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MULTILINGUALISM AT THE COURT OF JUSTICE OF THE EUROPEAN UNION: THEORETICAL AND PRACTICAL ASPECTS

Abstract. The paper analyses and evaluates the linguistic policy of the Court of Justice of the European Union against the background of other multilingual courts and in the light of theories of legal interpretation. Multilingualism has a direct impact upon legal interpretation at the Court, displacing traditional approaches (intentionalism, textualism) with a hermeneutic paradigm. It also creates challenges to the acceptance of the Court's case-law in the Member States, which seem to have been adequately tackled by the Court's idiosyncratic translation policy.

Keywords: multilingualism, Court of Justice of the European Union, legal translation, legal interpretation, lawyer linguist, international justice

The importance of language for legal practices cannot be underestimated. Indeed, language is the law's "natural environment, in which all or almost all legal acts are accomplished" (Kozak, 2010:106). For this reason multilingualism – understood as the use of multiple equally authentic languages within one legal system – creates new challenges for legal practices, especially legislation and adjudication. The drafting of normative acts in more than one language, later their interpretation by a multilingual court and finally the translation of that court's own case-law into multiple official languages creates an opportunity for the analysis of fundamental questions regarding the interplay between law and language. The present paper analyses the practice of multilingualism at the Court of Justice of the European Union (CJEU) in Luxembourg, presenting it as a supranational and multilingual court; in particular it enquires about the impact of multilingualism upon legal interpretation and legal translation, with a particular focus upon the new European legal profession of "lawyer linguist".

The paper is divided into seven sections. Section 2 presents the principles of the use of languages in international courts and tribunals, as well as in multilingual national courts. The analysis conducted in section 3 focuses on the legal framework of multilingualism at the CJEU. Section 4 analyses European multilingualism from the standpoint of theories of interpretation and draws conclusions for the issue of translation at the CJEU. Section 5 presents the central figure of the Court's multilingualism, the lawyer linguist, a new type of professional at the intersection of law and language, entrusted with the delicate task of ensuring that the legal-linguistic conditions of CJEU case-law *effet utile* in the member states are created. Finally, in section 7 we present our concluding remarks.

The Use of Languages in International Courts

Preliminary Remarks

The role of language in international affairs is crucial and undeniable: it is not only a carrier of traditions and intentions of states, but also plays a dominant role in shaping their legal rights and obligations on a supranational level. Over the years, states have developed several approaches towards communication issues. The choice of the language used in mutual relations was based on criteria such as that of a state's power or was the result of application of the principle of sovereign equality of states. Formerly, Latin as the language of the Holy Roman Empire dominated the diplomatic discourse of European states. It was substituted by French in the eighteenth century, but still the option of one official language was considered a good way to overcome any obstacles arising from linguistic miscomprehension (Carvalho, 2011:49; Rotman, 1995–1996:191). The supremacy of the French language lasted until the 19th century, when English became an additional language of international conferences and selected treaties. During the Paris Peace Conference in 1919, after struggle for recognition, English was officially declared a second language of the League of Nations and of the Permanent Court of International Justice (PCIJ) (Tabory, 1980:5). After World War II, in order to satisfy the principle of equality, states present at the San Francisco Conference decided that communication in the United Nations would be based on the principle of multilingualism, albeit of a narrow scope. In that way, multilingualism became a widely applied solution, which remains in compliance with tendencies to protect linguistic diversity and promote national languages on an international level.

Multilingualism of International Courts and Tribunals

When the first international courts were established, it was considered obvious that the question of languages required specific regulation. In the first place, this is due to the fact that all countries in the world are able to submit their disputes to judicial settlement (Stevens, 1967–1968:706) and international courts deal with cases coming from various legal systems, which differ also with regard to languages. The second consideration derives from the fact that the justice system (not only the international one) is a field of particular responsibility, so that proceedings cannot be exposed to any misunderstandings resulting from the linguistic nuances of legal discourse. Lastly, the scope of jurisdiction *ratione personae* of particular international courts has been gradually expanding, covering also individuals, for whom linguistic guarantees are a precondition of full enjoyment of the right to a fair trial. Although the right to use one's preferred language is not recognised as a universal human right, it should be underscored that the right to a fair trial extends to linguistic guarantees with regard to proceedings (Bambust, Kruger & Kruger, 2012:219).

