

PRINCIPLE OF MULTILINGUALISM AND THE INTERPRETATION OF EUROPEAN UNION REGULATIONS

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Abstract

The general nature of legal regulation, the specificity of the legal language, the dynamics of purposefulness of the law, the internal contradictions of the legal system, the gaps of law are justify the need to interpret the legal regulation. European law is a supranational law system, an aspect which is setting it apart from both domestic and international law. The issue of implementing, interpreting and applying a mandatory legislative system in no less than 27 states with major linguistic and cultural differences is a complex one in terms of the language used. By this study we aim to highlight the significance of linguistic differences in the interpretation and application of the European law.

Keywords: legal language, interpretation of regulations, European law, linguistic differences, legal regulation, application of European law, multilingualism.

1. Introduction

The interpretation of legal regulations is an important and necessary step in the enforcement of the law. It may be performed both by those for whom the legal regulation is intended, by the state authorities responsible for the enforcement of the law, as well as by those who have drafted the legal regulations in question. To achieve the objectives for which compliance with a legal regulation is required, it is important to discern both the "letter of the law" and the "spirit of the law". As such, several methods of interpretation emerge, and the result of a thorough interpretation may differ from the first impression left after reading of a regulation, respectively it may reveal a broader or stricter meaning of the intent of the legislator, provided that it is interpreted in good faith.

In order to fulfill the purpose for which the legal regulations have been developed, it is necessary to know the letter of the legal regulations, as well as their spirit¹. These are revealed during the interpretation process, which is part of the law practice process. In both its meanings, the practice of law involves, in one form or another, to an extent or another, also the endeavor of "interpreting" the legal regulations. The interpretation of legal regulations is a logical-rational operation which is performed according to certain rules, based on law-specific methods for the purpose of establishing the true or full meaning of the legal regulation in its effective application, while representing a moment required for the application of law.

In the activity of legal regulation "application", its knowledge has a dual aspect: on the one hand it involves an integral as possible knowledge of the facts to fall under the provisions of that regulation and on the other hand a thorough as possible knowledge of the spirit and the letter of the regulation to be applied to the relevant facts.

The interpretation of legal regulations must lead to the full clarification of their meaning, both in terms of their internal logical-legal structure and in terms of their external form, style and drafting language, all of which aim to reveal the intent of the legislator. The practical reason for such an endeavor is, ultimately, is ensuring the correct selection and individualization of the regulation applicable to a given factual situation.

2. A brief history of the principle of multilingualism in the European Union

In 1952, during the drafting of the Treaty establishing the European Coal and Steel Community (ECSC), the signatory countries of that time: France, Italy, Federal Republic of Germany, Belgium, Luxembourg and the Netherlands, have decided that this new institution must stand out among the others, by its openness and linguistic diversity. And this is how the principle of "full multilingualism" was born, providing equal recognition to all languages of the Member States.

The body which supports the European Commission in implementing said multilingualism principle, which is one of the fundamental principles of the European Union, is the Directorate-General for

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¹ See Elena Anghel, *Reflections on the juridical system*, in proceeding CKS-eBook 2013, pp. 470-476, http://cks.univnt.ro/cks_2013/CKS_2013_Articles.html; The importance of principles in the present context of law recodifying, in proceeding CKS-eBook 2012, p. 753-762, http://cks.univnt.ro/cks_2012/CKS_2012_Articles.html.

Translation (DGT or DG TRAD). This principle has become the scope of Regulation no. 1 of 1958² and it determines the EEC language regime. The Directorate-General for Translation is the European Commission's translation service. It is one of the world's leading language services, employing about 2,300 people, including 1,600 translators in its offices from Brussels and Luxembourg. Their main mission is to provide language services and to translate texts of a legislative and political nature, as well as any other document of interest for the European Commission, into the twenty-four official languages of the European Union. Thusly, it contributes to the promotion of multilingualism, the language regime of the European Union.

One of the European Commission's major partners in promoting the idea of multilingualism is the European Parliament.

