

The entangled relationship between law and language in the globalized world. A report from the first edition of Winter School L.L.I.N.G.U.E, University of Trento, 13th-17th December 2021

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At the beginning of December 2021 the Faculty of Law of the University of Trento (Italy) hosted the first edition of the Winter School “L.L.I.N.G.U.E: *Legal Languages In National, Global and Uniform Environments*”. The event, coordinated by prof. Elena Ioriatti and Mrs Paola Borz (Director of Trentino School of Management) in cooperation Utrecht University (Netherlands) and Sird (*Società italiana per la ricerca nel diritto comparato*) gathered an international public of PhD students, postdoctoral researchers and civil servants with the idea to discuss and study the relationship between law and language with regard to citizenship and the characteristics of regional, national and, more generally, European and world legislation drafted in different languages.. The aim of the Winter School was to raise awareness of participants about the importance of legal translation techniques and methodologies, in order to reduce the economic and social impact of linguistic and legal barriers that prevent the full enjoyment of citizenship rights with particular attention to the European Union. The programme of the School consisted of theoretical introductory lectures held by academics and experts on legal translation, as well as courses delivered by practitioners in the field of legal translation. The Trento South-Tyrol region and University of Trento, as a historically important centre of comparative law studies , constituted the perfect setting for discussing challenges of law and politics in multilingual environments.

The Winter School’s particular approach to the discussed issue consisted of a combination of conceptual frameworks and practical techniques and solutions specific to certain disciplines (comparative law, linguistics, translation methodologies) which share the common interest in the functioning of law as a linguistic phenomenon in the cross-cultural and cross-language contexts. Far from a strict and purely lecture-based programme, the coordinators provided for a work organization allowing for extensive discussions with the invited experts and exchange with the participants. The special value of the School resided in a confrontation of different profiles and backgrounds, both on the side of the experts as well as the public which was composed not only of researches but also civil servants, translators and other professionals working in the field of the subject matter of the school. Such circumstances have allowed for fruitful discussion based on an impact of different, sometimes even contradictory claims and approaches and, by this, to draw the crucial conclusion on importance of openness to different methodologies in the field of law and language. Through a dynamic exchange of views and competences, the Winter School has provided for a precious opportunity to delve into the challenges resulting from the influence of multilingualism on legal orders by their evergreater fragmentation accompanied, on the other side, by a growing interdependence following globalization of law. An overview report of the presentations made during the Winter School is described below.

Law and multilingualism: mutual interdependence and inevitable tensions (13th December)

The morning session on Monday 13th of December was devoted to introductory contributions on the basic issues of law in multilingual environments as a source of legal, cultural and political clashes in a form of a roundtable. In his presentation ‘EU Law and Language. A bird's eye view’ professor **Sybe de Vries** (Utrecht University, The Netherlands) drew some insightful observations on how linguistic diversity and linguistic rights, although protected under EU anti-discrimination law, can pose a barrier to the very foundations of the European Union based on market freedoms such as free movement of persons or services. This barrier is both of a legal and factual nature. By pointing out the autonomous character of EU legal order, the Speaker highlighted the second tension which is produced between the Member States’ and the EU legislative power by the fact that the European law, by its very essence, produces its own language in a process of a complex practice of cross-cultural language creation (see

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also: P. Phoa, *EU law as Creative Process*, European Law Publishing, 2021). This is particularly observable in reliance of EU law on autonomous concepts the meaning of which is negotiated and determined in the case law of the Court of Justice of the European Union (hereinafter CJEU) and which, far from the mere linguistic exercise, requires in many cases some substantial or even ethical choices which may go counter their interpretations in some of the Member States (see: case law related to EU Biotechnology Directive and the notion of an ‘embryo’ or the CJEU case-law on the concept of ‘worker’). A third ‘intra-order’ tension created by European rules consists of a mutual contradiction between the concept of national constitutional identity protecting national languages (art. 4 par. 2 TEU) and the EU anti-discrimination requirements with regard to minority languages (Article 22 of the Charter of Fundamental Rights). This tension generates a need for a careful balance and proportionality which finds its expression in the CJEU’s case law. All in all, professor Sybe de Vries’ presentation made an important contribution to the discussion about relationship between law and language in the EU by presenting its inherent contradictions and non-obviousness of the issues at stake.