Consequently, in the international justice system, depending on the type of court or tribunal and its particular features, various solutions are applied as regards the usage of languages. The International Court of Justice (ICJ) dealing with disputes between states, operates in two working languages. The proceedings may be conducted in English or French, depending on agreement between the parties or, in absence of such agreement, in both official languages. It is worth noting that the ICJ can authorise, at the request of a party, the use of another language by that party (art. 39 of the Statute of the ICJ). A similar solution was adopted in the Rules of Procedure of the International Tribunal for the Law of the Sea (see art. 43 of the Rules of the Tribunal), although without the option of using another language at a party's request. The system of official languages adopted in the ICJ Statute reflects the nature of international law, in that it is mainly concerned with states' international organisations, and only exceptionally with private parties. It follows that whenever individual rights are not at stake, the efficacy of proceedings takes precedence over the respect for particular personal guarantees resulting from the right to a fair trial (Varennnes, 1994). On the contrary, in international criminal courts broader linguistic solutions have been adopted. According to the Charter of the International Military Tribunal (Nuremberg Tribunal), the defendants enjoyed the linguistic guarantees of a fair trial and, although the official languages of the Tribunal were English, French and Russian, they were entitled not only to receive all documents in their own language, but also to the simultaneous translation

of the trial. A similar solution has been adopted in the Rome Statute of the International Criminal Court (see art. 43 of the Statute). Its official languages are Arabic, English, French, Russian and Spanish, although the working languages are English and French.

The European Court of Human Rights (ECHR) dealing mainly with individual claims has adopted several rules which guarantee applicants the right to communicate in their own language, simultaneously respecting the principle that English and French are the Court's only official languages (art. 34 of the Rules of the Court). An application may be brought before the ECHR in one of the official languages of a state-party to the Convention (if it is not brought in English or French) and that language is used in all correspondence between the ECHR and the applicant, but only until the government of a respondent state is notified about the application. After such notification, the proceedings are conducted in English or French, unless the President of a Chamber allows use of the language of a respondent state (Nowicki, 2010:127).

Multilingual National Courts

The choice of the language to be applied before the court is also an issue in plurilingual countries, where several languages are declared official. Such countries may have one legal system (as is the case for Switzerland and Belgium, Russia or South Africa), but there are also plurilingual countries representing two or more legal systems like India, Canada, Israel (Šarčević, 1997:14–15). For example, the Constitution of South Africa declares eleven languages as official and the proceedings before the Constitutional Court may be conducted in any of these languages. Moreover, the state is obliged to provide an interpreter for any judge of the Court, who is not fluent with the language chosen by the party (Cowling, 2007:103). In Belgium, French, Dutch and German are used as court languages. Proceedings before the Belgian Constitutional Court may be instituted in each of the above mentioned languages, although judgments must be pronounced in Dutch and in French, and in German only if the case was brought in that language. An infringement of the linguistic rules may give rise to a sanction of nullity of proceedings (Bambust et al., 2012:225; Gambaro, 2007:5–8). In Canada, which is bilingual and in addition has two legal systems, according to the Official Languages Act in its version of 1988, which declares the juridical equality of both languages, proceedings before a federal court may be conducted in the language of the applicant's choice (English or French) (Scassa, 1994:175). In this context it is worth noting that even in the courts of monolingual countries, there is an emergent tendency to create international chambers,

operating in a language other than the official one. For example there is a bill pending before the German Federal Parliament to allow the use of English in certain commercial proceedings (Bisping, 2012:541).

The Legal Framework of Multilingualism at the Court of Justice

At the very beginning of the European Communities, multilingualism was not so clearly declared by its founders, as it is understood today. The only authentic version of the Treaty of Paris on European Coal and Steel Community (ECSC), signed in 1951, was in French, as that was the language spoken in most part by the member states of the ECSC (Swiss, 2004:89) and reflected the intention to make French the official language of Community (Andrassay, 2001:17). The subsequent treaties of Rome were equally authentic in four languages (Swiss, 2004:89), but French continued to be the main working language of the European Communities. Today, after over 60 years of European integration, the number of official languages of the European Union (EU) has reached 24, following the accession of Croatia.

The legal basis of EU multilingualism is to be found in art. 342 of the Treaty on the functioning of the European Union, in art. 22 of the Charter of Fundamental Rights, which provides for protection of the linguistic diversity, and in Council Regulation no. 1/1958 determining the languages to be used by the EEC, as amended. The general aim of multilingualism in the EU is to reconcile integration with the sovereign equality of Member States, regardless of the extent to which their languages are spoken. The *ratio legis* of multilingualism lies in the direct effect of EU law, which affects not only governments, but also natural and legal persons (Biernat, 2006:I-275) and therefore should be accessible in all official languages.

Article 7 of the above mentioned Regulation no. 1/1958 provides that the languages to be used in the proceedings before the Court of Justice shall be laid down in its rules of procedure. The Statute of the CJEU is silent on the subject, except its art. 64, which obliges the Council to lay down the linguistic arrangements applicable at the Court. As this has not yet been the case, the regime prescribed in the Rules of Procedure of the CJEU should be applied. Consequently, chapter 8 of the Rules of Procedure of the CJEU introduces, not without a reason, the expression “language of the case” and provides that it can be any one of the official languages of the EU. This means that all oral and written submissions should be prepared in

that language and if any document is filed in another, a translation into the language of the case should be provided. The determination of the language of the case in direct actions depends on the applicant. If the defendant is a Member State, the language of that state must be used. If the CJEU deals with an appeal against a decision of the General Court, the language of the proceedings is the language of the contested decision. In the preliminary ruling procedure, the language of the case is the language of the referring court or tribunal. A witness or expert, who is not able to express her opinion in any official language, may be entitled to give evidence in another language, although translation should be provided. The Court of Justice publishes its decisions in all the official languages (with the exception of Irish); however, only the Court's decision in the language of the proceedings is authentic.

