

# MULTILINGUAL LEGAL DISCOURSE AT THE COURT OF JUSTICE OF THE EUROPEAN UNION

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**Abstract:** The European Union is an organisation that uses multiple languages, and its law is no exception. Dealing with over twenty authentic language versions of EU legislation appears to represent an additional challenge in the interpretation of the provisions of the common legal order. Unlike most other works, this article does not focus on the process of interpretation conducted by an adjudicating panel or an Advocate General, but rather on the statements of the parties involved in a dispute, or on the national courts that request a preliminary ruling when referring to multilingualism.

This work is divided into two separate parts. Firstly, the author focuses on cases whereby a national court or a party invokes the multilingual character of EU law. The second part is dedicated to the issue of multilingualism in EU case law. Unlike EU law, the judgments of the Court of Justice, as well as the Advocate Generals' opinions, are authentic in certain languages only. However, research has proven that a solitary, authentic language version does not help to avoid problems the multilingual nature of European Union's legal discourse.

Both issues have been analysed based on the texts of judgments and opinions passed in cases recently resolved by the CJEU. Of course, the statements of the parties or national courts referring to multilingualism do not always have a great influence on the final result of the case. Nevertheless, the unique perspective taken in this article can serve as a good illustration of the various possibilities one can make use of when using multilingual comparison in the process of legal interpretation.

**Key words:** multilingualism; EU law; CJEU; legal interpretation.

## **WIELOJĘZYCZNY DYSKURS PRAWNY PRZED TRYBUNAŁEM SPRAWIEDLIWOŚCI UNII EUROPEJSKIEJ**

**Abstrakt:** Unia Europejska funkcjonuje w wielu językach, co znajduje odzwierciedlenie również w jej systemie prawnym. Praca z ponad dwudziestoma autentycznymi wersjami językowymi unijnego prawodawstwa stanowi dodatkowe wyzwanie w procesie interpretacji. W odróżnieniu od innych prac, niniejszy artykuł nie przedstawia analizy procesu interpretacji dokonywanej przez skład sędziowski lub rzeczników generalnych, lecz badanie stanowisk uczestników sporu oraz sądów krajowych inicjujących postępowanie prejudycjalne, w których odwoływano się do wielojęzyczności.

Niniejsza praca jest podzielona na dwie części. W pierwszej autorka koncentruje się na sprawach, w których sąd krajowy lub strona odwołują się do wielojęzyczności prawa UE. Druga część jest poświęcona zagadnieniu wielojęzyczności orzecznictwa TSUE. W odróżnieniu od prawa UE, wyroki TSUE oraz opinie rzeczników generalnych są autentyczne jedynie w wybranych językach. Badanie wykazało, że istnienie tylko jednej wersji językowej nie eliminuje problemów związanych z wielojęzyczną naturą unijnego dyskursu prawnego.

Oba zagadnienia zostały przeanalizowane w oparciu o treść wyroków i opinii wydanych w sprawach ostatnio rozstrzygniętych przez TSUE. Oczywiście, stanowiska stron oraz sądów krajowych, podnoszących kwestie związane z wielojęzycznością nie zawsze mają znaczący wpływ na wynik sprawy. Niemniej, perspektywa przyjęta w artykule służy

pokazaniu różnorodnych możliwości wykorzystania komparatystki językowej w procesie interpretacji prawa.

**Słowa kluczowe:** wielojęzyczność; prawo UE; TSUE; interpretacja prawa.

## **1. Multilingualism of law**

The unique EU attitude towards languages is also realised in the legal sphere. Recognition of the equal status of legislation written in more than twenty different languages makes it necessary to analyse and compare different texts (multilingual comparison) in the course of legal interpretation. This process, which is resolved by an adjudication panel, may be initiated by the parties to a dispute or by a national court. In this regard, a few different usages of multilingual comparison have to be distinguished.

### **a) Multilingual interpretation and the doubts of a national court**

First of all, multilingualism can be the core element of a dispute to be resolved by a national court – the divergences between different language versions lead to different interpretations of particular legal provisions that may be realised by a national court. This raises doubts as to the proper understanding and application of the interpreted provisions. In such cases, multilingualism can be seen as part of the problem instead of the solution. Sometimes the formulation of questions referred to the Court of Justice reflects the consideration of different language versions at a national stage.

