ISSN 1839 8308

International Journal of Law, Language & Discourse

Volume 9, Number 1

INTERNATIONAL JOURNAL OF
LAW, LANGUAGE & DISCOURSE

Volume 9, Number 1

CONTENTS

ata American Translators Association
The Voice of Interpreters and Translators

INTERNATIONAL JOURNAL OF
LAW, LANGUAGE & DISCOURSE

Editorial Team

INTERNATIONAL JOURNAL OF
LAW, LANGUAGE & DISCOURSE

The *International Journal of Law, Language & Discourse* (IJLLD) is an interdisciplinary and cross-cultural peer-reviewed scholarly journal, integrating academic areas of law, linguistics, discourse analysis, psychology and sociology, presenting articles related to legal issues, review of cases, comments and opinions on legal cases and serving as a practical resource for lawyers, judges, legislators, applied linguists, discourse analysts and those academics who teach the future legal generations.

For electronic submission and to read more, please visit
https://www.academics.education/ijlld/

ISSN 1839 8308

Included in the Directory of Open Access Journals (DOAJ). https://doaj.org/toc/1839-8308

CONTENTS

INTERNATIONAL JOURNAL OF
LAW, LANGUAGE & DISCOURSE

Moving Forward (despite Covid-19)

Robert J. Dickey
Keimyung University, S. Korea

Robert J. Dickey is Editor-in-Chief of the *International Journal of Law, Language & Discourse*, and an Assistant Professor of Public Administration in the School of Public Service at Keimyung University, Daegu, S. Korea. ORCID: https://orcid.org/0000-0003-0974-2628, Email: robertjdickey@yahoo.com

Abstract

This introductory article discusses Covid-19's impact in our field, describes the journal's direction in various indexing and electronic library services, and introduces the articles in this issue.

Keywords: Covid-19, journal indexing, electronic libraries, American Translators Association

The Profession, Journal Development, Indexing & Electronic Libraries

Covid-19 has significantly impacted our profession, neighbors, and in some cases, ourselves and our colleagues. For over 15 months, all across the globe, worklife, workstyle, income, and of course health, have been impacted significantly. As the old Chinese saying advises, with challenge comes opportunity. (I think most of us would have happily traded any new opportunities for a pass on this particular challenge!).

For most of us, this has meant a significant increase in working from home, unless our workload simply decreased. The social and economic stresses of this time will be felt for decades. We have discovered new technologies, and the limitations of technology. While the change may be "easier" for translators, closures and delays in court proceedings and business transactions, campus shutdowns and conference shifts to online have impacted us all. Artificial Intelligence (AI) and remote working are clearly not yet viable solutions for all the activities required in our field, although an increase in professional development activities (perhaps driven in part by convenience and time availability, as well as low-cost Webinar offerings) provides some hope for the future, along with steady increases in vaccination in most lands.

Our journal has made some progress despite Covid. The *International Journal of Law, Language & Discourse* is now included in the Directory of Open Access Journals (DOAJ). We are pending review in IndexCopernicus. We are preparing to submit to Scopus in the Autumn, and to apply for Serie A in Italy's ANVUR journal registry (*IJLLD* is already included in the

general listing). And the *Journal* is being included in Vlex Justis, and pending in other electronic library collections. Naturally our papers are found in Google and other online search portals. The number of submissions has climbed, although the number of accepted manuscripts for this issue is down. The *Journal* has also created a new publishing partnership with the American Translators Association, has added new sections for contributions (see more below), and is adding new sections for Short Reports & Summaries, Forums, and Reviews (see the website for more information on these). A special issue is in development, with discussions for more. And we are co-sponsoring a forthcoming ILLA conference in Bergamo, Italy. As always, check the website for the latest updates (http://ijlld.com) and follow us on Twitter, Facebook, and LinkedIn.

In this Issue

We are pleased to present two studies from Europe, and four reports from recent conferences in Europe and Asia. First, from Sweden, Mattias Derlén considers the importance of "majority meaning" in the interpretation of multilingual EU law. Then Luka Veljović, a Montenegrin sometimes in China, explores the drafting of legislation in Montenegro with an eye to legal linguistics and ethnological jurisprudence.

Also included in this issue is a brief introduction of the American Translators Association, an introduction of the new Short Reports & Summaries section. and four short reports from conferences in our field.

We hope you enjoy the issue. We welcome your comments, suggestions, and contributions. Find us at http://ijlld.com, or write to editor@ijlld.com

The American Translators Association
Publishing Partners

The American Translators Association was established in 1959 to advance the translation and interpreting professions and foster the professional development of its members. Members include translators, interpreters, teachers, project managers, web and software developers, language company owners, hospitals, universities, and government agencies.

ATA's mission is to promote the recognition of professional translators and interpreters, to facilitate communication among its members, to establish standards of competence and ethics, to provide its members with professional development opportunities, and to advocate on behalf of the profession.

To that end, ATA has several language-specific and specialization-specific divisions, one of which is the Law Division, which welcomes legal translators and judiciary interpreters from all language combinations throughout the world.

The division's mission is to raise the bar in legal translation and interpretation, to provide our members with valuable training and information on law and linguistics alike, and to promote the policies and services of the American Translators Association. And it is with that mission in mind that the Law Division has entered into a publishing partnership with the *International Journal of Law, Language, & Discourse*.

We believe in the value of academic research and are honored to collaborate with *IJLLD.*

June, 2021

Law Division, American Translators Association

ata American Translators Association
The Voice of Interpreters and Translators

INTERNATIONAL JOURNAL OF
LAW, LANGUAGE & DISCOURSE

Short Reports & Summaries, Forum (Comments)

This new section of the *International Journal of Law, Language & Discourse* includes short reports and summaries, as well as comments. This issue features four conference reports that present a synthesis of the key topics that were addressed at major global law and language events held at the end of 2020 and in the first half of 2021. The latter discussed multiple perspectives of the intersections of law and language, notably legal translation and legal interpretation (the 2020 Seoul International Forum on Translation and Interpreting); clear language, transparency and the rule of law (Talking Law Conference organised by the University of Amsterdam); contemporary judicial discourse (a special focus conference organised by the International Law and Language Association), and legal linguistics with a special focus on the topic of stereotype in and of legal language (the French Legal Linguistics Seminar). The reports offer valuable insights into the events, highlighting their most important findings and discussions.

We would like to use this opportunity to announce the next ILLA 2021 Focus Conference

"*The Digitalisation of Legal Discourse: Digital Genres, Media and Analytical Tools*"

to be held on 16-17 December, 2021 in Bergamo, Italy (planed as an on-site event, hybrid/online possible, depending on public health), co-sponsored by the IJLLD.

Martina Bajčić
University of Rijeka, Croatia
Short Reports & Summaries, and Forums Editor
reports@ijlld.com

ILLA 2021 Focus Conference

"The Digitalisation of Legal Discourse: Digital Genres, Media and Analytical Tools"

https://illa.online/index.php/upcoming-events/12-upcoming-events/37-fc-digitalisation-of-legal-discourse

email: illa-bergamo@unibg.it

INTERNATIONAL JOURNAL OF
LAW, LANGUAGE & DISCOURSE

The Importance of the "Majority Meaning" in the Interpretation of Multilingual EU Law: Never? Well, Hardly Ever!

Mattias Derlén
Umeå University, Sweden

Mattias Derlén is Professor of Law at the Department of Law, Umeå University, Sweden. He has long been interested in multilingual interpretation of European Union law. This includes the approach of the European Court of Justice, as well as potential reforms to the system, but also the far less discussed issue how courts in the Member States handle the challenging task of legal interpretation in a legal system with 24 official languages.
ORCHID: https://orcid.org/0000-0002-8680-5525

Abstract

The existence of 24 official languages in the European Union creates unique challenges, not least in situations when a divergence of wording between the language versions is discovered. One way to resolve such a divergence is to give priority to the meaning indicated by the majority of language versions, the so-called "majority meaning". This approach is thoroughly rejected by leading scholars and Advocates General at the Court of Justice. However, other scholars demonstrate a clear tendency of the Court of Justice to favour the interpretation indicated by the majority of language versions. The author attempts to resolve this contradiction by advancing a new, pluralistic understanding of the "majority meaning", breaking it down into different forms with examples of their application by the Court of Justice. Furthermore, the fixed expressions used by the Court of Justice in the context of multilingual interpretation are analysed to understand the underlying values supporting the use of the "majority meaning". It is demonstrated that the need for a uniform interpretation and application of EU law, as well as the importance of legislative intent, support adopting the meaning indicated by the majority of language versions. Consequently, the "majority meaning" cannot be so easily rejected.

Keywords: EU multilingualism, multilingual interpretation, majority meaning, uniformity, legislative intent

1 Introduction – The Challenge of Reconciling Diverging Language Versions

The multilingual legal system of the European Union, working in 24 official languages, naturally carries with it a number of challenges. One of those is the limit to legal integration, given the difficulty – maybe even impossibility – of translating legal text so as to achieve the same meaning in different languages (Derlén, 2014a). Another obvious challenge is the issue of legal certainty, making sure that law is determinable and accessible for the citizens, despite its existence in several languages (Paunio, 2013). However, great as these challenges are, they

are overshadowed by an even more fundamental aspect of the multilingual character of EU law. I am referring here to the reconciliation of diverging language versions. It goes without saying that drafting law in 24 languages carries with it the danger of discrepancies, both due to human error and due to profound difficulties of rendering the same meaning in different languages and legal systems (Šarčević, 2013, 9-11).

Diverging language versions can be handled in a multitude of ways in a multilingual legal order. The issue is relatively straightforward in a system where one of the languages is designated as the original, and thereby authoritative in interpretation. However, multilingualism in the European Union is characterised by the equal authenticity of the various language versions. How are diverging language versions to be reconciled and the divergence in meaning removed, in the absence of an original meaning? This is a much-disputed issue in EU law, with a number of explanations being put forward (Derlén, 2009, pp. 36-50). This article will not take on the entirety of this complex question, but rather one specific issue thereof, namely the controversial so-called "majority meaning".

One obvious way of resolving diverging language versions is to follow the meaning indicated by the majority of the versions, henceforth the majority meaning. The underlying idea is not new, a classical (in the proper sense of the word) example of the majority technique is the Roman Law of Citations, AD 426. It stipulated that the majority of writers having expressed an opinion on the subject were to be followed, and, in the case of a tie, the opinion of Papinian was to be given preference (Austin, 2010). However, applied to a system of multilingualism the majority meaning approach becomes problematic. If all the language versions are equally authoritative how can they be overridden by other versions? A language version is – from a legal perspective – just as authentic, no matter if it represents a majority or a minority of the language versions. From a practical perspective it can obviously be argued that for example a single language version deviating from all other versions is indicative of a simple error in translation, and the term error (as in drafting or typing error) is sometimes used to describe the wording of a diverging language version (joined cases T-481/93 and T-484/93, *Vereniging van Exporteurs*: para. 93 & case T-157/01, *Danske Busvognmænd*: para. 77).[1]

[1] References to judgments from the EU courts are made using the short case name and the unique case number, indicating when the case was lodged at the court. The prefix C before the number indicates the Court of Justice, while T indicates the General Court. A reference list can be found at the end of the article, providing the full case name and publication details. The list is sorted by case number. When the General Court or other courts are discussed in the text this is specifically noted. The general reference "the Court" always refers to the Court of Justice.

However, the legal standing of that version is unaffected, until it is formally corrected by the Union legislator (Robinson, 2012, p. 21).

Consequently, it is hardly surprising that the use of the majority meaning approach has been firmly denounced in the literature. However, other prominent EU scholars confidently claim that the majority meaning is used frequently by the Court of Justice. The literature is further reviewed in section 2.1 below, but the fundamental contradiction is clear. How can leading scholars fundamentally disagree about the use of the majority meaning in interpretation? This article will examine the use of the majority meaning by the Court of Justice of the European Union (henceforth CJEU or the Court) in an attempt to understand the conflicting opinions. It aims to achieve two main goals. First, it will attempt to re-define the discussion. One of the issues of the current discussion is that the majority meaning is treated as a single approach, when in reality the label is applied to a wide range of interpretative operations. None of these approaches constitutes an interpretative rule, in the sense that the CJEU would be bound to follow the interpretation indicated by the majority of language versions (section 2.2). Equating the majority meaning to such a rule naturally makes it easy to refute. The article demonstrates that, in the absence of a rule, the majority meaning takes five main forms. The most well-known is arguably employing the majority meaning as part of a larger interpretative process, as an initial step or as confirmation (section 2.3). A variant of this is what is here referred to as the Wolf in Sheep's Clothing (section 2.4). Here the majority meaning is presented as only part of a larger interpretative process, but *de facto* appears to be decisive. The majority meaning can also overlap with other interpretative approaches, such as adopting the interpretation indicated by the clear wording (the "clear meaning", section 2.5) or, more controversially, the meaning indicated by the original version (the "original meaning", section 2.6). However, even after distinguishing these four varieties a majority meaning in the strict sense (section 2.7) remains, where the majority of language versions decide the meaning of the provision in question and override a minority of versions, with no other interpretative arguments beyond the text being consulted.

The second goal of the article (section 3) is to attempt to explain the underlying reasons for the use of the majority meaning. How does the CJEU justify the use of such a controversial approach to multilingual interpretation? The Court is traditionally tight-lipped about the underlying reasons for its interpretative choices, but by studying the fixed expressions used by the Court in the context of multilingual interpretation (including their development over time) it is demonstrated that the need for a uniform interpretation and application of EU law, as well

as the idea that legislative intent is indicated by the statutory text, support adopting the majority meaning.

2 A Rose by any Other Name – The Many Faces of the Majority Meaning

2.1 Re-Defining the Discussion

As mentioned above the majority meaning has been thoroughly denounced in the academic literature on multilingual interpretation of EU law. Three main points of criticism can be identified. The first is practical. It is pointed out that the technique would have absurd consequences, in that the addition of new languages to the system could alter the majority and thereby change the meaning of the provision (Jacobs, 2003, 304). The point is well taken, and we will return to this particular issue in section 2.6 below.

The second concerns the equal authenticity of the language versions, or differently put the equal standing of the official languages of the EU. The EU has opted for what is referred to as full (as compared to limited, Leung, 2012, 482) or strong (as compared to weak, Schilling, 2011, 1463) multilingualism, where all language versions have equal standing. To conclude that a language version is incorrect, or more properly that it does not reflect the intention of the legislator, simply because it belongs to the minority appears to contradict the equal standing of the official languages (Anweiler, 1997, pp. 153-156; Bobek, 2008, 3). As noted by Schübel-Pfister (2004, pp. 267-275), the minority meaning is not necessarily the wrong meaning. Bobek (2008, 5) puts it more bluntly, concluding that a divergence of meaning cannot be resolved "by some form of language 'voting'". The derision in the term "language voting" is reminiscent of the critique by Watson (1970, p. 91) of the above-mentioned Law of Citation, deeming it a low point of Roman jurisprudence because the correct interpretation was determined by "counting heads".

Finally, and closely connected to the previous discussion, the last criticism concerns legal certainty, in the sense that individuals relying on a minority language version might find that the meaning of a provision has unexpectedly changed (Anweiler, 1997, pp. 153-156). While certainly true, this is a more general problem of diverging language versions which will not be further addressed in this article (see further Derlén, 2009, pp. 50-58).

However, despite this strong condemnation other scholars have demonstrated that the majority meaning is actually used in the case law of the CJEU. For example, Schübel-Pfister finds numerous examples of the majority meaning, notwithstanding the fact that it is often regarded as prohibited. While many examples can be found in the rather particular area of the customs code Schübel-Pfister emphasises (2004, pp. 267-275) that the majority meaning is not

limited to this area, nor to older cases. Baaij (2012, see also Baaij 2018) makes two interesting observations, based on an examination of all CJEU cases. Firstly, when a minority of language versions deviate from the majority the eventual interpretation of the provision in question will normally, in no less than 83 percent of cases, be consistent with the meaning indicated by the majority (Baaij, 2012, pp. 227-228).[1] In other words, the majority meaning tends to be the correct meaning (Capeta, 2009, p. 13). Secondly, in these situations, when the meaning adopted by the CJEU corresponds with the majority meaning, the Court will tend to employ literal rather than teleological methods of interpretation, preferring literal interpretation in 75 percent of such situations (Baaij, 2012, pp. 227-228). Finally, Zedler (2015) demonstrates that the CJEU often refers to the existence of a majority, and that this is used as an indication of the correct interpretation of the provision in question. She adds that the Court normally confirms the majority meaning using other arguments, but that cases can be found where the majority meaning is sufficient to establish the correct interpretation (Zedler, 2015, pp. 251-255).

How can this contradiction be understood? In short, the two sides appear to be having somewhat different discussions, in two main ways. Firstly, normative and descriptive elements are mixed in an unfortunate and not immediately obvious way. The critique against the majority meaning would seem to imply that it is not used, but this is refuted by scholars such as Schübel-Pfister, Baaij and Zedler. Instead, the repudiation of the majority meaning should be understood as a normative critique, warning the Court of Justice of the potential consequences of the majority meaning.

Secondly, the idea of the majority meaning is too vague, confusing the debate. I will argue that what we generally refer to as the majority meaning have at least five different variations, outlined in the following sections. To have a meaningful discussion about the majority meaning we have to start by breaking it down to its component parts.

2.2 No Rule – Doing Away with the Straw Man

The most extreme understanding of the majority meaning is that it constitutes a binding rule of interpretation. This understanding is arguably underpinning claims such as this by Müller and Christensen (2003, p. 25): "*[d]ie Mehrheitsregel hat der EuGH für die Lösung von Bedeutungsdivergenzen nie übernommen*" [the CJEU has never adopted the majority rule to resolve diverging meanings]. Similarly, Bobek (2008, 4-5) states that allowing the majority of the language versions to prevail is absolutely prohibited, even in situations of obvious errors, as it would violate the equality of all language versions.

While these statements might appear dramatic (using language like never and absolutely prohibited) they must not be taken at face value. The authors mentioned above must be

understood to say that no *rule* of majority meaning exists, in the sense that the meaning represented by the majority of language versions will automatically overtake the minority. Phrased thus the statement becomes self-evident. The majority meaning is seen as a rule, where the meaning represented by a majority (apparently, however slight a majority) always and automatically prevails over the minority meaning. As noted by Bobek (2008, 5) this would amount to "some form of language 'voting'", and it is obviously ridiculous. Indeed, it is difficult to imagine any court laying down such a strict and random rule of interpretation, and even less likely that the cagey CJEU would commit itself to such a rule, given its long history of vague guidance on issues of multilingual interpretation (Derlén, 2011).

The idea of a rule, forcing the CJEU to always and under all circumstances adopt the interpretation indicated by the majority of language versions, can be refuted by examples of the minority meaning being adopted by the Court. The most well-known example is arguably *EMU Tabac* (case C-296/95). Here an interpretation of Directive 92/12 that was, on its face, possible according to almost all of the language versions was rejected, based on the Danish and Greek versions, despite heavy criticism from the applicants due to the limited diffusion of the languages in question (paras. 28-37). Similarly, in *TV2 Danmark* (case C-510/10) the interpretation of recital 41 of Directive 2001/29 indicated by the majority, using the conjunction "and" and thereby making two conditions cumulative, was not followed by the CJEU. Following an extensive discussion, the Court concluded that the minority meaning, using the conjunction "or" and thereby making the conditions alternative, was more in line with the purpose of the directive (paras. 38-58). For further examples see *W.N.* (case C-420/98) and *Miguel M.* (joined cases C-627/13 and C-2/14).

2.3 The Majority Meaning as Indication or Confirmation

Concluding that the majority meaning does not constitute a binding rule is obviously correct, but the defeat of such a straw man does not take us far. What role, then, if any, does the majority meaning play in the interpretation of EU law? Here we can see several examples of scholars acknowledging the existence of the majority meaning, but downplaying its importance. Some do so generally, for example Anweiler (1997, pp. 153-156), who reduces the importance of the majority meaning to interpretation of more technical concepts. However, a popular opinion is to view the majority meaning as part of a larger interpretative process. This approach to the majority meaning comes in two varieties, using the majority meaning either as a first step (indication) or as second step (confirmation). In both situations the wording of the majority of language versions is regarded as added value, but the argument does not stand alone. For example, Capeta (2009, 7) states that "it will often be the case that the majority

meaning will be the one that the Court finds 'correct'", but the reason for this is, according to her, not that it constitutes the majority meaning but that the meaning conforms with the purpose of the rule or the intention of the legislator. Similarly, according to Jacobs (2003, p. 304), the CJEU takes the majority meaning into consideration if it supports what the Court considers to be the best interpretation of the provision in question. Buck (1998, 155-158) argues explicitly that the majority meaning only constitutes the first step in the interpretative process, to be confirmed or rejected by other interpretative arguments.

This view of the majority meaning as part of a larger process is articulated by Advocate General Kokott in her Opinion in *Commission v Council* (case C-370/07). As part of an interpretation of the term "decision" as used in Article 300(2) EC she argued, based on *Henke* (case C-298/94), that the fact that a majority of language versions used the same term was "at most some indication that the Commission's view is correct". A majority could not be decisive, Kokott concluded, as "all the language versions must, in principle, be of equal worth" (para. 44) and the CJEU makes use of the majority meaning only as confirmation of an interpretation. The need for a uniform interpretation, according to Kokott, necessitated that the meaning of the language versions be ascertained by way of systematic and teleological considerations.