The judges and advocates general may use an official language different than the language of the case, while conducting proceedings or delivering opinions, but in such circumstances the Registrar of the CJEU is responsible for providing translations into the language of the case. However, in practice they do not exercise this right, but simply use French (McAuliffe, 2008:808). Therefore, unlike other institutions of the Union which usually use both English and French as their working languages, the Court has consequently maintained the practice of using exclusively French as its internal working language, in which deliberations are held and decisions drafted (McAuliffe, 2008:808; 2012:203).

Although multilingualism reflects many values of the EU and affects its democratic legitimacy (Baaij, 2012), this does not mean that it is also an inherent element of the daily work of all institutions. Approximately 95% of legal texts adopted in co-decision procedures are drafted, scrutinised and revised in English. For practical reasons English has become a primary language used in the daily work of the institutions (Baaij, 2012), except the CJEU, where for the same reasons French dominates. This internal linguistic practice of the institutions is sometimes criticised as standing in opposition to the principles of the European Union, envisaged in its primary and secondary law. According to Baaij, one can even speak of a discrepancy between principles and practicality (Baaij, 2012). The translation of documents into other official languages affects their quality and gives rise to problems of interpretation, which is illustrated by numerous cases brought before the CJEU as a result of diverging versions of legislation (McAuliffe, 2009:100). In fact, the majority of authentic versions of CJEU judgements are also translations, since they were drafted in French (McAuliffe, 2009:101). Divergences could be partly avoided if the texts were drafted in all official languages simultaneously, but such a solution would

obviously not be practical at all. On the other hand, the existing practice of EU institutions of ‘internal restricted multilingualism’ contributes to striking a delicate balance between the requirements stemming from the principle of multilingualism and the need to operate smoothly in the complex space of EU law.

Interpretation of Multilingual Law at the Court of Justice

Interpretation of Multilingual Law

Multilingual law, characterised by the feature that its texts exist in various equally authentic language versions, creates new challenges for legal interpretation (Paunio & Lindroos-Hovinheimo, 2010:400). In the case of various authentic language versions differences in the shades of meaning are inevitable – contemporary translation studies emphasise that translations are only approximations and a preservation of meaning is not even an objective of translation (Lindroos-Hovinheimo, 2007:371). The inherent indeterminacy of natural language is thus only strengthened by interlingual indeterminacy, which is a consequence of the EU’s multilingualism (Paunio & Lindroos-Hovinheimo, 2010:409–410). Furthermore, multilingual EU law has been from the outset drafted in a vague manner, expressing principles and objectives, rather than prescribing in detail concrete modes of action (Arnull, 2006:612). However, this should not be viewed as a negative feature and legal theorists underline the positive value of vagueness as a drafting technique (Endicott, 2011:14–30; Paunio & Lindroos-Hovinheimo, 2010:397).

Furthermore, the drafting of EU legal acts is not only collective, but actually involves hundreds of actors from different EU institutions and national administrations, coming from different cultural backgrounds and usually working in a language foreign to them, showing more concern for reaching a compromise on the text rather than striving for clarity and precision (Guggeis & Robinson, 2012:51–81, 61–62). The inevitable discrepancies between the various language versions, their deliberate vagueness and the impossibility of identifying a psychological “legislator’s” intent obviously create challenges for traditional theories of legal interpretation – intentionalism, viewing interpretation as the retrieval of the drafter’s actual intent (Fish, 2005:629) and textualism (also known as originalism) which insists on the interpreter’s duty of fidelity to the text, perceived an inherent bearer of stable, objectively ascertainable meaning (Paunio & Lindroos-Hovinheimo, 2010:408).

In the absence of any reasonably identifiable collective intent of drafters (Waldron, 1997:329–356) and on the assumption that language itself is not capable of limiting the scope of possible readings of a text, as opposed to extra-linguistic factors (Kozak, 2002:87), it seems plausible to opt for a hermeneutic theory of interpretation, shifting focus from author and/or text to the interpreter and her epistemic community (Kozak, 2002:122–123; Stawecki, 2005:96–97), assuming that the interpreter invests meaning in a text (Paunio & Lindroos-Hovinheimo, 2010:408, 410) rather than second-guessing the intent of the drafter or decoding an “objectively” existing meaning allegedly inherent in the text. Nevertheless, the scope of meanings that a legal interpreter can invest in a text are limited by two factors, internal and external, both linked to the interpreter’s membership of an epistemic community. The interpreter is limited internally, in that the scope of her possible reading of a legal text is bound by the limits of her legal imagination, shaped in the process of her secondary socialisation as lawyer (Winter, 2001:210, 258). Secondly, the interpreter is limited externally, due to the fact that legal discourse is based on persuasion, an intersubjective process which is based on commonly shared values and perspectives (Kennedy, 1998:161; Winter, 2001:318; Kozak, 2002:166–169). In other words, an interpreter will not invest *any* meaning into a legal text, but only such meaning as her own cognitive process allows her to imagine (subjective limitation), and such a meaning will gain acceptance only if it is found plausible by the relevant epistemic community, i.e. depending on its persuasive value (objective limitation).

