliance does not have the resources to work continuously with interpreters and translators.

The dominance of English naturally also leaves its mark on the course offering. In order to offer education to as many students as possible, most of the courses developed by Una Europa – be it the BAES, doctoral programmes or MOOCs – are predominantly in English. To be attractive to future student generations wishing to take the BAES and other courses, from wherever in Europe or the world they may come, there will undoubtedly have to be further significant investment in the English-language course offerings of Una Europa universities.

We must remain vigilant in this regard to ensure that education in our own language and, more generally, our rich cultural diversity, does not suffer as a result. It would thus be ill advised to ‘anglicise’ subjects purely for the purpose of generating more interesting joint courses, for example, in the context of a European university alliance.

It would seem obvious, but in practice is often not, that students who study for at least one semester, or even for two or three semesters, at a particular university (which will be the case with the *truncus communis* of the BAES), would acquaint themselves with the first language of that university and its surroundings at least at a rudimentary level. However, my personal experience with Erasmus exchange students in Leuven shows that, in Flanders at least, this is hardly ever the case. It seems to me that we must be willing to look at this situation critically and should try to look for positive incentives and instruments to teach foreign students some basic concepts in Dutch. The same applies to every other Una Europa university that offers a *truncus communis* or mobility in the later years of the BAES. This state of affairs has implications not only for the curriculum, but also for the cultural offerings and social life at the host university and the world around it. A student community, even one that has a particularly international composition, must not become a separate, autonomous entity. This could lead to a dangerous isolation and to highly artificially separated living environments, where often hardly any interaction occurs with local students and their surroundings. Local communities should be able to expect that foreign students will make an effort to have an elementary conversation with them in the first language of these communities. If we fail to achieve this, ‘Europe’ is in danger of only ever remaining an elite project. We will then have failed to lay the foundations for a sustainable and cohesive Europe, both internally and in the wider world.

## As Many Worlds as Languages

### — Katarzyna Kłosińska

**Katarzyna Kłosińska is a Professor at the University of Warsaw. As a linguist, she specialises in modern Polish. Since 2019 she has been President of the Council for the Polish Language at the Presidium of the Polish Academy of Sciences (from 1999 to 2019 she served as the Council's Director of Science). Apart from her academic activities, she promotes knowledge about language and is known to the wider public for the regular radio programmes she has hosted since 2004. Since 2018 she has directed the work of the Language Observatory of the University of Warsaw, where a dictionary of Polish neologisms is being developed.**

Language is our world. The world that surrounds us. The world that is within us – the world of our thoughts, experiences and ideas. It is also the world that exists between us – the world of our relationships with others, and the world that emerges from our conversations and from our interactions with written text.

Language represents what is in the external world: objects, phenomena, situations, events and so on. It isolates individual elements of reality, names them, describes and classifies them, assigns values to them, and identifies the relationships between them. In this way, language organises our reality; it allows us to navigate and understand it: we observe a world in which something always resembles something else, and we discover that resemblance through words and grammatical structures. For example, we are able to imagine how a self-replicating harmful computer program works because it has been given the same name as an infectious agent that attacks our bodies: a virus.

Native speakers are generally unaware of the extent to which their thinking is enmeshed in language. Before using a plural verb, a Polish speaker must consider whether it will be paired (even if only implicitly) with a noun that denotes men or with one that denotes women, animals, children or inanimate objects. In the first case, the speaker will use the masculine-animate form, and in the second case, the non-masculine-animate form. This grammatical category divides the world into two groups: men and not-men (which is why Polish women sometimes consider their native language to be misogynistic, but such a simple interpretation cannot in fact be accepted). When talking about more than one thing, a Slovenian speaker must specify whether ‘more than one’ is two or more than two. This is because the Slovenian language, in addition to the singular and plural, which are known to other languages, also has a dual number (which was also true of Polish until the 16<sup>th</sup> century) – nouns that refer to exactly two objects take a different form from those that refer to a single object, and from those that refer to three, four, five or more objects. When speaking of an action, a Hungarian speaker must decide whether the object of that action is known to his or her interlocutor or not. Depending on the answer, the same verb will be conjugated according to one of two paradigms – subjective or objective. For Polish speakers, it is irrelevant whether the interlocutor has already heard about the thing or person in question except, perhaps, when it comes to combining the relevant noun with the numeral two – if we know who or what we are talking about, we will say *obydwa* (both) instead of *dwa* (two). It is, however, the first thought that pops into the head of a German, French or English speaker (probably so quickly that it is not even noticed), as he or she needs to choose the right (definite or indefinite) article.

Each language imposes its own conceptual framework on reality, which we generally only discover when we are learning a foreign language and have to 'switch' to thinking in it. For instance, a Polish speaker who wants to mention a past action in English has to 'imagine', in each case, whether the effects of that action are still being felt or not (and, depending on the answer, will choose between the present perfect and the past simple). Just as a Polish speaker will find it difficult (not grammatically, but mentally) to distinguish the phrases *I bought (something) and I have bought (something)*, an English speaker will find it difficult to understand (and translate into his or her own language) the Polish sentence *Pisałam wczoraj artykuł, ale go nie napisałam* (I was writing an article yesterday, but I didn't finish writing it), which uses two different Polish verbs (the imperfective *pisać* and the perfective *napisać*), both of which correspond to the English verb to write and crucially, this problem will crop up each time a British person, American or user of any other language which does not differentiate between perfective and imperfective verbs wishes to apply in Polish an idea about temporal relations formed under the influence of his or her own language and its tense system.

Concepts are, of course, represented by words. As we know, words belonging to different languages and generally considered to be equivalents may differ in their range of usage. The English *to go* or the French *aller*, for instance, correspond to two Polish verbs of motion: *iść* (to move on foot) and *jechać* (to move using a means of transport). Thus, Polish distinguishes walking from travelling by some means of transport, but does not differentiate between the latter. Meanwhile, in English, the Polish verbs *iść* and *jechać* are the same verb (*to go*); however, *to go* does not correspond to every Polish instance of *jechać*, since with bikes or horses a different verb is used in English (*to ride*). Thus, the line that divides verbs of motion is in a completely different place in English compared to Polish. The different ways in which languages divide up the world around us are particularly pronounced when it comes to mental concepts. For example, Polish, unlike some other languages, distinguishes between two types of discomfort associated with not having what another person has – if this feeling is not accompanied by negative thoughts directed towards that person, then it is just *zazdrość*. However, if we also wish that person ill, then it is *zawiść*. Hungarian has two adjectives denoting the colour red: *piros* and *vörös*, and the way these are used is not determined by any objectively identifiable feature (such as hue), but only by the associations which the colour red may evoke – sometimes it is an 'emotionally neutral' colour (*piros*), and at other times it is a red that evokes strong emotions (*vörös*).

As we acquire a foreign language, we become ‘immersed’ in the world of the community that uses it. Language accumulates the experiences of successive generations of its users, and thus serves as a symbolic guide to their culture. The names of holidays, rituals, customs and national dishes (Polish *pierogi*, *bigos* and *gołąbki*, Czech *knedlík* and Slovak *knedľa*, Italian *spaghetti* and Hungarian *pörkölt*), which we usually learn in the early stages of language acquisition, are a type of passport to another spiritual culture and tradition. The phraseology of any language reflects how its users lived, what they did and what values were important to them. It is no wonder, for instance, that Polish has many more expressions and phrases relating to farming culture than those relating to bourgeois culture, since for centuries Poland was essentially a rural society. There are not many references to sailing in Polish, but quite a few to horse riding. This is because, for the inhabitants of a country with limited access to the sea (compared to, say, France, Spain or Greece), sailing was not an important part of daily life, while horse riding was. On the basis of phraseology, it is possible to reconstruct the landscape typical of the place where the users of a given language live or used to live – such Polish expressions as *sprać kogoś na kwaśne jabłko* (to beat someone to a pulp, literally: to beat someone into a sour apple), *obiecywać gruszki na wierzbie* (to make unrealistic promises, literally: to promise pears on a willow), *wpuścić kogoś w maliny* (to trick someone into a disadvantageous situation, literally: to lead someone into the raspberry bushes), *dziewczyna jak malina* (a beautiful girl, literally: a girl like a raspberry fruit) or *wpaść jak śliwka w kompot* (to find oneself in a difficult situation from which it is hard to extricate oneself, literally: to fall like a plum into compote) clearly tell us that the Polish countryside is strewn with apple, pear and plum trees rather than olive trees and date palms.

Finally, language is a guide to the world of values, and this is very clearly seen in the proverbs that have for centuries perpetuated prevailing moral norms. So, for instance, Polish proverbs teach us about the need to be loyal to loved ones (*zły to ptak, co własne kła gniazdo*, literally: it is a bad bird that sullies its own nest) or obedient to parents (*kto nie słucha ojca, matki, będzie słuchał psiej skóry*, literally: he who does not listen to his father and mother will listen to a dog’s hide). In Polish, but this is probably true of other languages as well, many words, idioms and proverbs reflect an image of humans as morally impeccable beings: *to jest człowiek przez duże C* (this is a valuable, noble person, literally: this is a person spelt with a capital P), *zrobić z kogoś człowieka* (to make of someone a decent person, literally: to make a human being of someone), *zachowuj się jak człowiek* (act according to accepted norms, literally: behave like a human being), and so on. Meanwhile, animals are denied morality by having unethical behaviour ascribed to them: *świnia* (a person who behaves unethically, literally: a swine), *bydlak* (a vile person,

literally: a beast), *małpia złośliwość* (extremely malicious behaviour, which is at the same time calculating and devious, literally: monkey mischief), *zejść na psy* (to degrade oneself, literally: to go to the dogs), *łgać jak pies* (to lie blatantly, literally: to lie like a dog), *żyć na kocią łapę* (to cohabit outside of wedlock, to live in sin, literally: to live on a cat's paw), and so on. These examples (and, for obvious reasons, I cite only a few here) provide us with the valuable insight that human beings see themselves as the centre of their world (it is no coincidence that colloquial language is said to be anthropocentric) and apply 'human' categories to the whole of the reality which surrounds them, even those parts of it which are in fact unconnected to such categories, because, after all, a pig or a dog cannot be considered unethical since animals do not act according to human norms. It is we who interpret their behaviour using our human measures – in this case moral ones (which, by the way, often have their roots in the religious texts of European culture, namely the Bible). Human beings are a point of reference for themselves also when referring to distances, which are construed in both concrete and abstract terms – colloquial language has such units of measurement as a step (*mieszkam dwa kroki stąd*, literally: *I live two steps away from here*), a hand (*mam to pod ręką*, literally: *I have this in hand*), a nose (*autobus uciekł mi sprzed nosa*, literally: *the bus vanished from under my nose*) or a hair (*było o włos od tragedii*, literally: *it was a hair's breadth away from tragedy*).

I stated at the outset that language is the world around us and the world inside us – the world of objects and realities as well as the world of values, beliefs and experiences. For native speakers, it is a way of expressing the experiences of successive generations (which they generally do not realise), and even if their views on various issues have changed over the centuries, the long-established ways of talking about them often remain (for instance, we still say that something has gone to the dogs, although we have long since ceased to see dogs as unclean animals). For outsiders who are learning a foreign language, it provides the key to another nation's spiritual and material culture.