Plenty of examples of the majority meaning as a first step, to be confirmed by other arguments, or as a second step, constituting said confirmation, can be found in the case law of the CJEU. An example (see also case 55/87, *Moksel*) of the former is *Denkavit* (joined cases C-283/94, C-291/94 and C-292/94), where the CJEU interpreted Directive 90/435 on taxation of parent companies and subsidiaries. One of the questions raised was whether a certain tax advantage was dependent on the holding of the parent company in the subsidiary having come to an end at the time when the tax advantage was granted. This was indicated in the Danish language version, which used the past tense. However, the CJEU emphasised that all other language versions used the present tense, for example "maintain" in the English version, indicating that it was not necessary for the holding to have come to an end. This interpretation was confirmed by the purpose of the directive, as expressed in the preamble (paras 25-26).

In other judgments the process is flipped, and the majority meaning is used to confirm the interpretation arrived at using other arguments. An example (see also case C-300/05, *ZVK Zuchtvieh-Kontor*) of this approach is *4finance* (case C-515/12), concerning the conditions under which a system of trade promotion was to be considered a "pyramid promotional scheme" according to Directive 2005/29, and therefore prohibited. One of the questions was whether financial consideration on the part of the consumer, i.e., the payment of a fee or similar, was necessary in order for the activity to qualify as a pyramid promotional scheme. The Court

pointed to the purpose, described in the preamble as protecting consumer economic interests. Thus, in the absence of financial consideration on the part of the consumer no activity in need of protection existed. This interpretation was confirmed by the majority of language versions, explicitly requiring financial consideration (paras 16-25).

2.4 The Majority Meaning Downplayed – The Wolf in Sheep's Clothing

The use of the majority meaning as part of larger interpretative process is hardly controversial. However, in some situations the true importance of the majority meaning is hidden, an approach here referred to as the Wolf in Sheep's Clothing. The importance of the majority meaning is hidden in the sense that it is apparently supplemented by other interpretative arguments, but these arguments are never actually elaborated. In other words, the majority meaning is *de facto* central to the interpretative process, but the Court downplays this importance. Naturally, even in situations where the Court supplements the majority meaning with a discussion of the purpose of the provision, and the case is classified as indication or confirmation, the addition might be little more than a fig leaf. Schübel-Pfister (2004, p. 274) criticises the CJEU for confirming the majority meaning with an "*apodiktischen, floskelhaften Hinweis auf Sinn und Zweck der Regelung*" [incontestable and clichéd reference to the aim and purpose of the provision]. However, this section includes only the more extreme examples, where the purpose is not actually further discussed.

An example of this approach is *Müller* (case C-451/08), where the Court discussed the German wording of Directive 2004/18 concerning public works contracts. The German version deviated in several aspects from all other language versions. For example, the German version alone required that a certain variant of public works contracts had to be realised by third parties. The Court cited its well-known statement that "[w]here there is divergence between the various language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part" (para. 38), but no discussion of the purpose of the directive was offered. The Court simply concluded that the "questions submitted by the referring court must be answered in the light of those considerations" (para. 39) and moved on to discuss the detailed questions. The Court did not return to the issue of third parties, and assumed the interpretation indicated by the non-German language versions. Thus, it appears that the majority meaning was given considerable weight in the interpretation.

Konservenfabrik Lubella (case C-64/95), something of a classic when it comes to multilingual interpretation (e.g., Solan, 2009, 297), offers a different example. The CJEU was requested by a German court to consider the validity of Commission Regulation 1932/93 establishing protective measures as regards the import of sour cherries. A company (Lubella)

had challenged the validity of the regulation before the German court, on a number of grounds. One of these grounds concerned the wording of the German language version of the regulation. Lubella observed that, before it was corrected, the German version referred to "Süßkirschen", not "Sauerkirschen", while at the same time mentioning CN codes applicable to sour cherries. However, this argument did not impress the Court of Justice. It employed its usual quote regarding the need for a uniform interpretation and the accompanying duty to interpret the provision in the light of all official language versions (para. 17, drawing on case 9/79 and C-372/88). It then concluded, in a single paragraph, that while the German version originally contained an error, that ambiguity could be resolved by reference to the other language versions (para. 18).

Here the CJEU downplayed the obvious error in the German version, classifying it as an ambiguity that could be resolved by turning to other language versions. However, despite this description it seems clear that the meaning was determined by the majority of language versions, turning the use of "Süßkirschen" in the German version into its opposite, "Sauerkirschen".

2.5 The Majority Meaning as the Clear Meaning – The Sheep in Wolf's Clothing

In a number of cases the majority meaning actually plays a more limited role than indicated, here referred to as the Sheep in Wolf's Clothing model. A minority of language versions are unclear or ambiguous and the interpretation of the provision is determined by the majority of language versions, which do not suffer from any such lack of clarity. No other interpretative arguments, beyond the text, are employed.

Huber (case 291/87) is a typical example of this approach (see also the similar case 295/81, *IFF*). It concerned the common customs tariff, more specifically the question whether impressions obtained by means of a mechanical printing process could constitute "original lithographs". The French language version was ambiguous, as the exclusion of any mechanical or photomechanical process could be read as referring either to the making of the plate or the printing of the impressions. However, the interpretation was guided by the literal meaning of the majority of the language versions, making it clear that impressions produced directly from the plate with the help of a mechanical or photomechanical process could not be regarded as original lithographs (paras. 8-11).

The *Huber* case might be regarded as a straightforward use of the majority meaning, in particular as it belongs to one of those technical areas (customs classification) where the majority meaning is said to be relatively more common (Schübel-Pfister, 2004, pp. 269-270). It would definitely fall within the category identified by Baaij (2012, pp. 227-228): the final

interpretation is in line with the majority of language versions and no interpretative arguments beyond the text are employed. However, on closer inspection the issue is one of clarity. One of the language versions is ambiguous, but this ambiguity can be removed by having reference to the other versions, that do not suffer from any such ambiguity. In other words, it is not the number of versions that decide the interpretative question, it is the clear versions. The fact that the clear meaning is also the majority meaning is rather accidental. The *EMU Tabac* case, discussed above, makes it clear that in cases of conflict between the majority meaning and the clear meaning the latter will prevail. The underlying idea that the clear meaning is closer to the intention of the legislator is articulated by Advocate General Trstenjak in *Fazenda Pública* (case C-62/06: para. 40): "Having regard to the more precise formulation of those language versions, it must be concluded that such interpretation corresponds more closely to the intention of the Community legislature".

A more recent example of the same approach is *X* (case C-486/12). The Court was asked whether Article 12(a) of Directive 95/46 precluded the levying of fees in respect of the communication of personal data by a public authority (para. 16). The Dutch language version of Article 12(a) could be understood as not allowing fees for the communication of data. However, this interpretation was not supported by the other language versions. While a few of them were open to the interpretation indicated by Dutch version the majority clearly supported the use of fees. The Court therefore found it to be "clear from the wording" that fees could be used (para. 22).

Similar to *Huber*, the *X* case could be regarded as a deployment of the majority meaning. The final interpretation is in line with the majority of language versions and no interpretative arguments beyond the text are employed. However, the central issue is again one of clarity. The placement of the word "excessive" created uncertainty as to whether it referred to the delay in communication or the expense, while most language versions made it clear that only excessive costs were prohibited. The meaning of the majority versions was also the clear meaning, resolving the uncertainty introduced by the Dutch version.

2.6 The Majority Meaning as the Original Meaning

While the combination of the clear meaning and the majority meaning in the examples above might appear intuitive a combination between the majority meaning and the original meaning is decidedly unexpected. The idea of the original meaning, i.e., the language in which the provision was originally drafted, is established in the international literature and also in the case law of international courts (Dölle, 1961, 22-23; Hardy, 1961, 98-106; Hilf, 1973, pp. 88-90). The underlying idea, as described by Hardy (1961, 104-106), is that the primary purpose

of interpretation is to ascertain the common intention of the parties, at the time of the conclusion of the treaty. The text of the treaty is presumed to express the intention of the parties. In a multilingual context, with several language versions, the parties could not have intended different meanings to be attached to the language versions. In case of divergence of meaning preference for the original version is natural, since the latter reasonably best reflects the intentions of the parties. The same fundamental logic could be applied to the European Union. Legislation is initially (see regarding the rest of the legislative process Piris, 2005; Robinson, 2005; Doczekalska, 2009) drafted in a single language, previously French but now mostly English (European Commission, 2014: 7; Baaij, 2018, pp. 63-66; Šarčević, 2013, 8-9), providing us a *de facto* original. It would be reasonable to assume that this original better reflect the purpose of the provision (Schübel-Pfister, 2004, pp. 297-298), in particular as subsequent translations may suffer from errors or otherwise deviate from the original (Zedler, 2015, p. 251).

However, the idea of an original meaning does not sit well with the approach taken by the Court of Justice regarding multilingual interpretation, emphasising equal authenticity, uniformity and the need to find a single, joint meaning (e.g., *EMU Tabac*, and generally Derlén, 2015). Despite this it is possible to find examples of the CJEU, and even more the Advocates General, indicating that the drafting language may have special importance in multilingual interpretation (Schübel-Pfister, 2004, pp. 290-298), something that Baaij (2018) uses to argue for moving towards English as the authoritative language of the European Union.

In the context of the majority meaning a particular form of the original meaning is relevant; original is understood in the sense of the languages existing at the time of adoption of the provision in question. This is what Zedler (2015, pp. 248-251) refers to as *Ursprungsfassung* (all languages existing at the time of adoption), in contrast to *Urtext* (the language used in drafting the provision). In these situations, the CJEU will apparently redefine what "most" or "the majority" means, including only certain languages in the comparison. While the Court does not explain this selectivity, and is far from consistent, it seems reasonable to assume that the underlying idea is the same as for the traditional original meaning discussed above. Having been created after the fact the later language versions do not reflect the intention of the legislator in the same way as the original versions (Zedler, 2015, p. 249). Zedler (2015, p. 439) argues that this approach is acceptable as part of a subjective teleological interpretation, concentrating on the intention of the historical legislator. While her point that the original versions can tell us more about the historical intention is reasonable, and she does add that the use of originals is only acceptable as an argument amongst others, the approach is still

fundamentally problematic. It reduces the equal authenticity of the official languages to a formality, denying them equal authority in interpretation. Furthermore, it is problematic from a legal certainty perspective, in particular for citizens and companies in the newer Member States.

Despite its practice the CJEU emphasises that all language versions must be taken into account in interpretation (case C-16/16 P, *Belgium v Commission*: paras. 48-49). Furthermore, there is no lack of examples of cases where the Court includes language versions (but see Zedler, 2015: 205-211) not existing at the time of adoption of the provision (case C-72/95, *Kraaijeveld*: para. 29, case C-257/00, *Givane*: paras. 35-36), making the position of the CJEU difficult to determine (Schübel-Pfister, 2004, pp. 315-317). However, the idea of understanding the majority by reference to languages existing at the time of adoption is common enough to merit discussion.

Examples include (see also case C-66/09, *Kirin Amgen*) *Daimler* (case C-19/11), which concerned the interpretation of Directive 2003/124 regarding the definition and disclosure of inside information. The Court observed a divergence of wording when it came to the definition of inside information. It noted that the German version deviated from "all the other language versions… existing at the time it was adopted", and that the wording in the non-German versions indicated the intention of the legislator (para. 44). By reducing the language versions examined to those existing at the time of adoption the Court excluded the new languages added in the 2004 expansion. This is particularly noteworthy as the directive was only adopted the year before the expansion and the case was decided eight years after the expansion. Thus, the versions in the new languages should have been available to the Court (see however Šarčević, 2013, 5-6, regarding some delays in publication in the new official languages following the 2004 expansion, and Pommer, 2012, 1249-1250 regarding the reliability of these new versions).

In *Gassmayr* (case C-194/08) the Court discussed, inter alia, the concept of "pay" and more specifically whether workers granted leave during pregnancy due to risks to their safety or health had a right to on-call duty allowance according to Directive 92/85. Article 11.1 of the directive stated that the worker on such leave had a right to pay, but the CJEU found that this pay did not include on-call duty allowance. As part of an extensive discussion the Court emphasised that "most of the language versions existing at the time of adoption" used the expression "a payment", and not "the pay", implying a limitation (para. 61). This would indicate that the languages added in 1995 and later were excluded from the definition of the majority meaning.

However, the fact that the Court at times connect the majority meaning to the original meaning does not translate into this always being a successful argument for parties to a case to make. This was demonstrated in *Commission v Spain* (case C-189/11), where the Commission relied extensively (but not exclusively) on multilingual interpretation as part of its argumentation concerning the special VAT regime for travel agents, and whether it applied to sales to any customer or only for sales directly to travellers. The Commission argued that the intention of the Union legislator was demonstrated by the use of the term "traveller" in five of the six language versions existing at the time of adoption of the Sixth VAT Directive. The use of the term "customer" in the English language version was, according to the Commission, a mistake, that was reproduced in later "translations" (para. 22) of the directive. The Commission also claimed that the French wording, using traveller, was the one agreed upon by the Member States (paras 20-23). Here the Commission adopts both versions of the original meaning, pointing both to the language versions existing at the time of adoption of the underlying Sixth VAT Directive and to the drafting language of the same directive. According to the Commission, the correct meaning of the provision is demonstrated by the drafting language, French, and the English wording is due to a mistake. However, later language versions, identified as translations by the Commission in a manner that is factually correct but legally problematic given the equal authenticity of EU languages, were created based on the English version, thus carrying this mistake on to a large number of languages. Spain indirectly acknowledges this, by pointing to the Bulgarian, Polish, Portuguese, Romanian, Slovak, Finnish and Swedish language versions supporting their argument, in addition to the English version (para. 35). The situation in *Commission v Spain* is illustrative of a more general trend. The number of official languages has increased significantly, especially with the 2004 expansion, and English has been heavily relied upon as a source language when translating existing EU law to the new languages (Pommer, 2012, 1249-1250). However, for older texts English is itself a translation (Šarčević, 2001, 41-43; Felici, 2010, 159-160), creating the possibility of a new majority, based on the English version and deviating from the French *Urtext*.

The CJEU did not accept the reasoning of the Commission in *Commission v Spain*. The argument that the wording of the English version was a mistake was problematic, as the Commission had several opportunities to correct it. The Court also observed that the term customer was used in "numerous other language versions" (para. 53). Consequently, an interpretation could not be reached based on the wording and the Court moved on to discuss the aim and purpose of the directive, concluding that the customer-based interpretation was

correct (paras. 57-70). By referencing the "numerous other language versions" with the same wording as the English version, without discussing the point made by the Commission that this was simply due to English being used in the translation process, the Court did not give special weight to the languages existing at the time of adoption.

2.7 The Majority Meaning *Sensu Stricto*

Finally, even disregarding all variants above cases remain, constituting the majority meaning in the narrow sense. Here the majority of language versions decide the meaning of the provision and override a minority of language versions, despite the fact that the minority is not obviously vague or ambiguous *per se*. Naturally, you could argue that some openness exists in any interpretative situation, but to distinguish this from the clear meaning variant of the majority meaning, discussed above, this section only includes examples where the issue has at least not expressly been regarded as clarifying a vague wording by having recourse to other language versions. No other interpretative arguments, beyond the text, are employed in these cases. Rather, as we will discuss further in section 3 below, the majority meaning is regarded as reflecting the intention of the legislator. For further examples see *D. v W.* (case C-384/98), *Clark International* (joined cases C-659/13 and C-34/14) and *Casa Fleischhandels* (case 215/88), as well as cases discussed in section 3.3 below.

Ferriere (case T-143/89) is a typical example of the majority meaning in the strict sense. The proceedings, starting before the Tribunal, concerned inter alia Article 85 EC (now Article 101 TFEU). An agreement had been found to have as its object the prevention, restriction or distortion of competition, as prohibited by Article 101. However, the applicant argued that no violation has taken place, as an anti-competitive effect had not been demonstrated. The applicant emphasised that the Italian language version of Article 85 required an agreement to have both an anti-competitive object and an anti-competitive effect for it to be prohibited. However, the Tribunal concluded that the effect of the agreement did not have to be considered, given the anti-competitive object. The Italian version stood alone in requiring both criteria to be fulfilled, while all other language versions required only one of them to be fulfilled in order for the agreement to violate Article 85. According to the Tribunal the Italian version could not "prevail by itself against all the other language versions" (para. 31). The Court of Justice upheld this conclusion on appeal (case C-219/95). The Court admitted that the Italian version was clear and unambiguous on its own, but that this could not cast doubt on the correct interpretation of Article 85, since all the other language versions expressly indicated a different interpretation (paras. 10-16).

Another example of the majority meaning in the strict sense is *Eulitz* (case C-473/08), concerning value added tax and exemption for higher education. The German language version of Article 13A(1)(j) of the Sixth VAT Directive diverged from "all other language versions in which the Sixth Directive was initially adopted" (para. 21, see section 2.6 regarding the original meaning), by not including the word tuition or similar. The Court recited its usual warning against considering a single language version in isolation and concluded – rather abruptly – that the Directive had to be understood according to the majority meaning (paras. 20-23).

In *Länsstyrelsen Norrbotten* (case C-289/05) the CJEU was even more brief, downplaying the importance of the diverging language versions. The case concerned the calculation of expenditure of operations co-financed by the Structural Funds. The Finnish language version of Regulation 1685/2000 contained no reference to a pro rata or proportional allocation of overhead costs, but according to the CJEU this was "of no consequence", as the other language versions expressly included this requirement (para. 20). Thus, the meaning of the majority was adopted without further discussion. The Court gives the impression that the divergence of wording was not of any importance. However, in his Opinion the Advocate General described the difference between on the one hand the Finnish version and on the other hand the other versions as "significant", with the former lacking any reference to concepts such as pro rata or proportional, included in the latter (Opinion: para. 32).

The examples above concern situations where a single language version has diverged from the other versions, without being obviously unclear or ambiguous in itself. *Giloy* (case C-130/95) is an example of two language versions differing from the majority. One of the issues was whether serious economic or social difficulties on behalf of a debtor prevented customs authorities from demanding security for custom duties, or only enabled them to refrain from asking for such security. The underlying dispute concerned customs authorities in Germany and the German language version at the time of the dispute supported the former interpretation ("*darf…nicht*" [may not]), but it was later amended and at the time of the proceedings before the CJEU supported the latter interpretation ("*braucht…nicht*" [need not]). The Italian language version had been amended in the same manner (paras. 1-5). However, even though the non-amended German version was applicable to the case at hand the CJEU concluded that Article 244 did not prevent the customs authorities from requiring security. The reason given was that it was "clear from the wording of all the other language versions of the provision then in force - with the exception of the Italian" (para. 48). No other interpretative argument was used.

The cases discussed above demonstrate that the majority meaning, even in the strict sense, is employed by the Court of Justice, at least in what could be referred to as super-majority situations. In these situations, the interpretation indicated by the minority language versions can be rejected by the Court, without recourse to any interpretative arguments beyond the text. However, it should be emphasised that it is possible to find examples of super-majority situations where the CJEU also references the purpose, at least briefly. In *Profisa* (case C-63/06: paras. 12-19) the Court concluded that the answer followed from the majority meaning, but it added a sentence about the objective of the provision in support of this conclusion. The fact that the CJEU does not feel bound to follow the majority meaning has been discussed in section 2.2 above.

3 Understanding the Use of the Majority Meaning

3.1 The First Step is Talking About It

In this section we will seek to understand the idea behind the majority meaning approach, as employed by the CJEU. The first step is to acknowledge the use and importance of the majority meaning approach. It has been given remarkably limited attention in the scholarly discussion, as mentioned in section 2.1 above. This might be due to the inherently problematic nature of the majority meaning approach, at least from the perspective of equal authenticity of the official languages. However, critiquing the use of the majority meaning is one thing, denying its existence is another. As demonstrated in the section above the majority meaning approach is used by the CJEU, in a number of ways. This section aims to understand why the Court finds the majority meaning to be reasonable, at least as a part of an interpretative argument.

The CJEU has not expounded in any detail on the use of the majority meaning. It certainly refers to a number of language versions (be it described as a majority, most or similar) that are similar in wording, but it does normally not expound on what importance to attach to that fact. This is not particularly surprising in itself, but rather follows the general approach of the CJEU in matters of multilingualism. The Court tends to cut-and-paste general statements on the importance of multilingualism and how to resolve a divergence of wording, where only the case references vary. The general tendency of the CJEU to cut-and-paste phrases from previous cases is well established (McAuliffe, 2013), but such common statements do not offer much information or guidance to other actors. The reluctance of the Court to explain its reasoning regarding multilingual interpretation is particularly clear in sensitive situations. One example of this is multilingual interpretation of CJEU judgments (Derlén, 2014b). However, the Court

has been somewhat more forthcoming in extreme cases, i.e., situations when only one or two versions deviate from the meaning expressed by the rest of the language versions. Consequently, we will focus our attention on the wording used by the CJEU in these cases, in an attempt to capture the value of the majority meaning as perceived by the Court. More specifically, we will identify a development in the standard, cut-and-paste, phrases (henceforth referred to as formulas) employed by the Court, which helps to understand the interpretative approach of the CJEU.

3.2 The Starting Point: The *Stauder* Formula

The oldest standard phrase connected with multilingual interpretation is what I will refer to as the *Stauder* formula, named after its first occurrence in *Stauder* (case 29/69: para. 3), which typically reads as follows (case C-256/16: para. 49, references omitted):

> It is settled case-law that the need for a uniform interpretation of EU law prevents, in the case of doubt, the text of a provision of EU law from being considered in isolation and requires, on the contrary, that it be interpreted on the basis of the real intention of its author and the aim which the latter seeks to achieve in the light of, in particular, all language versions.