All parliamentary documents are published in all the official languages of the European Union and each deputy is entitled to speak in the official language which he/she prefers. The European Parliament has enacted a regulation³ recognizing the right of every deputy to review the parliamentary documents, to follow the debates and to speak in his/her own language.

The first Regulation enacted by the European Community in 1958 was establishing the German, French, Italian and Dutch languages as the official languages of its institutions - namely the languages of the founding countries: Germany, Belgium, France, Italy, Luxembourg and the Netherlands. Together with each expansion of the European Communities, the languages of the new Member States have been integrated. In 1973, the English, Danish and Irish languages have been added, the latter only as the "language of treaties", meaning that only the Treaty of Accession of Ireland and the basic texts concerning this country have been translated. The next languages to gain the status of official languages have been the Greek language in 1981, the Spanish and Portuguese languages in 1986, the Finnish and Swedish languages in 1995, the Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Czech, Slovak and Slovenian languages in 2004. As of January 1st, 2007, after the accession of Romania and Bulgaria, the European Union numbers 23 official languages. From this date, the Irish language has also become an official language. Since Croatia's accession to the European Union, 24 languages have been officially used in European legislation, a number that has not been seen so far not

event at the level of states with multiple official languages or at the level of other international organizations.

Since 2007⁴, the Romanian language has become one of the official languages of EU and the principle of European multilingualism applies to it. Thus, the binding European acts are also translated into our language, and private or public persons of Romania who are seeking justice at the CJEU can hold the court proceedings in their own language. Moreover, many Romanian linguists have been employed in European structures prior to Romania's accession specifically to enable a quick and easy integration. Despite these advantages, the translations into Romanian language are not without gaps, which is why the CJEU reminds the national courts to take into account other translations too when it comes to interpreting the European regulations.⁵

With 24 official languages, more than 506 language combinations are possible, as each language can be translated into 22 other languages. In order to respond to his challenge, the European Parliament has complex services of translation and check of legal texts. Strict rules have also been developed to ensure the effectiveness of these services and to maintain reasonable budgetary costs.

As a general rule, the translators are translating texts from an original version into their mother tongue. However, after the latest EU expansions and the increase in the number of possible language combinations, it has sometimes become difficult to find a person proficient in a particular language combination, especially when it comes to the least widely used languages in the European Union. For the translation of texts written in these languages, the European Parliament has created a "swivel" language system, which involves the translation of texts first into the most widely used languages (English, French or German languages). Over time, other European languages (Spanish, Italian and Polish languages) may also become swivel languages.

The principle of multilingualism is also regulated by art. 3 (3) of the TEU, according to which: "*The European Union shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced*", as well as by art. 33 of the Vienna Convention of 23 May 1969 on the Law of Treaties, which states that when a treaty has been authenticated in two or more languages, the text is equally authoritative⁶ in each language,

² Regulation no. 1/1958 *determining the languages to be used by the European Economic Community*, OJ P 17, 6.10.1958, p. 385.

³ European Parliament, Rules of Procedure for the 8th parliamentary term, 2014 - 2019, of July 2018 and Rules of Procedure for the 9th parliamentary term, 2019-2024, of July 2019.

⁴ From another perspective, regarding the language of drafting administrative acts, see also E.E. Ștefan, *Administrative law. Part II, University course*, Universul Juridic Publishing House, Bucharest, 2022, pp. 42-44.

⁵ https://curia.europa.eu/common/recdoc/repertoire_jurisp/bull_ordrejur/data/index_A-05.htm.

⁶ Elena Anghel, *Values and valorization*, LESIJ JS no. 2/2015, Lex ET Scientia International Journal - Juridical Series.

unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail. According to the same Convention, a version of the Treaty in a language other than the one in which the text has been authenticated shall not be deemed as authentic text, except when the Treaty stipulates otherwise or the parties have agreed to this. At the same time, the terms of a treaty are presumed to have the same meaning in the various authentic texts.