During the second presentation, **Eliana Morandi** (notary) showed how much the expertise in intercultural communication is important for the exercise of every legal profession. By reference to the concept of law as a linguistic creation, she developed a metaphor of legal professionals as translators of individual claims into legal language. The interpretation of relationship between law and language expressed in this presentation drew attention to an important anthropological thesis in this matter under which the law and language are intrinsically intertwined as a cultural process. With regard to this, Eliana Morandi drew a critical approach to objective concepts of law by underlining its social anchorage and dependence on common and shared belief in values and rules by which the law as a textual phenomenon is driven. The Author argued, with reference to the globalized and multi-language character of contemporary legal orders, which was the subject matter of the Winter School, that there is a strong need, not only in the academia but also in everyday legal practice, to apply observations made in the science of both descriptive and comparative legal ethnography in order to accommodate pluralism in law by promoting mutual understanding in all the diversity of socially determined meanings and ideas. In the conclusion of the presentation, she argued that the main challenge for the further development of globalized legal orders is to build some sort of a ‘transcultural legal language’.

The third speaker in the morning roundtable, professor **Flavio Guella** (Trento University) gave an insightful presentation on the linguistic and legal diversity of the Trentino Alto Adige/Süd Tyrol region. The author developed on the importance of historical experiences of multilingualism, which, although has now become a global issue, is not a new phenomenon in the history of Europe which has already in the past had to deal with the problem of diversity in the context of the exercise of power through law. With reference to the history of this region as multi-ethnic area, the Speaker developed on the importance of a negotiating and consensual approach to multilingualism as a specific constitutional and political setting.

In the afternoon session, **William Robinson** (University of London) gave an extensive presentation on the problematic issue of the language of the so-called ‘Brussels bubble’. The Guest speaker delved on possible threats of alienation of the society as an ‘outside world’ from the discourse produced by political and legal milieus at EU level. Such phenomenon is, according to Robinson, at odds with the idea of democratic legitimacy of EU institutions which are more and more drifting apart from the societies (and their languages) that are to be represented by them. As argued in the presentation, English and EU specific terminology, which are rarely used in non-EU contexts, dominate the discourse and create a barrier for outsiders to understand or challenge how the Union’s institutions work. In the second part of the presentation the Speaker developed on the historical background of EU linguistic regime as a unique and far-reaching solution based on full multilingualism in order to tackle the problem of democratic deficit. As demonstrated on the basis of Treaty provisions (Article 342 and unanimity of vote on linguistic regime) and case law of the CJEU, the issue of preserving multilingualism and protecting linguistic connections of European societies with the EU institutions is of a crucial importance. Despite that, as everyday practice shows, multilingualism in the EU has to be subject to

some restrictions in order for its institutions to remain operative. By reference to the CJEU's case law the presentation also drew some interesting observations on the tension between the requirements of diversity and the pragmatical need for some common, culturally and linguistically neutral and translatable communication leading back to the idea of alienated EU discourse as something inevitable.

Between theory and practice: comparative legal studies as a bridge between law and linguistics (December 14th)

The first presentation on December 14th made by the coordinators of the Winter School, professor **Elena Ioratti** and **Mrs Caterina Bergomi** (University of Trento), was devoted to an introduction to the idea of comparative law studies as a cross-discipline tool mixing linguistics and legal studies. The Speakers developed on both the theoretical and practical function of comparative legal studies which can be used in various ways but, among them, also a contribution to a better understanding of the proper, national legal system. The presentation gave a very insightful view of the history of the discipline with a special focus on the local but renowned school of comparative law based on the so-called *Trento thesis*, a scientific Manifesto elaborated by prof. Rodolfo Sacco. By this, the Speakers insisted in particular on the primarily scientific character of comparative law, disseminating knowledge, as a deliberate and systematic approach to the study of legal phenomena. The presentation covered, therefore, some key methodological assumptions of comparative law as a science, mainly the concept of operational rules based on the observation and analysis of the legal effects of legislation combined with a cautious scrutiny of the textual dimension of law. With regard to the study of legal concepts in multi-level and multilingual legal orders, the Speakers attracted the attention on the need of a piece-by-piece and case-by case analytical and contextual approach to them by pointing out possible misleading approaches based on pure textual equivalence (see: E. Ioriatti, "EU legal language and comparative law. Towards a European Restatement?", *Gobal Jurist*, 2021).

By developing the idea of misconception of textual equivalence, **Marco Battaglia** (Kodeks legal languages firm), gave an extensive overview of different strategies in legal translation allowing for accommodation of disparities between legal concepts in different languages during the afternoon session. Battaglia focused in particular on situations of legitimate use of loanwords, calques on one side and functional and descriptive equivalents on the other as translation strategies requiring more analytical approach to translation mixing legal and linguistic competences.