A similar, but shorter version, was used by the Court earlier in *van der Vecht* (case 19/67: 353). The exact wording varies somewhat. For example, sometimes the Court drops the "real intention of its author…", only stating that the provision "should be interpreted and applied in the light of the versions existing in the other official languages" (case C-559/15: para. 39).

The *Stauder* formula establishes the single meaning idea (Derlén, 2015). Instead of placing reliance on a single text the CJEU emphasises that all the language versions read together forms the correct meaning of an EU provision. The formula, in its original wording, concerns the issue of consultation, i.e., how one should proceed when interpreting an EU law provision. It establishes that such an interpretation cannot limit itself to a single language version of the provision in question but must take all other language versions into account as well. The need for the formula is clear, as the equal authenticity of all official language versions might generally be understood as a right to rely on a single version (Tabory, 1980, pp. 198-199). Already early in its existence the CJEU made it clear that such an approach would not be acceptable in the EU context. Instead, the Court insisted on, and has continued to insist on, full multilingualism. The prohibition of monolingualism and the insistence on full multilingualism should be treated separately. It is arguable that monolingualism, while convenient, could be deeply problematic and increase the risk for mistakes and thus endanger the uniform interpretation and application of EU law. Indeed, examples abound of national courts finding

assistance in other language versions when interpreting EU law (Derlén, 2009). However, the requirement of full multilingualism, reading the provision in all the official language versions, is clearly problematic. It is practically impossible to uphold for national courts and authorities, not to mention citizens of the Union (Derlén, 2011), and not even followed by the CJEU itself (Baaij, 2018, pp. 70-78 and Zedler, 2015, pp. 168-184).

Finally, the *Stauder* formula is interesting as the CJEU connects multilingualism and the single meaning approach to two key values: uniformity and legislative intent. The need for a uniform interpretation and application of EU law is a central issue for the CJEU and particularly emphasised regarding EU multilingualism (case 283/81: para. 16 and Derlén, 2014a, p. 21). To accept monolingualism would, according to the Court, jeopardize this uniformity. Furthermore, the Court emphasises that EU provisions must be interpreted "on the basis of the real intention of its author and the aim which the latter seeks to achieve" (case C-256/16: para. 49), a statement that may seem somewhat surprising to those accustomed to the free-wheeling interpretative style of the CJEU (Lasser, 2009). Furthermore, the language versions, read together, are regarded as the primary indication of that intention. The CJEU repeats this point also outside of the formula. For example, in *Giloy* (case C-130/95: paras. 30-31) the Court observed that all language versions of the provision in question used the same conjunction and concluded that "[i]t therefore follows from the wording of the provision that the Community legislature intended that…". This follows the old truism that the best indication of what the legislator meant is what the legislator said. It might seem surprising that the CJEU would pay this amount of attention to the wording, but the connection between wording and intention is repeatedly emphasised by the Court. For example, in *easyCar* (case C-336/03: para. 24) the CJEU stated that the "wording of Article 3(2) of the directive thus demonstrates that the legislature intended to define the exemption…". However, the idea that the best indicator of what the legislator meant is what the legislator said is somewhat more complicated in a multilingual context. Article 4 of Regulation 1 indicates that EU legislation is "drafted" in all the official languages, but the initial drafting process is *de facto* monolingual. Typically, legislation is drafted in English and then translated into the other official languages (Zedler, 2015, pp. 354-355). Thus, the connection between the legislator and most of the language versions is less obvious (but see Piris, 2005, 23-24, regarding how the source text can be modified as part of the process of finalizing all language versions of an act).

3.3 Developing the Formula: Moving from Consultation to Determination

The CJEU has, in a step-by-step process, changed the meaning of the *Stauder* formula, from concerning only the issue of consultation to playing a central part in the determination of meaning in case of conflict between language versions. The first step is the phrasing used in *Ferriere* (case C-219/95 P), already discussed in section 2.7 above. After repeating a variant of the *Stauder* formula, the Court observed that the obligation to consult all language versions in interpretation was "unaffected by the fact that, as it happens, the Italian version of Article 85, considered on its own, is clear and unambiguous" (para. 15). The Court concluded that the interpretation suggested by the Italian version was incorrect, as all other versions suggested a different interpretation, but the phrase is in fact rather careful, indicating only that multilingual interpretation is not excluded by the unambiguous nature of the Italian language version. The CJEU thus rejected the position of the appellant, who argued that other language versions should only be used in interpretation where one version (here the Italian) was unclear, i.e., a criterion of doubt (para. 13 and generally Derlén, 2009, pp. 32-36).

In a number of cases the CJEU has developed the formula further, emphasising the connection between consultation and determination. In cases such as *Institute of the Motor Industry* (case C-149/97: para. 16), *Endendijk* (case C-187/07: para. 23) and *Sabatauskas* (case C-239/07: para. 38) the CJEU uses another formula, stating that "[i]t is settled case-law that the wording used in one language version of a Community provision cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard". In this formula it is clear both that monolingual interpretation is prohibited, and that a single language version, standing alone,[2] cannot prevail in interpretation. However, in these cases this is not the end of the interpretative process. The Court moves on to another standard phrase, the *Regina v Bouchereau* (case 30/77: para. 14) formula, stating that "[w]here there is divergence between the various language versions of a Community text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part" (*Sabatauskas*: para. 39 and *Endendijk*: para. 24, similar words used in *Institute of the Motor Industry*: para. 16). Consequently, the CJEU moves on to discuss the purpose of the rules, based – at least partly – on external factors such as the preamble or general interpretative principles.[3] In all three cases the interpretation suggested by the minority of language versions turned out to be incorrect (*Institute of the Motor Industry*: para. 21, *Endendijk*: para. 26 and *Sabatauskas*: para. 49), but the existence of a clear majority position was not in itself sufficient to end the interpretative process, despite the wording of the formula.

Consequently, the cases belong in the category majority meaning as part of a larger interpretative process, as discussed in section 2.3 above.

The next step is illustrated by *Refood* (case C-634/17). As part of a rather technical discussion concerning the relationship between a number of provisions regarding animal by-products the CJEU discussed the interpretation of Article 48.2 of Regulation 1069/2009, more specifically whether it introduced an approval requirement. It noted that the German version of the provision referred to applications for approval, but other versions did not. After referring to the same version of the *Stauder* formula as in the three cases discussed above the Court simply moved on, implicitly concluding that the meaning of the majority of language versions must be correct without citing the *Regina v Bouchereau* formula and discussing the purpose of the provision (paras. 38-43).

In the final group of cases the importance of a clear majority of language versions is taken one step further. *García and Cabrera* (joined cases C-261/08 and C-348/08) is an illustrative example. Here the CJEU concluded as follows (para. 56):

> In the present cases, as the Spanish-language version of Article 11(3) of Regulation No 562/2006 is the only one which diverges from the wording of the other language versions, it must be concluded that the real intention of the legislature was not to impose an obligation on the Member States concerned to expel, from their territory, third-country nationals in the event that they have not succeeded in rebutting the presumption referred to in Article 11(1), but to grant those Member States the option of so doing.

Here the wording of cases such as *Institute of the Motor Industry*, *Endendijk*, *Sabatauskas* and *Refood* – one version cannot override the other language versions – has been taken to its logical conclusion: one language version standing alone must be overruled. Or, more succinctly, since one version standing alone cannot win, it must lose. The wording here is striking. The Spanish version of the regulation does not express "the real intention of the legislature", "as…[it] is the only one which diverges from the wording of the other language versions". This is sufficient to end the interpretative discussion, without recourse to an examination of the purpose as demonstrated by external factors.

The Court has taken the same stance on two versions deviating from the majority. This is illustrated by *Jany* (case C-268/99), where the Spanish and French language versions of the Association Agreement with Poland and the Czech Republic deviated from the other versions, in that they lacked an expression like "in particular" or "especially" before a list of activities. The CJEU used a formula similar to the one employed in *Institute of the Motor Industry* and

other cases, stating that "one language version of a multilingual text of Community law cannot alone take precedence over all other versions, since the uniform application of Community rules requires that they be interpreted in accordance with the actual intention of the person who drafted them and the objective pursued by that person, in particular in the light of the versions drawn up in all languages" (para. 47). It then held that the same conclusion must be reached where two versions diverged from the majority. This was sufficient to settle the interpretative issue (paras. 47-48). The Court had already noted that the use of "in particular" or similar expression in all but two of the language versions expressed the "unequivocal intention" of the legislator not to limit the concept of economic activity to those activities listed (para. 46). Consequently, we have taken a further step towards a majority perspective, where the existence of a large majority may be sufficient to settle an interpretative question.

As the Court connects the majority meaning discussion back to the *Stauder* formula the same values – uniformity and legislative intent – are emphasised. This indicates that the need for a uniform interpretation of EU law and the intention of the legislator are arguments in favour of following the majority meaning. Arguably, they get stronger with a larger majority, especially in situations of a super majority, with only one or a few deviating language versions. From a uniformity perspective it might then be problematic to follow the minority versions, and it appears more likely that the intention of the legislator is illustrated by the majority rather than the minority versions.

Codan (case C-236/97) illustrates the connection between uniformity and the majority meaning. On its surface it is a traditional example of the majority meaning as part of a larger interpretative process, with CJEU employing a variety of the *Stauder* formula (in para. 25) as well as the *Regina v Bouchereau* formula (in para. 26) in response to an argument that the Danish version of Directive 69/335/EEC deviated from other language versions. However, the Court emphasised the importance of a uniform interpretation, both in general and regarding the directive in question in particular and concluded as follows (para. 29):

> To disregard the clear wording of the great majority of the language versions of Article 12(1)(a) of the Directive, and so distinguish between those companies which are listed on the Stock Exchange and those which are not, would not only run counter to the requirement that the Directive be interpreted uniformly but could result in competition being distorted and dissuade certain companies from becoming listed on the Stock Exchange.

The CJEU stressing the importance of uniformity is hardly surprising, but to reference the existence of a "great majority" as part of this discussion clearly ties the two phenomena together. To follow the minority position would jeopardize the need for a uniform interpretation, thus granting significant interpretative weight to the majority position. Advocate General Mengozzi (Opinion in case C-569/07: footnote 5) has described it in the following terms: "the Court has held that it is necessary to adopt a uniform interpretation of Article 12, which reflects the majority of the language versions…".

4 Conclusion – The Uncomfortable Truth About the Majority Meaning

This article has set out to achieve two main goals. Firstly, it has demonstrated that, while profoundly controversial, the majority meaning is employed by the Court of Justice, both in a narrow sense and as part of a larger interpretative approach. The debate, if an all-out rejection of its existence can indeed be termed a debate, would benefit from a more nuanced approach. The majority meaning can be legitimately criticised from the perspective of equal authenticity of EU languages. To conclude that one or two languages deviating from the majority must give way comes dangerously close to undermining the equal authenticity, or at least making it a "fair-weather principle" where the value of the language version is dependent on it following the majority. Furthermore, the majority meaning is fundamentally problematic given the expansion of the Union and thereby the Union languages. As was demonstrated in the *Commission v Spain* case the expansion of EU languages, coupled with a tendency to translate from English, can create a new majority, at odds with the original drafting language. However, criticizing the majority meaning is not the same as denying its existence. Part of the problem is that the majority meaning is discussed as a single entity, while in reality it takes many forms. The one form it does not take is that of a rule, a binding requirement on the CJEU to follow the interpretation indicated by a majority of language versions. Having defeated this obvious straw man is however no great achievement and does not negate the importance of the majority meaning. Furthermore, the influence of the majority meaning is not limited to the role of indication/confirmation, but takes a number of forms, including being sufficient to resolve interpretative issues in super-majority situations.

Secondly, the article has demonstrated that the value of the majority meaning, from the perspective of the CJEU, is connected to overarching principles of uniformity and legislative intent. While the Court is traditionally tight-lipped about its approach to multilingual interpretation the use and development of the *Stauder* formula ties the majority meaning to these values. The connection to the need for uniformity in the interpretation of EU law is

straightforward, at least from a pragmatic perspective. One could view the wording of the majority as an entrenched position, an established interpretation that the CJEU will only deviate from should it be necessary. This is expressed more clearly by the EFTA Court. Given the nature of the EEA agreement the EFTA Court will often have to make a prognosis as to how the CJEU would resolve a particular issue (Fredriksen, 2010, 733). In *Sveinbjörnsdóttir* (case E-9/97) the EFTA Court interpreted Directive 80/987 and stated (para. 28):

> In the case of differing authentic language versions, a preferred starting point for the interpretation will be to choose one that has the broadest basis in the various language versions. This would imply that the provision, to the largest possible extent, acquires the same content in all Member States.

The connection between the majority meaning and legislative intent is less intuitive. The continued emphasis by the CJEU on the combined wording as the intention of the legislator is interesting as it challenges the traditional view (Bengoetxea, 1993, pp. 234-235) of the majority meaning as a literal interpretation technique. With somewhat limited preparatory works (Lenaerts & Gutiérrez-Fons, 2013-2014, 19-24) the CJEU emphasises the wording, or the majority of wordings, as primary evidence of the legislator's intention. The Advocates General, more outspoken than the CJEU, have emphasised this point. For example, in *ERGO* (Opinion in case C-48/16: para. 28) Advocate General Spzunar stated that the existence of a "vast majority" made it seem "fairly clear to me that this is how the EU legislature intended the provision to be understood". One might question how later language versions, *de facto* translations, demonstrate the intention of the legislator. However, as argued by Schilling (2011, 1464) new translations can take implicit assumptions and make them explicit, thereby contributing to our understanding of legislative intent.

In conclusion, the majority meaning might be controversial, but it appears to be here to stay. To properly understand and criticise it we need to understand both the different varieties of the majority meaning and the underlying values, as perceived by the Court of Justice.

Endnotes

1. This tendency is confirmed by my own examination of all judgments involving an explicit discussion of language versions in the 1995-2018 time period. It identified 165 cases where some form of majority/minority position was discussed. Out of these the final interpretation of the CJEU followed the majority position in 87 percent of the cases.

2. In *Institute of the Motor Industry* the CJEU uses the formula concerning a single language version, para. 16, but the minority position appears to include more than one language version. The Court speaks of "other versions, including the French", para. 15.

3. In *Endendijk* the phrasing of the other language versions, more specifically their use of general terms as compared to the specific wording of the Dutch version, was used as part of the discussion of context and purpose (*Endendijk*: para. 25). In *Institute of the Motor Industry* (para. 17), the Court notes that exceptions to the main rule should be given a strict interpretation.

References

(cases listed separately, below)

Anweiler, J. (1997). *Die Auslegungsmethoden des Gerichtshofs der Europäischen Gemeinschaften*. Peter Lang.

Austin, J. M. (2010). The law of citations and seriatim opinions: Were the ancient Romans and the early Supreme Court on the right track? *Northern Illinois University Review, 31*, 19-36.

Baaij, C. J. W. (2012). Fifty years of multilingual interpretation in the European Union. In P. M. Tiersma & L. M. Solan (Eds.), *The Oxford handbook of language and law* (pp. 217-231). Oxford University Press. https://doi.org/10.1093/oxfordhb/9780199572120.013.0016

Baaij, C. J. W. (2018). *Legal integration and language diversity: Rethinking translation in EU lawmaking*. Oxford University Press. https://doi.org/10.1093/oso/9780190680787.001.0001

Bengoetxea, J. (1993). *The legal reasoning of the European Court of Justice: Towards a European jurisprudence*. Clarendon Press.

Bobek, M. (2008). On the application of European law in (not only) the courts of the new member states: 'Don't do as I say'? *Cambridge Yearbook of European Legal Studies, 10*, 1-34. https://doi.org/10.5040/9781472564610.ch-001

Buck, C. (1998). *Über die Auslegungsmethoden des Gerichtshofs der Europäischen Gemeinschaft*. Peter Lang.

Capeta, T. (2009). Multilingual law and judicial interpretation in the EU. *Croatian Yearbook of European Law and Policy, 5*, 1-17. https://doi.org/10.3935/cyelp.05.2009.88

Derlén, M. (2009). *Multilingual interpretation of European Union law*. Kluwer Law International.

Derlén, M. (2011). In defence of (limited) multilingualism: Problems and possibilities of the multilingual interpretation of European Union law in national courts. In A. L. Kjaer & S. Adamo (Eds.), *Linguistic diversity and European democracy* (pp. 143-166). Ashgate. https://doi.org/10.4324/9781315592473-12

Derlén, M. (2014a). Multilingualism and legal integration in Europe. In R. Temmerman & M. Van Campenhoudt (Eds.), *Dynamics and terminology: An interdisciplinary perspective on monolingual and multilingual culture-bound communication* (pp. 17-41). John Benjamins Publishing Company. https://doi.org/10.1075/tlrp.16.02der

Derlén, M. (2014b). Multilingual interpretation of CJEU case law: Rule and reality. *European Law Review, 39*(3), 295-315.

Derlén, M. (2015). A single text or a single meaning: Multilingual interpretation of EU legislation and CJEU case law in national courts. In S. Šarčević (Ed.), *Language and culture in EU law: Multidisciplinary perspectives* (pp. 53-72). Ashgate. https://doi.org/10.4324/9781315591445-10

Doczekalska, A. (2009). Drafting and interpretation of EU law – Paradoxes of legal multilingualism. In G. Grewendorf & M. Rathert (Eds.), *Formal linguistics and law* (pp. 339-370). Mouton de Gruyter. https://doi.org/10.1515/9783110218398.4.339

Dölle, H. (1961). Zur Problematik mehrsprachiger Gesetzes- und Vertragstexte [On the problem of multilingual statutory and treaty texts]. *Rabels Zeitschrift für ausländisches und internationales Privatrecht, 26*, 4-39.

European Commission (2014). *Translation and multilingualism*. Publications Office of the European Union. https://op.europa.eu/en/publication-detail/-/publication/e0770e72-afa1-4971-8824-6190512537dc

Felici, A. (2010). Multilingualism in EU law: How promulgation authenticates equality. *Comparative Legilinguistics, 2*, 153-165.

Fredriksen, H. H. (2010). The EFTA Court 15 years on. *The International and Comparative Law Quarterly, 59*, 731-760.

Hardy, J. (1961). The interpretation of plurilingual treaties by international courts and tribunals. *British Yearbook of International Law, 28*, 74-138.

Hilf, M. (1973). *Die Auslegung mehrsprachiger Verträge – Eine Untersuchung zum Völkerrecht und zum Staatsrecht der Bundesrepublik Deutschland*. Springer-Verlag.

Jacobs, F. G. (2003). Approaches to interpretation in a plurilingual legal system. In M. Hoskins & W. Robinson (Eds.), *A true European – Essays for Judge David Edward* (pp. 297-305). Hart Publishing. https://doi.org/10.5040/9781472562890.ch-021

Lasser, M. de S.-O.-l'E. (2009). *Judicial deliberations: A comparative analysis of transparency and legitimacy*. Oxford University Press.

Lenaerts, K. & Gutiérrez-Fons, J. A. (2013-2014). To say what the law of the EU is: Methods of interpretation and the European Court of Justice. *Columbia Journal of European Law, 20*, 3-48.

Leung, J. (2012). Statutory interpretation in multilingual jurisdictions: Typology and trends. *Journal of Multilingual and Multicultural Development, 33*(5), 481-495. https://doi.org/10.1080/01434632.2012.680462

McAuliffe, K. (2013). Precedent at the Court of Justice of the European Union: The linguistic aspect. In M. Freeman & F. Smith (Eds.), *Law and language: Current legal issues Volume 15* (pp. 483-493). Oxford University Press. https://doi.org/10.1093/acprof:oso/9780199673667.003.0297

Müller, F. & Christensen, R. (2003). *Juristische Methodik, Band II, Europarecht*. Duncker & Humblot.

Paunio, E. (2013). *Legal certainty in multilingual EU law: Language, discourse and reasoning at the European Court of Justice*. Routledge. https://doi.org/10.4324/9781315591995

Piris, J. C. (2005). The legal orders of the European Union and of the member states: Peculiarities and influences in drafting. *Amicus Curiae, 58*, 21-28. https://doi.org/10.14296/ac.v2005i58.1090

Pommer, S. E. (2012). Interpreting multilingual EU law: What role for legal translation? *European Review of Private Law, 5&6*, 1241-1254.

Robinson, W. (2005). How the European Commission drafts legislation in 20 languages. *Clarity, 53*, 4-10.

Robinson, W. (2012). *Drafting European Union legislation*. European Parliament: Directorate General for Internal Policies. https://www.europarl.europa.eu/RegData/etudes/note/join/2012/462442/IPOL-JURI_NT(2012)462442_EN.pdf

Šarčević, S. (2001). Preserving multilingualism in an enlarged European Union. *Terminologie et Traduction, 2*, 34-50.

Šarčević, S. (2013). Multilingual lawmaking and legal (un)certainty in the European Union. *International Journal of Law, Language & Discourse*, *3*(1), 1-29. https://www.ijlld.com/744/volume-3/3-1-sarcevic/

Schilling, T. (2011). Multilingualism and multijuralism: Assets of EU legislation and adjudication? *German Law Journal, 12*(7), 1460-1491. https://doi.org/10.1017/s2071832200017399

Schübel-Pfister, I. (2004). *Sprache und Gemeinschaftsrecht: Die Auslegung der mehrsprachig verbindlichen Rechtstexte durch den Europäischen Gerichtshof*. Duncker & Humblot GmbH. https://doi.org/10.3790/978-3-428-51333-8

Solan, L. M. (2009). The interpretation of multilingual statutes by the European Court of Justice. *Brooklyn Journal of International Law, 34*(2), 277-301.

Tabory, M. (1980). *Multilingualism in international law and institutions*. Sijthoff & Noordhoff.