The Charter of Fundamental Rights of the European Union guarantees respect for linguistic diversity, and discrimination on the grounds of language is prohibited regardless of a person's country of origin. The European Parliament, the Committee of Ministers, the Economic and Social Committee and the Committee of the Regions are using all the official languages. To this end, the creation of an office of European Commissioner for Multilingualism on January 1st, 2007 proves that the European Executive is thoughtful with regard to this issue. This vision is also recaptured in the recent legislation of the European Parliament. The Code of Conduct on Multilingualism, adopted in 2006, states that the only method to achieve linguistic equality, while keeping the expenditure within acceptable budget limits, is the "integrated controlled multilingualism", built based on the needs communicated and prioritized in advance. This is the only way to ensure equality between Member States and between citizens.

The European Union is a "multicultural and multilingual democracy" where three alphabets are used: Latin, Greek and Cyrillic alphabets. This, however, generates a series of costs. No other body is spending this much on translation and interpretation, and yet in relative terms the costs are quite low - about 1% of the Union's annual budget or € 2.3 per year for a citizen. In the European Parliament, these costs account for more than a third of the total expenditure, in relation to an impressive work load - since 2005, more than one million pages per year have been translated at the Parliament level. On average, the EU's institutional system requires more than 2000 translators and more than 80 interpreters a day.

Unitary interpretation governs the case of ambiguities encountered between several versions of a European provision. In a ruling, the Court of Justice

states: "According to constant case-law, the need to unitary apply and, as such, interpret the provisions of the European law precludes the possibility that, in case of doubt, the text of a provision may be regarded on its own, by relation to only one of its versions, conversely requiring its interpretation and application in the light of the versions existing in the other official languages"⁷. In the case *Consiglio Nazionale degli Jugegneri versus Ministero della Giustizia, Marco Cavallero*, at para. 53 it is stated that: "a constant case-law reveals the need to unitary apply and, as such, interpret the provisions of the European law precludes the possibility that, in case of doubt, the text of a provision may be regarded on its own, by considering one of the versions, but requires its interpretation and application in the light of the versions existing in the other official languages"⁸.

In case of inconsistency between the various language versions of an European text, the relevant provision must be interpreted in consideration of the general economics and purpose of the regulation it belongs to. The first recital of the directive reveals that the directive's purpose is to remove the obstacles to the free movement of certain prepacked products containing food liquids, obstacles caused by the existence of compulsory administrative regulations in most Member States.⁹ According to the consistent case-law, a text of secondary European law must be interpreted insofar as possible in accordance with the provisions of the EC Treaty and the general principles of European law.¹⁰

3. The role of the European Union Court of Justice in the interpretation of the European law

The European Union Court of Justice is the judicial authority of the European Union and has the role of guaranteeing the observance of the law in the interpretation and application of the Treaties. To this end, the European Union Court of Justice has the power to exercise judicial control over the legal acts of the European Union, as well as the acts of the Member States, having the following responsibilities: to verify the legality of the acts issued by the European Union's

⁷ Case C-457/05, *Schutzverband der Spirituosen - Industrie ev. v. Diageo Deutschland GmbH*, Court Decision of October 4th, 2007, para. 17. The Court refers to: Case C-29/69 *Stander*, Decision of November 12th, 1969, Rec., p. 419, para. 3; Case C-55/87, *Moksel Import und Export*, Decision of July 7th, 1988, Rec., p. 3845, para. 15; Case C-296/95, *EMU Tabac and others*, Decisions of April 2nd, 1998, Rec., p. 1-1605, para. 36 and Case C-63/06, *Profisa*, Decision of April 19th 2007, Rec., pp. 1-3239, para. 13. Please see: Case F-32/08, *Marie-Claude Klein v. the Commission*, European Union Civil Service Tribunal Decision of January 20th, 2009, pct. 35-36; Case F-11/08 *Jörg Malling versus Office européen de police (Europol)*, European Union Civil Service Tribunal Decision of June 4th, 2009, para. 35-36.

⁸ Please also see: Case C-311/06, Court Decision of January 29th, 2009.