Researching legal translation: textual nature of law in cross-language contexts (December 15th)

In her presentation in the morning session, prof. **Lucja Biel** (University of Warsaw, Poland) delved into textual complexities of law by highlighting the most specific features of legal languages which render legal interpretation and translation difficult. With regard to this, she presented some key examples of syntactic and conceptual complexities of legal language characterized by i.a. the tradition of long sentences, complex nominal groups, peculiar punctuation rules, as well as by a significant conservatism, formality and formulations of textual conventions of legal language. In parallel to these considerations, the Speaker insisted on the specificity of legal terminology by arguing that legal terms are system specific rather than language specific and do not refer directly to the general language but to an autonomous social legal discourse developed within it. Bearing in mind this specificity, she presented a general historical overview of approaches to legal translations which tend to oscillate between strict literalism and functionalism expressed in the strategies of domestication and foreignization of legal terms. In this context, the speaker developed on crucial factors that have had impact on the beginning of legal translation, such as characteristics of inter- and intra-systemic translation, language constraints, the idea of purpose driven by a receiver-oriented approach to translation as well as the diversity of legal genres, legal systems (unitary or composed) and on purely pragmatical constraints of translation practice. In the last part of her presentation, professor Biel mentioned some recent trends in research of legal translation such as the user design approach, plain language schools and the newest technological changes in the area of translation.

With a link to these issues, **Guendalina Carbonelli** from the Directorate-General Translation of the European Commission gave a very practical presentation sharing some know-how and tips on the use of computer assisted translation tools in the work of legal translators for the EU institutions. The presentation focused on pragmatical problems of the EU multilingualism policy as an important communicational challenge of everyday institutional practice.

Law making and law enforcement in multilingual contexts (December 16th)

The fourth day of the Winter School was devoted to the specificities of law-making and law enforcement challenges in cross-language legal systems. In the morning presentation prof. **Jacqueline Visconti** (University of Genoa, Italy) focused on legal drafting as a complex, communicational exercise. The Speaker delved into inherent limits of legislative work with regard to the idea of general and abstract character and the ideal of consistency of the positive law. In this context, she insisted on the specificity of legal drafting as an exercise of linguistic precision and attentiveness combined with speculative, prospective analysis of foreseeable circumstances of application of the drafted piece of legislation. The Speaker also mentioned some key recommendations of the plain language as crucial factors for operability of composed, multilingual legal systems such as the EU (see for example: CJEU Recommendations to national courts 2021 on preliminary ruling proceedings). At the same time, she pointed out the inevitable textual complexity of law in multilingual institutional contexts driven by polyphony of legal orders and actors involved in it, as well as by plurality and diversity of addressees of drafted laws. By reference to the example of the EU, prof. Visconti explained how English is ‘going European’ in case of the European legislation by further development of its linguistic autonomy and complexity observable in its conservative and, in some cases, even artificial character.

The issues introduced in this presentation have been completed in an interesting way by the considerations developed by prof. **Silvia Ferreri** (Turin University) during the afternoon session. The Speaker gave an extensive overview of pitfalls and advantages of multilingualism in law. She insisted, in particular, on the issues of impossibility of full and simple analogies between legal concepts in different languages which are to be, by the very principle, considered with cautiousness as potential ‘false friends’ despite their linguistic resemblance. In this perspective, prof. Ferreri’s presentation offered an important contribution to the idea that legal terminologies require independence and autonomy in order to safeguard equal treatment of legal systems within the EU. As pointed out by the speaker, despite the inherent cultural founding of every social institution, multilingual legal orders inevitably tend to be more and more linguistically self-referential and closed by use of neutral language as a way to accommodate diversity both in the context of law making and law enforcement.

Mutual understanding: communication aspects of internal market and public sphere (December 18th)

During the morning session of the last day of the Winter School professor **Stefaan van der Jeught** (Brussels University and Court of Justice of the European Union) made a comprehensive presentation of language rules in the internal market law of the EU. The Speaker developed on a diversity of approaches in EU legislation opting for full, conditional or mitigated territoriality of linguistic requirements refereeing to information on products and services, in particular to packaging in the context of their free movement. The analysis was accompanied by an overview of the CJEU’s case law on permissible restrictions and direct applicability of EU rules in this matter. The second part of the presentation was devoted specifically to free movement of workers and anti-discrimination law of the EU. The Speaker insisted on mutual tensions between the free movement requirements supported by the strong-standing Treaty prohibition of discrimination on the basis of nationality and the necessary restrictive character language policies of individual actors in the Internal market following the need of their operability. With regard to this, professor developed on the idea of proportionality of language discrimination based on objective assessment of work and employment conditions with reference both to the provisions of secondary EU legislation (see Regulation 492/2011 on freedom of movement for workers and Directive 2005/36/EC on the recognition of professional qualifications) and the case law

of the CJUE. The presentation highlighted the importance of communication requirements for the functioning of the internal market for which linguistic diversity constitutes an important factual challenge.

The communication issues have been completed by the presentation made by **Loredana Pancheri** (Language and Communication Factory, Trento) on communication skills and public speaking, which closed the Winter School's first edition.