Watson, A. (1970). *The law of the ancient Romans*. Southern Methodist University Press.

Zedler, F. (2015). *Mehrsprachigkeit und Methode: Der Umgang mit dem sprachlichen Egalitätsprinzip im Unionsrecht*. Nomos Verlag.

CJEU Case Law (Including the General Court, Opinions of Advocates General and the EFTA Court), Sorted by Case Number

Case 19/67, Bestuur der Sociale Verzekeringsbank v J. H. van der Vecht, ECLI:EU:C:1967:49

Case 29/69, Erich Stauder v City of Ulm, ECLI:EU:C:1969:57

Case 30/77, Regina v Pierre Bouchereau, ECLI:EU:C:1977:172

Case 9/79, Marianne Wörsdorfer, née Koschniske, v Raad van Arbeid, ECLI:EU:C:1979:201

Case 283/81, Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health, ECLI:EU:C:1982:335

Case 295/81, International Flavors & Fragrances IFF (Deutschland) GmbH v Hauptzollamt Bad Reichenhall, ECLI:EU:C:1982:326

Case 55/87, Alexander Moksel Import und Export GmbH & Co. Handels-KG v Bundesanstalt für landwirtschaftliche Marktordnung, ECLI:EU:C:1988:377

Case 291/87, Volker Huber v Hauptzollamt Frankfurt am Main-Flughafen, ECLI:EU:C:1988:547

Case 215/88, Casa Fleischhandels-GmbH v Bundesanstalt für landwirtschaftliche Marktordnung, ECLI:EU:C:1989:331

Case C-372/88, Milk Marketing Board of England and Wales v Cricket St. Thomas Estate, ECLI:EU:C:1990:140

Case T-143/89, Ferriere Nord SpA v Commission of the European Communities, ECLI:EU:T:1995:64

Joined cases T-481/93 and T-484/93, Vereniging van Exporteurs in Levende Varkens and others and Nederlandse Bond van Waaghouders van Levend Vee and others v Commission of the European Communities, ECLI:EU:T:1995:209

Joined cases C-283/94, C-291/94 and C-292/94, Denkavit International BV, VITIC Amsterdam BV and Voormeer BV v Bundesamt für Finanzen, ECLI:EU:C:1996:387

Case C-298/94, Annette Henke v Gemeinde Schierke and Verwaltungsgemeinschaft Brocken, ECLI:EU:C:1996:382

Case C-64/95, Konservenfabrik Lubella Friedrich Büker GmbH & Co. KG v Hauptzollamt Cottbus, ECLI:EU:C:1996:388

Case C-72/95, Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeputeerde Staten van Zuid-Holland, ECLI:EU:C:1996:404

Case C-130/95, Bernd Giloy v Hauptzollamt Frankfurt am Main, ECLI:EU:C:1997:372

Case C-219/95 P, Ferriere Nord SpA v Commission of the European Communities, ECLI:EU:C:1997:375

Case C-296/95, The Queen v Commissioners of Customs and Excise, ex parte EMU Tabac SARL, The Man in Black Ltd, John Cunningham, ECLI:EU:C:1998:152

Case E-9/97, Erla María Sveinbjörnsdóttir v Iceland, [1998] EFTA Ct. Rep. 95

Case C-149/97, The Institute of the Motor Industry v Commissioners of Customs and Excise, ECLI:EU:C:1998:536

Case C-236/97, Skatteministeriet v Aktieselskabet Forsikrinsselskabet Codan, ECLI:EU:C:1998:617

Case C-384/98, D. v W., ECLI:EU:C:2000:444

Opinion of Advocate General Saggio in case C-384/98, D. v W., ECLI:EU:C:2000:55

Case C-420/98, W.N. v Staatssecretaris van Financiën, ECLI:EU:C:2000:209

Case C-268/99, Aldona Malgorzata Jany and Others v Staatssecretaris van Justitie, ECLI:EU:C:2001:616

Case C-257/00, Nani Givane and Others v Secretary of State for the Home Department, ECLI:EU:C:2003:8

Case T-157/01, Danske Busvognmænd v Commission of the European Communities, ECLI:EU:T:2004:76

Opinion of Advocate General Stix-Hackl in case C-265/03, Igor Simutenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol, ECLI:EU:C:2005:6

Case C-336/03, easyCar (UK) Ltd v Office of Fair Trading, ECLI:EU:C:2005:150

Opinion of Advocate General Geelhoed in case C-289/05, Länsstyrelsen i Norrbottens län v Lapin liitto, ECLI:EU:C:2006:580

Case C-289/05, Länsstyrelsen i Norrbottens län v Lapin liitto, ECLI:EU:C:2007:146

Case C-300/05, Hauptzollamt Hamburg-Jonas v ZVK Zuchtvieh-Kontor GmbH, ECLI:EU:C:2006:735

Opinion of Advocate General Trstenjak in case C-62/06, Fazenda Pública - Director Geral das Alfândegas v ZF Zefeser - Importação e Exportação de Produtos Alimentares Lda, ECLI:EU:C:2007:264

Case C-63/06, UAB Profisa v Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos, ECLI:EU:C:2007:233

Case C-187/07, Criminal proceedings against Dirk Endendijk, ECLI:EU:C:2008:197

Case C-239/07, Julius Sabatauskas and Others, ECLI:EU:C:2008:551

Opinion of Advocate General Kokott in case C-370/07, Commission of the European Communities v Council of the European Union, ECLI:EU:C:2009:249

Opinion of Advocate General Mengozzi in Case C-569/07, HSBC Holdings plc, Vidacos Nominees Ltd v The Commissioners of Her Majesty's Revenue & Customs, ECLI:EU:C:2009:594

Case C-194/08, Susanne Gassmayr v Bundesminister für Wissenschaft und Forschung, ECLI:EU:C:2010:386

Joined Cases C-261/08 and C-348/08, María Julia Zurita García (C-261/08) and Aurelio Choque Cabrera (C-348/08) v Delegado del Gobierno en la Región de Murcia, ECLI:EU:C:2009:648

Case C-451/08, Helmut Müller GmbH v Bundesanstalt für Immobilienaufgaben, ECLI:EU:C:2010:168

Case C-473/08, Ingenieurbüro Eulitz GbR Thomas und Marion Eulitz v Finanzamt Dresden I, ECLI:EU:C:2010:47

Case C-66/09, Kirin Amgen Inc. v Lietuvos Respublikos valstybinis patentų biuras, ECLI:EU:C:2010:484

Case C-510/10, DR and TV2 Danmark A/S v NCB – Nordisk Copyright Bureau, ECLI:EU:C:2012:244

Case C-19/11, Markus Geltl v Daimler AG, ECLI:EU:C:2012:397

Case C-189/11, European Commission v Kingdom of Spain, ECLI:EU:C:2013:587

Case C-486/12, X, ECLI:EU:C:2013:836

Case C-515/12, «4finance» UAB v Valstybinė vartotojų teisių apsaugos tarnyba and Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos, ECLI:EU:C:2014:211

Joined cases C-627/13 and C-2/14, Miguel M. and Others, ECLI:EU:C:2015:59

Joined cases C-659/13 and C-34/14, C & J Clark International Ltd v The Commissioners for Her Majesty's Revenue & Customs and Puma SE v Hauptzollamt Nürnberg, ECLI:EU:C:2016:74

Case C-559/15, Onix Asigurări SA v Istituto per la Vigilanza Sulle Assicurazioni (IVASS), ECLI:EU:C:2017:316

Case C-16/16 P, Kingdom of Belgium v European Commission, ECLI:EU:C:2018:79

Opinion of Advocate General Szpunar in case C-48/16, ERGO Poist'ovna, a.s. v Alzbeta Barlíková, ECLI:EU:C:2017:377

Case C-256/16, Deichmann SE v Hauptzollamt Duisburg, ECLI:EU:C:2018:187

Case C-634/17, ReFood GmbH & Co. KG v Landwirtschaftskammer Niedersachsen, ECLI:EU:C:2019:443

INTERNATIONAL JOURNAL OF
LAW, LANGUAGE & DISCOURSE

Legal Linguistics and Ethnological Jurisprudence in Legislative Reforms: Drafting Legislation in Montenegro

Luka Veljović
Shanghai Jiao Tong University, People's Republic of China

Luka Veljović is LLM student at Shanghai Jiao Tong University, KoGuan School of Law, and associate at Moravčević Vojnović and partners in cooperation with Schönherr. He specialises in contract and commercial law, with a track record in construction, energy, M&As and dispute resolution practices in Montenegro and the Western Balkans region.
E-mail: l.veljovic@schoenherr.me / veljovic.l95@gmail.com

Abstract

In the context of contemporary legislative reforms, countries that lack a comprehensive and compact corpus of national laws may choose to rely on linguistic methods and techniques inspired by the basic principles of ethnological jurisprudence. The General Property Code for the Principality of Montenegro, written by jurist Valtazar (Baltazar) Bogišić, is one of the rare examples of a legal act drafted primarily on principles that would later become the core of ethnological jurisprudence. The dogmatic teachings of this legal school of thought and its relationship to legal linguistics is summarised, and Bogišić's ideological and methodological approach to the codification of the General Property Code is reviewed. Special attention is placed on the relevance of Bogišić's approach to drafting legislation from a contemporary perspective, principally in the countries in which legislative reforms mostly rely on legal transposition: the amelioration and consolidation of national laws through a direct or indirect reliance on foreign legal concepts. The central part of Bogišić's ideological and methodological approach to legislative reforms is legal linguistics. Therefore, Bogišić's analysis of Montenegrin legal terminology and his differentiation between the three categories of legal terms appearing in the General Property Code is offered. The study concludes with recommendations for the potential application of Bogišić's approach to legislative drafting to attain more positive effects from legislative reforms.

Keywords: *acquis communautaire*, Bogišić, ethnological jurisprudence, General Property Code for the Principality of Montenegro, legal linguistics, legal transposition, legislative reforms

Introduction

Legal linguistics are a necessary and multifunctional constituent of all legislative reforms. Their role in contemporary legislative drafting exceeds the level of simple policy formulation, commonly aiming to ensure that legislation is easily comprehensible to those whom it might concern. As the law is only one of a society's constituent parts and cannot ensure the

achievement of any development on its own (Tamanaha, 2011, p. 247), legislative reforms are conditioned by the capability of lawmakers to predict how the envisaged policy will be applied in a particular social environment (Seiden & Seiden, 2008, p. 296). In that respect, legal linguistics is expected to take a proactive role, anticipating and indicating how the choice of legal terminology influences the understanding of a legal concept and its subsequent interpretation. Furthermore, it also ensures the consistent use of various legal terms across different legal branches to safeguard and strengthen the legal system's compactness and functionality. Therefore, disregarding the importance of legal linguistics for legislative reforms can lead to the creation of dysfunctional legislation incomprehensible to those who are supposed to adhere to its norms.

Nonetheless, the necessity of formulating and adopting a concise and consistent approach to drafting legislation is often suppressed for a variety of economical and time-saving reasons. This practice is especially notable in countries that lack a consolidated and functional corpus of national laws. For example, after the fall of communist regimes in ex-Yugoslav and post-Soviet countries, the newly formed states decided to undertake a set of profound legislative reforms (Petrovic, 2013, p. 1). These reforms were designed to provide a suitable basis to introduce democracy and further socio-economic development, which is still apparent in one of the ex-Yugoslav countries, Montenegro (Dauderstädt & Gerrits, 2000, p. 374). Specifically, while Montenegro unquestionably embraces European values (Penev, 2010, p. 31) and aims to create modern and functional laws (mainly through the adoption of the common rights and obligations that are binding on all Member States of the European Union (EU), (i.e., the European *acquis communautaire*; see European Commission, 2020, p. 4), such laws often fail to exceed the rudimentary phase of development, integrate fully within the country's existing legal environment and leave behind a transitory character condemned to further modifications.

Consequently, most post-independence Montenegrin laws have been amended several times, and some have been replaced entirely. Due to its ongoing accession negotiations with the EU, the essence of the legislative reforms in Montenegro is a legal transposition. Such legal transposition represents a direct and indirect transposing or introducing of legal concepts appertaining to the European *acquis communautaire* into the Montenegrin national legal system. Nonetheless, the lack of a genuine political culture rooted in a consolidated democracy (Suchocka, 2015, p. 24) significantly influences the results of those legislative reforms. Moreover, insufficient attention is placed on planning and anticipating the results of the transposition mechanisms used. In that respect, the importance of legal linguistics in achieving the most out of the legislative reforms is often unfairly neglected.

This study will discuss the use of legal linguistics, inspired by the legal doctrine of ethnological jurisprudence, to ensure the functionality and outcomes of legislative reforms in countries where legal transposition predominates all legislative reforms, such as contemporary Montenegro. Ethnological jurisprudence combines the knowledge, research methods and scientific method, from both ethnology and jurisprudence. The term was introduced in 1886 by the scholar Albert Hermann Post (Leonhard, 1934, p. 216). Ethnological jurisprudence has primarily been perceived as a theoretical science, researching the laws of 'all the peoples of the Earth' (Post, 1891, p. 34). Related research has focused chiefly on developing ethnological jurisprudence as a science (Tarkany-Szücs, 1967, p. 212) rather than potential practical reliance on its tenets; therefore, its application in the context of legislative reforms has not been sufficiently researched. One of the rare examples of ethnological jurisprudence in practice is the 1888 General Property Code for the Principality of Montenegro, authored by jurist Valtazar Bogišić – this study will present the ideological, methodological and linguistic techniques and methods used by Bogišić while preparing the General Property Code. Simultaneously, it aims to discuss whether and to what extent Bogišić's approach continues to be relevant and might offer a new perspective into contemporary legislative reforms in those countries still lacking a coherent corpus of functional domestic legislation (such as Montenegro).

To this end, the study commences with a brief overview, including some shortcomings, of the current status of legislative reforms in Montenegro. It proceeds with a discussion of the basic postulates of ethnological jurisprudence and indicates its relationship to legal linguistics. Furthermore, the ideological and methodological approach, which enabled Bogišić to establish the appropriate extent, nature and timing of legislative reforms, is presented. Bogišić's linguistic methods and the techniques used to codify the General Property Code, inspired by the canons of clarity, precision and unambiguity, are highlighted. As the study aims to promote the significance of appropriate legal terminology in ensuring the functionality and durability of legal acts resulting from legislative reforms (especially when performed through legal transposition), due reference is also made to the compatibility of Bogišić's linguistic approach with contemporary linguistic practices.

Legislative Reforms in Montenegro

The history of the Montenegrin legal system has been marked by periodic profound reconceptualisations inspired and aligned with the changes in the country's political aspirations and its overall socio-cultural reality. Until the 19th century, the Montenegrin legal system was primarily based on local customary law. Its modernisation, tailored by comparative European

civil law practices, commenced in the late 19th century. Bogišić's General Property Code, which meticulously regulated the basic postulates of Montenegrin property law and some parts of Montenegrin customary contract law, represents one of the most important legal acts from that era. Due to its success in combining the need for profound legal reforms and legal modernisation with the existing national laws and customs, the Code represents one of the rare legal acts that continued to apply throughout Montenegrin territory, even after the state officially ceased to exist in 1918.

Nonetheless, the modernisation of the Montenegrin legal system in light of European civil law practices was disrupted by the creation of a Yugoslavian state, which started to embrace communist political and legal doctrines beginning in 1945. After the dissolution of Yugoslavia in the 1990s, the collapse of the communist regime incited the country's decision to return to political and legislative reforms rooted in democracy. Thus, the history of contemporary legislative reforms in Montenegro can be traced only to three decades ago. This radical change of the basic postulates of a legal system is not specific to Montenegro, as similar patterns of democratisation through legislative reforms may be observed in other countries of the Balkans region (Dolenc, 2016, p. 125) and in the so-called EU-associated post-Soviet countries, or the countries of the former Soviet bloc that have embraced EU integration as their objective (Ordukhanyan, 2019, p. 820).

After regaining its independence in 2006, Montenegro met all the necessary preconditions for undertaking profound reforms in each area of social life (Vukčević & Bošković, 2016, p. 9), including the comprehensive overhaul of its legal system. Contemporary legislative reforms in Montenegro are predominantly marked by the legal transposition of the European *acquis communautaire*. Even the preamble of the 2007 Montenegrin Constitution reinforces that Montenegro is committed to its European integration, stating that Montenegrins share the same values and aims as the peoples of Europe (Orlandić, 2015, p. 66). Negotiations on a *Stabilisation and Association Agreement* between Montenegro and the EU started in 2006. The *Agreement* was officially signed in 2007 and came into force in 2010, after its ratification by all 27 EU Member States. Following its ratification, the accession negotiations with Montenegro officially started in 2012. Since that time, Montenegro has been trying to harmonise its domestic laws with the European *acquis communautaire*. Nonetheless, the pace of such legislative reforms has been rather slow. As a consequence, Montenegro has been engaged in one of the most prolonged negotiations with the EU. This is in part because Montenegrin legislation still fails to achieve the minimum standards of functionality and efficiency.

Despite regaining its independence more than a decade ago, drafting legislation in Montenegro (which also includes the transposition of the European *acquis communautaire*) is still mostly unregulated. In 2010 the Government of Montenegro adopted the *Rules on Legal and Technical Approach to Drafting Legislation* (*Pravno-tehnička pravila za izradu propisa*, 2010), which contain a specific chapter regulating the language, the style and the overall linguistic approach to drafting legislation in Montenegro. Nonetheless, this chapter contains only two articles in which the legislator vaguely refers to the general principles of drafting legislation. There are no references to any particular linguistic approach, or linguistic methods and techniques, that should be relied upon when preparing a particular legal act. Furthermore, the *Guidelines for Harmonizing the Regulations of Montenegro with the European Acquis Communautaire* are annexed to the *Rules*. The *Annex* merely specifies that the same legal and technical approach to drafting national legislation shall also be used to transpose the European *acquis communautaire*. However, the exact modality in which a particular legal concept should be communicated to the general public remains uncertain. Such uncertainty leaves space for simultaneous reliance on different (at times contradictory) linguistic approaches to drafting legislation. This ultimately leads to inconsistent legal terminology across various branches of Montenegrin national law.

Apart from the *Rules* and *Guidelines*, the Montenegrin ministry charged with European affairs also prepared a *Handbook for the Translation of Legal and Other Acts During the Process of European Integrations* (Vlada Crne Gore, 2012), which was initially adopted in 2010, and subsequently amended in 2012. The *Handbook* was envisaged as a tool for translators and related professionals engaged in translating legal regulations from Montenegrin into English and *vice versa*. For that purpose, it primarily explains the basic legal concepts of Montenegrin and EU law. It also contains a brief Montenegrin-to-English glossary containing the names of Montenegrin institutions, titles of the basic legal acts of the EU, titles of EU publications and a list of acronyms (Vlada Crne Gore, p. 175). Nonetheless, the *Handbook* provides no details about the linguistic approach to legal translation nor a comprehensive glossary of Montenegrin legal terminology and its actual use.

This section reveals that Montenegro still lacks a firm, compact and unanimous approach to drafting legislation. Furthermore, there are currently no official databases or glossaries that might serve as a tool for ensuring the harmonised use of legal terminology across different legal branches. Moreover, due to the country's objective to close the EU accession negotiations as soon as practically possible, the involvement and participation of the general public is often underestimated. For all those reasons, the lawmakers repeatedly fail to communicate the

European *acquis communautaire* in a comprehensible and straightforward manner, which prevents its full implementation and integration into the Montenegrin legal environment.

Ethnological Jurisprudence and Legal Linguistics in Legislative Reforms

As suggested by Bajčić (2018), every language and legal system contains specific features deriving from a particular culture and tradition. Therefore, the effectiveness of all legislative reforms, particularly those reforms adopted through legal transposition, could be enhanced through insistence on ensuring the compliance between the transposed legal concepts and the existing corpus of national laws, inspired by local culture and traditions. In that respect, the teachings drawn from ethnological jurisprudence could serve as a starting point.

Ethnological jurisprudence is founded upon a comparative-ethnological method, rejecting any system of jurisprudence founded upon the law of a single nation or a group of nations (Post, 1897, p. 642). It confronts broad categorisations of legal traditions and focuses on the systematised arrangement of numerous legal conceptions that repeat themselves among different peoples. For this reason, the ideal basis for the development of ethnological jurisprudence would be the 'monographic' treatment of the law of every single society worldwide (Post, 1891, p. 37), including an analysis of the legal customs that connect the law and members of society. Ethnological jurisprudence, as also held by Bogišić (Bogišić, 1874, p. 18), rejects the traditional perception of customs (Pigliasco, 2000, p. 6), where interest is centred solely on the segregation and separate examination of its essential elements, i.e., habit and prolonged usage. For example, Bogišić perceived customs more as self-sufficient units composed of people's internal beliefs and needs, which substitutes for the metaphysical quest to satisfy the inner desire for absolute truth.

Post (1891) stressed that ethnological jurisprudence places prominence in the law viewed as a provenance of ethnic existence. Therefore, ethnological jurisprudence holds that legal customs, conceptions and institutions initially arose from expressions of the individual legal consciousness (or jural consciousness), which relies on social instincts developed through persistent and inevitable interactions in human societies. The individual jural consciousness, i.e., the individual perception of the jural world, is a product of the social conditions and environment in which a person is raised. The individual jural consciousness changes according to social conditions, implying that people who grow up under different social conditions possess notably different juristic perceptions (Post, 1891, p. 36). On the contrary, a shared jural consciousness is a collective perception of the legal concepts and legal relationships of a determined number of individuals at one exact historical moment. Over time, the individual

perceptions of jural affairs became widely accepted by a totality of individuals, forming their shared (common) jural sense. Therefore, if ethnological jurisprudence is used in legislative reforms, its focus would not be on individual jural consciousness but rather on determining whether and how the shared jural consciousness can be altered to accept a given legal change.