For instance, in case C-74/13, concerning the interpretation of the Common Customs Tariff, a Hungarian court asked the following in its second question:

“If the answer to the first question is affirmative, **can payment** of the anti-dumping duty **be waived**, on the basis of the Community legal order, **for a legal or physical person which, trusting in the wording of the Regulation published in the language corresponding to its nationality — without ascertaining potentially different meanings**

**in other language versions — on the basis of the general and well-known understanding of the legislation in that person’s language,** imports into the territory of the European Union a product manufactured outside that territory, taking into account that, according to the language version that the person knows, that product is not included in the list of goods subject to anti-dumping duty, **even if it may be determined, on the basis of a comparison of the different language versions of the rule of Community law, that Community law does make the product subject to anti-dumping duty?** (emphasis added by K.P.).<sup>1</sup>

The long question cited above raises many legal questions concerning the multilingual character of EU legal order. The idea of creating European Law as multilingual is founded on the need to guarantee equal access to law for all EU citizens, irrespective of the language they speak. The concerned possibility of relying on a certain language version has previously been analysed from the perspective of the principle of legal certainty (Paunio 2013<sup>2</sup>, Derlén 2009: 50-58; Paluszek 2013). Moreover, the role of translators and legal linguists in drafting and interpretation of multilingual law has been presented from different views (see inter alia Doczekalska 2009a and b; McAuliffe 2010 and 2016; Šarčević 2000). Nevertheless, it is impossible to address this question in a short article. Therefore, we must conclude with the observation that the Court, answering the cited question, denied the right to interpret one language version in isolation, thereby underlining the need to compare different texts, which in the commented case, led to an interpretation against the single version invoked by the party.

However, the Court has also pointed out the possibility of repayment or remittance of the anti-dumping duties in question, under the procedure laid down in Article 239 of the Customs Code – provided that the conditions set out therein are met. The invoked article regulates repayment and remittance of customs in cases of no deception or obvious negligence of the person concerned – so its application could possibly save an individual who trusts a language

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<sup>1</sup> Judgment of the Court in case C-74/13 GSV Kft. v Nemzeti Adó- és Vámhivatal Észak-Alföldi Regionális Vám- és Pénzügyőri Főigazgatósága (ECLI:EU:C:2014:243), point 23.

<sup>2</sup> Elina Paunio tries to reconcile the contradictory factors of the legal certainty, presenting a concept of discursive legal certainty, in which the crucial role is given to the dialogue between court, conducted first of all within the preliminary ruling procedures.

version that proves to be inaccurate as a result of improper translation. Nevertheless, the indication of the correct interpretation is of importance for further possible cases whereas the possible exculpation of the individual should be seen as exceptional and would possibly be more difficult to reach in subsequent cases when the right interpretation should be known (from the previous case law of the Court).

## **b) Multilingual comparison in statements of the parties**

It is not only national courts that point out the multilingual nature of EU law in their statements before the Court; the same applies to parties. Before explaining certain examples, one must underline that the statements and argumentation of the parties are neither translated into all EU languages nor published on the official CJEU website. Instead of being widely available, they are only reported in judgments and opinions of the Advocates General. These considerations are based on such quotations and descriptions. Moreover, the notion “party” is understood broadly in accordance with the CJEU rules on proceedings, and encompasses all participants of the proceedings (such as the EU institutions or Member States presenting their statements before the Court).

The concept of “the date of the first authorisation to place the product on the market in the Community” was the core issue in case C-471/14. The question rested on whether account is to be taken of the date on which the authorisation was granted, or the date on which the addressee was given notification of the authorisation decision. Interestingly, both parties referred to multilingual comparison for justification and were of opposite views. This has been reported by the Advocate General:

“The Latvian Government **maintains that the wording in its own language version** (‘the date on which the first [marketing authorisation] was obtained’, in the Latvian version) **is more precise than that in other language versions and suggests that** the relevant date is the date on which the decision granting the authorisation was adopted. For its part, the **Lithuanian Government maintains that the forms of words used in the German, French, Lithuanian and English versions also suggest that meaning.** Those arguments are

not decisive, in my opinion or in that of the **Commission, which considers that the wording used in the other language versions of the text gives no clear indication as to which solution to choose.** In any event, if the various language versions of the provision of EU law at issue are to be regarded as truly divergent, then the provision ‘must be interpreted by reference to the purpose and general scheme of the rules of which it forms part’ (see, *inter alia*, the judgment in Hässle, C-127/00, EU:C:2003:661, paragraph 70).<sup>3</sup>

Finally, the Court of Justice confirmed the Advocate General’s view that the ambiguous wording of the interpreted provision makes it impossible to give an unequivocal answer to the question of the Austrian court, and the decision had to be taken on the basis of a teleological means of interpretation.