Interpretive practice of the Court of Justice

Confronted with the multilingualism of EU law, the CJEU has adopted a specific practice of interpretation which is well suited to multilingualism and which, we may assume, can be accounted for within the hermeneutic paradigm of interpretation set out above. Although legal interpretation starts with a reading of the text, and in the case of multilingual law, of its various language versions, for the CJEU semantics have never been a decisive factor of interpretation. True, the CJEU has developed in its case-law a number of rules regarding the treatment of various language versions, insisting on their equal footing regardless of the number of population using a given language, adopting from international law the view that the clearest version should be given precedence or rejecting the maximum common content theory (Paunio, 2007:389–390; Paunio & Lindroos-Hovinheimo, 2010:400–401). However, what is most important is that the CJEU has given clear preference to policy-oriented interpretation over linguistic in-

terpretation (Stawecki, 2005:108; Arnall, 2006:612; Paunio, 2007:392; Paunio & Lindroos-Hovinheimo, 2010:399). An underpinning to this approach is the CJEU's view that EU-law concepts have an autonomous meaning, therefore even if all language versions are deemed to be in accord, their exegesis still does not end the interpretive process (Paunio & Lindroos-Hovinheimo, 2010:400). Whereas a traditionally positivist court would look into the words of a statute and only if they are unclear, ambiguous or seem to contradict the basic values of the legal system would the court look into the statute's underlying purpose, the CJEU has taken the opposite approach (Paunio & Lindroos-Hovinheimo, 2010:399–400), stressing that it is always necessary to interpret EU law in light of its purpose and general context, regardless of whether the language of a provision is “clear” or “obscure”. In fact, the *acte clair* doctrine has a purely procedural and competence-dividing character and does entail the CJEU's accession to the *clara non sunt interpretanda* doctrine typical for the textualist position (Stawecki, 2005:109). Rejecting the textualist position, the CJEU has rather acceded to the idea of a hermeneutic cycle, whereby a text can only be understood in its context where a pre-understanding of the entirety plays a key role (Stawecki, 2005:99).

Certainly not being guided by textualism, neither can the the CJEU's interpretive practice be described as intentionalist. The CJEU does not subscribe (Stawecki, 2005:108) to the fiction of a “reasonable legislator”. Whilst it is true that in the language of its decisions the CJEU frequently mentions the drafters' intent (e.g. Case 29/69 *Stauder*) there are strong arguments against describing the Court's view on interpretation as intentionalism. From the outset the CJEU pursued the objectives of the EU as a “new legal order”, rather than looking into the intent of the Treaty drafters. A case in point are Cases 26/62 *Van Gend* and 6/64 *Costa* where the CJEU laid down the cornerstones of EU constitutional law – direct effect and supremacy. The founding states of the Communities intended the EU to be an international organisation within the limits of classical international law and the Court's interpretation was inspired by the Legal Service of the Commission rather than by the actual views of the “founding fathers” (Alter, 2002:37). It can be said that *Van Gend* and *Costa* even “replaced the Member States” blueprint of the [EU] legal system with its own’ (Sweet, 2007:924). Such a creative approach to legal interpretation cannot be accounted for either by the paradigm of textualism or that of intentionalism.

It seems that the multilingual character of EU law was one of the factors which enabled the CJEU to free itself from the straight-jacket of traditional theories of interpretation, such as intentionalism and textualism, in favour

of a creative, hermeneutic approach (Stawecki, 2005:110), which allowed it to further socially and politically important policy goals without being constrained by the semantic layer of the law (Paunio, 2007:388).

Translation at the Court of Justice: The Role of Lawyer Linguists

Departing from the assumption that the act of legal interpretation is essentially creative and that constraints on the lawyer's discretionary power are to be found rather outside, than inside the interpreted text, one could arrive at a pessimistic conclusion with regard to the effectiveness of CJEU case-law in the member states. Assuming that each national epistemic community of lawyers will understand the CJEU's judgments in a different way, their uniform application across the Union could be seriously hampered. However, it is submitted that the mechanisms for legal translation at the CJEU can be viewed as a response to such risks, in that they are also based on the hermeneutic view of legal interpretation.