Language is also the world that exists between us. Obviously, it is an essential tool for communication, being used to express thoughts and feelings as well as to establish and maintain relationships. But the idea that language creates the world of interpersonal relationships may also be understood in another way, namely that it shapes our idea of the social order and perpetuates that idea, as a result of which we each act out the role assigned to us by language. To give an example: for centuries, people who were perceived as mentally disturbed were described using phrases with comic undertones: *mieć kuku na muniu* (to be bonkers), *dostać fiksum-dyrdum* (to be off one's rocker), *być szurniętym* (to be batty), *mieć szmery pod czaszką* (to be nutty as a fruitcake). Those phrases imposed a way of thinking about such individuals as weird misfits, which was usually due

*to the fear they instilled in others. It thus became established that anyone who deviated from the norm (however understood) was seen as ridiculous and, at best, deserving of pity. Nowadays, many people and institutions engage in campaigns to try to change this social order by encouraging the abandonment (at least in the public domain) of the words that once supported it, and by suggesting that non-neurotypicality should be perceived as one of the many naturally occurring differences in the world. This is not even about not calling people living with mental ill health 'crazy', 'cuckoo' or 'loony' (journalists and politicians have long since learned that lesson), but about, for instance, replacing nouns that 'concentrate' a given trait, making it a person's main characteristic, with phrases in which the trait is 'removed further' from the noun. Indeed, this applies not only to terms used to describe people with mental disorders, but also to other groups which have, in a sense, suffered systemic discrimination through language. The aim is to present being outside the norm as an additional trait, and not as a defining characteristic; as a result, there is a shift away from using words such as 'schizophrenic', 'autistic', 'homosexual', 'homeless', 'crippled' ('disabled'), 'obese', 'anorexic' or 'lefty' towards terms such as 'a person with schizophrenia', 'a person on the autism spectrum', 'a non-heterosexual person', 'a person affected by homelessness', 'a person with a disability', 'a person with obesity', 'a person with anorexia' or 'a left-handed person'. In this way, we are slowly moving away from a world in which a person's status is determined by whether they conform to common (read: majority) notions of 'normality' to a world in which everyone is first and foremost a human being and may additionally be characterised by certain traits (e.g. disability, homelessness, left-handedness); a world in which the essence of humanity is not reduced to sexual orientation, intellectual disposition or outward appearance. No amount of institutional efforts aimed at improving the situation of people who are 'different' and who have been discriminated against for decades would help if these actions – usually undertaken in the legislative context – were not accompanied by a change in linguistic habits, since it is primarily language that shapes interpersonal relations.*

It is precisely for this reason that efforts have been made in recent years to make language more 'aware' of the existence of women. Polish is increasingly using feminine forms for functions and professions – *dyrektorka* (female director), *architektka* (female architect), *profesorka* (female professor), thus changing the established habit of referring to prestigious positions using masculine forms, even if they are held by women. We have long since moved away from referring to women using the positions occupied by their husbands (*dyrektorkowa* – the director's wife, *doktorowa* – the doctor's wife), and nowadays a woman would rarely be introduced as, for instance, *profesorowa*

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(the professor's wife). This change has happened spontaneously, in line with broader social changes. Most politicians and journalists (i.e. the people who largely shape our language habits) no longer use (at least publicly) contemptuous expressions and phrases that perpetuate the image of women as less intelligent than men on one hand (*babska logika*, literally: female logic, to denote a lack of logic, or *babskie gadanie*, literally: female chatter, to dismiss particular speech as irrelevant and worthless) and, on the other hand, expressions and phrases that put men in a privileged position (*męska decyzja*, literally: a manly decision, to praise the right decision, or *męska rozmowa*, literally: a manly conversation, to describe a conversation that requires courage).

Non-binary people are also demanding their linguistic rights, correctly claiming that Polish, just like many other languages, does not recognise them. Neither is surprising. Language does not reflect non-binary gender because it perpetuates a vision of the world that stems not from observations made by specialists, but rather from those made in our everyday lives and using the tools available to ordinary people, namely our senses. According to this point of view, a person is either male or female, and people with different gender identities are simply overlooked. Not surprisingly, language does not see them either. However, it should also come as no surprise that this group is entitled to linguistic self-determination. Non-binary gender is starting to emerge in Polish. For the time being, this manifests itself mainly in the use of first names that do not indicate gender (this is a major novelty, since Polish first names have always enabled the bearer's gender to be identified). There have also been attempts, some more successful than others, to construct new grammatical forms, but we should not expect much progress here because grammar is much slower to change than vocabulary. Moreover, it is not susceptible to top-down regulation.

As many worlds as languages – the title of this article can be understood in two ways. First, by learning a new language, we are taking a fascinating journey into a new world. Second, by choosing how we speak (within a single language) about certain phenomena, especially people, we choose the world we live in: contemptuous language leads to a contemptuous world; if we wish our world to be one of respect, our language must follow suit.

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## Multilingualism: the testimony of an academic and judge

— **Ana Maria Guerra Martins**

**Judge at the European Court of Human Rights since 1 April 2020. Judge at the Portuguese Constitutional Court, 2007 to 2016. Professor at the Faculty of Law, University of Lisbon. Visiting researcher at the Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany, 1997 to 1999. Professor of International Human Rights Law, 1999 to 2020. Visiting professor, Jean Monnet Faculty of Law, University of Paris XI, 2004. Visiting professor, Eduardo Mondlane University, Maputo, Mozambique, 2004 to 2005. Member of the European Network of Legal Experts in Gender Equality and Non Discrimination, European Commission, 2016 to 2020. Visiting professor at Iredies (Institut de recherche en droit international et européen de la Sorbonne), École de Droit, University of Paris I Panthéon-Sorbonne, 2019.**

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Writing about multilingualism is no easy task, particularly for a person, such as myself, who is not a linguist by profession. I therefore thought that the most genuine way of expressing my point of view on the subject would be to recount my own experience of learning and using the language – or, more accurately, languages – which I use in my work.

I should, however, begin by establishing my starting point. Whilst it is true that multilingualism means the ability of a person, or a people, to express themselves in a number of languages, the fact remains that language is the expression of a people's culture; thus, every time a language disappears or gradually stops being spoken, we are all left culturally poorer for it.

Having been born in a country living under a dictatorship which channelled most of its financial resources to a colonial war effort at a time when the rest of the world had already accepted the principle of self-determination and had, accordingly, decolonised, it is logical to believe that the growing poverty and political isolation at that time did not help to promote language learning.

At secondary school level – to which only a minority of children had access – Portuguese language and literature were studied, as permitted by the regime, with foreign languages relegated to a very distant second place. Moreover, the task of teaching foreign languages teaching was entrusted to teachers who had most often not even visited the countries where those languages were spoken. Predictably, the outcome was far from positive.

It should be borne in mind, however, that the political situation, the colonial war and the widespread poverty in Portugal under the dictatorship pushed millions of Portuguese people to emigrate to countries such as France, Switzerland, Luxembourg and Germany, among others, in search of the freedom that they did not have in Portugal, a better life in economic and social terms, or to escape the colonial war. In all those cases, Portuguese people had no choice but learn the languages of the countries in which they settled, often without any learning support, which, in the majority of cases, led to poor levels of proficiency in those languages.

In the aftermath of the overthrow of the dictatorship on 25 April 1974, the construction of a democratic system demanded a great deal of energy and effort on the part of all sectors of society, and language learning was, understandably, not a priority for the State.

Portugal opening up to the world after 25 April 1974 – which saw Portugal's accession to a number of international organisations such as, for example, the Council of Europe in 1976 and, above all, the then European Communities in 1986 – gave new impetus

to foreign language learning. The free movement of persons afforded by European integration meant that the number of Portuguese citizens travelling abroad to work, study or simply as tourists grew whilst, in turn, contributing to an increase in the number of foreigners entering Portugal. This in turn gave rise to a fresh need for the Portuguese to communicate in other languages, both at home and abroad.

*Many of us, on account of our limited knowledge of foreign languages acquired at secondary school level, attended language schools – in my own case, the Alliance Française, the British Institute and the Goethe Institut – in order to hone our skills in that area. This would prove to be particularly useful in the future.*

As a researcher in international and European Union law, the study of foreign legal literature and case-law has been of tremendous importance in my professional life, as have contacts with academics in other countries. Spoken and written communication in English, French and German has thus been essential to achieving my academic objectives. I prepared my doctoral thesis in Germany, where I spent two and a half years as a visiting researcher at the Max Planck *Institut für ausländisches öffentliches Recht und Völkerrecht* in Heidelberg, a completely international environment. There, I had access not only to one of the best European public law libraries but also to weekly debates on the major issues of the day in the field of public law at a global level, which contributed to the gradual construction of a cosmopolitan view of law which I retain to this day. At that time, I also met researchers from around the world who, like me, were just starting their careers and who, over time, have held prominent posts at national and international level. The network of contacts I created then enabled me to participate in international working groups, which I continue to do today.

Naturally, my prior knowledge of languages smoothed my path into the different international environments in which I have participated in my professional life.

It comes as no surprise that, in the globalised world that we live in today, knowledge of foreign languages is essential; I have tried to instil this in my students.

It should, however, be borne in mind that proficiency in a foreign language, to however high a degree, rarely attains a level on a par with that which one has in one's mother tongue.

As a judge at the European Court of Human Rights, I am faced with that problem on a daily basis. Given that the Court's only official languages are French and English and legal terminology is very precise, colleagues from States where one of the two official

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languages are spoken naturally find themselves at an advantage compared with those from States where other languages are spoken.

Thus, in international forums, everyone should ideally be able to express themselves in their own language. However, we know that this is untenable economically, particularly where there are a large number of States and languages, as occurs, for example, in the context of the United Nations. In these situations, acceptance of a limited number of official languages is imperative.

Accordingly, where the number of States is small, it is preferable that everyone should be able to express themselves in their own language; to do otherwise would be to accept the subordination of some languages to others. If, as has been said, language is the expression of a people's culture, acceptance of the supremacy of one or more languages over others implies acceptance that cultures can be organised into a hierarchy, which is contrary to the most basic principles of international law. On the other hand, treating certain languages differently involves placing individuals who speak official languages at an advantage or disadvantage compared with others. It should therefore be stressed that multilingualism must not exclude the Portuguese language, which is the fifth most widely spoken language in the world.

In short, it is essential to express oneself in Portuguese in international forums where Portuguese is an official language, such as the European Union.

Having the option of speaking one's own language contributes not only to the affirmation of equality between all States, but also to the affirmation of equality between all individuals since, where a citizen of a given State does not have access to documents in his or her own language, that citizen is naturally at a disadvantage compared with other citizens of States who do have access to documents in their mother tongue.

In practice, through its successive expansions, we have seen a growing trend of 'Anglicisation' of the European Union as, although the final and most important documents - such as regulations and directives - are translated into every language, the preparatory and non-binding documents are frequently available in English alone.

The consequence of that situation is that citizens are even more disengaged from European affairs. However, if the aim pursued is one of greater citizen participation in the European Union, investment in languages must be regarded as a means of ensuring that participation.

To conclude, I would say that – like everything in life – balance must be struck between multilingualism, on the one hand, and the preservation and protection of different languages, on the other.

# Interpretare humanum est

## — Radu Paraschivescu

Radu Paraschivescu (born in Bucharest in 1960) is a writer and translator. He has written 30 books and has translated around 120. He is the author of novels such as *Fluturele negru* (*The Black Butterfly*), *Cu inima smulsă din piept* (*With the Heart Torn out of the Chest*), *Acul de aur și ochii Glorianei* (*The Golden Needle and the Eyes of Gloriana*) and *Astăzi este mâinele de care te-ai temut ieri* (*Today is the Tomorrow You Feared Yesterday*), short works of prose such as *Bazar bizar* (*Bizarre bazaar*), *Aștept să crăpi* (*I'm Waiting For You to Crack*) and *Omul care mută norii* (*The Man Who Moves Clouds*), and books analysing Romanian customs such as *Ghidul nesimțitului* (*Fools: A Guide*), *Două măhuri stau de vorbă* (*Two Brooms are Gossiping*) and *În lume nu-s mai multe Români* (*There aren't Many Romanians in the World*) [Translator's note: there are no official English translations of these books or their titles]. He has translated authors such as Julian Barnes, Salman Rushdie, Jonathan Coe, Martin Amis, Kazuo Ishiguro, Stephen Fry, William Burroughs and John Steinbeck. He is a regular contributor on the Digi FM and Rock FM radio stations, as well as the Digi Sport television channel.