It should be noted that in some cases, the considerations concerning the multilingual character of EU law, as presented by the parties, may be pivotal to the solution of the case. For example, in joined cases C-43/13 and C-44/13, some participants claimed that certain language versions clearly confirmed their standpoint on the right interpretation of the provision in question<sup>4</sup>. The Advocate General has concurred with their view and confirmed it with additional arguments of a non-textual character. Thus, the comparison of different language versions provided one of reasons for the solution proposed in the Advocate General’s opinion. Although the adjudicating panel versions have reached the same conclusion, the Court based the decision on the arguments of a contextual and purposive character, noticing that various language versions were not unequivocal. The comparison performed by the Court encompassed more language versions than those indicated by the parties to confirm their statement. Thus, unlike in the opinion, multilingual arguments did not support the Court’s final decision. Nevertheless, the comparison of different texts indicated the possible interpretation paths, and as such played a clear role in the Court’s reasoning.

Multilingual comparison is usually seen as a means of literal interpretation (however, it has been also qualified within the tools of systemic character – Zirk-Sadowski 2013: 371), which has been

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<sup>3</sup> Opinion of advocate General Jääskinen in case C- 471/14 Seattle Genetics Inc. v Österreichisches Patentamt (ECLI:EU:C:2015:590) Footnote 33.

<sup>4</sup> Opinion of Advocate General Jääskinen in joined cases C-43/13 and C-44/13 Hauptzollamt Köln v Kronos Titan GmbH and Hauptzollamt Krefeld v Rhein-Ruhr Beschichtungs-Service GmbH (ECLI:EU:C:2013:839), point 25.

described as losing its importance for the output of the interpretation process. The diminishing role of literal interpretation has been noticed in the theory of law without concern for the uni- or multilingual character of particular legal system (Tobor 2012 and 2010, Spyra 2006). Nevertheless, the multiplicity of language versions implies that teleological interpretation is of even greater importance for the interpretation of EU law (Derlén 2009: 43-49, Solan 2014:19), and even when multilingualism is significant for a particular judgment or opinion, it is common that the results of multilingual comparison are accompanied with other arguments (Baaij 2018: 176).

## **2. Multilingualism in EU case law**

The case law of the EU is not subject to the same language regime as its legislation. Unlike EU legal acts, the judgments of the Court and the opinions of the Advocates General are authentic only in certain language versions. In the case of opinions, the Advocate General chooses the authentic language in which he or she submits the opinion. The judgments are authentic in the language of the proceedings. In practice, a great importance is given to the French version, as the judges' deliberations, as well as the daily work in the Court, takes place in the French language. It is worth noting that the European Union did not establish any separate court system to apply its law – the national courts are competent to enforce the common legal system in respective Member States. However, in order to assist the national courts in the course of interpretation of EU law (in the so called preliminary rulings procedure) and to ensure uniform EU law interpretation across all Member States, the Court of Justice of the European Union was created. The Court judgments and the Advocate General's opinions are available in all official languages of the EU. Such availability is of great importance for the national courts, which should know EU case law and may refer to previous CJEU judgments in matters regulated by EU law. Access to all of the resolved and pending cases is possible via an internet platform, [curia.eu](http://curia.eu), which enables one to easily choose and change the language in which documents are displayed. The comparison of wording is easy thanks

to a clear structure of judgments (numbered points of similar length irrespective of the language).

Naturally, the judgments and opinions of the CJEU and the Advocates General are subject to the interpretation of national judges and doctrine all over Europe. The choice of one authentic language for each document should therefore simplify interpretation and guarantee the prevailing position of the authentic version in case of any differences between language versions (as is the core function of the authenticity of a particular language version). However, when discussing EU case law, it has to be considered that the authentic version of the judgment (if other than French) is in fact a translation from the actual working language of the Court (McAuliffe 2016:11). Some translation errors or distorting issues may also occur here in the translation from French into the language of the proceedings, much like in any other translation process. Interestingly, the interpretation process also has a multilingual dimension and the presence of only one authentic language version of a judgment and an opinion does not prevent disputes concerning their wording in different languages. Therefore, the French language version should be the first to consult in the event of any awkward formulation or discrepancy observed in the wording of the authentic text. Several examples from the case law illustrate the aforementioned issues.