The principal audiences of CJEU case-law are national legal communities of the EU member states, comprising of administrators, judges and practising lawyers, as well as academics. Whether CJEU rulings are actually effective (cfr. Alter, 2001:45–46), depends on their persuasive force *vis-à-vis* those audiences (Paunio, 2009:1483–1484). There are strong arguments in favour of identifying epistemic communities of lawyers in Europe primarily within the national legal communities of the EU member states, notwithstanding an emergent, transnational community of EU lawyers. Despite the ongoing Europeanisation of legal cultures across the EU, fundamental differences still persist, fully justifying the identification of four legal families within the EU (e.g. Zweigert & Kötz, 2006) or even five (Mańko, in press) legal families in Europe. Even with the growing opportunities for the free movement of lawyers (Lonbay, 2010), the judicial profession still remains thoroughly national. Indeed, it is asserted that important features of European legal culture include its “national character” and “internal perspective” (Hesselink, 2001:9). For instance in Polish case-law, texts from foreign legal cultures are resorted to only rarely and only if a lacuna exists in the national legal culture (Mańko, 2007–2008:129). For better or for worse, European lawyers still inhabit their own distinct worlds of national law, understood as “intersubjective worlds” in the sense used by Berger and Luckmann (1991:37), even if they communicate between those worlds more than before, and even if limited supra-national subworlds gradually emerge.

Finally, owing to the fact that legal languages are registers of national ethnic languages (Gizbert-Studnicki, 1992:151), it is plausible to claim that as long as distinct European nations exist as socio-cultural realities, the legal languages of Europe will continue to reflect different socio-cultural backgrounds even if legislation were to be completely unified across the continent.

Having clarified our position with regard to epistemic communities of lawyers in the EU – the audiences which the CJEU essentially seeks to persuade in favour of its vision of EU law – we must underline that a precondition for persuasion is communication, that is access to translated ECJ case-law (Paunio, 2007:296). Assuming that legal translation is a creative process (Šarčević, 1997:18), in which the transposition of legal ideas is more important than purely linguistic correspondence (Šarčević, 1997:13) the translator's membership of the relevant epistemic community becomes a key feature.

However, the only link between the CJEU judges and the national lawyer belonging to the target audience is the “material substratum of the legal text” (Kozak, 2002:115) of the Court's judgment. The encoding and decoding of meaning occurs in incommensurably different factual contexts and excludes the transmission of psychological meaning as in a one-on-one conversation (Paunio & Lindroos-Hovinheimo, 2010:409). The situation of litigants physically present at the Court, who are bound by the decision *inter partes*, and the situation of national legal communities throughout the EU who are bound by the decision *qua* precedent, is therefore radically different. The lack of a communicative relationship between the national lawyer and the law-making CJEU makes it impossible for the national lawyer to seek cognisance of the European judge's actual intent (cfr. Kozak, 2002:119). The CJEU judge is not physically present to assist the reader (national lawyer) and to correct the national lawyer's interpretation (cfr. Kozak, 2002:117). The lack of a direct communicative relationship does not, however, deprive the CJEU of all control over the meaning invested into its judgments by national lawyers (cfr. Kozak, 2002:130–131). The national lawyer is not free to invest any meaning she wants into the text of the Court's judgment – she is rather a subject “entangled in determined institutional structures and furnished with institutional interpretive tools” (Kozak, 2002:117). This gives the CJEU a real opportunity for controlling the meanings that will be invested into its judgments by *bona fide* national interpreters.

However, ultimately the only control that the CJEU can exert over the understanding of its judgments by national judges is by ensuring the highest persuasive value and quality of all the national language versions. Specifi-

cally, what the CJEU can rely on, is the fact that national lawyers “make use of a relatively stable code and catalogue of interpretive techniques”, treating a legal text as “simply an artefact, which is invested with meaning according to determined methods”. If the CJEU wants to control this process of investment of meaning by national lawyers, it must understand the national lawyer and not vice versa (cfr. Kozak, 2002:131). And indeed, there is no better way of understanding the national lawyer than by devolving the task of translation to a national lawyer who partakes in the internal perspective of her national legal culture. This is because only a translator who can be described as belonging to the same epistemic community as the target audience can actually anticipate its interpretive habits and ensure that the translated CJEU judgment is actually effective, in the sense that its interpretation by national judges will be as close as possible to what the CJEU judges intended.