The methodology suitable for ascertaining the application of legal ethnology has not been sufficiently researched to date (Tarkany-Szücs, 1967, p. 195). However, one method to determine the shared jural consciousness, as derived from Bogišić's approach, could be research into a commonly used legal vocabulary. It might be argued that for Bogišić, the research into legal vocabulary had a dual function. From one perspective, it was used as an indicator of citizens' perceptions of their jural life, indicating their jural consciousness. From the other, it served as a guideline for the materialisation of legislative reforms, i.e., to determine the adequate expression of legislative reforms in a manner that enabled or even facilitated their successful implementation within the shared jural consciousness. The focus of Bogišić's interest was not on legal vocabulary in general but, rather, on the expressions and terms suitable for prescriptive legal texts, i.e., for codification purposes.

Legal expressions and terms exist in many forms, and their use is dependent on the nature, content and purpose of a legal text. Based on their communicational and functional component, all legal texts might be delineated as: (i) prescriptive (e.g., national and international legal acts); (ii) both descriptive and prescriptive (e.g., court verdicts and administrative decisions); or (iii) descriptive (e.g., academic articles and books) legal texts (Bajčić, 2014, p. 317). In general, depending on the type of legal text, there are two major types of legal expression. One centres on simplicity and tends to induce even the most oblivious reader to apprehend the purpose of legal norms. This linguistic approach is typical for prescriptive legal texts and also represents the prevailing style in the combined descriptive and prescriptive legal texts. It aspires to achieve legal effectiveness by establishing clarity, precision and unambiguity as its objectives (Xanthaki, 2014, p. 85). In the other approach, scientific accuracy often prevails over the canons of clarity, precision and unambiguity. It characterises descriptive or non-binding legal texts (Bajčić, 2014, p. 318), aiming not to dictate and impose a proper social order but instead to examine and discuss pre-existing rules.

Legislative reforms are meant to produce prescriptive legal texts, and thus, they should result in legislation drafted in clear (Nourse & Schacter, 2002, p. 594), precise (Pigeon, 1988, p. 7) and unambiguous (Duckworth, 1977, p. 241) legal language, ascertained from the perspective of the law addressees. In prescriptive legal texts, any combination of normative and academic legal writing threatens to erode the circle of simplicity and result in dysfunctional

and inconsistent legislation, detached from the practicability and functionality it was designed to reflect. Nonetheless, it must be acknowledged that the indeterminate nature of language forces the legislature to deviate from the ideal concepts of clarity, preciseness and unambiguity and to embrace the ambiguity, vagueness and generality of specific legal terms (Cao, 2007, p. 19). For example, terms such as 'due diligence', 'reasonable men' and 'good business practices' represent widely accepted concepts where lawmakers resort to the descriptive and imaginative component of an academic writing style while intentionally leaving further scrutinization to experts' findings and the decisions of competent adjudication authorities.

Despite these sporadic pervasions between academic style and clear, precise and unambiguous legal writing, the guiding idea in prescriptive legal texts should be the simplicity of the legal expression, thus creating a functional system of acceptable social norms and human behaviours (Cao, 2007, p. 20). The further the prescriptive legal text reaches for literature-like, i.e., descriptive, linguistic rules and techniques, the more the legislation abandons its primary function of providing a system of rules (Caldwell, 2008, p. 258). Consequently, this study will be limited to presenting Bogišić's use of legal vocabulary in prescriptive legal texts and the potential reliance on his findings in the present-day context.

Bogišić's Ideological and Methodological Approach to Legislative Reforms

Several parallels may be drawn between the objectives and circumstances under which the General Property Code was prepared and contemporary legislative reforms in Montenegro. Namely, the joint nominator between Bogišić's work on the General Property Code and contemporary legislative reforms in Montenegro is the modernisation of the existing legal system by relying on comparative practices and experiences. While Bogišić's quest involved modernising the mostly customary law in a primarily rural society, the Montenegrin legislature is currently dealing with the modernisation of a post-communist society inexperienced in democratic rule.

Ideological Approach

Most of Bogišić's codification work conforms to the systematic and dogmatic teachings of ethnological jurisprudence (Strohal, 1908, p. 842). He was inspired by Charles-Louis de Secondat Montesquieu's idea that laws must not be an art of logic, as they are designed for people of mediocre understanding (Bogišić, 1888, p. 3). Therefore, Bogišić's codification was marked by a desire to create a modern but easily comprehensible code. He started from the premise that the modernisation of a legal system is preconditioned by thorough research into

the shared jural consciousness of the people of Montenegro, i.e., their traditional perception of legal concepts and relationships (Luković, 2009, p. 95). By analysing their common jural consciousness, Bogišić aspired to identify the exact extent, nature and timing of potential legal modernisation through legislative reforms. In that respect, he did not regard the underdeveloped socio-cultural context as an impediment to adopting new legal concepts if the reforms could still be successfully introduced into the shared jural consciousness.

Bogišić's reliance on the unique characteristics and customary law of the peoples of Montenegro (what will later become fundamental to ethnological jurisprudence) significantly influenced both the structure and the content of the General Property Code. The Code represented a balanced mélange of general legal rules deriving from Roman law, the 19th century's revolutionary legal tendencies and the unique features of Montenegrin jural consciousness (Bogišić, 1886, p. 4). One of the most significant differences between the Montenegrin Code and other European codifications of that time was that family and inheritance laws were not included in the codification. Bogišić claimed that family law was not civil law *strictu sensu* and that inheritance law was no more than a family law legal concept. Furthermore, codifying family and inheritance law in Montenegro would have been a virtually unfathomable quest in the 19th century. The utterly unsynchronised customary law used by different Montenegrin tribes enjoyed strong support by different factions, and thus, any intent to integrate it into a dominant legal unit would have been doomed to fail. As Poláčková and Duin (2013) observe, despite the relatively small territorial distance, there were notable cultural and ideological differences among Montenegrin tribes. Therefore, Bogišić argued that a separate codification for family and inheritance law should be created (Bogišić, 1886, p. 10).

The separation of family and inheritance law from the civil code should not be regarded as a rule but rather a manifestation of Bogišić's ideological approach. Namely, Bogišić's approach to legal codifications was founded on the premise that laws should always comply with the shared jural consciousness of its addressees. In 19th-century Montenegro, the shared jural consciousness regarding family and inheritance law was not sufficiently developed: individual jural consciousnesses was not transformed into a compact jural consciousness shared by the majority of Montenegrin inhabitants, and therefore the codification of family and inheritance law was not possible. Several parallels could be made between this approach and some contemporary practices in legislative reforms.

For example, following the initiation of the Chinese opening-up policy in the late 1970s, China primarily focused on adopting laws that would generate economic growth, which generally enhances citizens' welfare (Clarke, 2007, p. 1). Lawmakers did not focus on

promoting the establishment of legal rules typical for democratic legal regimes (such as the rule of law), as those laws are preconditioned by specific fundamental changes to the shared jural consciousness. In that respect, many Chinese authors have argued that rushed legislative reforms would also have a decelerating effect on the overall development of Chinese law (Zhang, 2016, p. 122). Only following the achievement of a more market-oriented paradigm that brought prosperity to Chinese society as a whole (Keyuan, 2006, p. 6) did Chinese lawmakers envisage reforms concerning the creation of a 'country under the rule of law' in 1999 (Morrison, 2019, p. 31). The opening-up policy influenced the opening of the Chinese market alongside the opening of the shared jural consciousness of the peoples of China. The change in social circumstances acted as a stimulus for subverting several individual jural consciousnesses and indicated that the shared jural consciousness might be prepared to integrate new legislative reforms.

Bogišić's approach to legal codification is, to a certain extent, also reflected in the EU. For example, the adoption of the new European *acquis communautaire* is preconditioned by its intelligibility with the commonly shared values set out in Article 2 of the *Treaty on European Union* (Council of the European Communities..., 1992). Those commonly shared values are part of the shared jural consciousness of all citizens of EU Member States, regardless of their socio-cultural differences. However, transposing commonly shared European values in the candidate countries (especially in the Western Balkans) remains quite challenging. Recent reports demonstrate notable differences in the perception of commonly shared European values between Member States and candidate countries (European Commission, 2012, p. 11). Therefore, the entire accession negotiations process is marked by a candidate country's capability to ensure that commonly shared European values are accepted as a part of the specific jural consciousness of its citizens. In that respect, the EU is actively involved in promoting its values in the candidate countries, to such an extent that some authors have interpreted its involvement as 'a shift from a pre-accession agenda to a Europeanisation agenda' (Barbulescu & Troncota, 2013, p. 93).

Methodological Approach

Bogišić commenced his codification work on the General Property Code by preparing questionnaires and surveys envisaged to identify the focal points of Montenegrin customary law that plausibly depicted quotidian life in Montenegro. He prepared more than 2,000 questions (Luković, 2008, p. 181), cautiously arranged them into different surveys, and aimed to approach all the people of Montenegro, regardless of their tribal affiliation. In other words, Bogišić had to adapt his questionnaires to accommodate idiosyncratic perceptions and

utilisations of the law by members of numerous tribes. In that aspect, Bogišić's standpoint outlives his era and fits some of the modern arguments for the importance of linguistic and cultural diversity, as described by Turi (2015). Furthermore, Bogišić's approach also reflects some of the basic postulates of modern ethnolinguistics, as his empirical studies indicate the interactions among linguistic, ethnocultural and ethno-psychological factors in the functioning and development of language in Montenegro, which is one of the principal objectives of ethnolinguistics (Baydak, Schariothb, & Il'yashenkoc, 2015, p. 15). Bogišić also relied on fruitful collaborations with esteemed national and international legal practitioners and theoreticians (Luković, 2008, p. 182). However, he remained a staunch supporter of the ideal that legislative reforms shall surpass the autotelic legal *l'art pour l'art,* and he promoted the creation of a functional yet sophisticated legal environment.

Contrary to Bogišić's approach, the current legislative reforms in Montenegro (in particular, the transposition of the European legislation) are implemented primarily by academics, professional public and governmental officials, without the consistent or regular involvement of the general public. It becomes questionable, therefore, how the effectiveness of a specific legal rule is predicted and achieved if its perception by the general public has not been tested prior to enactment. Moreover, in failing to consult the general public, it also becomes unclear whose perceptions are being adopted to establish the canons of clarity, precision and unambiguity. It could be argued that the clarity, precision and unambiguity ascertained solely from legal professionals or experienced linguists do not necessarily correspond to what the general public perceives as concise, straightforward and clear. Exposing the legal terminology to the general public before its adoption, as Bogišić accomplished, could contribute to achieving legal effectiveness. In that context, Montenegrin legislators could, in particular, rely on information and communication technologies to include the general public in the process of drafting legislation.

Consistent with Rašović (2018), the insistence on consolidation between Montenegrin jural consciousness and general legal principles may be found in the sixth part of the Code, where Bogišić presents a set of legal proverbs [in Montenegrin: *zakonjače*]. Those legal proverbs represent adaptations of the rules marking the entire civil law system, and originate in Roman law. However, this section does not merely translate those maxims but rather illuminates the specific subsumption of their general ideas into the Montenegrin legal tradition, culture and specific linguistic expression. Codifying the founding principles of the civil law in proverbial form made them sound more like a cultural product of the Montenegrin people. In this manner, the legal transplants were distanced from the mere 'borrowing of a bare string of

words' (Legrand, 1997, p. 121) and were enhanced with the unique socio-cultural elements of the peoples of Montenegro.

The idea of subsuming legal principles into the Montenegrin legal tradition, culture and specific linguistic expression could also be used in contemporary legislative reforms in Montenegro; namely, when transposing European legislation into the Montenegrin legal environment, Montenegro could focus more on the linguistic forms that would allow for communication of the EU law in a manner understandable to the general public. Bogišić's reliance on legal proverbs is especially important, as it allowed Bogišić to effectively communicate legal norms to the general public without changing their original ideas or essence. In the EU context, it must be underlined that the transposition of the *acquis communautaire* is not to be equated with the mere verbatim translation of legal texts. Achieving the initially agreed-upon effects should, in principle, be prioritised over the production of authentic translations, as demonstrated through the practice of the European Court of Justice: even when the Court finds that a difference in meaning as expressed in different language versions of the EU legislation exists, it will try to understand what the legal rule stands for by looking into its purpose within the more general scheme in which it operates, if the essence remains the same (Ćapeta, 2009, p. 16). Therefore, Bogišić's approach could inspire Montenegrin legislators to adopt a more creative way of transposing the EU *acquis communautaire*, which will not focus on literally translating the EU legislation but rather on ensuring its essence is widely comprehended and accepted in Montenegro.

Bogišić made use of various comparative practices and experiences. Nevertheless, while he examined and adopted several legal concepts presented in the French Civil Code (1804), the Californian Civil Code (1872) and (at that time) working drafts of the German Civil Code (1888), his reformistic and modernised work does not result in a plain replica. Arguably, Montenegrin lawmakers are currently failing to carry out one of the first steps of Bogišić's methodological approach, as Montenegrin laws are not only inspired by the laws of other European countries (primarily Croatia and Slovenia) but often demonstrate an unfounded degree of similarities with them. For example, pursuant to the official information provided by the competent Montenegrin state authorities, due to the proximity between Croatian and Montenegrin languages, the translation of the European *acquis communautaire* in Montenegro is mainly performed by directly relying on official Croatian translations and other general strategies (Ministrstvo evropskih poslova, 2018).

While comparative practices and experiences (Whelan, 1988, p. 49), especially from those countries which have already successfully completed the process of European integration,

should remain one of the starting points for the preparation of new laws, Montenegrin legislators could consider the implementation of Bogišić's methodological approach in an attempt to achieve a more comprehensible, and consequently more functional, legal framework. Montenegro could also benefit more from the EU's approach – anticipating implementation problems and facilitating legal transposition, which follows Bogišić's line of argumentation in accentuating the importance of performing an impact assessment, among others, through previous consultations with all parties concerned with a particular legal proposal (European Commission, 2017, p. 34)

The efficiency of the legislative reforms (i.e., productive work with minimal wasted efforts and expenses) embodied through legal transposition does not necessarily lead to their effectiveness (i.e., production of the desired effects; see Xanthaki, 2008, p. 9). Therefore, while legal replication is indisputably time and cost-effective (Graziadei, 2006, p. 457), it should not replace a planned, organised and consistent approach to legislative reforms, which will ultimately lead to the creation of a legal system deeply rooted in the actual needs and aspirations of society. The methodological approach used by Bogišić might serve as a starting point for discovering the shared jural consciousness of the general public, and consequently, credibly ascertaining the manner in which legal transposition might occur.

Legal Linguistics in the General Property Code

The General Property Code represents a prototype of the law drafted based on firm linguistic principles promoting clarity, simplicity and precision of legal expressions. According to Bogišić (1888), if the lawmakers want to be understandable to the people, they should use the peoples' language. Bogišić's legal vocabulary is peculiar in many ways. It exceeds everyday speech with indubitable precision but remains on the solid ground of general comprehension. The wording of the General Property Code was meticulously analysed and implemented through a prism composed of the criteria of usage, acceptance and appropriateness. As per Pi-chan Hu (2014), similar methods and techniques still represent one of the guiding principles for the differentiation between the legal terms perceivable by 'ordinary people' and those comprehensible solely by legal practitioners. Prescriptive legal texts rule the life and activities of ordinary people and must be understandable to all (Stolze, 2013, p. 5). As argued by Cao (2007), the law has a normative existence, reflecting the ideals and principles that people cherish, the purpose and aspirations they pursue and the notions they hold. Therefore, if the principal function of the law is to direct people's behaviour in society,

then the clarity, precision and unambiguity of legal expression are preconditions for achieving this goal.

Bogišić (1877) starts from the premise that concise and accurate legal terminology is the utmost goal to be achieved, fundamentally through usage of legal vocabulary easily understandable to anyone to whom it may concern. He advocates this viewpoint by comparing the study of laws with the process of learning in schools. Specifically, as he claims, professors have students who do not have, or barely have any previous knowledge on a particular topic, and thus, might be portrayed as a *tabula rasa*. Being in that position, the professors can use both books and in-person interaction to explain to their students the authentic meaning, usage and purpose of the particular material. On the other hand, lawmakers (especially in the civil law countries) have only the written communication channel at their disposal and cannot rely on any additional, informal explanations. As Bogišić remarks, even when additional commentaries and explanations of the laws are made, they are written primarily for scholars and mostly intended for scientific purposes. They are not meant to serve as explanatory notes that could clarify the meaning of specific provisions to the general public or those who must obey them. For that reason, Bogišić persists that the language in prescriptive legal texts must be precise but straightforward, understandable and unambiguous to avoid confusions and contradictions in the shared jural consciousness.

This linguistic approach to prescriptive legal texts, promoting clarity, precision and unambiguity is already used in various EU Member States and the EU itself. For example, the first general principle of the *Joint Practical Guide of the European Parliament, the Council and the Commission* (European Commission, 2015) provides that the drafting of a legal act must be clear (easy to understand and unambiguous), simple and concise (avoiding unnecessary elements) and precise (leaving no uncertainty in the mind of the reader). Bogišić's standpoint also corresponds to the second general principle of the *Joint Practical Guide*, or the common-sense principle. The common-sense principle is often perceived as a guardian of a multicultural and multilinguistic European society, which aspires to ensure the comprehensiveness of legal norms and avoid any potential disputes arising out of misleading and inadequate legal terms. It enforces some of the general principles of law, such as the equality of citizens before the law and legal certainty (as argued, for example, by the Croatian Administrative Court in the Decision no. U-I/2694/2003, as reported in; Bajčić & Stepanić, 2011, p. 770). As in Bogišić's teachings, if the laws are not entirely understandable to everyone they might concern, they leave room for abuses and the emergence of inequality and indirect discrimination in their application. Furthermore, suppose the laws are not drafted so that their application and practical

implications are easily foreseen: in that case, they cease to represent the promoters of the socially desirable behaviour and lead to confusion and contradictions among the general public.

It is also important to accentuate that Bogišić's linguistic approach does not suggest that plain language is the utmost goal to be achieved, but rather emphasises its utilitarian characteristics in bringing the legislation to the people. The call to simplify legal language within the plain language movement has occupied the area of legal linguistics worldwide (Boleszczuk, 2011, p. 68). There have been many calls for promoting plain language as the standardised legal form. However, most of these calls have been challenged for reasons ranging from legal professionals' inertia to accept and undergo change, to questioning the overall necessity of changing the current system in which the understanding of the laws is conferred chiefly to legal professionals (Butt, 2001, p. 30). More recently, the use of plain language has been regarded more as a mere tool to add clarity (Xanthaki, 2014, p. 126) and not as an attempt to convert plain language into a dogmatic imperative. In that respect, Bogišić's claims that the addressees of a certain law should not be treated as a *tabula rasa*, but on the contrary, their previous experience in legal relationships and their already existing perception of the laws need to be taken into consideration, might find relevance. Following this line of argumentation, as also argued by Xanthaki (2014), the legal terminology that already enjoys a sufficient level of clarity, precision and unambiguity must not be undermined by the mere desire to use plain language.

In the more contemporary context, dissociation from plain language should especially be allowed for those laws that are not meant for the general public, but rather for professionals. Deviations from the usage of plain legal expressions seem to be justifiable when a particular group should already be accustomed to certain terms and expressions, even if they are not familiar to the general public (e.g., usage of construction and energy terms in the laws concerning those respective industries). At the same time, some artificially created legal regimes require terminology marked predominately by neologisms. For example, EU terminology is often described as artificially created (Bajčić, 2009, p. 229), which comes as a logical consequence of the fact that the concept of the EU does not emanate from the spontaneous process of law creation, but rather represents a product of planned and joint actions for commonly shared problems, deriving from the commonly shared values and goals.

Bogišić approached legal drafting with the idea of Jean-Étienne-Marie Portalis, that it is not enough for a people to know that a law exists, but rather, that people must know and understand its contents – that is to say, laws have to be drafted in a straightforward manner and under the dual nature of the lawmaker and the people (Bogišić, 1888, p. 3). On those grounds,

Bogišić differentiated between the three categories of legal terms appearing in the General Property Code: terms that might be found in peoples' spoken language; terms borrowed from other languages (i.e., loanwords); and terms that have been, to a certain extent, independently created (i.e., neologisms). As Kordić and Barna (2019) indicate, similar categories have been identified by several German scholars in the late 19th century and still represent the main linguistic features of the German legal vocabulary in the domains of lexicology and semantics.

Terms Existing in Spoken Language

Bogišić argued that commonly used words, which are well-known to everyone, should be indisputably employed as an essential part of the legal vocabulary in prescriptive legal texts. Nevertheless, he added that it is challenging to determine those words, primarily due to the complex process to differentiate between regionally and unanimously accepted terms. Bogišić proposed that terms used solely in certain areas should be adopted if there is a justifiable need for such action and under the condition that the inhabitants from other regions are also able to fully understand their meaning. Such words are typical for regions with a strong foreign influence. Bogišić gave an example of the archaic legal terms used only in the Dubrovnik region and its surroundings (e.g., *kanjošiti* or to 'plan a misdemeanour theft'; Bogišić, 1888, p. 7) which were not widely understood and used. Nevertheless, he affirms that the widespread and well-known words should *in perpetuum* be prioritised and never artificially and unfoundedly replaced with loanwords or neologisms.