When the Romanian version of *The Greek Interpreter* (*Interpretul grec*) was first published, I was at the end of what I believe could be described as a career that would have been almost inconceivable under Communism. *The Greek Interpreter* is a novel by Max Davidson which tells the story of a conference interpreter sweating it out in a claustrophobic booth, translating from one language to another. The protagonist, Stavros de Battista, is a hotchpotch of identities: half-German, half-Greek, with an Italian stepfather and an Irish spouse living in Switzerland. A natural multilinguist, you might say. With that kind of family tree, how could our hero help becoming someone who would break through language barriers to connect ideas? The novel was published in Romania by Humanitas in 2005, as part of a now-forgotten series called *Râsul lumii* (*The Laughing Stock*). I worked on the series after almost 15 years during which I too had been an interpreter – sometimes, but not always, a conference interpreter. The Romanian translation was provided by Cornelia Bucur, a former conference interpreter and my former booth partner in Prague, Sibiu, Bușteni and Timișoara. Although ‘the earth is long’,<sup>1</sup> it is still a small world.

Dragi colegi. *Dear colleagues. Chers collègues.*

This is how it all starts.

These are the words that kick off the adventure: an adventure in which you, the interpreter, are the equivalent of a stuntman in a film. No one is asking you to jump off a burning building or climb onto a moving train, like stunt doubles do in action scenes. The very word ‘action’ seems a comically exaggerated description of what you are required to do. A Scottish comedian once said that interpreting and chess are two of the main causes of haemorrhoids – and he was right. In your booth-based adventure, you are required to sit on a chair, put on a pair of headphones and remain glued to the microphone. You have certain rights which are enshrined in an unwritten constitution: the right to have a dry mouth due to nerves; the right to drink water in such a way that attendees can’t hear you through their headphones; the right to fan yourself if it’s hot (which it usually is); the right to hold it in when you hear the call of nature. Not only that, but you have a giant sword of Damocles hanging over your head. In films, when police catch the bad guy, the screenplay requires them to come out with the cliché, ‘Anything you say may be used against you’. It’s like that at a conference too. The interpreter is often the

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1| Translator’s note: this is a reference to ‘e lung pământul’, which is the opening line of a well-known Romanian poem by George Coșbuc.

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scapegoat when speakers make a faux pas. When speakers see the sceptical, astonished reaction of the audience, to avoid a diplomatic incident they'll simply shrug and indicate the booth: 'I didn't say that; that idiot in the booth didn't translate it properly.' And although you know you said what you were supposed to say, without toning it down or tinkering with it, here you are in the position of the bad guy in the film: what you said can be used against you. When a football team does badly, the coach is sacrificed; when a conference risks turning into a drama, it's the interpreter who is sacrificed. The cast of *The Expendables* doesn't just include Stallone, Lundgren, Statham and Jet Li: any interpreter can have a starring role if he or she unwittingly finds himself or herself in the wrong place at the wrong time.

We can argue the finer points of the significance and relevance of multilingualism; we can stress how necessary it is and illustrate its advantages. But given the temperature of the event and the booth, anyone who has ever donned headphones knows that it all comes down to the here and now. Conference interpreting is a weight loss treatment that no nutritionist would recommend. Why? Because it wouldn't occur to nutritionists that at the end of a day in the booth, perhaps with a distracted colleague and disoriented speakers, an interpreter might be a few kilograms lighter than he or she was at the beginning. That's even assuming you – whenever you actually get to *have* lunch – manage to have a decent lunch. (Attendees are known to want to discuss the plenary topics during the lunch break, so they turn to an interpreter, who sits there with a meatball skewered on the end of his or her fork, waiting for the right moment to put it in his or her mouth and chew it hurriedly while the attendee drinks some water, orders another dessert or answers his or her mobile).

Joking aside, conference interpreting really takes it out of you: you go into the orange booth and come out as juice and peel. You weigh 75 kilograms (kg) when you go in, and 73.5 kg when you come out. Not even a sauna is that effective. Moreover, in a sauna you just lie down and sweat, whereas here the cogs in your brain are whirring as fast as a high-speed train. A split-second lapse of attention can compromise more than the meaning of a sentence. In any event, a sneeze completely ruins the *feng shui* of the statement. Admittedly, interpreters swap places every 20 minutes, but even here there can be hidden dangers. For example, there are interpreters who have no problem speaking to an audience of 200 people, but feel self-conscious in front of their booth partner. This is because, unlike the attendees, your colleague can feel the tension in your body, smell your sweat, and see your tics, involuntary hand movements and shiny forehead. This leads to twitchiness. This leads to fear of making a mistake. This leads – of course – to error. It's not as though you can just say to your colleague,

'please leave and come back in 20 minutes'. That would be against the rules, and you might not be invited back.

Multilingualism, as represented by, inter alia, conference interpreting, is more than a courtesy and a symbol of equal opportunities. Yes, Malta and Germany deserve a level playing field, but there's more to it than that. There was a time – nowadays regarded as the Jurassic period for conferences – when everything took place in English. If you spoke the language, you attended in person. If you didn't speak the language, you sent someone who did. We saw the same thing in Romania in the early 1990s. The country was full of foreign lecturers who had come to talk about privatisation, book publishing, relations between trade unions and employers, occupational medicine, the fight against drug trafficking and a thousand other things. Everything was in English, including input from Romanian students. Everything worked well until one day, one gentleman, caught up in the moment, said, 'I want to undress you', instead of '*I want to address you, before a predominantly female audience which included some particularly shapely women. The reactions were, of course, mixed.*' The guest of honour – the keynote speaker, as it were – tried to come to the aid of the gentleman concerned by saying that, while going down to breakfast in the hotel where he was staying, he had seen the following notice for foreign guests: '*Take a tour of Bucharest by carriage. We guarantee no miscarriages.*' Everyone was amused, but the organisers decided that things couldn't go on like that and they needed interpreters.

Aside from the mysteries of the source language and target language, the rigid protocol of the meetings and the formal, labyrinthine style of some conference attendees, the interpreter just needs to remember one thing: the delegate who puts on headphones hears no other voice but *his or her* voice – the voice of the interpreter. This means that the interpreter must be not only accurate, but also consistent. The message that reaches the attendees must be logical and true to the original. You can't just offer phrases, beginnings or endings of sentences. The sentence must be expressed in its entirety. It sounds simple, but I can assure you all it is anything but. The interpreter might be unlucky enough to have a rambling, verbose speaker who doesn't bother to stick to the written speech, a copy of which has also made its way to the interpreter. In addition, some speakers are fans of wordplay, which requires the interpreter not only to pay attention but also to find inspiration – which does not always appear on command. The English, from whom Europe has since made a sort of escape, have a reputation for being peddlers of puns. One of them really scraped the bottom of the barrel of rude jokes and, during a conference, in a setting which was far too solemn

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for the risqué question he was about to ask, came out with: *'What happened when Jesus went to Mount Olive? Popeye got pissed'*.

*So, now we truly see the interpreters.*

Having seen them, we pity them. And, having pitied them, we admire them. They deserve it, because they are what we call human connectors – people who connect ideas, cultures, trends and influences. People who perform a highly complicated shuttle (and I say this as a former commuter in a hostile environment) between two different languages and two different types of structure. People who have extremely agile minds and communication skills. People who, instead of delivering a lacklustre message, give it authenticity through the weight of their conviction, thereby also doing the work of an actor, albeit one who is often unseen.

Because after all, an interpreter *is* an actor. He or she is given a role that he or she must perform without having had much opportunity to rehearse. Today's role is to do with *rolling assets*. *Tomorrow it will be all about mixed feeds*. *The day after tomorrow, it will be the turn of shop stewards*. An interpreter must put everything into the role, without holding back. An interpreter who holds back is not an interpreter. Likewise, an interpreter who hasn't almost swallowed the microphone at some point is a rare species indeed.

And the interpreter is also this: an individual who, at times, receives no thanks. Only those who have experienced this know how much it means to get a kind word from the conference organisers and from the speakers. It's not about massaging your ego; it's about confirming your role as a connector. Just as the absence or presence of a connector can create or resolve an issue, so the absence or presence of the interpreter can maintain or resolve an impasse. Perhaps this is one of the advantages of multilingualism: a speaker expresses himself or herself in his or her own language, confident in the knowledge that he or she can draw on his or her native customs. He or she employs nuance, style and metaphor to achieve this. And he or she knows that somewhere behind him or her, on the other side of a glass panel, is the thrum of an attentive (and sweaty!) individual preparing to cast the spell – which for many would be impossible – whereby the same idea is rendered with the same nuance and style in another language.

This is what multilingualism looks like in real life. Yet even in literature things aren't that different, as the following extract shows:

'The debate proper started twenty minutes later. A statesman-like compromise had been agreed through the good offices of Monsignor de Ste Croix, the chubby-cheeked papal

nuncio in Singapore who was attending the conference as an observer. The Assembly *would* break for lunch, but for one hour instead of the normal three; to make up for the time lost, speaking time would be cut from eight minutes a delegate to seven and a half. Everyone applauded the ingenuity of the arrangements – except for the interpreters, who groaned in protest. They knew what was coming. Delegates wouldn't actually deliver shorter speeches: they would deliver the same speeches at a faster speed. It recalled Strasbourg in '86, when a Spanish-speaking Turk had delivered a twenty-minute speech on Cyprus in five minutes flat and reduced the finest linguists in Europe to gibbering impotence.' (Max Davidson, *The Greek Interpreter*).<sup>2</sup>

Sounds familiar, doesn't it?

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2| Translator's note: the pages from which this passage is taken vary depending on the language edition concerned. The passage appears on pages 90 and 91 of the English edition (published in 1990 by Hodder & Stoughton).

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## Multilingualism

### — Stanislav Vallo

**Stanislav Vallo (1951), a translator and former diplomat, read French and Italian at Comenius University in Bratislava. After working for 14 years at the Vydavateľstvo Slovenský spisovateľ (Slovak Writers' Publishing House), he entered the Czechoslovak diplomatic service, working from 1 January 1993 in the diplomatic service of the newly established Slovak Republic. He held the posts of Deputy Ambassador in Rome and Paris and then the post of Ambassador, again in Rome and later in Brussels. He remains active in the field of literary translation from Italian.**

*'The protection of multilingualism is an essential instrument for ensuring the democratic participation of citizens in the construction of the Europe of today and tomorrow'. This quotation, together with other, no less compelling, ideas, comes from an extensive and particularly thought-provoking review of the work of Ginevra Peruginelli, **Multilinguismo e sistemi di accesso all'informazione giuridica (Multilingualism and the systems of access to legal information)** (pub. Giuffrè Editore, 2009), written by the Italian academic and research librarian Antonella De Robbio (University of Padua). It is in fact a quotation of a quotation from the abovementioned work, for Ginevra Peruginelli is herself citing David Mellinkoff ('The Language of the Law'). Antonella De Robbio also quotes the author of the introduction, Nicola Palazzolo, who points out that *'the law is a language and its language is the law, since law cannot exist without language, which is its medium'*. And let us return again to Mellinkoff, according to whom the law cannot survive without language, in so far as *linguistics and the science of law have always been closely linked and one has developed through and using the other*.*

Quote after quote in the work under review, as well as the citation of quotes by these and other authors in the review itself, stresses the legitimacy of multilingualism and adds persuasive weight to it, especially in the European and legal context. On the other hand, the author of the publication does not abstain from referring to the dangers inherent in multilingualism. Quite the contrary. We may observe that while the book was written and published in 2009, those threats are still relevant today. The unrelenting and ever-increasing imperative to optimise expenditure on governance is leading to pseudo-solutions limiting the use of the official languages of the European Union and thus neglecting the cornerstone on which it is built: the principle of equal access to legislation, case-law and information in general.

However language is no laughing matter. Language not only serves as a means of communication within a certain group of people, say, a nation, language is also one of the basic attributes of belonging to that group. Further, the effective and simultaneous use of multiple languages can facilitate adequate communication within a larger whole, creating endless possibilities for sharing ideas, opinions or human needs. Is this not at the heart of a democratic society such as the European Union, in whose future the citizens of which actively participate? One's own language is a right, multilingualism a privilege. However, those words mean much more than we might imagine.