The CJEU’s policy of translation seems to further these goals. The Court has entrusted the translation of its case-law exclusively to lawyer linguists, who are not professional translators specialising in legal texts but lawyers who perform the act of translation. This differentiates the CJEU from other EU institutions, where legal texts are translated by translators under the supervision of legal revisers or lawyer linguists (Dragone, 2006:99–108; Guggeis, 2006:109–117; Hakkala, 2006:147–166; Ricci, 2006:131–146; Guggeis & Robinson, 2012:51–81). This interinstitutional differentiation of translation policy can be explained by the fact that primary and secondary EU law (translated by the other institutions) is open-textured and subject to policy-focused, rather than linguistic-logical interpretation. Hence, since the linguistic layer has only a superficial character, and its function is merely to hint at the actual, underlying policy considerations, its legally precise translation is not of paramount importance – it can be performed by translators, not necessarily by lawyers. The situation is different with regard to CJEU case-law, which constitutes a source of law in the Member States *qua* binding precedent (cfr. Arnull, 2006:626–628; Sulikowski, 2005:221–232). Hence, there is no room for extensive judicial law-making at the level of following CJEU precedent – “national judges are left with the simple obligation of applying the law in accordance with the interpretation of the Court” (Paunio, 2007:401–402). Therefore, a legally conscious translation, aware of the interpretive habits of national legal communities, is necessary.

In order to assure this goal, lawyer linguists are recruited in open competitions from among persons having a full legal education, with a diploma obtained in the Member State into the language of which they will translate.

Acknowledging that legal translation is a creative, and not mechanical process (Lindroos-Hovinheimo, 2007:372), the CJEU has not implemented any forms of automated, mechanical translation (Gallo, 2006:190–191), leaving the choice of terminology, style and outlook to the lawyer linguists. The translating activity of a lawyer linguist can be described as a constant switch between the internal and external perspective (cfr. Kozak, 2002:60). Indeed, her task is one of incessantly transacting between the two symbolic universes (cfr. Berger & Luckmann, 1991:110) – that of the CJEU (and its French-drafted judge-made law) and national law. In order to achieve a fully persuasive translation she must commence from the internal perspective of the CJEU, then switch to the internal perspective of a national lawyer thereby adopting a cognitively external perspective on EU law, but maintaining an emotively internal one (cfr. Kozak, 2002:66) in order to make the best possible choices of terminology and style, and finally switch back to the internal perspective of EU law, not losing sight of the national perspective, in order to verify the consistency of the expected reading by the target audience with the perceived intent of the CJEU judges. The task is both delicate and extremely demanding: intellectually, legally, linguistically but also ethically (cfr. McAuliffe, 2008:806–818). Not only does it exceed the competence of any translator specialised in legal matters, but also not every multilingual lawyer would be capable of accomplishing it. Only a highly qualified CJEU lawyer linguist, combining a thorough knowledge of EU law and national law (McAuliffe, 2010:239–263) with membership of the relevant national epistemic community and loyalty towards the “new legal order” created by the CJEU can strive towards its accomplishment.

Conclusions

Against the background of multilingual national and international courts and tribunals, the European Union’s multilingualism stands out not only quantitatively, but also qualitatively, creating unprecedented challenges in the fields of legal interpretation and legal translation. Multilingualism has eroded traditional positivist approaches to interpretation which either seek to discover the actual intention of the drafter (intentionalism) or to decode a meaning objectively present in a legal text (textualism), allowing the CJEU to move its interpretive emphasis from semantics to politics. A linguistic analysis of the text is only the beginning of the process of interpretation, which focuses more on what is outside the text (policies, purposes, values) than what is inside it.

Simultaneously, the impact of the CJEU's case-law throughout the Union depends on its understanding and acceptance by national legal communities, both practicing lawyers and judges. It seems that the CJEU translation policy is capable of responding to these challenges, owing to the fact that translation is devoted to in-house "lawyer linguists", that is, lawyers from relevant national legal communities who translate CJEU case-law into the language of their legal education. This guarantees that the lawyer linguist combines her internal point of view as an administrator at the Court with membership of the relevant national epistemic community.

R E F E R E N C E S

- Alter, K. (2001). *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe*. Oxford: Oxford University Press.
- Andrassy, G. (2001). European Integration and European Languages: Will the Diversity Be Maintained? *Studia Iuridica Auctoritate Universitatis Pecs*, 127, 11–22.
- Arnulf, A. (2006). *The European Union and its Court of Justice* (2nd ed.). Oxford EC Law Library.
- Baaij, C. J. (2012). The EU Policy on Institutional Multilingualism: Between Principles and Practicality. *Language & Law*, Vol. 1, Retrieved from: <http://www.languageandlaw.de/volume-1/3338>.
- Bambust, I., Kruger, A. & Kruger, T. (2012). Constitutional and Judicial Language Protection in Multilingual States: a Brief Overview of South Africa and Belgium. *Erasmus Law Review*, 5, 3, 211–232.
- Berger, P. L. & Luckmann, T. (1991). *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*. London: Penguin.
- Biernat, S. (2006). Prawo Unii Europejskiej a prawo państw członkowskich. In J. Barcz (Ed.), *Prawo Unii Europejskiej. Zagadnienia systemowe* (pp. 229–262). Warszawa: Wyd. Prawo i Praktyka Gospodarcza.
- Bisping, Ch. (2012). Conquering the Legal World: The Use of English in Foreign Courts, *European Review of Private Law*, 2, 541–570.
- Carvalho, E. M. de (2011). *Semiotics of International Law: Trade and Translation*. Dordrecht, New York: Springer.
- Cowling, M. G. (2007). The Tower of Babel – Language Usage and the Courts. *South African Law Journal*, 124, 1, 84–112.
- Craig, P. & Burca, G. D. (2011). *EU Law: Text, Cases and Materials* (5th ed.). Oxford: Oxford University Press.