In cases where the same legal concept is known under different terms, Bogišić suggests using the statistical method, i.e., adopting the term that enjoys greater respect and use. Nonetheless, he clarifies that additional words should not be unreasonably repressed, but rather presented alongside the main term. Even though this proposal may at first seem incompatible with the initial insistence on legal precision and unambiguousness, Bogišić expounds on its actual contribution to legal clarity and unequivocalness. Namely, this approach could primarily serve to approximate the concept of one legal concept to the public by relating it to the terms with which they are already familiar. Furthermore, Bogišić also demonstrates that such additional terms tend to decrease in usage over time, and thus, cannot create any confusion in the long term. For example, he explains that the legal terms for granting a gratuitous loan [in Latin: *commodātum*] in the Montenegrin language are *posuda* and *naruč*. Nevertheless, as *posuda* became the dominant term, the term *naruč* gradually disappeared from Montenegrin language. Bogišić uses this technique in several articles of the General Property Code. For example, the concept of factual possession [in Latin: *possessiō*] is defined in Article 18 as *državina* or *posjed* and in Articles 258 and 875, a loan [in Latin: *crēditum*] is defined as

rukodaće or *zajam*. Modern Montenegrin legal linguistics confirm Bogišić's claim that less dominant terms tend to disappear over time. Therefore, as the terms *državina* and *zajam* grew more dominant, it would be rather difficult to relate the terms *posjed* and *rukodaće* to the respective legal concepts in the contemporary Montenegrin legal vocabulary.

Bogišić claimed that polysemy should be strictly avoided. One of the most typical examples of such problematic competing meanings of a single term in the Montenegrin language (to a lesser extent even today) is the term *dužnik*, which, depending on the situation, might be colloquially related both to the term debtor [in Latin: *dēbitor*] and creditor [in Latin: *crēditor*], even though its original meaning is debtor (Bogišić 1900, p. 329). The standard terms used for 'creditor' were *vjerovnik* and *povjerilac*, with the latter favoured in contemporary Montenegrin legislation. Both the terms *vjerovnik* and *povjerilac* derive from the verbs *vjerovati* or *povjerovati*, translated in English as *to believe*. Nevertheless, the general legal logic and reasoning dictate that a debtor does not always have to place his belief and confidence in the creditor (especially in extracontractual or tort relationships). Therefore, in Article 902 of the General Property Code, Bogišić introduces a new word for the creditor, *dužitelj*, in an attempt to avoid this polysemy and simultaneously to preserve legal accuracy. The proposed term derives from the verb *zadužiti*, which might be translated as 'to charge' or 'to obligate', and is intended to define a person to whom someone owes a particular action, payment or abstinence from action. The term *dužitelj* was initially widely used in the practice of Montenegrin courts (Luković, 2009, p. 236). Nevertheless, over time, it disappeared from the Montenegrin legal vocabulary.

The link between polysemy and the canons of clarity, precision and unambiguity in the context of contemporary legislative reforms should be especially addressed. From one side, as argued by Kordić (2020), polysemy enhances legal uncertainty and allows for misleading and incorrect translations in international transactions. However, the sole desire for its elimination, as demonstrated in the example of the term *dužitelj*, might not necessarily justify the artificial creation of new legal terminology, especially concerning those terms in daily use. It is also highly debatable whether a clearer, more precise and unambiguous term would serve its purpose if it is not widely acknowledged and used. As argued by Xanthaki (2008), the effectiveness of legal terms is the principal goal to be achieved, and clarity, precision and unambiguous are subordinate to this aim.

Loanwords

Bogišić attempted to avoid simple, literal translations and the usage of untranslated foreign legal terms, which he denoted as 'freaks' [in Montenegrin: *nakaze*] among legal terms (Bogišić, 1877, p. 28). He believed that translation and the usage of foreign words should be considered as a remedy reserved for those situations when the legislator cannot find a relevant term in the native language understandable to the people or when the legislator cannot create a corresponding compound term from existing words. He even argued that it would be much more efficient to adopt the foreign word without any translation. Bogišić also proposed that all Slavic languages refer to the old Slavic language (from which contemporary Montenegrin derives) to create new terms in the same manner that Romance languages draw upon Latin. This proposal could especially be beneficial and deserves further examination in the context of legal translation and the transposition of the European *acquis* into the national legislation of candidate countries such as Montenegro.

Bogišić explained that a mere literal translation erases the entire historical background preceding the creation of a term. In that manner, the new legal concept is left stripped of all theoretical justification, which eventually results in ineffective, inexpedient and confusing legislation. A preference for localism over internationalism within language purification movements has marked the recent legal linguistics in some of the ex-Yugoslav countries, such as Croatia (Bajčić, 2009, p. 222) or Slovenia (Nećak Lük, 2017, p. 61). Beginning in 1991, Croatian legal terminology went through a series of changes aiming both to prepare the country for its new socio-economic and political order and to purge loanwords (Šarčević and Čikara, 2009, p. 198). This also contributed to the return of the language to its historical roots and cultural heritage. Similar changes have also been seen in Slovenia, where a set of new laws have been adopted in order to promote the use of Slovenian in all public domains (Gliha Komac, 2017, p. 85).

Apart from the ease of understanding, as advocated by Bogišić, the insistence on the prevailing effects of the national legal vocabulary over the use of loanwords within language purification movements has several other functions. Those functions include the unifying function (i.e., consolidating a group of people speaking the same language), separation function (i.e., building and promoting national identity), prestige function (i.e., building the international reputation of a group of people speaking a standardised, internationally recognised language), participatory function (i.e., facilitating participation in cultural, scientific and other activities) and frame-of-reference function (i.e., easing the use of new, widely used standardised norms) (Požgaj Hadži & Balažic Bulc, 2015, p. 69). As explained above, language purification

tendencies should be carefully examined from the perspective of legal effectiveness, or as explained by Bogišić, the utmost need to draft legislation in a manner understandable to the people. Namely, if the loanwords are already understandable and used by the general public, their replacement within the language purification movement paradigm might incite confusion and hinder the objective of achieving legal effectiveness.

Many authors argue that in the context of the growing internationalisation and international integrations (especially among EU Member States), the usage of loanwords and internationalisms might be justified or even indispensable (Kordić, 2020, p. 251). At first, this tendency seems incompatible with Bogišić's claim that loanwords should be used as a final remedy. However, if certain legal concepts have been created for international legal transactions and affairs, such terms might be incorporated into national legal environments without translation. Nevertheless, certain conditions would have to be met in order to comply with Bogišić's linguistic approach. Firstly, such terms should designate state-of-the-art legal concepts, or in other words, they should not have any proper or relatable historical background in the legal environment in which they are being introduced. Secondly, to avoid confusion, those terms should not be translatable in the native language understandable to the people. For example, Montenegrin legislators opted to use the term *lizing*, a transcription of the English terms 'leasing'. Given the fact that this legal concept did not previously exist in Montenegrin law, and that there were no corresponding legal terms in the Montenegrin language, nor was it possible to accurately translate it or explain it with a compound term, we might conclude that the usage of loanword in the particular case was justified.

Neologisms

As the ultimate remedy, when none of the previously mentioned techniques can be used, Bogišić referred to the creation of new words. The new words should be created with the interaction of non-experts, i.e., the actual subjects of the law. Conferring the creation of the new terms entirely to legal scholars or linguists could again lead to the creation of complex legal acts, which rarely gain popular acceptance and usage. Therefore, Bogišić created a particular legal term and then exposed it to non-experts in order to ascertain whether it was comprehensible (Bogišić, 1877, p. 15). He also addressed the use of analogies and metaphors when forming a neologism and concluded that such figures of speech might be used if they are broadly understandable. As an example, he spoke about the focal word of Montenegrin legal vocabulary, the law [in Montenegrin: *pravo*], which has a metaphorical meaning and refers to the 'straight direction' or the 'correct way'.

When neologisms are used in prescriptive legal texts, they are to be thoroughly elaborated. Bogišić proposed three manners for explaining neologisms. The first is to define a neologism within one sentence directly after its first mention. The second modality is a variation of the first approach; include familiar concepts in the sentence structure where the neologism is mentioned for the first time to demystify its abstract concept. The third option is to dedicate a specific part or even an entire chapter of the code to explain new ideas and terms.

Finally, Bogišić also proposed several alternatives closely related to neologisms, but not fully appertaining to this group. He justifies the limited use of circumlocution [in Latin: *circumlocūtiō*], using long phrases and expressions to describe a legal concept instead of merely naming it. As per Šarčević and Čikara (2009), one recent example of circumlocution in the Croatian language, as proposed by Bogišić, is the transposition of the new definition of 'producers' from the European Economic Council Directive 85/374/EEC (on liability for defective products) (Council of the European Communities, 1985) in the applicable Croatian legislation as the descriptive phrase 'every person who places goods on the market' [in Croatian: *svaka osoba koja robu stavlja u promet*]. Finally, Bogišić also proposed broadening the scope of existing terms by consolidating all legal concepts that have a closely related purpose and sense into a single unit already defined by law.

Conclusion

Legislative reforms may symbolise the sophistication, amelioration and unification of various legal acts into a single, compact corpus of national laws. However, the mere necessity of legislative reforms does not necessarily justify their rushed formulation, leading to their degradation and reduction to aimless legal transformations. The appropriate formulation of legislative reforms becomes especially important in countries like Montenegro, which primarily rely on legal transposition for their legislative reforms. In that respect, Bogišić's approach to legislative reforms and legal linguistics, inspired by the basic concepts of what would later become known as ethnological jurisprudence, might still find relevance. This study provided a basis for further research into how ethnological jurisprudence, which focuses on the singular and unique perception of the law by one group of individuals, might be compatible and further contribute to contemporary legislative reform practices. Its relevance could especially be found in addressing the importance of the structure and characteristics of the national legal order, which, for example, represents an important, but still mostly under-researched issue in the framework of transposing the EU *acquis communautaire* (Steunenberg & Toshkov, 2009, p. 25). Therefore, ethnological jurisprudence could contribute to a shift from

focusing primarily on the political and economic effects of legislative reforms to analysing and concentrating more on the compatibility of transposed legislation within the existing corpus and spirit of national laws.

The first thing that arises from Bogišić's work on the General Property Code is that the pursuit of legal change, especially through legal transposition, should be ruminative and not hurried. In order to achieve highly functional legislation, the tendencies for legal replication and the precipitated transposition of laws should be replaced with intensive and cautious legal drafting. New laws need to be meticulously prepared and gradually introduced to ensure compatibility with the shared jural consciousness. Therefore, the lawmakers in those countries that are still experiencing legal transitions and engaging in the profound consolidation of national laws could pursue Bogišić's model and use legal linguistics as an indicator of the shared jural consciousness. Consequently, this approach can serve as a tool to avoid alienating the general public from newly adopted prescriptive legal texts, aiming to dictate the acceptable social norms and the desired canons of behaviour. For those purposes, lawmakers could also ensure frequent consultations with the general public, facilitated by information and communication technologies.

It must also be noted that what makes Bogišić's selection of legal vocabulary relevant from a contemporary perspective is not the reliance on plain language as such, but rather its methodological approach, which subordinates the choice of legal vocabulary to the achievement of legal effectiveness. Achieving the effectiveness of legal vocabulary has recently been a widely debated topic in legislative reforms (Xanthaki, 2008, p. 5). Therefore, Bogišić's dual perception of legal linguistics (i.e., as a tool for ascertaining the existing perception of the legal system and as a necessary instrument for achieving the successful implementation of legislative reforms) can withstand further scrutinization of the relevance and potential application of simple legal vocabulary for official purposes.

One of the most notable aspects of Bogišić's work is his meticulous research to establish concise and accurate legal terminology through the usage of legal vocabulary easily understandable to anyone it may concern. It appears debatable whether the more than decade-long research of Bogišić could be realistically performed in a modern setting. However, such research does not have to be conducted independently for each proposed law. The lawmakers could rather contemplate the adoption of general, systematic and comprehensive rulebooks or detailed, sector-specific legal databases and glossaries (Bajčić, 2009, p. 229), which would define national legal linguistic strategies and objectives but also underpin and support legislative reforms. Those glossaries should not contain only the translations of Montenegrin

legal terminology but also include explanations of their perception and usage in the current Montenegrin legal system. As argued by Ćapeta (2009), if interpreting law equated to reading dictionaries, the legal truth would be discovered by merely stating the singular meaning of each word in a phrase. However, as this is not the case, such glossaries would, among other aspects, define the purpose, the role and the perception of a particular legal concept in the entirety of national legal rules. Moreover, the clarity, precision and unambiguity of different national laws would be assured. Furthermore, those glossaries would facilitate legal approximation among various national laws (Kellerman, 2008, p. 225) and support the transposition of new legal tendencies into national legal environments.

References

Bajčić, M. (2009). The search for Croatian equivalents for EU terms in competition law. In S. Šarčević & L. Sočanac (Eds.), *Legal language in action: Translation, terminology, drafting and procedural issues* (pp. 215-231). Nakladni zavod Globus.

Bajčić, M., & Stepanić M. (2011). (Ne)dosljednost pri prevođenju pojmova iz prava tržišnog natjecanja Europske unije [(In)consistencies in translating competition law terms of the European Union]. *Zbornik PFZ, 60*(3-4), 747-772.

Bajčić, M. (2014). Pravno prevođenje. In A. Stojić, M. Brala-Vukanović, & M. Matešić (Eds.), *Priručnik za prevoditelje: Prilog teoriji i praksi* [Handbook for Translators: A contribution to theory and practice] (pp. 314-331). Filozofski fakultet Rijeka.

Bajčić, M. (2018). The role of EU legal English in shaping EU legal culture. *International Journal of Language & Law*, *7*, 8-24.

Bărbulescu, I. G., & Troncotă, M. (2013). EU's 'laboratory' in the Western Balkans: Experimenting Europeanization without democratization. The case of Bosnia and Herzegovina. *Revista Española de Ciencia Política*, *31*, 63-99. https://recyt.fecyt.es/index.php/recp/article/view/37575

Baydak, A. V., Schariothb, C., & Il'yashenkoc, I. A. (2015). Interaction of language and culture in the process of international education. Procedia*: Social and Behavioral Sciences*, *215*, 14-18.

Bogišić, V. (1874). *Zbornik sadašnjih pravnih običaja u južnih slovena* [A collection of current legal customs of the Southern Slavs]. Jugoslovenska akademija znanosti i umjetnosti. https://www.digitale-sammlungen.de/de/view/bsb11186199?page=4,5

Bogišić, V. (1877). Stručno nazivlje u zakonima: pismo prijatelju filologu [Professional terminology in laws: A letter to a philologist]. *Mjesečnik Pravničkoga društva u Zagrebu*, *3*, 225-240.

Bogišić, V. (1886). A propos du Code Civil du Montenegro [Concerning the Montenegrin Civil Code]. *Bibliothèque nationale de France – Paris*, 3-23. https://catalogue.bnf.fr/ark:/12148/cb30119390j

Bogišić, V. (1888). Tehnički termini u zakonodavstvu [Technical terms in law]. *Mjesečnik Pravničkoga društva u Zagrebu*, *14*, 1-19.

Bogišić, V. (1900). I opet o stručnim izrazima u zakonima [Another essay on professional legal terminology]. *Mjesečnik Pravničkoga društva u Zagrebu*, *6*, 331-339.

Boleszczuk, E. (2011). Plain language solutions to the problems of legalese: A case study of wills. *Comparative Legilinguistics*, *5*, 67-83. https://doi.org/10.14746/cl.2011.5.05

Butt, P. (2001). Legalese versus plain language. *Amicus Curiae*, *35*, 28-32. http://dx.doi.org/10.14296/ac.v2001i35.1332

Caldwell, H. (2008). Can legislation rank as literature? In H. Xanthaki & C. Stefanou (Eds.), *Drafting legislation: A modern approach* (pp. 245-259). Ashgate Publishing Limited.

Cao, D. (2007). *Translating law*. Multilingual Matters Ltd.

Clarke, D. C. (2007). China: Creating a legal system for a market economy. *George Washington University Law School, Asian Development Bank*, 1-30.

Council of the European Communities (1985). Council Directive 85/374/EEC. Approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products. Office for Official Publications of the European Communities. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31985L0374

Council of the European Communities, & Commission of the European Communities. (1992). Treaty on European Union. Office for Official Publications of the European Communities. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT

Ćapeta, T. (2009). Multilingual law and judicial interpretation in the EU. *Croatian Yearbook of European Law & Policy*, *5*(1), 1-17. https://www.cyelp.com/index.php/cyelp/article/view/88

Dauderstädt, M., & Gerrits, A. (2000). Democratisation after communism: Progress, problems, promotion. *International Politics and Society*, *4*, 361-376. https://library.fes.de/pdf-files/ipg/ipg-2000-4/artdauderstaedt-gerrits.pdf

Dolenc, D. (2016). Democratization in the Balkans: The limits of elite-driven reform. *Taiwan Journal of Democracy*, *12*(1), 125-144.

European Commission. (2012). *The value of Europeans*. Standard Eurobarometer 77 - TNS Opinion & Social. https://ec.europa.eu/commfrontoffice/publicopinion/archives/eb/eb77/eb77_value_en.pdf

European Commission. (2015). *Joint practical guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation*. Publications Office of the European Union. https://op.europa.eu/en/publication-detail/-/publication/3879747d-7a3c-411b-a3a0-55c14e2ba732

European Commission. (2017). *Better regulation guidelines.* SWD (2017) 350. https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2017)350&lang=en

European Commission. (2020). *Commission staff working document on Montenegro 2020*. SWD (2020) 353 final. https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro_report_2020.pdf

Gliha Komac, N. (2017). Ciljni raziskovalni projekt Jezikovna politika Republike Slovenije in potrebe uporabnikov (raziskovalno poročilo) [Target research project on the language policy of the Republic of Slovenia and speakers' needs (research report)]. *ZRC SAZU*.

Graziadei, M. (2006). Comparative law as the study of transplants and receptions. In M. Reimann & R. Zimmermann (Eds.), *The Oxford handbook of comparative law* (pp. 441-475). Oxford University Press.

Hu, P. (2014). A study of the frame of legal language. *International Journal of Law, Language & Discourse*, *4*(2), 1-45. https://www.ijlld.com/686/volume-4/4-2-hu/

Kellerman, A. E. (2008). Procedures for the approximation of Albanian legislation with the *acquis communautaire*. In H. Xanthaki & C. Stefanou (Eds.), *Drafting legislation: A modern approach* (pp. 213-231). Ashgate Publishing Limited.

Keyuan, Z. (2006). Administrative reform and the rule of law in China. *The Copenhagen Journal of Asian Studies*, *24*, 5-32. https://rauli.cbs.dk/index.php/cjas/article/download/814/829/0

Kordić, Lj., & Barna Z. (2019). Lingvistička obilježja njemačkog jezika u kontekstu prava Europske unije na primjeru Amsterdamskog ugovora [Linguistic features of the German language in the context of European Union law on the example of the Amsterdam Treaty]. *Pravni Vjesnik, 35*(3-4), 223-241.

Kordić, Lj. (2020). Specific issues and challenges in translating EU law texts. *Athens Journal of Humanities & Arts*, *7*(3), 235-254. https://doi.org/10.30958/ajha.7-3-3

Legrand, P. (1997). The impossibility of 'legal transplants'. *Maastricht Journal of European and Comparative Law*, *4*, 111-124. https://doi.org/10.1177%2F1023263X9700400202

Leonhard, A. (1934). Modern ethnological jurisprudence in theory and practice. *Journal of Comparative Legislation and International Law*, *16*(4), 216-229.

Luković, M. (2008). Valtazar Bogišić and the General Property Code for the Principality of Montenegro: Domestic and foreign associates. *Balcanica*, *39*, 175-188.

Luković, M. (2009). *Bogišićev Zakonik: Priprema i jezičko oblikovanje* [Bogišić's Code: Preparation and linguistic forming]. Balkanološki institut SANU.

Ministrstvo evropskih poslova (2018). *Direkcija za pripremu crnogorske verzije pravne tekovine EU* [Directorate for preparation of the Montenegrin version of the *acquis communautaire*]. https://mep.gov.me/organizacija/det/o-det/dcv

Morrison, W. M. (2019). China's economic rise: History, trends, challenges, and implications for the United States. *Congressional Research Service no. RL33534*, 1-38.

Nećak Lük, A. (2017). Slovene language status planning. *Revista de Llengua i Dret*, *67*, 55-69. https://dx.doi.org/10.2436/rld.i67.2017.2918

Nourse, V. F., & Schacter, J. S. (2002). The politics of legal drafting: A congressional case study. *New York University Law Review*, *77*(3), 575-624. https://www.nyulawreview.org/issues/volume-77-number-3/the-politics-of-legislative-drafting-a-congressional-case-study/

Ordukhanyan, E. (2019). The peculiarities of democratization in post-Soviet countries: Current situation and trends. *International Journal of Scientific & Technology*, *8*(11), 818-821. https://www.ijstr.org/final-print/nov2019/The-Peculiarities-Of-Democratization-In-Post-soviet-Countries-Current-Situation-And-Trends.pdf

Orlandić, S. (2015). Predetermined foreign policy – aligning national policies of the candidate countries with the CFSP and CSDP: Case of Montenegro. *Političke perspektive: časopis za istraživanje politike*, *5*(2), 65-87. https://www.fpzg.unizg.hr/_download/repository/Politicke_perspektive_2_2015.pdf

Penev, S. (2010). *Unapređenje procesa reformi ekonomskog zakonodavstva u zemljama Zapadnog Balkana* [Improving the process of reforming economic legislation in the Western Balkans countries]. OECD Investment Compact for South East Europe, Ekonomski Institut Beograd, and German Organisation for Technical Cooperation.

http://www.parlament.gov.rs/upload/archive/files/ostalo/2009/GTZ-PROCES%20REFORMI.pdf

Petrovic, M. (2013). *The democratic transition of post-communist Europe*. Palgrave Macmillan.