First, I would like to share my personal experience of using languages. I am a member of a small nation whose language – Slovak – is spoken by 5 600 000 people, according to a table in Ginevra Peruginelli's publication. It is also possible to make oneself understood

in it in the Czech Republic and in Hungary, to which might quietly be added quite large areas of, for example, Serbia, Romania and, I guess, part of the Argentinian province of Chaco. It has always fascinated me when, at the events at which I had the privilege to be present, the foreign host (a diplomat, president, public official or artist) began their speech in Slovak: *'Dobrý deň, vážené dámy, vážení páni, dobrý deň, priatelia'* (*Good evening ladies and gentlemen, Good evening friends,*). My feelings at that small and, at first sight, possibly meaningless act are difficult to express: a mixture of pride, gratitude, appreciation, quiet joy? It was all in there. And the audience always, always and unmistakably, responded with applause. That occurred not only here in Slovakia but also wherever I have had the honour and pleasure of representing my country as a diplomat. Naturally, I have often found myself on the opposite side – on the podium – in Italy, France and Belgium. In the former two countries, I followed on fluently from the introduction in Italian or French, to slightly surprised applause (in particular in small towns), to demonstrate my appreciation of the audience. I always strove to use language as something extraordinary and engaging, going beyond what I thought were my public's expectations of a diplomat. I thus tried to reach out to my audience with something that would make them happy, surprise them or put a smile on their faces, be it even a sincerely meant joke. In Belgium I found myself in linguistic discomfort because (unlike in my previous postings in Rome and Paris) I did not speak one of the two official languages, Flemish. But there again, thanks to a happy coincidence, I also improvised an approach which I would describe as a *captatio benevolentiae* of the Flemish audience. At the beginning of every speech, I said in Flemish: 'Good evening ladies and gentlemen, I am the Slovak Ambassador. I don't speak Flemish. I am learning it intensively, but I still have very, very far to go'. After that, I spoke in French about how the then President of the Flemish Government Gerd Bourgeois, during my courtesy visit on his entry into office, gave me a scarf with some words written on it. When I found out what it the text was, I was truly fascinated. It was in fact the text of the oldest – that is the first written – example of Old Dutch, dating back to the 11<sup>th</sup> century. It was discovered in the 1930s in a codex in England. It is comprised of two short sentences, which the monk copying out the codex wrote in place of the customary Latin formula *'Probatio pennae si bona sit'* when trying out a new goose quill. The monk, who was probably from west Flanders, instead wrote: „*Hebban olla vogala nestas hagunnan hinase hic enda thu, wat unbidan we nu?*“ (*All the birds have built their nests, only you and I have not yet – what are we waiting for?*). And the *benevolentia* of the audience was forthcoming, since I was familiar with and had mentioned something they all knew intimately from their school days and which formed part of their identity and national pride. Most nations treasure similar linguistic mementos.

As a diplomat, I always tried to pay homage to my partner's language, and sensed from the reactions that I was not in any way transgressing etiquette – quite the opposite – my partner always greeted it with surprise as something which was all the more pleasant for being unexpected. When I handed over the letters of credence to the then President of Malta, Fenech Adami, in May 2006, I did not recite the customary formula in English but read it out in Maltese. It was accepted by those present, as I later learned from the reactions, as an unanticipated and extremely welcome form of paying homage to the Maltese native language.

And when, as Ambassador of the Slovak Republic to the Kingdom of Belgium, I hosted the traditional community meal for fellow ambassadors of EU Member States on the occasion of our Presidency of the Council of the EU, the final words of my introduction, 'Welcome and *bon appétit*', were delivered in 23 languages.

I therefore believe that multilingualism has an indispensable and unquestionable role to play in the construction and functioning of a larger whole such as the European Union, and in the creation of its common consciousness and in the strengthening of its cohesion and solidarity. It is also an expression of respect for the centuries of development of the native languages of its inhabitants and an enhancement of their cultural heritage. The very nature of multilingualism itself, which is often fragile and vulnerable, makes it all the more imperative to protect it while economic expediency tries all the more insistently to relegate it to a position in the arsenal of the non-essential and to condemn it in the name of using a single, universal and all-encompassing language.

One of the most important minds of our time, the Italian writer Umberto Eco, took a clear and resolute position on this issue when he said that the common language of Europe is translation. As one of his many translators, I remember fondly and very well the extensive, very specific instructions and explanations he sent out to us regarding the translation of his various works. Those instructions and guidelines exuded the joy of playing with language, with its nuances and hidden corners.

In her publication, Eco's compatriot Ginevra Peruginelli identifies the protection of linguistic diversity as a symbol of the policy of preserving national individuality within the European Union. That message is clear and understandable in all languages and, with the growing pressure of economic expediency, all the more urgent.

# Multilingualism in the Institutions of the European Union – Experience and Observations

— **Prof. Dr Rajko Knez**

**Professor Dr Rajko Knez is a Judge of the Constitutional Court of the Republic of Slovenia. He also teaches at the University of Maribor Faculty of Law. He is project leader of the university's Jean Monnet Center of Excellence and holds the Jean Monnet Chair. From 2015 to 2017 he was senior legal counsel, specialising in EU law, in the administrative department of the Supreme Court of the Republic of Slovenia. He is the author of numerous scientific and academic articles, monographs and legal commentaries. In 2017 he was appointed to the Constitutional Court, where, from 2018 to 2021, he served as its President. His term of office at the Constitutional Court continues until April 2026.**

## I. Introduction

It was with pleasure that I accepted this invitation to share my experiences and my thoughts concerning the importance of multilingualism in the European Union. I have always been fascinated by the role that language plays within a community, as well as in interpersonal relationships, and in particular the ability of language to establish trust, on the one hand, or a sense of exclusion, on the other. Various aspects of this issue have caught my interest, for example: how language can forge a vision of, and a sense of belonging to, a particular country (and not just a nationality); language as a right of minority groups; language as a ground of unlawful discrimination; language as a marker of difference – but one that can nevertheless unite. It is this last, seemingly contradictory aspect that has always interested me the most and is the aspect particularly evident in the European Union. I should like to share my thoughts and experiences regarding this apparent paradox. First, however, I should plainly state that my own affinity with these matters is, in part, the result of purely personal circumstances. It is with these that I shall begin.

## II. Early experiences

I spent my childhood and youth in what was – at the time – a young, industrialised and rapidly developing city where, precisely because of those characteristics, there were many opportunities for employment. My home town consequently became a destination for numerous migrants from the former Yugoslav Republics. The languages spoken by these immigrants and their families were various, and different from mine. But it was not uncommon for me to communicate with my classmates, and later with my colleagues, in a language that was not the local native language. At primary school we also learned Serbo-Croatian, which is no longer an official language. Likewise we learned the Cyrillic alphabet. My first, very pleasant, experiences of all this date back to primary school. Indeed, along with the immigrants came their families (or they came later, once the mothers or fathers had found work and a reasonably steady source of income). The children in these families had to switch often from one social environment to another during the course of the school year. It could not have been easy for them. When they first entered my primary school class the teachers approached them with great sensitivity and tried to identify the classmate among us who could help the new pupil the most or who might be the easiest for them to get along with. This often meant that we would 'rotate'; the new pupil would be given a particular seat and we would take it in turns to sit beside him or her. We all spent some time with the new arrival – a few

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days or weeks, depending on how we got along - under the watchful eye of the teacher. In doing so we strove to overcome a number of barriers, including language barriers. When I think back, now, to those events, I realise how important they had been for integration. At the time, as a child, I failed to understand how significant the situation was, considering it, rather, to be a normal part of everyday life. I did sense, however, that it was a friendly approach – in this instance adapted to children – that could or should be taken towards immigrants and, consequently, toward their parents and entire families also. It was reflected in other aspects of our lives. It seemed obvious that we should socialise together and live together like this and the new arrivals integrated quite successfully into their new school environment. I think that, without my realising it, these experiences had quite an influence on me. A positive influence. Even when I think of the role of language in the European Union, I see it as a strong integrating force, as I shall discuss.

### **III. Legal aspects in Slovenia and in the European Union**

*What I have just outlined is not the only positive aspect of the role played by language and integration. The rules which facilitate all this also delineate an environment in which the role of language is duly recognised. The highest-ranking legal instrument in Slovenia – its Constitution – provides for the language rights of national communities and minorities, in particular Slovenia's Italian and Hungarian communities.*<sup>1</sup> In municipalities where these minority communities reside, Italian or Hungarian are also official languages (Article 11 of the Constitution). In addition, and I believe this to be significant, the Constitution prohibits all discrimination based on membership of a particular language group (Article 14(2) of the Constitution) and encourages the expression of national identity through language. Thus, under Article 61 of the Constitution, everyone has the right freely to express affiliation with his or her nation or national community, to foster and give expression to his or her culture and to use his or her language and script. Recently, in 2021, language rights for braille were incorporated into the Constitution, Article 62a of which now guarantees the free use and development of Slovenian sign language.

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1 | The indigenous Italian and Hungarian communities also enjoy special protection with regard to the use of national symbols, education and training, association and the preservation of cultural identity. Both communities, which receive financial support from the State, also have a right of representation in municipal bodies and in parliament.

Furthermore, the free use of Italian and Hungarian sign language is guaranteed in municipalities where Italian and Hungarian are also official languages.

I believe that the Slovenian Constitution has recognised the personal, anthropological, historical, cultural, national and sociological value of language. These are all important aspects. Language is not only about language rights *per se*. It involves many aspects which, depending on the approach taken by the authorities, can all have a positive or negative impact in many areas of life. I see this sense of awareness also in the European Union and, before its advent, in the policies of the institutions of the European Economic Community and of the European Community. I remember one of the first legal cases that caused me to question various aspects of the influence of language in society. I can draw parallels between the provisions of the Slovenian Constitution and my understanding of the Court of Justice's ruling in the case of the renowned Dutch artist Anita Groener, who wished to work in the education sector in Ireland.<sup>2</sup> She wanted to teach art. The case was, at least to my knowledge, one of the first cases to raise the issue of the role of a Member State's language in the process of integration and in the creation of the internal market of what was then the European Economic Community.

On that occasion, the Court acknowledged the value at the time of the national language (Irish) and the desire of the Irish authorities to preserve a language that was being increasingly overshadowed by English. The period during which the Court heard the case of Anita Groener (more than thirty years ago) was a period when greater credence was given to the motto of the European (Economic) Community and, subsequently, of the European Union: united in diversity. That motto held great significance and often had a very positive, unifying force. Today, however, it is being forgotten and it seems we are now living in less united times: one country has left the European Union; many different views prevail on the question of national identity, which itself has been used as the basis for diversity and exception; authorities in some Member States are calling into question the primacy of EU law; we are now witnessing conflict and the threat of war at

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2] Judgment of 28 November 1989, *Groener* (C-379/87, [EU:C:1989:599](#)). The artist brought an action against the Minister and the Educational Committee after the Minister had refused to appoint her to a permanent full-time post as an art teacher. The reason given was that she had failed a test assessing her knowledge of the Irish language. According to Irish law, a permanent, full-time teaching post in a public vocational education institution was a post of such a nature as to justify a requirement of language competence. The Court of Justice held that such a requirement was compatible with EU law, provided that it was imposed as part of a policy for the promotion of the national language which was, at the same time, the first official language and provided that it was applied in a proportionate and non-discriminatory manner.

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the perimeter of the European Union; some EU policies (migration policy, for example) are creating division between the Member States, among their authorities and among their peoples. The list goes on. This is why I believe that the issue of multilingualism should be brought to the forefront, together with the European Union's role in furthering integration. We have left the period when diversity, of which I have some personal experience as I have mentioned, was – as contradictory as it may seem – a real driving force for joint or integrative action. It is against that background that I shall now address one or two aspects of multilingualism in the European Union.