### **a) CJEU case-law interpretation at national level**

As stated above, the availability of judgments and opinions in all official languages, which should ensure the uniform interpretation of EU law across all its Member States, can also lead to differences at national level. Sometimes this has been pointed out in the course of proceedings before the Court. For example, in her opinion in case C-559/14, Advocate General Juliane Kokott stated:

“Remarkably, Paragraphs 17 and 18 **of the German version of the judgment** (which, as the language of the case, is authoritative) **differ from the French text** in so far as the French version rejects status as a judgment in the cumulative absence of summons to appear and service (as in the situation in the main proceedings), whereas the German version of the judgment suggests the reading that status as a judgment



is not satisfied in the absence of either summons to appear or service. **The case law<sup>5</sup> of the German Bundesgerichtshof** (Federal Court of Justice) (see, for example, the order of 21 December 2006, Az. IX ZB 150/05, published inter alia in RIW 2007, p. 217), according to which there must first be an adversarial procedure in the State of origin for foreign provisional measures to be recognised in Germany, **possibly stems partly from this linguistic discrepancy** (emphasis added by K.P.).<sup>6</sup>

According to the cited statement, two analysed language versions of the previous CJEU judgment relevant for the ongoing case lead to contradictory interpretations, one of which has been recognized by the German Federal Court of Justice and, according to the Advocate General's view, resulted in its reserved position. As may be concluded from the presented example, the limitation of the number of authentic language versions of the case-law (in comparison to the EU legislation) does not prevent interpretative doubts concerning linguistic discrepancies that present a serious obstacle in reaching the uniform application of EU law across its Member States. In the cited case, the German court followed the authentic German wording of the CJEU judgment. Even the authentic status of the German version did not result in its prevailing position over the French text.

In the author's opinion, it is an especially valuable observation in the context of proposed limitations on the number of authentic language versions in EU legislation. Even relying on the authentic text does not give certainty as to the subsequent interpretation of the judgment delivered by judges and the Advocates General of the Court.

On the other hand, even the subordinate status of translations (applicable to all versions other than the authentic one) does not guarantee their comparison with the prevailing, authentic text formulated in the language of proceedings. If we accept the Advocate General Francis Jacobs' statement, according to which national courts are not obliged to compare all language versions of the interpreted legal provision (Jacobs: 2003) and agree that it is unrealistic McAuliffe 2016: 19; Kjaer 2010), then we have even less reasons to

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<sup>5</sup> In original, German version of the opinion, the Advocate General uses the notion "Die zurückhaltende Rechtsprechung" that could be translated as "cautious case law" which highlights the reserved, conservative position of the German court.

<sup>6</sup> Opinion of Advocate General Kokot in case C- 559/14 Rudolfs Meroni v Recoletos Limited (ECLI:EU:C:2016:120), footnote 19.

require them to analyse the different language versions of the EU case-law they want to consider. Thus, it can be presumed that each national court would take its language version as the first to analyse, and it is not sure whether other versions would be consulted in each and every case. Nevertheless, as may be concluded from the presented case, even where the national court is “lucky” to operate in the language considered authentic for the judgment it refers to, the consideration of the authentic language version should not substitute the consultation of other language versions (at least the French one) to ascertain the proper understanding of the CJEU position on the issue at stake.

## **b) The appeal cases**

The multilingual dimension of EU case law can be observed not only in the preliminary ruling procedure but also in appeal cases where one party questions the ruling of the General Court. The interpretation of the judgment of the first instance plays a crucial role in the formulation of pleas – and again, unknown language divergences may mislead an appellant or a counterparty. The Advocate General’s opinion in cases C-176/13 and C-200/13 serves as an excellent illustration of the problem:

“166. In any event, **I consider that the bank is focusing on a terminological detail here — and possibly on an unfortunate translation. The French version of the judgment under appeal** (which, as is known, is the version in which the judgment was drafted and deliberated upon) **uses the more general word ‘éléments’ (‘material’) where the English uses ‘evidence’.** (...) I would therefore dismiss this ground of the cross-appeal.”<sup>7</sup>

