RECONCILIATION OF LANGUAGE VERSIONS WITH DIVERGING MEANINGS IN THE EUROPEAN UNION

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Abstract

As emphasized in a study published last year, when multiple legal orders and languages co-exist within a single legal regime, there is potential for divergences between the legal texts. The European Union gives rise to such divergences, having in mind that it integrates 28 Member States and 24 official languages. After discovering how the multilingual and multicultural environment of the European Union affects its legislative and judicial processes and arguing the problem of translation divergences between the authentic texts of the European Union, it is nowadays our concern to analyse the reconciliation of language versions with diverging meanings in the EU legal order.

The present study is part of a more complex research on this theme and it is meant to approach certain important points of the master thesis prepared in Switzerland for a LL.M. program.

Keywords: *European Union, translation, divergences, conflicts, reconciliation.*

1. About Language and Multilingualism

Language is "a companion to culture, as the essential core of national or minority group identity".[1] Multilingualism can be seen as "a democratic value to be protected, a fundamental right of minority groups, an obstacle to deliberative democracy and a hindrance to legal certainty and the possibility of uniform law, a cultural asset of Europe to be promoted and protected, a competitive advantage of businesses on the market and a prerequisite for the free movement of EU citizens".[2]

But why the EU does not agree on a common language?

As from the 1st of July 2013 "the European Union has 28 Member States, the last Member State entering the European family being Croatia. Each Member State has its own legal system, which can be classified under the criteria of René David in civil law countries or common law countries. Almost every Member State has its own official language, in the EU being recognized 24 languages per total.[3] Moreover, "depending on how languages are defined and what inclusion criteria are used, more than 100 regional and minority languages are spoken in Europe".[4]

However, despite *the struggle* of Europeans to keep their linguistic diversity, we noticed that the number of languages spoken in Europe has certainly dropped: "[m]any languages have disappeared, and some European states gave even managed to impose an almost perfect linguistic unity on their territory: English in the UK, German in Germany, French in France or Italian in Italy. Some states even share the same official language".[5]

As some authors point out "there is an important difference in the way multilingualism and multijuralism play out: while it is entirely possible and, indeed, necessary for individual participants in the legislative and adjudicative processes of the EU to act sometimes or even regularly in a language that is not their mother tongue", it is rather difficult and generally not required to forget one's legal background and to adopt a foreign one".[6]

The concept of "multilingualism" can be strong, meaning that all official language versions are equally authentic, or week, meaning that one language version is authentic, while the others are official translations. In the history of the European construction, we can find both strong and weak multilingualism. For example, the EU adopted the strong multingualism, because all language versions of an act are authentic, while the European Coal and Steel Treaty adopted the weak multilingualism, because the French version was considered to be authentic. An example of today's weak multilingualism would be the case law of the European Court of Justice, because the authentic version is the language-of-the-case version.

From the doctrine and from the ECJ's case law, we notice that by adopting the strong multilingualism,

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[1] Anne Lise Kjaer and Silvia Adamo, "Linguistic Diversity and European Democracy: Introduction and Overview" in *Linguistic Diversity and European Democracy: Introduction and Overview*, eds. Anne Lise Kjaer and Silvia Adamo, (London: Ashgate, 2011), 1.

[2] Kjaer and Adamo, *Linguistic Diversity*, 2.

[3] However, it must be emphasized that until 2007, Irish was an authentic language of the Treaties but was not included among the official and working languages of the EU. Irish became, with the accession of Ireland, an authentic language of the Treaties but it did not acquire the status of an official language under Regulation No. 1 until 2007 when the regime was extended to Irish with some limitations.

[4] Kjaer and Adamo, *Linguistic Diversity*, 4 (footnote omitted).

[5] Magali Gravier and Lita Lundquist, "Getting Ready for a New Tower of Babel" in Kjaer and Adamo, *Linguistic Diversity*, 75.

[6] Theodor Schilling, "*Multilingualism and Multijuralism: Assets of EU Legislation and Adjudication?*, German Law Journal, vol. 12, no. 07, 2011, 1461 (footnote omitted).

the EU faces many problems, leading to contradictions or variations between the language versions of the EU acts.