Directive 88/316 / EEC of 7 June 1988 of the Council amending Directive 75/106, which introduced in the later directive the relevant provisions of the main proceedings, is based on art. 100a of the EEC Treaty (which became art. 100a of the EC Treaty, which in turn became, following the amendment, art. 95 EC), and consequently seeks to improve the conditions for the establishment and functioning of the internal market. Case C-457/05, para. 21.

¹⁰ *Idem*, para. 22.

institutions; to ensure the compliance of Member States with their obligations under the provisions of the Treaties; to interpret the Union law at the request of national courts of law.

The request for interpretation may be related to the founding treaties, as well as the amending acts and treaties. Moreover, the protocols and annexes to the founding and amending treaties are an integral part of these, which means that their texts may also be subjected to interpretation.¹¹

Together with the merging of pillars I and III and the abrogation of art. 35 of the Treaty on European Union and art. 68 of the Treaty establishing a constitution for Europe, the CJEU jurisdiction extends also to the police cooperation in criminal matters. The exception to this rule is represented by art. 276 of the Treaty on the functioning of the European Union which maintains the rule established by former art. 35 para. 5 TEU, according to which the Court of Justice has no jurisdiction in verifying the legality¹² or proportionality of police or other law enforcement operations carried out in a Member State, nor to issue decisions with regard to the exercise of the responsibilities incumbent upon Member States for maintaining the public order and the defense of domestic security.

The court of Justice is authorized to issue preliminary decisions with regard to the interpretation of acts enacted by the institutions of the European Union and the European Central Bank.

Acts of the European institutions mean both the acts specified in the Treaties (Regulation, Directive, Decision) and the acts which are not covered by the Treaties (also known as atypical acts). With regard to the latter category, we refer to the decision of CJEU of 24 October 1973¹³. In this case, Finanzgericht de Baden-Württemberg has asked of CJEU, based on art. 177 TCE, to issue a preliminary ruling on the interpretation of two regulations (one of the Council, one of the Commission), certain articles of the Treaty establishing the EEC, but also on the interpretation of the Resolution of the Council and of the Representatives of the Governments of the Member States of 22 March 1971, on the attainment by stages of economic and monetary union in the Community. Thus, according to the Court, „art. 103 does not preclude the power of the Community

institutions to enact, without prejudicing other procedures specified in the Treaties, circumstantial measures for maintaining the objectives of the Treaty. The Council is the body which selects, as the case may be, the form of the measure which it deems most appropriate.”¹⁴. In this way, the European Court of Law has provided the requested interpretation to the national court.¹⁵

As per CJEU case-law, its power to interpret the acts issued by the European institutions is not conditional upon nor secondary to the direct effect of European acts or their binding nature. In this respect, we refer to the ruling for *Impresa Construzioni comm. Quirino Mazzalai del Renom*¹⁶, a Decision which states the fact that „according to the provisions of art. 177, the Court has the power to establish, by preliminary ruling, the interpretation of acts enacted by the European institutions, whether or not these are directly applicable. It is not for the Court to judge the relevance of the questions submitted under art. 177, which is based on a clear separation of powers, leaving it to the national courts to decide whether it is necessary to have a preliminary ruling procedure in order to issue decisions in the disputes brought before them.

The procedure of preliminary questions is governed by art. 267 TFEU¹⁷. The procedure of preliminary questions fulfills at least two functions. One is the function of a tool which ensures the unitary interpretation of European Union law, respectively its unitary application by the national courts of the Member States. The effect of this procedure is the elimination of the risk of a non-unitary practice occurring at the Union level, an obvious risk if the task of interpreting the European Union law would be left for the national courts. A second function is to protect the rights of natural and legal persons, the procedure of preliminary questions being essential for their legal protection given that it provides the opportunity to obtain the European Union law application by the national courts of the Member States. Based on this procedure, the relatively limited options of individuals - natural and legal persons from Member States - to lodge a complaint with the Court of Justice, are being compensated.