Pigeon, L. P. (1988). *Drafting and interpreting legislation*. Carswell.

Pigliasco, G. C. (2000). Legal ethnology and sociological jurisprudence: Law, custom, and justice in a Samoan village court. http://dx.doi.org/10.13140/RG.2.2.14870.19529

Poláčková, Z., & Duin, P. (2013). Montenegro old and new: History, politics, culture, and the people. *Studia Politica Slovaca: Časopis pre politické vedy, najnovšie politické dejiny a medzinárodné vzťahy*, *6*(1), 60-82.

Post, A. H. (1891). Ethnological jurisprudence. *The Monist*, *2*(1), 31-40.

Post, A. H. (1897). An introduction to the study of ethnological jurisprudence. *The Open Court*, *11*(2), 641-653.

Požgaj Hadži, V., & Balažic Bulc, T. (2015). (Re)standardizacija v primežu nacionalne identitete: primer hrvaškega, srbskega, bosanskega in črnogorskega jezika [(Re)standardization in the grip of national identity: The case study of Croatian, Serbian, Bosnian and Montenegrin]. *Slovenščina 2.0*, *3*(2), 67-94.

Pravno-tehnička pravila za izradu propisa [Rules on the legal and technical approach to drafting legislation] (2010). ('Official Gazette of Montenegro', no. 002/10).

Rašović, M. (2018). Zakonjače u Bogišićevom Opštem imovinskom zakoniku [Legal proverbs in Bogišić's General Property Code]. *Časopis Matica Crnogorska*, *73*, 55-74.

Strohal, I. (1908). Valtazar Bogišić. *Mjesečnik Pravničkoga društva u Zagrebu*, *10*, 841-870.

Stolze, R. (2013). Translation and law. *SYNAPS: A Journal of Professional Communication, 28*, 3-13. https://openaccess.nhh.no/nhh-xmlui/handle/11250/2393844

Suchocka, H. (2015). Challenges to democracy in Central and Eastern Europe. *Revista catalana de dret public*, *50*, 19-31.

Šarčević, S., & Čikara, E. (2009). European vs national terminology in Croatian legislation transposing EU directives. In S. Šarčević & L. Sočanac (Eds.), *Legal language in action: Translation, terminology, drafting and procedural issues* (pp. 193-214). Nakladni zavod Globus Zagreb.

Seiden, A., & Seiden, R. B. (2008). Between policy and implementation: Legal drafting for development. In H. Xanthaki & C. Stefanou (Eds.), *Drafting legislation: A modern approach* (pp. 287-320). Ashgate Publishing Limited.

Steunenberg, B., & Toshkov, D. (2009). Comparing transposition in the 27 member states of the EU: The impact of discretion and legal fit. *Journal of European Public Policy*, *16*(7), 1-29. https://doi.org/10.1080/13501760903226625

Tarkany-Szücs, E. (1967). Results and task of legal ethnology in Europe. *Ethnologia Europaea*, *1*(1), 195-217.

Tamanaha, B. Z. (2011). The primacy of society and the failures of law and development. *Cornell International Law Journal*, *44*, 211-247. https://scholarship.law.cornell.edu/cilj/vol44/iss2/1/

Turi, J. G. (2015). Language law and language rights. *International Journal of Law, Language & Discourse*, *5*(2), 1-18. https://www.ijlld.com/648/volume-5/5-2-turi/

Vlada Crne Gore – Ministarstvo vanjskih poslova i evropskih integracija. (2012). Priručnik za prevođenje pravnih i drugih akata u procesu evropskih integracija [Handbook for translation of legal and other acts during the process of European integrations], https://mep.gov.me/organizacija/det/prirucnik

Vukčević, M., & Bošković, M. (2016). Judicial system in Montenegro (Historical development, basic principles, and organisation). *Law & Justice Review*, 7(13), 1-26.

Whelan, D. (1988). The comparative method and law reform. *University College Dublin*.

Xanthaki, H. (2008). On transferability of legal solutions: The functionality test. In H. Xanthaki & C. Stefanou (Eds.), *Drafting legislation: A modern approach* (pp. 1-19). Ashgate Publishing Limited.

Xanthaki, H. (2014). *Drafting legislation: Art and technology of rules for regulation*. Hart Publishing.

Zhang, X. (2016). The new round of civil law codification in China. *University of Bologna Law Review*, *1*, 106-137.

INTERNATIONAL JOURNAL OF
LAW, LANGUAGE & DISCOURSE

Conference Reports

2020 Seoul International Forum on Translation and Interpreting

December 3-4, 2020
Ewha Research Institute of Translation Studies and
Korea Legislation Research Institute

Moonsun Choi
Ewha Womans University, South Korea

Moonsun Choi is an Assistant Professor at the Graduate School of Translation and Interpretation, Ewha Womans University, Seoul, Republic of Korea, where she teaches Korean-English interpreting and conducts research on interpreter education and technology in interpreting. (choimoonsun@ewha.ac.kr)

The Ewha Research Institute of Translation Studies (ERITS, erits.ewha.ac.kr) and Korea Legislation Research Institute (KLRI, klri.re.kr) co-hosted the 2020 Seoul International Forum on Translation and Interpreting (Seoul IFTI). Initially planned to be held at the Ewha Womans University campus in November 2020, the forum was conducted as a webinar due to concerns over the COVID-19 pandemic with the streaming of pre-recorded presentations on 3-4 December 2020. The Korea Legal Research Institute (KLRI) is the only government-funded research institute specialized in legislation in the Republic of Korea, and ERITS is the translation studies research institute of the Graduate School of Translation and Interpretation (gsti.ewha.ac.kr), Ewha Womans University, Korea. The forum had received over 800 pre-registrations for the webinar, including many from overseas in different time zones. Simultaneous interpretation in Korean, English, French, Chinese and Japanese was provided for the international viewers by the Ewha GSTI.

The 2020 forum, which as the first installment of the Seoul IFTI series to follow in the years ahead, was organized under the theme of legal translation and interpreting as an interface between law and language. Various issues relating to law and language, and legal translation and interpreting were explored from research, professional practice and training perspectives. The forum, though it was held online, enabled the participants from home and abroad to engage in active, in-depth discussions on the role of translation and interpreting in legal settings by exchanging their views in writing via the electronic bulletin boards set up on the webinar webpage.

The two-day program consisted of three plenary talks and four sessions on legal interpreting, law and language, and legal translation. The plenary speakers included Prof. Sandra Hale, University of New South Wales, Australia, Prof. Łucja Biel, University of Warsaw, Poland, and Prof. Jan Engberg, University of Aarhus, Denmark. A total of 16 scholars from Korea, Australia, UK, Mexico, Austria, and Japan participated as presenters. Notably, there were two "special conversations" arranged as an intermittent session for each day, in which Jeesoo Jung, an Ewha GSTI alumni and conference interpreter specializing in legal field, and Sharon Choi, who interpreted for Bong Joon-ho, director of the internationally acclaimed Korean film "Parasite" were invited for one-on-one interviews to talk about their experience in the field.

Day 1 kicked off with the opening remarks by Prof. Mikyung Choi, Dean of Ewha GSTI. President Kye-Hong Kim of KLRI welcomed the audience to the forum, followed by Minister Kang-Seop Lee of the Ministry of Government Legislation, Korea, and Director Klause Meyer-Koeken from the European Commission Directorate-General for Translation sending congratulatory messages to the international audience.

The first plenary talk was given by Prof. Sandra Hale (University of New South Wales, Australia) on legal interpreting in Australia. Under the title of "Fighting for justice: Battles won for legal interpreting in Australia", Prof. Hale summarized her own trajectory as practitioner, educator, researcher, advisor and advocate for improvements to legal interpreting and outlined the battles won along the way. Her presentation provided a summary of the main results of her research over the years on the social status of legal interpreters. She closed her presentation by showing how dissemination and outreach have led to social impact and significant milestones.

In Session 1 on legal interpreting, Prof. Jieun Lee (Ewha Womans University, Korea) and Dr. Seoyeon Hong (Dankook University, Korea) co-presented a paper entitled "Repair as a coping strategy in legal interpreting: A case study of untrained interpreter-mediated investigative interviews". They explored the phenomenon of repair in legal interpreting and its critical role in communication, drawing on the discourse of interpreter-mediated Korean prosecutor interviews with a suspect. Prof. Miranda Lai (RMIT University, Australia) and Prof. Erika Gonzalez (RMIT University, Australia), in their presentation titled "When interpreting training is not available – A pilot court interpreter mentoring program for minority languages", talked about a pilot program for interpreter training adopted in Australia to implement the Recommended National Standards for Working with Interpreters in Courts and Tribunals released in 2017. Prof. Eloísa Monteoliva (Heriot-Watt University, UK) delivered her presentation under the title of "It is 'The' way, but it can turn into a bit of a palaver - Police

officers' views of interpreting and other means to communication in multilingual interaction", drawing on six focus group interviews with community and response officers from Police Scotland. She discussed interpreting as a socially-situated practice in policing scenarios and different forms to enable communication in multilingual encounters used by officers in daily policing operations.

In Session 2 on law and language, Prof. Andrii Ryzhkov (National Autonomous University of Mexico, Mexico) presented a paper titled "Sworn Korean-Spanish-Korean translation: Repercussions of migratory processes between Mexico and South Korea". Based on professional interaction between the author as an official translator and interpreter with citizens from Mexico and the Republic of Korea, Prof. Ryzhkov analyzed sworn translations for individuals coming from the two countries and discussed the realities that migrants face in everyday life upon arrival in the two countries. Dr. Iana Kazeeva (University of Vienna, Austria) presented a paper titled "Drafting errors and interpretations of legal provisions", in which she delved into punctuation errors and suggested some possible solutions. Prof. Hyun-soo Kim (Pusan National University, Korea) delivered a presentation titled "Problems and solutions in the translation of civil law provisions". Prof. Kim highlighted the obstacles that impede the translation of the civil code and suggested the necessity of drawing up a translation guideline. Prof. Sara Oh (Gachon University, Korea), in her presentation entitled "Ethics for AI court translation and interpretation", examined the influence of artificial intelligence (AI) in courtrooms and judicial institutions around the world and discussed the issue of translator ethics with the focus on the need for a specialized code of ethics for the AI translators.

Day 2 opened with two plenary talks. In the first talk entitled "What's trending in legal translation studies?: Sketching a landscape of research trends in the last decade (the 2010s) through a bibliometric analysis", Prof. Łucja Biel (University of Warsaw, Poland) surveyed and categorized publications on legal translation in the 2010s to identify key research trends and publication patterns as well as niches and gaps through a bibliometric and bibliographic analysis of key journals and translation-studies bibliographical databases. The second talk entitled "Generating multidimensional knowledge for legal translation: How comparative law and translation theory interact in translation as knowledge communication" was given by Prof. Jan Engberg (University of Aarhus, Denmark). Noting that legal translators must have strategies and techniques to generate relevant knowledge for the specific translational purposes from legal sources of different kinds in a systematic and efficient manner, Prof. Engberg presented ways of generating and representing the necessary multidimensional knowledge in the form of conceptual frames, mirroring the structure of the human long-term memory.

Following the plenary talks, Session 3 on legal translation featured three Korean papers. Prof. Jina Kim (Hankuk University of Foreign Studies, Korea) discussed "Points to note when translating Korean-Chinese laws". Prof. Kim examined the difficulties involved in the translation of Korean laws into Chinese and suggested some solutions. Prof. Jieun Lee (Ewha Womans University, Korea), Ms. Hyejin Park (Attorney at Law and Lecturer, Ewha Womans University, Korea) and Prof. Hyo-eun Choi (Ewha Womans University, Korea) co-presented a paper titled "Developing a guideline for the Korean-English Translation of Korea Laws" with a focus on the project for the development of an English translation guideline for the government-funded Korea Law Translation Center (KLTC) of the Korean Legal Research Institute (KLRI). And Ms. Hyejin Chong (Senior Researcher, KLRI, Korea) shared her experience as a practitioner in the field of legal translation in her presentation titled "Legal translation from the perspective of translation practitioners: The case of the Korea Legislation Research Institute".

Session 4 was another session dedicated to legal interpreting along with session 1 on Day 1. Prof. Jakub Marszalenko (Nagoya University of Foreign Studies, Japan), in his presentation entitled "Court interpreting prescribed vs court interpreting described: Differences between Japanese and English and their implications on interpreter-mediated criminal proceedings in Japan", discussed discretionary choices made by court interpreters in Japan working with English. Last but not least, two Ph.D candidates from Australia presented papers based on their doctoral dissertation work. Ms. Shuyu Zhang (Ph.D Candidate, Australian National University, Australia) focused on sight translation in legal interpreting in her presentation titled "From theory to practice: Interpreter protocols revisited with special attention to sight translation in legal interpreting"; Ms. Xiaoyu Zhao (Ph.D Candidate, University of New South Wales, Australia), in her presentation titled "Linking the process and product of simultaneous interpreting in courts: An experimental approach", discussed an experiment that links the process and product of SI in courts with the adoption of eye-tracking equipment.

Now that Seoul IFTI 2020 is over with a great success, the vision of the Seoul IFTI series is to make the forum an annual event to serve as an international platform for legal experts and T&I researchers and practitioners from around the world to discuss theory and practice on legal issues involving T&I and to share their diverse experiences and perspectives. The second forum, Seoul IFTI 2021, is scheduled to be aired on 15 July 2021. Papers on the topics related to ethics and professionalism in Translation & Interpreting are welcomed.

INTERNATIONAL JOURNAL OF
LAW, LANGUAGE & DISCOURSE

Conference Reports

Talking law in the EU: Clear language, rule of law and legitimacy in the European legal space

January 21-22, 2021
University of Amsterdam

Corina Andone
University of Amsterdam, the Netherlands

Candida Leone
University of Amsterdam, the Netherlands

Corina Andone is an Assistant Professor of Language and Communication and research leader of the PERSUADE group at the Amsterdam Centre for Language and Communication, the Netherlands. She carries out interdisciplinary research into the persuasive use of language in the legal and political contexts. Email address: c.andone@uva.nl

Candida Leone is an Assistant Professor of Private Law at the Amsterdam Centre for Transformative Private Law, University of Amsterdam, the Netherlands, where she focuses on European Private Law and different paradigms in, in particular, contract law and theory. Email address: c.leone@uva.nl

From 21 to 22 January 2021 the University of Amsterdam hosted an interdisciplinary conference organised by Corina Andone (Faculty of Humanities) together with Candida Leone, Anna van Duin and Iris Domselaar (Faculty of Law) on Talking law in the EU: Clear language, rule of law and legitimacy in the European legal space. The main rationale behind this conference rests on the idea that clear legal language is seen as a precondition, or an instrument, to bridge the gap between citizenry and governments, particularly in an increasingly dense legal space, such as the European Union (EU).

The organisers sought to bring together legal and linguistic perspectives on language in EU law. Accordingly, the conference reunited a number of contributions from these two perspectives which helped explain the essential factors affecting the working and effectiveness of EU legal language, and look for appropriate ways to address them. Academics interested in ethical and societal aspects of legal communication, legal scholars, judges and policy-makers from all over Europe – including the European Commission and policy experts from several

national governments – attended the event and contributed through presentations, comments and questions to the discussions.

First, a general panel concentrated on the conceptual question of what "clear language" means in law – within national contexts and that of the EU – and discussed the conditions under which it can perform a legitimising function. Zsolt Ződi (National University of Public Service, Hungary) discussed some considerations for comprehensible law. Based on a brief history of comprehensibility in law, Ződi demonstrated that the increasing complexity of law – due to factors such as, for example, technical language, its interpretative character, the heterogeneous character of interconnected texts – makes it practically almost impossible to achieve the ideal of comprehensible language. On this basis, he submitted that a more differentiated approach, such as a problem-oriented explanation, example or checklist, are a better option than rewriting the text of the law itself. Hanneke van Eijken (University of Utrecht) used examples from case law on free movement and EU citizenship to exemplify how the law can feel as a labyrinth to citizens. Language is the bridge to the outer world; it gives citizens the opportunity to express themselves, to analyse information. In a world of misinformation, with different voices that want to be heard, it can be difficult to understand one's own position. Van Eijken argues that the right to language and cultural diversity might sometimes challenge the right to free movement as well.

Second, four successive panels brought to light the role, practices and challenges of clear language in different institutional constellations, including legislation, adjudication, non-legislative rule-making and transparency and comprehensibility as a regulatory tool. Helen Xanthaki (University College London) argued for reforming EU legislation to regain a sustainable EU. She pleaded in particular for the 'easification' of EU language, i.e. the manner of expression and presentation of legislative communication that enhances accurate receipt by tailoring different formats to different target audiences. In her view, legislation can re-establish the lost channel of communication between EU citizens and the EU, and can render EU citizens participants to EU regulation and ultimately to the EU's long-term vision. Laura Tafani, (formerly at Senato della Repubblica Italiana), started from the observation of an increasingly poor quality of legislation, in Italy as in other European countries, which has led to citizens experiencing disaffection towards regulatory instruments and, at the same time, mistrust in the institutions responsible for producing, implementing and enforcing legislation. Speaking of a crisis of law, she pleaded for an increase in transparency of the legislative process and enabling citizens and stakeholders to take part in it, thereby restoring confidence in legislation. In order to achieve concrete results, it is necessary to bring together in the legislative rule-making

process different professional skills and knowledge: legal, linguistic, economic-financial, statistical, social and even behavioural sciences. This will shape legislative intervention geared towards making regulatory acts as capable as possible of producing a phenomenon of spontaneous compliance with the objectives set by the legislation.

The second panel discussed transparency as a policy tool, that is as a requirement for non-government parties to operate their (market) activities. Marissa Ooms (Tilburg University) had as a primary concern the operation of transparency in practices of mineral supply chain due diligence reporting and auditing. In this context, "transparency" is produced through the language of the risk-management system – a language that is inherently abstract and likely unclear to most citizens. Although the stated purpose of reporting and auditing is to generate public confidence in ethical mineral supply chains, the public plays a passive role in this transparency exercise. She argued that this suggests that practices of due diligence reporting and auditing have an internal orientation, which is to say that transparency functions primarily to disclose the corporation to itself. Joasia Luzak (University of Exeter) focused on transparency in consumer law and provided guidelines for such transparency. She discussed the role of transparency in relation to the regulatory aims which it is attached to. In certain cases it is possible that transparency will operate as a "vaccine", by allowing consumers to react to the disclosure of noxious corporate practices. Sometimes, transparency operates in practice as a cure-all, a signpost which only serves to reinforce the regulator's intention to clean up a certain area of market action, or ultimately as a placebo. Luzak argued that each of these functions, ultimately, have a role to play towards the pursuit of better-informed citizens. Sometimes, however, as also highlighted by Ooms, compliance-oriented transparency serves at best some internal purpose and has no effect on its intended audience or beneficiaries.

Alexander Flückiger (University of Geneva) turned to soft law, and asked whether such law can, should or must be clear. He argued that the notion of soft law is unclear, as it is a notion which cannot be clear. At the same time, soft law instruments should be drafted in such a way that they are not unnecessarily ambiguous as to their own legal nature. In soft law, like in traditional law, the notion of clarity also presents intrinsic challenges: clarity, in this context, entails a need to ensure a fair balance between linguistic clarity and normative clarity. Corina Andone (University of Amsterdam) and Florin Coman-Kund (Erasmus University Rotterdam) turned to the European Commission's soft law instruments during crisis, and started from the premise that EU soft law instruments should presumably be effective mainly due to the argumentation employed to persuade addressees to comply. By pointing at a number of significant legal problems and concerns for the quality of EU law-making deriving from the

Commission's 'hardened' soft law instruments, the presenters argued for an approach that goes beyond a purely legal account. In an attempt at solving the current legally problematic ambiguities arising from the use of soft law instruments, a normative approach was proposed focusing on soft law instruments as highly persuasive instruments. Danai Petropoulou Ionescu and Mariolina Eliantonio (Maastricht University) drew some lessons from linguistics on the bindingness of soft law in EU environmental regulation. Relying on a survey of different soft law instruments, their use of language and declared non-bindingness, the presentation explored how EU soft law instruments convey authority and influence the behaviour of their addressees establishing, *de facto*, a perception of bindingness beyond legal obligation. Overall, the panel conveyed a strong impression that law-like language in soft law instruments is a popular feature (or a shortcut) that deserves closer scrutiny and possibly reconsideration in light of the limited democratic and political legitimacy enjoyed by soft law instruments.

André Verburg, judge and legal scholar at Utrecht University, discussed plain language in court decisions. He discussed three societal changes: responsiveness by the judge as a professional being asked to make a decision who needs to address all reasonable requests; procedural justice, that is the need for parties to experience proceedings as fair and just; personal – rather than institutional – legitimacy, requiring the establishment of effective communication with the citizens. Finally, Iris van Domselaar (University of Amsterdam) engaged with the notion of the judge as a "civic friend" of the parties. Judgments can be framed, and termed, as a communicative act addressing real existing people. Addressing those affected by a judgment in a more direct form can help address the moral remainder implied in (some) judgments, thus enhancing its legitimation or perceived legitimacy, but it can also be seen as a loss of impartiality. Much as with legislation, the question of changing audiences seems crucial to linking language and legitimacy in contemporary rule-based democracies.