In many ECJ cases, it was underlined that multilingualism is essential to the EU legal order. For instance, in the case *Kik v. OHIM*, it was said that:

Multilingualism is an indispensable component of the effective operation of the rule of law in the Community legal order, since many rules of primary and secondary law have direct application in the national legal systems of the Member States.[7]

Another example can be discovered in the *CILFIT* case, where the Court stated:

It must be borne in mind that Community legislation is drafted in several languages and that the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions.[8]

2. Reconciliation of Language Versions with Diverging Meanings

The meaning of the EU law cannot be derived from one version of the official languages, therefore the languages are interdependent and "[h]ence EU citizens cannot purely rely on their own languages when they want to know what the EU law says on a particular issue. In principle, the EU citizens must know the law in each and every official language because the meaning of the law is anchored not in one single language version, but in all the language versions taken together".[9]

The differences between the languages are inevitable because they are not absolute copies one of each other. In this case, the EU multilingualism leads to "legal miscommunication, misinterpretation, incoherent and divergent texts and, ultimately, an obstacle to achieving what lies at the very core of the rule of law, namely legal certainty".[10]

But to what extent must language be regarded as *a barrier* to the development of a uniform European law?

If the EU legislator wants to legislate, therefore to communicate despite the diversity, translators and interpreters are required. They are the ones who can bridge the gap between different nationalities, facilitating the passage from one river bank to the other. Can we speak just in one language? Or what is the language of democracy in Europe? Habermas suggested that the common language in Europe should be English.[11]

"Legal translation is a special form of translation where linguistic signs are closely related to the legal systems to which they originally belong".[12] It is special because the legal language is a specialised sub-language used by jurists and the legal norms found in legal texts are enforceable. Because law is not an exact science, its language is polysemantic. For example, depending on the context, by the word *law* (in other languages, *drept, derecho, droit, diretto*) we can designate the objective law or the subjective law. Moreover, law contains legal concepts specific to a legal culture or system, for which there are no other equivalents in other legal systems (*e.g. common law, consideration, equity*).

"To be imbued with life and full meaning, the word/term must be used in conjunction with quasi-legal vocabulary (collocations) in addition to general vocabulary".[13]

But which European institution intervenes when translation conflicts arise? Well, the European Court of Justice (formed by the Court of Justice, the General Court and the Civil Service Tribunal) is the judicial authority of the multilingual European Union, ensuring the uniform interpretation EU law in 24 of the official languages. It ensures the observance of law "in the interpretation and application" of the treaties. It has to ensure that the Member States comply with their obligations, reviews the legality of the EU institutions' acts and interprets the EU law at the request of the national courts.

In the last year's study[14], we have analyzed the ECJ's case law on translation conflicts between the authentic texts of the European Union and the legal consequences of such judge-made definitions.

A normal continuation on the divergences between language versions problem is the reconciliation of the texts. It is obvious that there are diverging meanings between all 24 official languages versions, but the problem is how do we reconcile the diverging meanings?

The European institutions are familiar with this question. During the years, several methods of reconciliation have been discussed and observed in the ECJ's case law, among which the preference for the majority meaning, the preference for the clear meaning, the preference for the liberal meaning. *Unfortunately, the Court did not prefer and adopt just one method.*

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[7] Judgment of the Court in Case C-361/01 P *Christina Kik v. Office for Harmonisation in the Internal Market* [2003] ECR I-8283.

[8] Judgment of the Court in Case C-283/81, *Srl CILFIT and Lanifacio di Gavardo SpA v. Ministry of Health* [1982] ECR 3415, par. 18.

[9] Kjaer and Adamo, *Linguistic Diversity*, 7.

[10] *Ibidem.*

[11] Please see Kjaer and Adamo, *Linguistic Diversity*, 9.

[12] European Commission, Directorate-General for Translation, *Studies on translation and multilingualism. Lawmaking in the EU multilingual environment*, 1/2010, 66.

[13] Jean-Claude Gemar, "What Legal Translation is and is not – Within or Outside the EU" in *Multilingualism and the Harmonisation of European Law*, eds. Barbara Pozzo and Valentina Jacometti, (the Netherlands: Kluwer Law International, 2006), 73.

[14] Laura-Cristiana Spataru-Negura, "*Some Aspects Regarding Translation Divergences Between the Authentic Texts of the European Union*", CKS 2014 proceedings, Bucharest, 2014, 368-387.