#### **IV. Multilingualism in the institutions of the European Union**

##### *Language and the sense of belonging*

Language is a decisive factor in the creation of a sense of belonging – not only of belonging to a particular nation, but also of belonging to a community. A community is a group of individuals – even of millions of individuals, in theory at least – who share similar values, goals or outlook (even if these may be difficult to pin down or indeed attain) and who are therefore looking in the same direction and wish to develop in that particular direction. However, even within a community, language can be a barrier. If it does become a barrier, it will give rise to a sense of limitation. It can even paralyse. This diminishes the sense of belonging. Conversely, the better a person knows a language (or languages), the more that sense of belonging increases. The same is true if one does not know a language but is able to use one's own language on an equal footing: the more one can use one's own language on an equal footing with other languages, the greater the sense of belonging.

I remember a class in private international law that I attended long ago in which the lecturer developed the idea that even nationality, as a connecting factor (often the main one) for the application of the law (to an individual's legal situation, for example his or her legal capacity) in the field of international relations, creates less of a sense of belonging to a particular country than does language. I remember keeping the thought in mind at the time and trying it out with certain friends and acquaintances who had moved to Slovenia and had applied for citizenship. They had been required to show a basic proficiency in Slovenian and I remember how happy they were when they were able to fulfil this element of the requirements. They expressed their attachment to this, their new country, with joy. Indeed, they were happier than when they received the decision granting them citizenship. Citizenship is an artificial legal construct, whereas language

provides real daily contact with a social environment. I myself am from a mixed family; my mother is Croatian and my father is Slovenian. I know from personal experience that blood ties and social ties are stronger than legal ties. A sense of belonging usually has little to do with the law, legislation or legal instruments. What usually matters is what the individual feels. For example, the extent to which a person feels accepted, anthropologically, in a particular community or social environment. Having a document in the jacket pocket to prove a legal affiliation to one or other country is important, but not as important as a sense of belonging to a society. This is the subjective aspect of integration. Belonging is one of the aspects that define an individual. And, just as I am attempting to explain that belonging is closely linked to language, it is also closely linked to the functioning of the European Union.

### *The role of multilingualism and the institutions of the European Union*

The existence and development of the European Union demand a sense of affiliation to this idea of the international integration of those who live on this continent. A sense of belonging is therefore extremely important. What I said above about the dynamic of inclusion and belonging among individuals applies equally to the relationship between the institutions and individuals. So then, how does the European Union use language in order to get 'closer' to the individual? If the European Union were to fail to get close to the people living in every single Member State, by means of multilingualism – the equal treatment of languages – there would be division, an unbridgeable chasm, between the institutions of the European Union on the one hand and the people living on this continent on the other. This 'getting closer' and the equal treatment of the languages of those living in the European Union are vital to the proper functioning of the community. They generate common feeling and equality. Only a community that functions properly is capable of building trust. That is particularly true if the community has been created artificially, and especially so in the case of a union (a union, in simple terms, signifies the relinquishment of national sovereignty in favour of the EU institutions.) This leads us to understand that trust, which is essential to the functioning and existence of the European Union, would not exist without bringing the institutions close to citizens, inter alia, through language.

Community action also reduces individualism. Conversely, as individuality increases, the opportunities for the community to progress decrease. It is an inversely proportional relationship. Language is one thing that can, if no appropriate policy is in place, heighten individuality, both for individual citizens and, as a consequence, for Member States. This can in turn lead to the promotion of national aspects. I would confine myself here

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to mentioning economic interests, for example, within the internal market, which is a prerequisite for the European Union's functioning at institutional level. Such individuality could manifest itself in the promotion of national manufacturers, traders, service providers, work forces, and so on. Still more dangerous is individualism with regard to political issues. It moves us further away from integration. Integration is not the product of individual rationality, but of the ability to think as a large group. This is something only human beings are capable of and it is the reason for our success. Achieving and maintaining integration is not always easy. Multilingualism within a community as diverse as the European Union is thus one of the basic preconditions for integration.<sup>3</sup>

The European Union has always sought to forestall the effects that may be produced by language barriers. The approach it has taken - respecting each national language and treating them all equally - is an approach not found anywhere else in the world. Europe is a continent with many countries, some of them small, each with its own historic, religious and cultural characteristics and differences. Language is one of them. Indeed, on no other continent in the world can such diversity be found within so small a land mass. The European Union has managed to integrate it all, to bring it together. Its pioneers were visionaries and, in my eyes, they are heroes. Heroes without weapons, of course. In pursuit of the economic idea of deepening trade (not just trade, but a single market), *Robert Schuman, Konrad Adenauer, Jean Monnet, Walter Hallstein, Paul-Henri Spaak and others* set about the unification of Europe during the Cold War period that followed the Second World War. Those were decisive years. Thanks to these ideas and the efforts made to achieve them, the development (now the history) of Europe as a continent was put back on track. As a child of the baby boom generation, I can only feel content, fortunate, to be living in this age, which has allowed me to develop into the person I choose to be. I am not sure we are all so aware of this, given the aforementioned period of disintegration we are currently experiencing.

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3| Language should not, therefore, represent a barrier. To give just one small example of the consequences which ensue when language becomes a barrier, I would mention those neighbourhoods, more or less closed to the outside world, that are typical of big cities with large (economic and other) migrant populations. Of course, in such areas it is not only linguistic barriers, but also cultural and sociological circumstances that come into play. Yet, language remains one of the greatest barriers. It is possible to overcome such barriers by offering at least the most basic services (for example shops selling basic foodstuffs) in the language of the residents of the area. However, over time, this can also lead to isolation and individualism.

## V. Conclusion

When we first set about achieving the far-reaching idea, the redeeming vision of integration in Europe, language was not a barrier – although that was not a given. Removing language barriers was part of the project for European integration and, as I have attempted to explain, it was an aspect, or rather an element, of that integration that was absolutely necessary. Now it is time to acknowledge those efforts. The European Union deserves credit and recognition for the approach it has taken.

I am aware that all of this demands a great deal of work. In this context, the translators in the various departments of the institutions of the European Union do a very important job. They are often overlooked and taken for granted, but the basic ideas I have expressed in this article touch them profoundly. They are an extremely important part of this great project to preserve the integrity of the European Union, to bring unity where there is diversity. In this way, not only will we preserve peace on this historically troubled continent of ours, but we will also help to put in place an important piece of the puzzle, in terms of both economic prosperity and the coexistence of many different peoples and cultures.<sup>4</sup>

There are many similarities between the approach to integration taken by the multicultural city of my youth, which I described at the beginning of this piece, and multicultural Europe. The two stories have a common theme: both represent a process of integration (which is not rapid, perhaps, but has an important long-term aim) in which language does not constitute a barrier, but rather an enriching and unifying difference. One can only hope that this vision, first held by the European Economic Community, then by the European Community and now by the European Union, will continue on its journey and develop further. It does not have to be fast. Personally, I would be happy to continue down this road at any pace. The approach to language that has developed over time has certainly proven to be highly appropriate. In it we can see an important element of the Europe we have built and which, even today, is in urgent need of further integration.

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4| On this aspect, see Harari, Y.N., *21 nasvetov za 21. stoletje (21 lessons for the 21st century)*, Mladinska knjiga, 2020, p. 139.

# Nordic multilingualism and legal co-operation

— **Heikki E. S. Mattila**

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## 1. An overview of the linguistic conditions in the Nordic countries <sup>1</sup>

In the Nordic countries, certain languages (Icelandic, Finnish, Norwegian, Swedish and Danish) occupy a dominant position at national level, while others are minority languages. <sup>2</sup>

Icelandic, Norwegian, Swedish and Danish are related languages; they are the main Scandinavian (North-Germanic) languages. <sup>3</sup> With the exception of Icelandic (which is the closest to Old Norse), these languages are easily mutually comprehensible, especially in written form. Written material is, in many cases, understood almost effortlessly or requires only a short period of study, which is also true for legal texts. <sup>4</sup> However, that does not mean that these languages are identical. In Norwegian, Danish and Swedish there are words which are different, there are also 'faux amis' (similar sounding words with different meanings) (there are also two variants of Norwegian – see section 3.1 below). Oral communication presents far more difficulty, especially in the case of Danish, the pronunciation of which differs considerably from that of Swedish and Norwegian.

The main language of Finland, Finnish, belongs to a different family of languages. The relationship between the Scandinavian languages and Finnish can be compared to that between German and Hungarian; in other words they have nothing in common. However, Swedish is spoken by a minority in the coastal regions of Finland (representing a little over 5 percent of the total population). Despite the small size of this minority group, for historical reasons Swedish has the status of (second) official language of Finland;

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1 | Dr Timo Esko, Emeritus President of the Supreme Court of Finland, who has been involved in Nordic co-operation for decades, was kind enough to read and comment on a draft of this article. He made many relevant comments, which enabled considerable improvements to be made to the draft. The provisional text of the article, written in French by the author, was completely revised by Mr Frédéric Nozais, of the University of Helsinki's Language Centre. The author is extremely grateful to those two specialists. It goes without saying that the author accepts sole responsibility for any errors or omissions in the final published version.

2 | These minority languages (such as the Sami languages) may have official status.

3 | Faroese should also be mentioned. A very interesting summary of the linguistic situation in the Nordic countries and its evolution is given in a recent article by Karl Erland Gadelli, 'Écologie des langues dans le Norden', *Nordiques*, No 35, 2018, pp. 77 to 93, which is available at <https://journals.openedition.org/nordiques/1570#tocto1n1>.

4 | For example, the word 'law' is *ret* in Danish, *rett* in Norwegian, and *rätt* in Swedish (with the 'ä' pronounced like the '[e]' of the English word 'met'), and the word 'insurance' is *forsikring* in Danish and Norwegian and *försäkring* in Swedish (here again, the 'ä' is pronounced like the '[e]' of 'met').

Finnish speakers study it in the later years of school.<sup>5</sup> Finnish legislation is also available in Swedish, and the Finnish and Swedish versions have absolutely equal status. A great deal of other official material exists in both languages. In addition, some Finnish legal literature is published directly in Swedish (as indicated in footnote 15).

The legal cultures of the Nordic countries are very similar, owing to shared values, historical contact<sup>6</sup> and legislative co-operation, particularly during the twentieth century.<sup>7</sup> Between the end of the nineteenth century and the second half of the twentieth, the laws of the Nordic countries were harmonised to a significant extent. Today they are relatively similar overall, and very similar in certain areas, particularly that of private law. There are also inter-Nordic conventions, particularly in the field of international law (judicial co-operation, enforcement of judgments, etc.). However, judicial co-operation at European and international level has lessened the importance of the system of Nordic conventions.<sup>8</sup>

For the reasons mentioned above, there is a good deal of communication between the Nordic countries on legal matters, and those involved have traditionally used Danish, Norwegian and Swedish for this purpose, switching freely between them and using different combinations as appropriate – a case of plurilingualism in the context of three closely related languages. We can thus speak of a Nordic community of legal languages.

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5| However, knowledge and use of Swedish are declining in Finland, including within the administration; this is clearly demonstrated in numerous official reports from the last few decades. The Council of Europe, amongst others, has given consideration on several occasions to the position of Swedish in Finland, with regard in particular to knowledge of Swedish in Finnish-speaking environments, and the preservation of its public visibility and use in the educational and administrative systems of the country, as well as in daily life generally.

6| For many centuries Finland and Sweden were a single entity, while there was initially a personal union between Denmark and Norway, and later a real union.

7| On that subject, the recent French-language article by Marie-Louise Holle ('Le projet d'OleLando sur les contrats: le code sur le droit nordique des contrats', *Revue internationale de droit comparé*, Vol. 69, No 4, 2017, pp. 779 to 805), gives, in addition to a comprehensive survey of contract law, an overview of the law of the Nordic countries and Nordic legal co-operation in general, mentioning a large number of sources in that field. For collections containing articles by Nordic authors on this topic, see Letto-Vanamo, P., Tamm, D. and Mortensen, B. O. G. (Eds), *Nordic Law in European Context*, Springer, 2019, and Husa, J., Nuotio, K. and Pihlajamäki, H. (Eds), *Nordic Law: between Tradition and Dynamism*, Antwerpen: Intersentia, 2007.

8| It has often been necessary to amend the details of the Nordic conventions to avoid contradicting EU law, which means that the overall scheme of the conventions is now rather complicated, and in places artificial.