¹¹ For a detailed presentation of the acts which may be the subjected to a preliminary proceedings, please see Augustin Fuerea, *European Union Law. Principles, actions, freedoms*, Universul Juridic Publishing House, Bucharest, 2016, pp. 97-101

¹² From another perspective E.E. Ștefan, *Legality and morality in the activity of public authorities*, în Public Law Magazine no. 4/2017, Universul Juridic Publishing House, Bucharest, pp. 95-105.

¹³ CJEU, 24.10.1973, *Schluter/Hauptzollamt Loerrach*, C-9/73.

¹⁴ C. D. Radu Prescură, R.-M. Popescu, *The legal regime of CJEU preliminary rulings and their impact on the national legal system SPOS Project*, European Institute of Romania, 2008, p. 15, unofficial translation, C-9/73, specified, Item 2 of the Table of Contents.

¹⁵ C. D. Radu Prescură, R.-M. Popescu, *op. cit.*, p. 15.

¹⁶ CJEU, 20.05.1975, *Impresa Construzioni comm. Qirinto Mazalai del Renom*, C-111/75.

¹⁷ Art. 267 TFEU: "The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of the Treaties; (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union; Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon."

The procedure is non-contentious, of judicial collaboration, being an intermediate procedural stage of a litigation brought before a national court. Depending on the subject-matter of the request, the purpose of this procedure is to ensure the unitary interpretation and application of the European Union law and, consequently, to ensure the cohesion of the legal order of the European Union; the Court's interpretation seeks to reveal the exact meaning of an equivocal provision, to clarify the meaning and purpose of that provision as it is meant to be understood and applied, as well as to verify the compliance of a particular act with European Union law. The validity of an European Union act is appraised based on a judicial verification of regulations under review.

As such, the Court is the sole responsible for the interpretation of the European Union law. This means that neither the interpretation of the national law provisions nor the appraisal of its compliance with European Union law may be the subject-matter of a preliminary question. Also, the Court may not decide with regard to the European Union law application in effective individual cases, not ruling in the case submitted to the national court. The Court drafts an abstract requisite, providing, depending on the particular elements of the case, an answer required for the settlement of the main litigation. Ruling on the merits of the case and issuing the decision in the main litigation are the exclusive responsibilities of the national courts.

The preliminary referral procedure is a fundamental mechanism of the European Union law, which seeks to provide the national courts of the Member States with the means required to ensure an unitary interpretation and application of this law at the European Union level. Among the proceedings before the Court of Justice of the European Union, the preliminary ruling procedure has an essential role to play in the development of the important principles¹⁸ of European Union law, several of which having been established following preliminary questions.

4. The principle of multilingualism in the procedure and practice of the European Union Court of Justice

The languages of the Member States are official languages of the European Union¹⁹ and of the proceedings of the Luxembourg Court. In the Procedure Regulations of the Court of Justice²⁰ title I (Organization of the Court), chapter 8 (Language Regime), art. 36-42 govern the language regime before the Court. In *Cilfit* case it was stated that: "it must be borne in mind that Community legislation is drafted in several languages and that the different language versions are all equally authentic; thus, an interpretation of a provision of Community law thus involves a comparison of the different language versions. It must also be borne in mind, even where the different language versions are entirely in accord with one another, that Community law uses terminology which is peculiar to it. Furthermore, it must be emphasized that legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States."²¹

Special report concerning the Performance review of case management at the Court of Justice of the European Union [developed based on the second subparagraph of art. 287 (4) TFEU], drafted by the European Court of Auditors²², the translation of documents plays a crucial role in assisting the judicial activity of the CJEU due to its obligation to treat cases and to disseminate a significant number of legal decisions in all EU official languages. The availability of translation at certain key points can directly affect the duration of a case's lifecycle. In terms of sampled cases of the Court, between 2014-2016, the CJEU had a total number of 1.1 million pages translated each year. The CJEU has different methods for setting deadlines with regard to the translation of case documents. For most translations, tailored time-frames are set. However, the deadlines do not reflect the average potential daily translation capacity of a lawyer linguist. Such information, if available, would enable the identification of certain options to achieve higher efficiency or best practices. The translation of the last procedural documents, in the context of the written procedure, is a key date because it triggers the start of the indicative deadline for the preliminary reports to be drawn by the judges. The Court has found that in a

¹⁸ For more details on the principles, see E.E. Ștefan, *Legal Liability. Special view on liability in administrative law*, Pro Universitaria Publishing House, Bucharest, 2013, pp. 63-64.