Building on the presentations and fascinating discussions with the audience on topics as the Scandinavian plain language projects and the motivation style in judicial decisions rejecting the former US president's attempts to undo the November 2020 election results, the event marked a moment of real interdisciplinary exchange and cooperation. It enriched the debate on plain legal language and informed this debate, with both theoretical and practical insights from the areas of law and linguistics. We hope that, together with the output it will generate, the conference will contribute to the understanding of law as a discursive and socially grounded practice in the EU legal space. In line with this ambition, a selection of the contributions in this event will be included in a special issue of the journal *The Theory and Practice of Legislation*.

INTERNATIONAL JOURNAL OF
LAW, LANGUAGE & DISCOURSE

Conference Reports

Spotlight on Courts: Judges and their discourse from a multidisciplinary perspective

March 4-5, 2021
University of Lodz

Stanisław Goźdź-Roszkowski
University of Lodz, Poland

Katarzyna Bednarska
University of Lodz, Poland

Stanisław Goźdź-Roszkowski is Associate Professor and Head of the Department of Specialised Languages and Intercultural Communication, University of Lodz (Poland). His research focuses on functional and corpus-based approaches to the study of judicial discourse in US and Polish courts. He has published widely in the area of variation in legal language, legal phraseology and communicating evaluative meanings in judicial opinions. He is now involved in researching legal argumentation in the justification of judicial decisions.
stanislaw.gozdz@uni.lodz.pl
ORCHID: https://orcid.org/0000-0002-4323-8647

Katarzyna Bednarska is an Assistant Professor of Linguistics in Department of Specialized Languages and Intercultural Communication, University of Lodz, Poland, where she specializes in Slovene Linguistics, media discourse analysis and second language acquisition.
katarzyna.bednarska@uni.lodz.pl
ORCHID: https://orcid.org/0000-0002-3318-8754

The purpose of the *Spotlight on Courts* conference, held under the auspices of the International Law and Language Association, was to provide a forum and the opportunity for scholars working otherwise in different disciplines to share their views and insights into various dimensions underlying contemporary judicial discourse. The organizing team at the University of Lodz led by Prof. Stanisław Goźdź-Roszkowski in collaboration with Prof. Gianluca Pontrandolfo (IUSLIT, University of Trieste) wished to bring together lawyers (academics as well as practitioners), political scientists, legal linguists, media specialists, sociologists, etc. to consider a wide range of court-related phenomena and processes.

The conference programme was organized into five themed panels concerning the judicialization of politics, the organization and working methods of courts and their impact on

judicial discourse, the nature and function of judicial dissent, media representations of courts and the judicial decision-making process, public perceptions of courts, courts and their image, judicial and political ways of conflict resolution, judicial argumentation and persuasive and evaluative concerns in judicial discourse.

The first panel, led by Prof. Victoria Guillén Nieto (University of Alicante), was dedicated to judicial discourse and its construal. First to speak was Prof. Anne Lise Kjær, who presented considerations on the 'consensus' case law of the European Court of Human Rights. Dr. William Byrne and Prof. Zuzanna Godzimska continued the discussion, focusing on the issue of pleadings at the International Criminal Court. Their paper was followed by three presentations on linguistic analysis of legal discourse: Dr. Paulina Nowak-Korcz and Dr. Margarete Flöter-Durr focused on the evolution of the French arrêts de la Cour de cassation and the use of forms in European procedural law; Prof. Łucja Biel, dr. Dariusz Koźbiał and mgr. Dariusz Müller gave a presentation on genre profiling of the Court of Justice of the European Union judgments whereas Prof. Gianluca Pontrandolfo presented his keyword-informed study on (in)frequent patterns in judicial discourse.

Prof. María Ángeles Orts Llopis (University of Murcia) chaired the second panel, which addressed the issue of constructing identities and reflecting perceptions through judges' and courts discursive practices. The first to speak was Prof. Ruth Breeze (ICS, University of Navarra), who presented Baroness Hale's prorogation of parliament in the sight of media creation. In his presentation, Prof. Jan Engberg (University of Aarhus) analyzed the website of the Court of Justice of the EU and on that basis presented ways of popularization and creation of organizational identity. The session was closed by Prof. Miguel Ángel Campos Pardillos (University of Alicante), who focused on the construction and personal relations' metaphors in European Judicial Cooperation.

The third panel was led by Prof. Dieter Stein (Heinrich-Heine-University Düsseldorf). The subject addressed in this block concerned judicial argumentation and evaluation. Two presentations dealt with the problem of corpora-based analysis of judicial texts: Prof. Martina Bajčić (Faculty of Law, University of Rijeka) presented her thoughts on the use of corpora in multilingual adjudication, whereas Dr. María José Marín Pérez (University of Murcia) dedicated her presentation to a corpus-based comparative analysis of the evaluative lexicon found in judicial decisions on immigration. Prof. Stanisław Goźdź-Roszkowski (Department of Specialized Languages and Intercultural Communication, University of Lodz) continued the discussion, focusing on evaluation and argument in the justification of judicial decisions. Next two presentations were focused on Supreme Court opinions: Prof. Davide Mazzi (University

of Modena and Reggio Emilia) presented the causal argumentation in Supreme Court of Ireland's judgments on data protection, while the presentation of Prof. Magdalena Szczyrbak (Jagiellonian University, Kraków) addressed the issue of the evidentiality in US Supreme Court opinions with focus on passive structures with 'say' and 'tell'.

The fourth panel, led by Prof. Friedemann Vogel (University of Siegen), was dedicated to clarity in judicial discourse. Three papers were presented: James Brannan (Senior Translator, European Court of Human Rights) spoke about principles and problems of multilingual communication at the European Court of Human Rights, Antonio Mura (Prosecutor General at the Rome Court of Appeal) and Prof. Jacqueline Visconti (University of Genoa/Honorary Research Fellow at Birmingham University) presented their thoughts on clarity in court proceedings and Prof. Christopher Williams (University of Foggia) added his analysis of the impact of plain language on court judgments in the UK.

The fifth and final conference panel was chaired by Prof. Frances Olsen (UCLA, Law School) and it was concerned with judicial interpretation. First to speak was Prof. Marek Jan Wasiński (Faculty of Law and Administration, University of Lodz) who presented the dogmatic approach to decisions of international courts. Next speakers – Dr. Anna Tomza-Tulejska and Dr. James Higgins (Faculty of Law and Administration, University of Lodz) – dedicated their paper to current problems in the US judicial argumentation. The focus was transferred to the European ground by Dr. Joanna Kulesza (Faculty of Law and Administration, University of Lodz), who spoke about free speech, artistic expression and blasphemy laws within the ECHR margin of appreciation. The last two presentations again referred to the US judicial interpretation: Prof. Jessica Greenberg (Department of Anthropology, University of Illinois) presented comparative frameworks for judicial approaches to expression rights, whereas Prof. Kathryn M. Stanchi (William S. Boyd School of Law, University of Nevada) analyzed the rhetoric of tacism in the United States Supreme Court.

The conference reflecting a broad range of topics and critical perspectives on judges and their discourse was a great success, and as it was said in the concluding statements, both organizers and participants believe it constitutes an excellent starting point for fostering further interdisciplinary research. Selected papers will be published with Routledge in November 2021 in a volume titled *Law, Language and the Courtroom. Legal Linguistics and the Discourse of Judges* edited by Stanisław Goźdź-Roszkowski and Gianluca Pontrandolfo.

INTERNATIONAL JOURNAL OF
LAW, LANGUAGE & DISCOURSE

Conference Reports

The French Legal Linguistics Seminar

February – July 2021
Online

Mary C. Lavissière
University of Nantes – Centre de Recherche sur Identités Nationales et Interculturalité (CRINI), France

Mary C. Lavissière is an Associate Professor of Applied Language and Linguistics at the University of Nantes – Centre de Recherche sur Identités Nationales et Interculturalité (CRINI), Nantes, France where she researches language for specific purposes, morphosyntax, modality, historical linguistics and linguistic methods applied to management sciences and language teaching. Her recent work includes projects on legal language and textometry applied to management sciences and language teaching.
marycatherine.lavissiere@univ-nantes.fr, https://orcid.org/0000-0002-4241-4389

The French Legal Linguistics Seminar took place from February to July 2021 in the form of seven two-hour seminars. These sessions were organized by Johannes Dahm and Mary C. Lavissière (University of Nantes) and Laurent Gautier, Arthur Joyeux, and Waldemar Nazarov (University of Burgundy). The seminar aims to gather scholars and professionals working in legal linguistics and associated domains such as legal translation, interpretation, and forensic linguistics in France. It also seeks to create links amongst international researchers who are interested in French approaches to legal language and linguistics. Finally, although current or historical frameworks used in France are the focus of many invited speakers, the seminar encourages conversations about how French methods and frameworks compare with those used in other countries.

The seminar is organized several times a year in different universities in France. The continuing health crisis in 2021, however, was the opportunity to move the seminar online. The advantage of this format was clear from the diversity of participants. The speakers and audience members came from twenty different countries and represented a large number of universities. The digital format also favored a diverse audience in terms of professional domains and career stages. Academic professions, including teachers and researchers ranging from full professors (active and retired) to undergraduate students were able to take part in the discussion as were lawyers, jurists, interpreters, and translators. Finally, the sessions were recorded and are

available for viewing on the seminar's website (Centre de Recherche sur les Identités Nationales et l'Interculturalité, 2021).

The focus of the 2021 sessions is the topic of stereotypes of and in legal language. The starting point for this reflection is a larger research program on stereotypes and representations in the CRINI laboratory at the University of Nantes. While the term *stereotype* is frequently evoked in scholarly and non-scholarly contexts, there is little consensus about its exact meaning in academic literature (Galeote, 2016). In the English-speaking world, especially in legal contexts, the term stereotype is highly charged with negative connotations. In contrast, *stéréotype* in French occupies a more neutral semantic space. It may indeed make reference to an enduring and unquestioned representation of a phenomenon that has problematic social consequences, however, *stéréotype* can also make a more neutral reference to an "enduring form, model, pattern" ["forme constante, modèle, patron" – author's translation] (*Analyse et traitement informatique de la langue française*, 2004). In linguistics, the term has sometimes been used to refer to semi-fixed linguistic elements, "Stable association of elements, group of words forming a unit that has become indecomposable, used after having lost all expressiveness and used with an abnormal frequency" [*"association stable d'éléments, groupe de mots formant une unité devenue indécomposable, réemployée après avoir perdu toute expressivité et avec une fréquence anormale*." –author's translation] (*Analyse et traitement informatique de la langue française*, 2004). Invited speakers in the seminar studied the functions, both social and linguistic, of stereotypes that impact legal language and associated disciplines. They also presented the way stereotypes impact the community using legal language and this community's views concerning its own linguistic production.

The seminar opened with Dr. Margarete Durr (University of Strasbourg – Centre Interlangues) on 19 February 2021 and her presentation entitled "Stereotypes and Relevance: Lines of Convergence." In her talk, Dr. Durr argued that while all language is a reservoir of (stereo)types, legal language is subject to a higher rate of typification at several levels. To explain her analysis of the connection between stereotypes and relevance, Dr. Durr made reference to the concept of *frames* (Ziem, 2008) as a semantic schema and entity of organization. From this theoretical standpoint, a stereotype can be given a wide definition as both a structure of experience and a frame. More narrowly, a stereotype can be defined as an association of an epistemological and an axiological element or a fixation of one variable in a frame's default instantiable slots. This fixed element is integrated into "the space of comprehension" (Ziem, 2008, p. 143) and specific communicative practices. Dr. Durr then introduced the concept of relevance about which she has authored a scholarly monography (Durr, 2020). Relevance is

related to processes of comprehension and sense-making. It allows for selection and for the activation of interpretative schemas. It also allows for the determination of relationships within a schema. Because relevance is inscribed in the semantic structure of a frame, we can conclude that the stereotype may be a fixation of relevance which blocks the latter's modification despite conflicting evidence that would call for an update.

The second session took place on 12 March 2021 with the presentation of Dr. Arthur Joyeux (University of Burgundy – Centre Pluridisciplinaire Textes et Cultures). Dr. Joyeux's presentation was entitled "Practitioners of Law and Language: Categorizations and Representations." He focused on the introduction of *standards* into different domains of French law, especially French contract law. Standards are characterized by their generality, their reference to social normality, their vagueness, and their indetermination. They include, for example, *reasonable person* (*personne raisonnable*), *reasonable time* (*délai raisonnable*), *reasonable cost* (*coût raisonnable*), and *legitimate expectations* (*attentes légitimes*). As seen from these examples, linguistically, standards are linked to the use of adjectives that make reference to a social norm. Standards, according to Pound (1919) allow for vagueness and confusion. On the other hand, they also allow for adaptation to social changes (Tunc, 1970). Finally, standards are linked to stereotypes. The standard may impose a different type of logic on the judge, a logic that makes reference to criteria of normality and reasonableness. The judge, therefore, may rely on social or professional stereotypes rather than on clearly defined criteria. In sum, the existence of an alternative type of reasoning calls for a wider examination of representations of judicial reasoning.

Dr. Laurent Gautier and Waldemar Nazarov, Ph.D candidate, (University of Burgundy, Centre Interlangues) presented their research in the third session of the seminar on 23 April 2021. Their communication was entitled "Co-drafting in Plurilingual Systems and Meaning Fossilization: A Semantic and Translation Studies Approach to Swiss Ordinances Linked to COVID-19." Their research explored the process of legal translation and legal drafting in multilingual countries under the pressure of the COVID-19 pandemic. More specifically, the researchers used frame semantics to examine how stereotypes about the words *Veranstaltungen* and *manifestations* ("gathering"/ "event") in Swiss German and French were connected to varying interpretations of a Swiss ordinance about the nature of restrictions on public and private gatherings. The varying interpretations led to the need for the Swiss government to clarify the ordinance in question. Their research shows the importance of considering entrenched social representations such as stereotypes while co-drafting or translating legal texts.

In the fourth session on 21 May 2021, Dr. Julien Longhi (University of Cergy-Pontoise - Institut des Humanités Numériques) presented his research about stereotypes in the French media coverage surrounding forensic linguistics in France. His presentation was entitled "Stylometry, Forensic Linguistics, Legal Linguistics: Corpus Studies to Separate Myths, Fantasies and Marginalization." Forensic linguistics has been the focus of a debate in the French media since the revelation that lawyers in the "Little Grégory Affair" had called for a linguistic analysis of some of the textual evidence in the case. This development led experts associated with the case as well as researchers and legal professionals to criticize the use of statistics and linguistics for author identification and other forensic analyses. Dr. Longhi presented some of the developments in forensic linguistics in France, whose legal system has given less authority to linguists than other Western judicial systems. Dr. Longhi presented several of his research projects which aim to make linguistics a tool for French policing institutions such as the *gendarmerie nationale*. He rejected the opposing media stereotypes of forensic linguistics that simultaneously represent this application of linguistic methods either as a panacea or as artifice. Dr. Longhi argues that linguistics is one of many disciplines that can contribute to an interdisciplinary approach to criminal investigations.

In the fifth session, Dr. Stefana-Olga Galatanu (University of Nantes) presented her study entitled "The Contribution of Semantico-Discursive Elements in the Theory of Semantics of Possible Argumentatives (SPA): Stereotypes of Lexical Entities and the Resolution of Interpretation Conflicts in the Discourse of Judicial Practices." The concept of stereotypes, in the more neutral French conception, is central to Dr. Galatanu's theory of semantics. In this theory, the stereotype is a block of internal argumentation that is attached to a word's set of essential internal traits. These are equally attached to external blocks of argumentation that allow for different interpretations of a word in discourse. In this study, Dr. Galatanu argued that the line separating legal terms from non-legal language is porous because of stereotypes. Judges and legal professionals are therefore constantly confronted by potential non-terminological argumentations that are attached to words which also serve as legal terms. Dr. Galatanu illustrated her theory with a diverse corpus of legal language including a dictionary of legal terms, extracts from courtroom proceedings, letters written by serial killers (Furio, 1998), and interviews with prisoners in France.

The sixth session included two speakers, Dr. Martina Nicklaus (University of Düsseldorf) and Dr. Paolo Canavese (University of Geneva). Dr. Nicklaus presented a talk entitled "Lying in Legal Contexts: Techniques of Identification, Illustrated Using Evidence from German." The detection of lies in testimony is crucial to judicial proceedings. This is especially true of

sexual abuse cases, where the testimony is often key evidence and sometimes the only evidence. Dr. Nicklaus focused on one lie-detection method in her talk: statement validity assessment (SVA). This method, which is widely practiced in Germany, includes linguistic analyses and is supported by experts in the field of psychology (Daber, 2014; Steller, Koehnken, & Raskin, 1989). Dr. Nicklaus highlighted the criticism of some stereotypical representations of language put forth in this technique. She presented excerpts of testimony that had been rated using this technique and underlined the potential of the truth criterion called *spontaneous corrections* when the latter is combined with pragmatic analysis, for example that of Stokke (2018).

Following Dr. Nicklaus's presentation, Dr. Paolo Canavese presented his talk entitled "'Misuse of English Expressions,' 'Inflation of English Terms,' 'Fight Against the Use of Anglicisms': Anglicisms in Swiss Institutional Language, Between Stereotypes and Empirical Findings." His research focused on the Swiss government's reaction to claims that the institutional languages of Switzerland were being threatened by excessive use of English words. This stereotype led to a push to pass legislation for the protection of languages spoken in Switzerland. None of the claims about the increase of English words in Swiss institutional discourse, however, had been the subject of scientific investigation. Dr. Canavese carried out a diachronic study of the corpus *LEX.CH.IT* (Canavese, 2020) which includes Swiss federal laws from 1974 to 2018, representing a total of 1.1 million words. His quantitative and qualitative studies of English words in the corpus point to a curated use of these words rather than an uncontrolled invasion. These words correspond to a language need, usually because an equivalent does not exist in Italian. Finally, the words are transparent and often defined in the texts that use them.

Dr. Dieter Stein (University of Düsseldorf) presented his research in the seventh and final session of the seminar. His communication was entitled "Jurilinguistique and Legal Linguistics: Some Myths and Stereotypes." Dr. Stein explored the stereotypes about language present in the disciplines of linguistics and of law. He focused specifically on the differences between the approaches to legal linguistics in France and those used in the wider English-speaking community of researchers. Dr. Stein put forth the hypothesis that the influence of structuralism in France has led researchers to focus on semantics and system-based approaches rather than favoring pragmatics-oriented approaches. This trend, however, does not exclude collaboration amongst researchers coming from these different theoretical backgrounds and should rather be seen as an opportunity for new joint efforts to understand language in legal contexts.

The French Legal Linguistics Seminar ends this series of meetings with the intention to continue sessions in the fall of 2021. The program will be announced on the webpage of the

seminar (Centre de Recherche sur les Identités Nationales et l'Interculturalité, 2021) in September 2021. While the organizers hope for a return to meetings in person, the possibility for researchers from around the world to attend the seminar online will be maintained through a hybrid format. In addition, an international conference entitled "Stereotypes and Representations in Times of Crisis," will be organized by the CRINI laboratory in Nantes, France, in June 2022. It will partly focus on representations and stereotypes during times of past, current, or future crises as seen through the lens of legal linguistics and its associated disciplines. The call for papers will be published in October 2021. The conference will be an opportunity for participants in the French Legal Linguistics Seminar to meet for a more extended period of time dedicated to research about linguistics and law.

References

Analyse et traitement informatique de la langue française. (2004). Stéréotype. In *Trésor de la langue Française informatisé*. CNRS. https://www.cnrtl.fr/definition/stereotype

Canavese, P. (2020). Els anglicismes en l'italià legislatiu suís: Extensió i naturalesa del fenomen. *Revista de Llengua i Dret, 0*(74), 18-37. https://doi.org/10.2436/rld.i74.2020.3545

Centre de Recherche sur les Identités Nationales et l'Interculturalité. (2021). Séminaire francophone tournant de jurilinguistique « Stéréotypes de la langue juridique et dans la langue juridique ». Centre de Recherche sur les Identités Nationales et l'Interculturalité. https://crini.univ-nantes.fr/activites/seminaire-stereotype-langue-juridique

Daber, B. (2014). Neue Entwicklungen in der Aussagepsychologie. In R. Deckers & G. Köhnken (Eds.), *Die Erhebung und Bewertung von Zeugenaussagen im Strafprozess: Juristische, aussagepsychologische und psychiatrische Aspekte | 4. Band* (pp. 259-266). BWB Verlag.

Durr, M. (2020). *La pertinence en traduction juridique: Un regard franco-allemand*. Peter Lang.

Furio, J. (1998). *The serial killer letters: A penetrating look inside the minds of murderers.* Charles Press.

Galeote, G. (2016). Introduction. *Iberic@l, Revue d'études ibériques et ibéro-américaines, 10*. Retrieved June 20, 2021, https://web.archive.org/web/20210610181828/https://iberical.sorbonne-universite.fr/wp-content/uploads/2017/02/Pages-from-Iberic@l-no10-automne-2016-1-Intro.pdf

Pound, R. (1919). *The administrative application of legal standards.* Bibliolife network.

Steller, M., Koehnken, G., & Raskin, J. D. (1989). Criteria-based statement analysis. Credibility assessment of children's testimonies in sexual abuse cases. In *Psychological techniques in law enforcement* (pp. 217-245). Springer.

Stokke, A. (2018). *Lying and insincerity*. Oxford University Press.

Tunc, A. (1970). Standards juridiques et unification du droit. *Revue internationale de droit comparé, 22*(2), 247-261. https://doi.org/10.3406/ridc.1970.15698

Ziem, A. (2008). Frames und sprachliches Wissen: *Kognitive Aspekte der semantischen Kompetenz*. De Gruyter.