## 2. The use of languages in legal communication between the Nordic countries

Co-operation between the Nordic countries, viewed as a whole, covers a number of sectors (culture, law, the environment, energy, the economy, public health etc.). It is conducted in the three Scandinavian languages referred to above, which are used both in official and informal contexts. However, there are now some areas of co-operation in which the use of English has become the norm.<sup>9</sup> While legal co-operation is not completely free of this trend, the position of the Scandinavian languages nevertheless remains secure (see below).

In practice, the linguistic aspect of Nordic co-operation works as follows: Norwegians use one of the two variants of Norwegian, according to preference (see point 3.1 below); Swedes and Finns use Swedish (see point 3.2 below) while Danes and – normally – Icelanders use Danish (which is taught in Icelandic schools). In oral communication, a hybrid language (called *Skandinaviska*) may also be used; this contains elements of two or more Scandinavian languages and in speaking it, overly Danish pronunciation is avoided.

Specifically in the area of law, Scandinavian languages are usually used in co-operation between the Nordic judicial and administrative authorities. In this regard, a central role is played by the ministries of justice (especially in legislative matters) and the courts; the regular meetings of the presidents of the Supreme Courts and the Supreme Administrative Courts<sup>10</sup> of all the Nordic countries are a good example. In other areas of legal activity too, for example in communications between legal practitioners, the use of Scandinavian languages is common in the context of Nordic co-operation. When law firms from two or more Nordic countries are dealing with a case, the choice of language is dictated by the nature of the matter and the language spoken by the client.

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9| See the official website at <https://www.norden.org/en/language>.

10| In the justice systems of Finland and Sweden there are two hierarchies: the judicial courts and the administrative courts. It is worth adding that the Presidents of the Nordic Courts of Appeal also meet regularly.

Thus, Scandinavian languages are often used by lawyers from Nordic countries in preparing for trials, particularly in family law cases.<sup>11</sup>

An important area of official Nordic co-operation is that of international legal assistance. In this sector – pursuant to the inter-Nordic conventions – Danish, Norwegian and Swedish are the languages to be used in communication between the authorities of the Nordic countries. This applies notably to the service of documents (summonses etc.), the use of evidence in court, and the enforcement of judgments.<sup>12</sup> The three languages have strictly equal status. Consequently, Finns may use Swedish in their dealings with Danes and Norwegians, and not only in their dealings with Swedes. For example, a Finnish court may send a Swedish-language document to a person resident in Denmark or Norway, requiring that person to attend a trial in Finland as a witness. Similarly, the Nordic conventions assume that the Finnish authorities understand documents written in Danish or Norwegian, as well as Swedish.<sup>13</sup> Thus, a request for the recovery of child support, written in Danish or Norwegian, may be received in Helsinki in relation to a child resident in Copenhagen or Oslo.

As regards legal literature, in the twenty-first century there is a notable trend in academic publications in all the Nordic countries to use English, to the detriment of the national languages.<sup>14</sup> Reflecting that change, it is no longer rare to see young Finnish lawyers – or those from other Nordic countries – presenting their papers in English at a Nordic

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11| The position is different in the commercial field, where international contracts are normally drafted in English. Nonetheless, preliminary discussions concerning a contract to be concluded in English may be conducted in the Scandinavian languages. Sometimes, two languages (English and a Scandinavian language) may be used in such discussions, in order to avoid misunderstandings.

12| For example, the 1974 convention between Finland, Iceland, Norway, Sweden and Denmark on judicial co-operation regarding service of documents and production of evidence (Article 2) and the 1962 convention between Finland, Iceland, Norway, Sweden on the enforced recovery of child support (Article 2). Those conventions require documents sent pursuant to their provisions to be accompanied by a translation into Norwegian, Swedish or Danish if the original is not in one of those three languages (in other words, if it is in Finnish or Icelandic). Each of the three languages is valid in cases governed by those conventions.

13| As this assumption does not always reflect the reality, the 1977 Finnish decree on the enforcement of Nordic judgments arising out of civil law claims (Article 5) provides that a court of first instance has the right to have documents which are in Norwegian or Danish translated into Finnish or Swedish.

14| The visible signs of this include the fact that, in Finland, English has already overtaken Finnish as the language of publication of technical works by authors teaching in law faculties (based on statistics gathered by those faculties).

convention or seminar. Looking at legal writing as a whole, however, the picture is different. First, all publications intended to be used in legal practice, as well as numerous academic publications of a theoretical nature, appear in the national languages. Publications from Denmark, Norway and Sweden can therefore be read throughout Scandinavia, and the same is true of publications from Finland, as some of these – albeit a small proportion – are published in Swedish.<sup>15</sup> In addition, inter-Nordic legal journals publish articles in Danish, Norwegian and Swedish,<sup>16</sup> and the national journals also publish material (quite rarely, it must be said) in the languages of their Nordic neighbours. Similarly, the Scandinavian languages are often used in conventions and seminars for Nordic lawyers.<sup>17</sup> The Nordic legal days, which bring together a large number of lawyers both from academia and from the various branches of legal practice, are particularly worthy of note.<sup>18</sup> With this in mind, it cannot be said that traditional multilingualism has completely lost its importance in academic or educational collaboration between Nordic lawyers – far from it.

### 3. Problems in inter-Nordic communication

Communication between the Nordic countries, using the Scandinavian languages, is not without its difficulties, even where the participants are native speakers of Danish, Norwegian or Swedish. Besides the problems already mentioned (differences in shared vocabulary and differences of grammar and pronunciation – stemming especially with

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15| At the beginning of the twenty-first century, in Finland, about 5% of legal textbooks and about 10% of legal articles were published in Swedish (as calculated with help from the staff of the library of the Finnish Parliament). In that context, it is worth noting that it is possible to study law in Swedish in Finland and qualify as a lawyer in that country. For a long time legal studies could only be pursued in Swedish at the University of Helsinki, a bilingual teaching institution, but very recently (in January 2022) a decision was taken to offer such a course at *Åbo Akademi*, which is a Swedish-language university in Turku.

16| Today these journals also publish articles in English, written for example by Finnish lawyers.

17| For example, the colloquium on property law in the Nordic countries (*Nyatrenderochbärandepinciper i den nordiskaförmögenhetsrätten*), organised by the University of Helsinki in 2019.

18| Most recently in 2017, in Helsinki. The Nordic legal days (*De nordiskajuristmötena*, sometimes written in French as *Congrès des juristes nordiques* or *Réunions des juristes nordiques*) are an especially important institution. The legal days have a history of over a century and a half and today the number of participants, coming from all the Nordic countries, is over one thousand. Participants hold conferences, present reports, exchange ideas on the development of law in the Nordic countries and establish co-operative relationships, often at evening gatherings.

regard to Danish), it is above all original legal terminology, not recognisable even by foreigners speaking a related language, that presents problems in inter-Nordic legal communication. Such non-recognisable terminology may result from differences in legal institutions,<sup>19</sup> but also from differences in the names of identical institutions. The problems are exacerbated by the fact that Norway has two variants of its written language, equal in status, in which the spelling of words – including legal terminology – may differ to a greater or lesser extent. Such legal terminology may sometimes be completely different in the two variants of Norwegian. Similarly, the legal Swedish used in Finland may differ from the legal Swedish used in Sweden, though this is relatively rare and the differences are slight. These issues are briefly examined in the following paragraphs.

### 3.1 One country – two variants of a single language: Norwegian

At global level, there have been cases where two variants – two standardisations– of a single language have been in competition, sometimes over a relatively long period, in public life, including the field of law.<sup>20</sup> In Norway, that has been the position since the end of the nineteenth century. This rather particular linguistic situation makes inter-Nordic legal communication more difficult; lawyers from other parts of the wider region have to be able to understand both variants, which in reality are practically two distinct (though related) languages.

To understand this rather singular situation, it must be remembered that there was a union between Denmark and Norway which lasted centuries, from the end of the Middle Ages until the beginning of the nineteenth century. During that long period, the Danish language gradually replaced Old Norwegian (which was fairly similar to

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19] One very clear example is the Norwegian system of inheritance of farms (*åsetesrett*), the particular features of which are explained by the fact that, in the legislation governing the system, the legislature had to take account of the ancient concept of renunciation of allodial title (*odelsrett*), which is still part of Norwegian law. See generally, in French, Mattila, H., *Les successions agricoles et la structure de la société. Une étude en droit comparé*, with French text by Rabier, J.-C, Helsinki, Juridica, 1979, p. 115 et seq.

20] The case of Greece could be mentioned here, with *Katharevousa* and demotic Greek. As to the usage of such variants in a legal context, see, for a brief account, in French, for example, Mattila, H., *Jurilinguistique comparée. Langage du droit, latin et langues modernes*, with French text by Gémard, J.-C, Cowansville, Les Éditions Yvon Blais, 2012, pp. 101 to 107, or, in English, Mattila, H., *Comparative Legal Linguistics. Language of Law, Latin, Modern Lingua Francas*, 2nd ed., translated by Goddard, C., Farnham, Ashgate, 2013, pp. 75 to 79.

Danish) in the central administration of the country. The same process took place in local administration.

Then, in around 1830, in the atmosphere of romanticised nationalism of that period, the desire arose to create a written Norwegian language that was distinct from Danish. To that end, two courses of action were proposed. Under the first, moderate, proposal, Danish as it had traditionally been used in Norway would be retained to form the basis of the new written language, but elements of spoken Norwegian would be added. Under the second, more radical, proposal, an entirely new written language would be created from the 'good' Norwegian dialects, which were based on Old Norwegian. Thus, two standard versions of written Norwegian gradually formed and became established.

The two variants – one based on Danish, now referred to as Bokmål, and the other based on the Norwegian dialects, now referred to as *Nynorsk* – have many similarities, but at the same time there are considerable differences between them. There are innumerable small differences in spelling,<sup>21</sup> and certain words are completely different (including in the field of law).<sup>22</sup> There are also grammatical differences (inflection of words etc.).

The two variants are still in competition with each other. The use of *Nynorsk* became more widespread at the beginning of the twentieth century, but in the last few decades it has fallen continuously. The two variants have equal official status, but Bokmål is clearly dominant in all areas of social life. The same applies to legislation, the courts and legal theory. Legislation is generally drafted in Bokmål and the great majority of judges and academic lawyers use it in their work.<sup>23</sup>

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21| For example, the name of the country is *Noreg* in *Nynorsk* but *Norge* in Bokmål.

22| For example, one of the *Nyorsk* equivalents (albeit rarely used) of the word insolvency is *buslit*, which only exists in that language variant.

23| There is a good deal of material on the variants of Norwegian in international languages. See, with specific reference to legal activities: Askedal, J. O. and Lilleholt, K., *Sprache und Recht in Norwegen*, Europa ethnica 1 and 2, 1999, pp. 62 to 65, and Mattila, H., 2012, pp. 107 to 115 or Mattila, H., 2013, pp. 79 to 85 (see footnote 20). In Norwegian, there is a collaborative work that is especially valuable: Hæreid, G. O., Lilleholt, K., Skeie, I. Risnes, and Tollefsen, M. (Eds), *Målogrett – Juristmållaget 75 år*, Oslo, Institutt for privatrett, 2010.

### 3.2 The case of Swedish: two countries and certain divergences of language

As mentioned above, Swedish is an official language of Finland. Efforts are made to reduce, as far as possible, the differences between the Swedish of Sweden and that of Finland, both in ordinary and in official usage. In the field of law, this is reflected in measures taken to ensure the proper use of legal language. The goal is maximum similarity of usage in the two countries. The Swedish of Finland is not a separate language, either in ordinary usage or in the field of law.<sup>24</sup> Nevertheless, some – exceptional – differences remain. These are mainly due to the differences that exist between a certain number of legal institutions in the two countries. Where the institutions are the same, we must look to history<sup>25</sup> for the explanation, or to the influence of Finnish (which has now been the main language of the country for 100 years).