¹⁹ Please see Council Regulation no. 1 determining the languages to be used by the European Economic Community (OJ P 017, 6.10.1958, p.385). According to Art. 1 "The official languages and the working languages of the institutions of the Community shall be Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages." And art. 7 states that "The languages to be used in the proceedings of the Court of Justice shall be laid down in its rules of procedure."

²⁰ OJ, L265 of 29.09.2012

²¹ Case 283/81, CILFIT / Ministero della Sanità, Decision of 6 October 1982, ECR 1982 p. 3415, Item 18-19.

²² In this regard, please see: https://www.eca.europa.eu/Lists/ECADocuments/SR17_14/SR_CJEU_RO.pdf.

significant number of cases (29% for the Court of Justice and 57% for the General Court) translations were made available respectively between 5.5 and 9 days ahead of the fixed internal time - frame set. The CJEU participates in the inter-institutional Executive Committee for Translation whose aim is to promote best practices. Between 1960 and 2010, 246 instances have been reviewed before the Court of Justice of the European Union (CJEU) which required a comparison between translations. Among there, the Court has found translation discrepancies in no less than 170. As such, the question of which are the legal effects of these translation discrepancies must be asked. The case *Konservenfabrik Lubella*²³ of 1996, whereas material translation error has generated an entire process before the CJEU, may be instructive.

In this case, Regulation no. 1932/93 was establishing protective measures as regards the import of sour cherries, a fact which is recognized in all the national translations of the act, except the German ones. In the German language version the term „Stüßkirschen” (“sweet cherries”) was used, although the specific code for sour cherries was specified. In this context, a transport of 3 trucks of sour cherries was stopped at the German customs and a specific tax specific the European Regulation was requested. The German importer refused to pay the tax, citing the text of the German translation. Shortly after the event, the German authorities have rectified the error, but Lubella importer has chosen to ask for the annulment of the regulation, claiming that there still were doubts related to the type of cherries, as well as the fact that a change

in the translation would mean a retrospective application of the law. In the face of these arguments, CJEU has rejected the request stating that the correct use of the product code, as well as the exiting translations, were sufficient indications to prove the real intent of the legislator at the time of the Regulation entry into force hence, the German rectification was only a normalization of the act and not a retroactive application of the law.²⁴

5. Conclusions

This study only paves the way for the research of this vast and constantly present topic.

Obviously, the benefits of multilingualism are outweighing the costs. It has been said many times that the European Union, whose multilingual character is undeniable, can be likened to an ever-larger and more complex Tower of Babel. Linguistic diversity requires that institutions and citizens understand each other as well as possible, this being one of the EU's basic democratic principles. Each expansion of the Union also becomes a linguistic and cultural extension. Given that many citizens speak only one language, the European Union must ensure that they have access to legislation, procedures and information in their mother tongue and that they can communicate with all institutions in any of the official languages.

This is one of the methods by which the fundamental rights and freedoms of the individual are observed.

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²³ Mr. C.J.W. Baaij presentation before DGT and the Council, under the title "Consequences of Discrepancies between Language Versions in Cases of the European Court of Justice", 2010-2011.

²⁴ Case 64/95 *Konservenfabrik Lubella Friedrich Bükler GmbH & Co. KG v. Hauptzollamt Cottbus*. Reference for a preliminary ruling: Finanzgericht des Landes Brandenburg - Germany. Common organization of the market in fruit and vegetables - Protective measures - Sour cherries. *European Court reports 1996 Page I-05105*.

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