Sometimes, in reconciling the divergent language versions, the Court uses the context and the purpose. For example, in case *Givane v. Secretary of State*, the Court presupposed that a literal interpretation can solve the problem of diverging meanings, but underlined that it has not enough:

Since a literal interpretation of the words "for at least two years" […] does not provide an unequivocal answer to the question referred, it is necessary to place that expression in its context and to interpret it in relation to the spirit and purpose of the provision in question. [15]

Thus, we should interpret this passage as saying that literal interpretation can be used to reconcile diverging meanings, BUT that this was not possible in the respective case.

We notice that the Court regularly uses a *standard phrase* when explaining the need for multilingual interpretation, which is:

It must be borne in mind in this regard that, according to settled case-law, the necessity for uniform application and accordingly for uniform interpretation of a Community measure makes it impossible to consider one version of the text in isolation, but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, in the light, in particular, of the versions in all languages.[16]

However, there are situations when a comparison of the different official versions will not solve the interpretative problem, but it will still have an important role because it can demonstrate that a particular wording is misleading. When using the purpose to solve the interpretative problem, the Court often uses the wording of various articles of the act of its preamble. For example, in the case *Commission v. Germany*[17], the Court used in order to establish the purpose of the act the wording of Article 13 and the preamble of the directive. Of course that it is important how the ECJ finds and construes the purpose of a legal act. Apart from looking to the preamble or various articles of the act, the ECJ could also consult the *travaux préparatoires*, because the choice of the proper word could have been part of the discussions in the legislative bodies.

We consider that the teleological method used in interpreting the EU law is the most used method in establishing legal meaning by the ECJ.

But when multilingual interpretation is going to be engaged and which languages should be considered as mandatory consultation languages? First of all, we consider that English and French should be the consultation languages, because these are "*de facto* originals in the legislation process of the Union, in the sense that a crushing majority of all documents are drafted first in one of these languages. As *de facto* originals they are potentially better prepared than other language versions and better reflect the intention of the legislator".[18] Another reason would be that they represent the most important legal cultures: civil law and common law. The need for uniformity[19] throughout the European Union could be another reason to choose these languages as consultation languages. "[T]he search for their meaning [varying linguistic expression of laws] does not start out with the aim of reconciling the various language versions, but originated in the need to represent the precepts and values of the Community legal system in a uniform way".[20] The uniformity is needed because "a Union whose rules are interpreted and applied differently in each Member State is a Union on paper only".[21]

We consider that if the national courts will use their own language version, interpreted with the help of the two mandatory consultation languages (English and French), the uniformity could be achieved, because the same languages would be used in all the Member States. Although there might be critics regarding the privileged position given to French and English by this recommendation, we consider that they already enjoy a special position, being considered *de facto* originals in the legislative process of the European Union. Of course, that in the event of difficult cases, the national courts retain the possibility to refer them to the ECJ.

As regards the moment when national courts should consult other language versions, we underline that these mandatory consultation languages should be employed automatically in the interpretation process. As for the multilingual interpretation by the ECJ, this does not happen regularly. The ECJ either trusts its AGs with the performance of language comparison,[22] or it conducts its own comparison, sometimes

[15] Please see Case C-257/00 *Nani Givane and Others v. Secretary of State for the Home Department* [2003] ECR I-345.

[16] Please see Case C-188/03 *Irmtraud Junk v. Wolfgang Kühnel* [2005] ECR I-885, para. 33.

[17] Please see Case 107/84 *Commission of the European Communities v. Federal Republic of Germany* [1985] ECR 2655.

[18] Mattias Derlen, "In Defence of (Limited) Multilingualism: Problems and Possibilities of the Multilingual Interpretation of European Union Law in National Courts" in Kjaer and Adamo, *Linguistic Diversity*, 162.

[19] Please see Case 30/77 *Régina v. Pierre Bouchereau* [1977] ECR 1999, para. 14; Case C-372/88 *Milk Marketing Board of England and Wales v. Cricket St. Thomas Estate* [1990] ECR I-1345, paras. 18-19; Case C-187/07 *Criminal proceedings against Dirk Endendijk* [2008] ECR I-2115, para. 25.