It is essential to restrict these differences in legal language, as they sometimes lead to misunderstandings in relations between Swedes and Finns and in inter-Nordic relations generally. Today the European Union plays an important role in this respect. Within the EU, there is only one variant of Swedish, common to Sweden and Finland. It is true that EU directives are implemented in the Member States through national laws, and therefore that the Swedish terminology of such directives is not necessarily retained unchanged, but adapted to reflect the terminology of other Swedish or Finnish laws in the field in question. Nevertheless, it can be said that in the long term, the activity of the European Union will tend to promote uniformity of legal Swedish in Sweden and Finland. It should be borne in mind, in particular, that in certain sectors the EU makes frequent use of regulations as a legislative method, which means that the final form of the Swedish text is absolutely identical in both countries.

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24] See the informal guidebook Bruun, H. and Palmgren, S. (Eds), *Svensktlagspråk i Finland* (Legal Swedish in Finland), Helsingfors, Statsrådetssvenskaspråknämnd & Schildts, 1998, pp. 107 and 108, and more generally Reuter, M. et al., 'Swedish in Finland in the 20th century', *The Nordic Languages. An International Handbook of the History of the North Germanic Languages*, 2017, vol.22/2, pp. 1647 to 1656.

25] Numerous legal institutions were created in Finland during the nineteenth century – a period when the country was an autonomous Grand Duchy within the Russian Empire and its main legal language was still Swedish.

### 3.3 Terminological differences between western and eastern Nordic countries

Naturally, each of the Nordic countries has legal institutions which are specific to that country and not found elsewhere (such as the *åsetesrett* – see footnote 19). Also, an institution may be known by a different name even though it exists – and takes exactly the same form – in all the Nordic countries.

First, it is notable that, although the national laws of the Nordic countries form a relatively coherent whole – a Nordic family of laws – two units can be identified within that whole: a sub-family of western Nordic law (Denmark, Norway and Iceland) and a sub-family of eastern Nordic law (Sweden and Finland).<sup>26</sup> There are greater conceptual and terminological differences between these sub-families than within them. For example, issues relating to the division of certain types of asset (inheritance, matrimonial property, the property of insolvent debtors) form a separate branch of law in Denmark and Norway (*skifteret/skifterett*). Within that branch of law, terms are used which are unknown in Sweden and Finland.

Secondly, the Danish and Norwegian legal institutions and the authorities of those countries sometimes have unique names of their own, even where there is a conceptual equivalent in Sweden and Finland.<sup>27</sup> In legislative work on the harmonisation of Nordic law, attempts have been made to address this problem by choosing, as far as possible, terminology which is identical or has language variants which are easily recognisable in all the Nordic countries. However, it has proved to be difficult to make much progress to that end: national traditions are a very significant constraint on the creation of new terminology.

This means that, when documents circulate between the two sub-families of Nordic law, it can be difficult to understand the legal terminology and certain names of institutions correctly. One way to avoid this pitfall is to draft plurilingual documents in which the essential legal concepts are expressed using the equivalents used in each of the Nordic countries.

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26| As can be seen, this classification of the laws does not reflect that of the languages. See for example 'North Germanic Languages', Wikipedia.

27| For example the Swedish word for a judicial seizure of property is *utmätning*, but the Danish word is *udlæg* or – formerly – *udpantning*.

#### 4. The future of multilingualism in legal co-operation between the Nordic countries

The need for communication between the Nordic countries will undoubtedly continue into the future, despite the fact that the closer co-operation within the European Union – particularly as regards legislation – reduces Nordic co-operation to a certain extent. The Nordic countries may no longer enact laws which are contrary to EU legislation (a situation which did not exist up to the middle of the twentieth century), but, acting together, they can influence the development of that legislation.<sup>28</sup> It should also be noted that, since the countries and peoples have become closer in general, the importance of Nordic co-operation is increasing in certain sectors. With the free movement of persons (and goods, etc.), there are more and more legal relationships, either ongoing or occasional, between the Nordic countries (traffic accidents involving Finns in Norway, child support payments recovered in Finland for a child resident in Denmark, etc.). Co-operation between academic lawyers is also likely to continue to be very close.

As has been seen above, Nordic legal co-operation is an area in which a macro-regional form of multilingualism reigns. Three related languages are used (Danish, Norwegian and Swedish), or four if the two variants of Norwegian are regarded as distinct languages. In that multilingual environment, it is assumed, in general but especially in official contexts, that those involved in legal co-operation, as well as the authorities of the neighbouring Nordic countries, understand Danish, Norwegian and Swedish.

As we have also seen, the greatest difficulty in inter-Nordic communication is the fact that the main language of Finland is completely different, and that the de facto status and familiarity with Swedish is diminishing in Finland<sup>29</sup> (similarly, the position of Danish in the Icelandic education system is weaker today than in the past). The problems that exist in the other Nordic countries should not be overlooked, however. Comprehension of spoken Danish can be difficult, even for Norwegians, despite the fact that the dominant version of Norwegian derives from Danish. Comprehension of each other's written material does not always come easily to Danes, Norwegians and Swedes, and requires training. Similarly, it is noticeable that the ideology of Scandinavism is not as strong in

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28| As to the future development of Nordic co-operation in the field of law, see, in Swedish, *Sevón, L., Nordiskt lagstiftningssamarbete – forntid eller framtid?* (Nordic legislative co-operation – relic or opportunity?), *Tidskriftutgiven av Juridiska Föreningen i Finland*, 3 and 4, 2009, pp. 545 to 550.

29| See footnote 5.

the Nordic countries as it once was, and that young Scandinavians are less willing to make the effort (slight as it is) to learn to read the languages of neighbouring countries or participate in multilingual conversations using related languages.<sup>30</sup> In fact, young people across the world see English has a natural and neutral means of communication in all international relations, even with people from a neighbouring country who speak a very closely related language.<sup>31</sup> The problem of faux amis – similar words with different meanings – must also be mentioned. Another factor, external this time, is the desire of the Baltic countries, which (following the collapse of the Soviet Union) are now independent, to develop closer relations with the Nordic countries<sup>32</sup> – this is also natural from a historical perspective (formerly, especially in the seventeenth century, the northern part of the Baltic region was part of the Kingdom of Sweden). It is, however, very rare, in the Baltic countries, for a lawyer to understand the Scandinavian languages.

When all of that is taken into consideration, it seems difficult to make any confident prediction as to the extent to which the Scandinavian languages will retain their status as an instrument of inter-Nordic co-operation. The arguments above should not be taken lightly, but it has to be borne in mind that the Scandinavian languages, especially in their written form, are a very convenient vehicle for Nordic co-operation. They also offer Scandinavians (apart from the Icelanders) an important advantage: active communication is easy, as they can use their native language in written communications and oral discussions. Furthermore, it is easier to discuss typically Nordic legal phenomena using terms which already exist in the Scandinavian languages, rather than going through another language (translations into English often lack precision).

Even if, in future, English becomes generally used in the sphere of Nordic legal co-operation, this would not fundamentally dispense with the need to know the languages of neighbouring Nordic countries, if only to be able to understand written material. European Union matters are one thing, but national discussions concerning practical legal

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30| This is clear from a recent report (*Har Norden et språkfelleskap?*, 2021) of the Nordic Council of Ministers. In a survey, young Scandinavians were asked what language they used when meeting a native speaker of another Scandinavian language. About 60% of these young people stated that they used English.

31| In relation to law students, this observation was made – and the situation deplored – by Johan Bärlund, Professor of Nordic Law, at the Nordic colloquium of 2019 (see footnote 16).

32| This can already be seen in international collaboration between lawyers. Since the Baltic States began to take part in co-operation between Nordic associations of lawyers, there has been widespread use of English in the context of such co-operation.

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issues (legislative policy etc.) are normally conducted in the national languages. It is thus unusual to come across English-language material relating to those discussions. Also, there is a delay before translations of written material become available. Consequently, in order to obtain a complete and balanced picture of Nordic discussions concerning a practical legal issue, it is necessary to read written material (especially books and legal articles) published in the Scandinavian languages.

It is important to bear this fact in mind – especially at the present time, when young Scandinavians are convinced of the omnipotence of the English language. If lawyers involved in inter-Nordic co-operation are already able to understand Danish, Norwegian and Swedish, at least in written form, they will also have the knowledge required to grasp the issues examined within the framework of such co-operation easily. Having read the essential texts of the neighbouring countries, these lawyers will be familiar with the realities in all those countries and with the arguments put forward in the national debate. It is obvious that such knowledge will shape the input of those involved in co-operation and thus increase the scope for them to make relevant contributions.

Equally, exercises to develop comprehension of the spoken languages of the neighbouring Nordic countries, and the ability to conduct oral discussions in those languages, are not without importance.<sup>33</sup> Someone who does not understand Scandinavian languages will quickly be excluded from conversations held in the corridor or after hours, where the positions adopted and interventions made in subsequent official sessions take shape. The social aspect of speaking other Scandinavian languages must not be overlooked either. To have a discussion over dinner, alternating freely between the different Scandinavian languages, is an experience apt to reinforce Nordic identity in a very particular way.

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33| For speakers of Finnish or Icelandic, this means active practice in Swedish, Danish or Norwegian during discussions, while for speakers of Danish it means practice in developing an especially clear and intelligible articulation.

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## Language as a key to unlocking the world of law

### — Stig Strömholm

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*Une science est une langue bien faite* – ‘A science is a well-made language’ – is a maxim attributed to the French physicist Henri Poincaré (1854–1912), one of the last great polymaths. His description is particularly apt in relation to jurisprudence, which has no means of expression or medium other than natural language. It cannot be completely replaced by numbers or formulae, no matter how resolutely some legal theorists may have tried to use them to convey legal content. It is primarily legal language that will be the focus of this contribution.

Both general legal principles and specific detailed rules are expressed, reproduced, described and defined using a language which is admittedly ‘natural’ (as opposed to artificial or formalised), but which is often not only specialised – and thus already high incomprehensible to the uninitiated – but also archaic. In a society with a long unbroken history, it is inevitable that this language, with its origins in social conditions that no longer exist, sometimes even talks about objects, beliefs and actions that are unfamiliar to members of today’s language community.

In highly developed legal systems, legal language is a complicated system, characterised both by ‘normal’ logical semantic relations and by a separate hierarchical order, the structure of which the reader/audience must know at least the main features in order to be able to fully comprehend a text in that language. This system is the result of a historical development that has taken place differently in different cultures and countries. Sometimes there are clear and practically significant differences between the systems in small, in most respects close, closely-related and both politically/economically and culturally similar communities. An understanding of both the language’s words and structure and the logical and hierarchical structure of the rules system is an indispensable prerequisite for someone to be able not only to grasp intellectually, but also – to use a general, neutral word – ‘handle’ a legal system. The most common and objectively important way of ‘handling’ is, of course, to apply the rules, i.e. decisions by which the content of the rules is translated into action, as is the case, for example, when a criminal law rule is invoked in support of a conviction or when a civil law rule is proposed by a lawyer as applying to a contract. Until at least the mid-20<sup>th</sup> century – and much later in many fields – university legal studies in all countries had a narrow national focus and, in terms of practical application, there was a single system, usually with a limited national scope, that was taken into account at all.

European lawyers – and, for that matter, also American, African or Asian ones – can be said to have been, and to a very large extent still are, trapped in their own linguistic world, which is usually demarcated on national lines. This is not a surprise.

Consequently, the definitions of terms and interpretations that ‘work’ in this separate linguistic world – i.e. that can also be ‘handled’ successfully in it – are also perceived as the ‘right ones’, perhaps even ‘the only right ones’. Reasonably well-informed lawyers will know, of course, that there are other definitions of terms and interpretations and that they work in other national systems. These other systems become involved, in situations where it is considered necessary for various reasons, due to the narrow loopholes provided by private international law (and in certain special situations, general international law). Reasonably well-informed lawyers will also know that large parts of the system by which they consider themselves bound have a historical origin – Roman law, canon law, Germanic law – that is common to several systems. In the vast majority of situations faced by lawyers in their professional practice, however, this historical knowledge is not of immediate practical benefit. The specific solutions for which they are looking have to be sought within their own system, using that system’s own legal language. I do not think it is an exaggeration to state that experienced lawyers consciously or unconsciously carry with them an image of a kind of map of the legal system within which they work. The map is the result of the subject classification and order of the legal studies and textbooks as well as – perhaps to a particularly large extent – the legislation.