As shown in the presented example, the party to the proceedings (bank) based its standpoint on the English version of the judgment under appeal. It should be noted that English served as the language of proceedings in both instances, thus the English version of

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<sup>7</sup> Opinion of Advocate General E. Sharpston in cases Case C-176/13 P Council of the European Union v Bank Mellat and Case C-200/13 P Council of the European Union v Bank Saderat Iran (ECLI:EU:C:2015:130), point 166.

the judgement of the first instance was the authentic language version. However, the Advocate General points out the real subsequent character of the English version of the judgment was in fact a translation from French, which serves as the main language of the Court of Justice – even though the special status of the French language is not officially recognised in any legal act.

The common feature of both cases relating to diverging versions of CJEU case law is that the German Court, in the first example, and the party (bank) in the second, relied only on the authentic language versions of the invoked judgments. In both cases, those authentic versions diverged from the French one which, although it officially has no special importance, is privileged as the real original version in which the judgment is drafted and deliberated upon (the deliberations take place without the presence of any translators or interpreters). Both examples prove the need to consult the French version regardless of its status in a particular case.

Sometimes the multilingual comparison of the CJEU judgments is conducted at national level in the course of the formulation of questions concerning the proper interpretation of case law. For instance, an Italian court asked in case C-590/13<sup>8</sup> for the interpretation of the notion used in a previous judgment (C-95/07 and C-96/07 *Ecotrade*<sup>9</sup>), mentioning the notion in question in three languages. The multilingual comparison did not prove to be of particular importance for the case, but in the author's opinion, the Italian court, in the process of indicating slight differences between the wording of certain versions, underlined the need for a uniform interpretation of the judgment (regardless of the language version) and avoided possible accusations of focusing on one particular version.

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<sup>8</sup> Judgment in case C-590/13, *Idexx Laboratories Italia Srl v Agenzia delle Entrate*, (ECLI:EU:C:2014:2429).

<sup>9</sup> Judgment in case C-95/07 *Ecotrade SpA v Agenzia delle Entrate - Ufficio di Genova 3*. (ECLI:EU:C:2008:267).

### **c) Multilingual CJEU case-law in literature and research**

The case law of the Court of Justice is well known and commented on by scholars all over the world. Naturally, they work in different languages and the existence of more than twenty language versions of EU case law makes it more accessible. On the other hand, eventual divergences between language versions of the commented judgments may also lead to misunderstandings and errors in literature (it can be further multiplied in citations and references). One excellent example of such a situation has been given by M. Derlén (2014: 34). It is of particular importance for this article, as the matter of the analysed judgment relates to the multilingualism of the law. In case C-296/98<sup>10</sup>, one of the addressed issues was whether the multilingual comparison is to be conducted in each and every case concerning the interpretation of the EU law (due to its multilingual character) or only in the case of doubt. The authentic English version of the judgment differed from French and German versions. The latter two indicated doubt as a reason for the consultation of different language versions of the interpreted provision whereas the former one referred to the need to take the multilingual character of EU law into account without any additional conditions. As a result, the judgment has been referred to as an affirmation of both opposing standpoints.

### **3. Conclusion**

This article presents the importance of multilingualism for legal discourse in Europe. First of all, the considerations of language differences at the national stage may result in the initiation of the procedure for a preliminary ruling before the Court of Justice. That brings cases previously considered in a particular Member State onto an international, European, level. Multilingual arguments can also be used by participants in the course of proceedings – in some cases both parties try to employ it for the justification of counter-positions. The

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<sup>10</sup> Judgment in case C-296/98 Commission of the European Communities v French Republic (ECLI:EU:C:2000:227).

importance of such arguments differs in particular cases. Nevertheless, even if multilingual comparison cannot be seen to decisively impact the final result, it may add an argument supporting the decision or at least reveal different interpretative possibilities to be considered.

The unequal status of language versions of judgments and opinions does not release their interpreters from the need to consider different language versions of judgments and opinions, especially the French version, which is *de facto* authentic and serves as the source for translation into all other versions, regardless of which one is deemed to be authentic in a particular case. As has been explained, disregarding the multilingual character of both EU law and case law can lead to misunderstandings both in judicial practice and research. Therefore, a careful comparison of different language versions of analysed documents is highly advisable in the courtroom, as well as in commentaries and research works.

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