- Dragone, S. (2006). The Quality of Community Legislation and the Role of the European Commission Legal Revisers. In B. Pozzo & V. Jacometti (Eds.), *Multilingualism and the Harmonisation of European Law* (pp. 99–108). Alphen aan den Rijn: Kluwer Law International.
- Endicott, T. (2011). The Value of Vagueness. In A. Marmor & S. Soames (Eds.), *Philosophical Foundations of Language in the Law* (pp. 14–30). Oxford: Oxford University Press.
- Fish, S. (2005). There is No Textualist Position. *San Diego Law Review*, 42, 2, 629–650.
- Gallo, G. (2006). Organisation and Features of Translation Activities at the Court of Justice of the European Communities. In B. Pozzo & V. Jacometti (Eds.), *Multilingualism and the Harmonisation of European Law* (pp. 179–196). Alphen aan den Rijn: Kluwer Law International.
- Gambaro, A. (2007). Interpretation of Multilingual Legislative Texts, *Electronic Journal of Comparative Law*, 11.3 (December 2007). Retrieved September 27, 2013 from: <http://www.ejcl.org/113/article113-4.pdf>.
- Gizbert-Studnicki, T. (1992). Język prawny a obraz świata [Legal language and an image of the world]. In G. Skąpska (Ed.), *Prawo w zmieniającym się społeczeństwie* [Law in a changing society] (pp. 150–161). Kraków: Adam Marszałek.
- Guggeis, M. & Robinson, W. (2012). “Co-Revision”: Legal-Linguistic Revision in the European Union “Co-Decision” Process’. In C. J. W. Baaij (Ed.), *The Role of Legal Translation in Legal Harmonization* (pp. 51–81). Alphen aan den Rijn: Kluwer Law International.
- Guggeis, M. (2006). Multilingual Legislation and the Legal-Linguistic Revision in the Council of the European Union. In B. Pozzo & V. Jacometti (Eds.), *Multilingualism and the Harmonisation of European Law* (pp. 109–117). Alphen aan den Rijn: Kluwer Law International.
- Hakkala, P. (2006). Legislative Process From a Parliament Perspective – Past Practice in 11 Languages and Current Challenges in 20. In B. Pozzo & V. Jacometti (Eds.), *Multilingualism and the Harmonisation of European Law* (pp. 147–166). Alphen aan den Rijn: Kluwer Law International.
- Hesselink, M. W. (2001). *The New European Legal Culture*. Deventer: Kluwer. Retrieved September 27, 2013 from: <http://ssrn.com/abstract=1029573>.
- Kennedy, D. (1998). *A Critique of Adjudication fin de siècle*. Cambridge MA: Harvard University Press.
- Kozak, A. (2010). *Myślenie analityczne w nauce prawa i praktyce prawniczej* [Analytical Thinking in Jurisprudence and Legal Practice]. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego.
- Kozak, A. (2002). *Granice prawnicze władzy dyskrecjonalnej* [Limits of the Discretionary Power of Lawyers]. Wrocław: Kolonia Limited.