This statement applies to legal practitioners and lawyers, but it is from this historically given situation that the theoretically active lawyer must also start when he or she conducts comparative studies for whatever purpose. The legislator must also begin its work from this starting point in its quest for new solutions, whether it concerns national legislation or the enactment of rules that are intended to be common to several legal systems. Comparative work is greatly hampered by the fact that the similarities (and differences) between the real substance of the national legal systems’ solutions to social problems can often be obscured by such terminological and other linguistic differences, which can be described as random or arbitrary rather than as expressions of significant differences in substance.

In order to overcome the problems posed by comparative work, lawyers must have a fairly in-depth knowledge of the more or less firmly established language habits of the legal systems concerned and even of such seemingly superficial differences that are expressed in the selection of headwords in registers, court case headings and bibliographical lists.

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I shall now give, from my own experience, examples of some types of problems that arise in different types of language encounters and translations in the legal field. It is my hope that the examples will illustrate how multifaceted and demanding the translator's work can be even in such a limited and relatively well-defined area as the law. One translation is very seldom similar to another.

In the summer of 1956, while I was a law student, I worked as an unpaid intern at the Swedish Chamber of Commerce in Paris, which then had its premises in the 'Swedish House' at 125 Avenue des Champs-Élysées. The most common tasks included translating business correspondence from Swedish to French and vice versa. I had obtained a first-class bachelor's degree in Romance languages and read a large number of French literary works. I also loved the language and it rarely presented me with any difficulties. One day, a representative of a large French construction company came to the Chamber of Commerce and asked if someone could help his company with a translation into French of the crane standards of the Mekanförbundet (the former Swedish engineering industry association). The French company intended to submit a tender for the construction of several large cranes in a Swedish port. Interns at the Chamber of Commerce were entitled to undertake such assignments privately and for a fee if they could be considered closely related to the Chamber's activities as a promoter of Franco-Swedish economic relations. After quite an in-depth discussion with the French engineer, I took on the assignment.

The task proved to be very labour-intensive but, on the other hand, it was actually rather straightforward. It can be said to have involved rendering from Swedish into French very faithfully and with the utmost precision in terms of not only terminology but also syntax a piece of clear and concise technical prose – whose concrete meaning I naturally did not fully understand in either language. Of course, there was no room for any idiomatic or stylistic flair or any search for nuances. The work required above all the accuracy necessary to achieve absolute correctness in the terminology, with regard to both the terms used for materials and construction and the description of the lifting and transport operations that the products should be able to perform. Most of them turned out to be available – sometimes after diligent searching – in the relevant encyclopaedias, but some things were difficult to find. What still sticks in my mind is the time-consuming search for a completely correct French equivalent of the expression *maximal tillåten skjuvpåkänning* (maximum permissible shear stress) used in Swedish crane standards. Every now and then during the frantic days in the July heat when I sat bent over the task, I could see in my mind's eye a giant crane in an idyllic Swedish harbour come crashing down due to an error in my translation. In the end, however, the French client approved the text without question or complaint. It seems to have

been useful. I do not know whether there was any order. Nor did Swedish newspapers, in the few years thereafter, contain any reports of collapsing cranes in Swedish ports.

My second example belongs to a completely different intellectual area. One of the Swedish jurists who realised early on the importance of Nordic legal systems and jurisprudence coming into active contact with the world that opened up after the Second World War was the Stockholm professor Folke Schmidt (1909–1980), a pioneer in the field of labour law, a new discipline that was growing rapidly in scope and in importance. He headed the group of Nordic jurists who together founded and ran the English-language yearbook *Scandinavian Studies in Law*, whose first edition was published in Stockholm in 1957. Schmidt remained editor of the publication until his death in 1980 and put a great deal of effort into the yearbook.

Each edition of *Scandinavian Studies* comprised a selection of recently published Nordic jurisprudence articles deemed to be of international interest. Schmidt was assisted by an editorial board consisting of Stockholm professors. There was a correspondent in each of the Nordic countries whose task was to select and propose articles from his or her own country. I had gotten to know Schmidt in the late 1950s, and I ended up translating his textbook *Kollektiv arbetsrätt* (Collective Labour Law) into English. In the early 1960s, I became the editorial secretary of *Scandinavian Studies in Law*, a position I was to hold for several years. In principle, the Nordic authors' contributions would be available in English when they reached the editorial board, but they often required, especially in the beginning, a comprehensive linguistic review, which was mainly undertaken by Folke Schmidt and myself. Final revision was carried out by an experienced English translator, Richard Cox. The level of ambition in terms of drafting, orthography and even graphic design was very high from the beginning. The editorial board made a great effort to revise and proofread the contributions, but many eyes were needed, and the task of editorial secretary was labour-intensive. During the years in which I was editorial secretary, I was always accompanied by a stack of manuscripts or proofs on all trips by plane, train or boat.

Our work translating the Nordic texts into English in *Scandinavian Studies in Law* had a broader and more long-term secondary purpose in addition to the yearbook's primary task, which was to make the individual contributions available to an English-speaking readership and thereby create the conditions for an international scientific discussion. Looking at this readership, we were of the opinion – which would prove to be realistic – that it would essentially consist of a limited group of well-educated and often professional people with an interest in law, or at least social science. The secondary purpose was

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to build up gradually a fairly universal stock of English terms, which could be used to reproduce Nordic concepts and institutions in the continued international exchange of ideas that we hoped for. This stock of terms naturally grew with every edition of *Scandinavian Studies*. Richard Cox compiled the new words annually, but our plans to produce sufficient material for a more complete Swedish-English legal dictionary never came to fruition. This, in itself, came as no surprise. The articles that were included in the yearbook were selected mainly with regard to their scientific interest and quality, and they were often quite narrow in terms of subject matter and specialised. In the 1950s and 1960s, there was a sense of curiosity in the Western world and, at best, a respectful interest in Nordic social solutions. The notion of the Nordic countries, and especially Sweden, as representing a 'middle way' between socialism and capitalism was quite widespread among lawyers and social science writers in the Western world. Although broad overviews of major subject fields were not completely lacking among the articles selected, the presentation of Nordic law became too selective for even a fairly large number of editions of the yearbook – each comprising about ten articles, a total of between 200 and 300 pages – to provide, within a reasonable time, sufficient material for a useful general law dictionary. One problem that came to the fore early on when the dictionary plans began to materialise was the difference between British and American legal language. Often more than one word was required to reproduce a Swedish legal term in English.

In contrast to the situation with the Swedish Engineering Industry Association's crane standards, translating the legal texts in *Scandinavian Studies in Law* afforded a certain amount of scope for stylistic and even aesthetic considerations. Our mission was to present Nordic jurisprudence in as appealing a form of English as possible without sacrificing scientific rigour. Pursuing this ambition often led to a dilemma in the translation of legal terms, perhaps especially the names of offices, functions and institutions, but also legal theoretical concepts, which in my opinion is inevitable in any professional translation of texts which touch on social matters.

Simplified, the dilemma could be expressed as follows: should one choose a stylistically appealing and perhaps idiomatically acceptable but, on the other hand, factually vague and approximate solution or should one make the effort to produce a linguistically cumbersome detailed definition, which is provided with explanatory addenda and which sometimes, in order to be at all comprehensible, ends up requiring such a large amount of information regarding the surrounding social conditions that the translation of a single term grows into its own mini-chapter.

When choosing between these two principal solutions, it is inevitable to try to get an idea about the probable readership's use of the text. In the present case, it seemed – and it seems generally – unlikely that it would be used by practising lawyers as information of the kind they need for their decision-making. Such information is regularly obtained by pragmatic lawyers in other ways, not by reading academic yearbooks. The purpose of the study of Nordic law could in all probability be assumed to be of a theoretical nature. This assessment gave – and gives – a certain preponderance to the arguments in favour of an idiomatic, stylistically fluent translation rather than a detailed, descriptive and investigative one. However, the same assessment also warrants a warning: the text must not become so idiomatic that it obscures real differences between the rules and institutions that are the subject of the translation. Then it can be directly misleading. The foreign must be allowed to be foreign even if is expressed in a well-known linguistic form. It is hardly an exaggeration to claim that, in the linguistic and terminological field, there is a greater similarity between Nordic and German (and indeed even French) law than between the Scandinavian legal systems and the legal systems belonging to or based on Anglo-American *common law*. This is not to say that the Nordic legal systems would completely lack the linguistic exoticism that often – in the eyes of foreign observers – characterises English and North American law. A single example may be provided. This relates to a now defunct official employed in the Swedish legal system who required fairly detailed explanations in order to be fully understood in his threefold professional role. How could one perform a reasonably reliable translation of the term *landsfiskal* into English, French or German (or Danish or Norwegian for that matter) without becoming wordy?

A third example points to completely different translation problems. In the decades immediately following the Second World War, questions of *legal protection for the privacy of the individual* came into sharp focus in Western democracies. The growing threat to individuals' privacy through wiretapping, secret photography and new technical procedures was instrumental in European and American lawyers showing an interest in these issues. The discussion was particularly fuelled by the fact that the proponents of stronger legal *protection* for privacy caught on to the idea of fundamental human rights, which have been strongly enshrined both in the 1948 UN Declaration and in the 1950 Council of Europe Convention on the protection of such rights.

On the legal map, human rights and 'right of personality' (*Persönlichkeitsrecht*), which German lawyers in particular had already tried to launch in the 19<sup>th</sup> century as a generic term for, among other things, authors' moral rights (a subject which I dealt with in my doctoral thesis in Uppsala in 1966) are situated in different areas. The former, with roots

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both in the Declaration of Rights of the United States and in the French Revolution's *Déclaration des droits de l'homme et du citoyen*, were attributed to public law, the latter to private law. Traditional boundaries of this kind have a stronger controlling effect on thought than one imagines.

The international interest in the legal protection of privacy led the International *Commission of Jurists* (ICJ), which was based in Geneva, to organise a conference on the subject in Stockholm in the spring of 1967. The Commission's Swedish section was led by the distinguished judge Gustaf Petrén. He persuaded me to prepare an English-language comparative law report on the subject before the conference, with proposals for discussion topics as well as legal solutions. With some assistance from the ICJ secretariat, I was able to complete the report. It was published in 1967 as a book (*Right of Privacy and Rights of the Personality. A Comparative Survey*, Acta Instituti Upsaliensis Iurisprudentiae Comparativae, 8, Stockholm, Norstedts, 1967, 250 pages).

The purpose of my report was to provide, as a basis for the conference and for any legislative proposals, a clear and reasonably complete picture of the actual state of legal protection of the individual's privacy in European countries that could be considered leaders in the field and in the United States. The main difficulty with the task was that this legal protection, to the extent that it existed at that time at all, belonged to such divergent parts of the legal maps concerned and therefore also *had such different names*.

The solution to the problem of presenting an overall picture was on this occasion to refer to a number of high-profile legal cases, which had as a common denominator the fact that – regardless of the headings under which they were found – they were about legal protection of the individual's privacy. The collection included some famous rulings from the early 20<sup>th</sup> century by North American judges that had been described and analysed as expressions of a new right, the '*right of privacy*', a judgment from Norway's highest court from the period after the Second World War (when the concept of 'respect for private life' came into use), and a couple of similarly new and precedent-forming rulings from the West German *Bundesgerichtshof*. Here it was not a matter of simply translating one or more legal systems' terms into one or more terms in another system. A prerequisite for implementing the review was to ensure that one did not get bogged down in the terminology differences, but, so to speak, looked straight through them, into the substance of the legal solution. The *term* to be given to this solution was obviously no trivial matter – terms are never trivial in a meaningful language – but it was a secondary issue. The significance of the survey was that the legal systems examined provided an adequate remedy on essentially equal grounds.













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