[20] Favrizio Vismara, "The Role of the Court of Justice of the European Communitities in the Interpretation of Multilingual Texts" in Pozzo and Jacometti, *Multilingualism and the Harmonisation of European Law*, (the Netherlands: Kluwer Law International, 2006), 68.

[21] Derlen, *In Defence*, in Kjaer and Adamo, *Linguistic Diversity*, 163.

[22] Please see Case C-173/07 *Emirate Airline* [2008] ECR I-05237, par. 25. But sometimes, important language differences discovered by the AGs are ignored by the Court – *e.g.* Case C-265/03 *Igor Simutenkov v Ministerio de Educacion y Cultura, Real Federacion Espanola de Futbol* [2005] ECR I-2579.

including more languages[23] and arriving at different conclusions[24].

The multilingual interpretation can have two outcomes: either all the official language versions have the same meaning, or they do not. Sometimes, the ECJ understands the language comparison as looking for the literal meaning or the usual meaning of words, at least.[25]

3. Conclusions

The EU law is very special, because it is an autonomous legal order, characterized by multilingualism (24 equally authentic official languages) and multijuralism (28 national legal systems). The increase of the official languages in the EU (from 4 in 1958 to 24 in 2013), determines the multilingualism in the EU institutions to be even more complex. We have to keep in mind that with the 24 official languages, the European institutions have to manage 552 linguistic combinations both for translation and for interpretation: each of the 24 languages must be transposed in the 23 other official languages. This fact requires the recruitment of an important number of translators and interpreters.

From all the ECJ's cases mentioned in this study, it appears that the Court is compelled to apply different interpretation techniques that correspond to the nature of the actual discrepancy between the language versions of the EU legal acts that it is called upon to interpret. In order to avoid such discrepancies, a continuous effort of strengthening the quality of the drafting and the translation of the multilingual EU law is compulsory. Although the principle of equal authenticity of all language versions is incompatible with cases that result in an interpretation that gives precedence to one version over the other, the ECJ realized that solutions are needed. We have to borne in mind that these solutions do not have to overlook the principle of effectiveness, which ensures maximum adhesion to the EU objectives. Thus, in a judgment in 2000, the ECH stated that "whenever a provision of Community law was capable of diverse interpretation, preference must be given to the one which is best adapted to safeguarding its effectiveness, while preserving the principle that, in the case of disparity between the various language versions of a Community text, the provision must be interpreted as a function of the system and purpose of the legislation of which it forms part".[26] In another case[27], the Court reiterated that, when an EU provision is capable of different interpretations, preference shall be accorded to the best suited to preserve the effectiveness of that provision.

An examination of the ECJ case-law[28] highlights "how solutions to problems of interpretation of multilingual texts reflect specific characteristics"[29] of the EU's legal system. This analysis shows that the Court does not yet have a clear policy on how to solve the practical problem of authenticity of texts of all language versions of Community legislation.

Of course that the meaning of the EU law cannot be derived from one version of the official languages, therefore the languages are interdependent. In this case, the EU multilingualism leads to incoherent and divergent texts that are an obstacle to achieving legal certainty.

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[23] Please see Case C-420/98 *W.N. v. Staatssecretaris van Financiën* [2000] ECR I-2867.

[24] Please see Case C-72/95 *Aannemersbedriif P/K. Kraaijeveld BV & Others v. Gedeputeerde Staten van Zuid-Holland* [1996] ECR I-5403.

[25] Please see Case C-298/07 *Bundesverband der Verbraucherzentralen und Verbraucherverbände - Verbraucherzentrale Bundesverband eV v deutsche internet versicherung AG* [2008] ECR I-07841. In this case, AG Colomer used the dictionary meanings of the words in question.

[26] Please see Case C-437/97 *Evangelischer Krankenhausverein Wien v Abgabenberufungskommission Wien and Wein & Co. HandelsgesmbH v Oberösterreichische Landesregierung* [2000] ECR 1157.

[27] Please see Case C-434/97 *Commission of the European Communities v. the French Republic* [2002] ECR 1129.

[28] Please see Case 19/67 *van der Vecht*, Case 49/71 *Getreide*, Case 6/74 *Moulijn*, Case C-103/01 *Firefighters*.

[29] Vismara, *The Role of the Court of Justice*, 68.

- Case C-372/88 Milk Marketing Board of England and Wales v. Cricket St. Thomas Estate [1990] ECR I-1345;
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