- Lindroos-Hovinheimo, S. (2007). On the Indeterminacy of Legal Translation. In T. Wilhelmsson, E. Paunio & A. Pohjolainen (Eds.), *Private Law and the Many Cultures of Europe* (pp. 367–384). Alphen aan den Rijn: Kluwer Law International.
- Lonbay, J. (2010). Assessing the European Market for Legal Services: Development in the Free Movement of Lawyers in The European Union. *Fordham International Law Journal*, 33, 1629–1669.
- Mańko, R. (2007–2008). The Unification of Private Law in Europe from the Perspective of Polish Legal Culture. *Yearbook of Polish European Studies*, 11, 109–137. Retrieved September 27, 2013 from: <http://ssrn.com/abstract=2062451>.
- Mańko, R. (in press). Survival of the Socialist Legal Tradition? A Polish Perspective. *Comparative Law Review*, 3.2. Retrieved September 27, 2013 from: <http://ssrn.com/abstract=2332219>.
- McAuliffe, K. (2008). Enlargement at the European Court of Justice: Law, Language and Translation, *European Law Journal*, 14.6, 806–818.
- McAuliffe, K. (2012). Language and Law in the European Union: The Multilingual Jurisprudence of the ECJ. In P. M. Tiersma & L. M. Solan (Eds.), *The Oxford Handbook Of Language and Law* (pp. 200–216). Oxford: Oxford University Press.
- McAuliffe, K. (2010). Language and the Institutional Dynamics of the Court of Justice of The European Communities: Lawyer-Linguists and the Production of a Multilingual Jurisprudence. In M. Gueldry (Ed.), *How Globalizing Professions Deal with National Languages: Studies in Cultural Conflict and Cooperation* (pp. 239–263). Lewiston, Queenstown, Lampeter: Edwin Mellen Press.
- McAuliffe, K. (2009). Translation at the Court of Justice of the European Communities. In F. Olsen, A. Lorz & D. Stein (Eds.), *Translation Issues in Language and Law* (pp. 99–116). Basingstoke: Palgrave Macmillan.
- Morawski, L. (2010). *Zasady wykładni prawa* [Principles of Legal Interpretation] (2nd ed.). Toruń: TNOiK.
- Nowicki, M. A. (2010). *Wokół Konwencji europejskiej. Komentarz do europejskiej Konwencji praw człowieka* [Around the European Convention: A Commentary on the European Human Rights Convention]. Warszawa: Wolters Kluwer.
- Oddone, B. (2006). Legal Translation at the Court of Justice: Problems and Techniques. In B. Pozzo & V. Jacometti (Eds.), *Multilingualism and the Harmonisation of European Law* (pp. 197–208). Alphen aan den Rijn: Kluwer Law International.
- Paunio, E. (2009). Beyond Predictability: Reflections on Legal Certainty and the Discourse Theory of Law in the EU Legal Order. *German Law Journal*, 10, 1469–1494.

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- Paunio, E. (2007). The Tower of Babel and the Interpretation of EU Law: Implications for Equality of Languages and Legal Certainty. In T. Wilhelmsson, E. Paunio & A. Pohjolainen (Eds.), *Private law and the many cultures of Europe* (pp. 385–402). Alphen aan den Rijn: Kluwer Law International.
- Paunio, E. & Lindroos-Hovineimo, S. (2010). Taking Language Seriously: An Analysis of Linguistic Reasoning and Its Implications in EU Law. *European Law Journal*, 16.4, 395–416.
- Ricci, G. (2006). Controlled Multilingualism in Parliamentary Practice. In B. Pozzo & V. Jacometti (Eds.), *Multilingualism and the Harmonisation of European Law* (pp. 131–146). Alphen aan den Rijn: Kluwer Law International.
- Rotman, E. (1995–1996). The Inherent Problem of Legal Translations: Theoretical Aspects. *Indiana International & Comparative Law Review*, 6:1, 187–196.
- Šarčević, S. (1997). *New Approach to Legal Translation*. The Hague – London – Boston: Kluwer Law International.
- Scassa, T. (1994). Language of Judgment and the Supreme Court of Canada. *University of New Brunswick Law Journal*, 43, 169–193.
- Special Eurobarometer 386 (2012). *Europeans and their languages. Report*. European Commission.
- Stawecki, T. (2005). O praktycznym zastosowaniu hermeneutyki w wykładni prawa [The Practical Application of Hermeneutics in Legal Interpretation]. In P. Winczorek (Ed.), *Teoria i praktyka wykładni prawa* [Theory and Practice of Legal Interpretation] (pp. 89–116). Warszawa: Liber.
- Stevens, L. (1967–1968). The Principle of Linguistic Equality in Judicial Proceedings and in the Interpretation of Plurilingual Legal Instruments: the *Régime Linguistique* in the Court of Justice of the European Communities. *Northwestern University Law Review*, 62, 5, 701–734.
- Sulikowski, A. (2005). Tworzenie prawa przez Europejski Trybunał Sprawiedliwości.
- Wybrane problemy [The Creation of Law by the European Court of Justice: Selected Aspects]. In J. Kaczor (Ed.), *Teoria prawa europejskiego* (pp. 221–232). Wrocław: Wyd. Uniwersytetu Wrocławskiego.
- Sweet, A. S. (2007). The Juridical Coup d'État and the Problem of Authority. *German Law Journal*, 8, 915–928.
- Swiss, Ch. Bodnar (2004). Language Problems in the European Union: Accommodations for Twenty-Five Member States and Twenty Official Languages. *European Journal of Law Reform*, 6, 87–118.
- Tabory, M. (1980). *Multilingualism in International Law and Institutions*. Alphen aan den Rijn: Sijthoff & Noordhoff.
- Varenes, F. de (1994). Language and Freedom of Expression in International Law. *Human Rights Quarterly*, 16, 1, 163–186.

- Waldron, J. (1997). Unintentional Legislation. In A. Marmor (Ed.), *Law and Interpretation: Essays in Legal Philosophy* (pp. 329–356). Oxford: Clarendon Press.
- Winter, S. L. (2001). *A Clearing in the Forest: Law, Life and Mind*. Chicago–London: University of Chicago Press.
- Zweigert, K. & Kötz, H. (2006). *An Introduction to Comparative Law* (3rd ed.). Oxford: Oxford University Press.