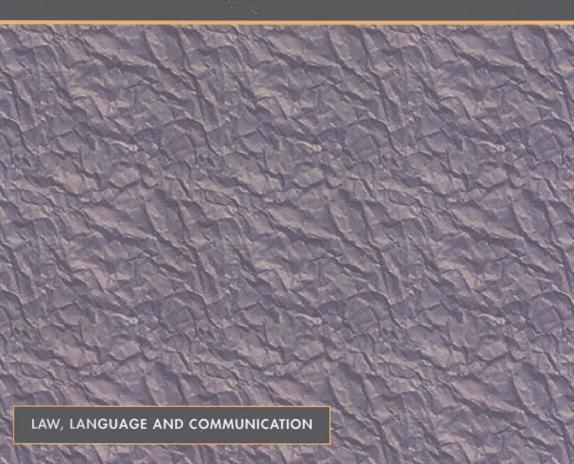


LANGUAGE AND CULTURE IN EU LAW MULTIDISCIPLINARY PERSPECTIVES

Edited by Susan Šarčević

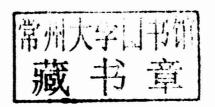


Language and Culture in EU Law

Multidisciplinary Perspectives

Edited by

SUSAN ŠARČEVIĆ University of Rijeka, Croatia



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LANGUAGE AND CULTURE IN EU LAW

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Susan Šarčević Zagreb, Croatia

List of Abbreviations

ABGB Allgemeines Bürgerliches Gesetzbuch

(Austrian General Civil Code)

BDÜ Bundesverband der Dolmetscher und Übersetzer

(German Federal Association of Translators and Interpreters)

BeVReStG Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten

im Strafverfahren (German Act on Strengthening Procedural

Rights of Accused Persons in Criminal Proceedings)

bg Bulgarian

BGB Bürgerliches Gesetzbuch (German Civil Code)
BVerfGE Entscheidungen des Bundesverfassungsgerichts

(Decisions of the German Federal Constitutional Court)

BVerwG Bundesverwaltungsgericht

(German Federal Administrative Court)

CESL Proposal for a Common European Sales Law

CFR Common Frame of Reference

CISG UN Convention on Contracts for the International Sale

of Goods

CJEU Court of Justice of the European Union

CMLR Common Market Law Reports Cr.App.R. Criminal Appeal Reports

CRC Coordination and Revision Centre (Czech Republic)

cs Czech da Danish

DCFR Draft Common Frame of Reference (Principles, Definitions

and Model Rules of European Private Law)

de German

DG Directorate-General

DGT Directorate-General for Translation EAEC European Atomic Energy Community

EC European Commission
EC European Community
E.C.C. European Commercial Cases

European Commercial Cases

ECHR European Convention on Human Rights

ECJ Court of Justice of the European Communities (pre-Lisbon)

ECLI European Case Law Identifier ECR European Court Reports

ECSC European Coal and Steel Community

ECtHR European Court of Human Rights
EEC European Economic Community
ELF English as a *lingua frança*

EMT European Master's in Translation

en English

EP European Parliament

es Spanish et Estonian

EU European Union

EULITA European Legal Interpreters and Translators Association
Euramis European Advanced Multilingual Information System
EWCA Civ England and Wales Court of Appeal (Civil Division)

FG Finanzgericht (German Financial Court)

fi Finnish fr French

GVG Gerichtsverfassungsgesetz (German Court Constitution Act)

HGB Handelsgesetzbuch (German Commercial Code)

hr Croatian hu Hungarian

IATE InterActive Terminology for Europe

(EU's Multilingual Term Bank)

IEHC High Court, Ireland

ISO International Organization for Standardization

it Italian

JVEG Justizvergütungs- und Entschädigungsgesetz

(German Judicial Remuneration and Compensation Act)

K.B. King's Bench

LSP Language(s) for Specific Purposes
MEP Member of the European Parliament

MT@EC Machine Translation at European Commission

nl Dutch

OJ Official Journal of the European Union

PCC UNIDROIT Principles of International Commercial Contracts

PECL Principles of European Contract Law

pl Polish
pt Portuguese
Q.B. Queen's Bench
ro Romanian
sk Slovak
sl Slovene

StGB Strafgesetzbuch (Criminal Code, Austria and Germany) StPO Strafprozessordnung (Code of Criminal Procedure,

Austria and Germany)

sv Swedish

TC of LAS Terminology Commission of the Latvian Academy of Sciences

TCU Translation Coordination Unit

TEAEC Treaty establishing the European Atomic Energy Community

(EURATOM Treaty)

TEU Treaty on European Union (post-Lisbon)

TFEU Treaty on the Functioning of the European Union
TransCert Trans-European Voluntary Certification for Translators

TTC Translation and Terminology Centre (Latvia)

UfR Ugeskrift for Retsvæsen, Denmark UKHL United Kingdom House of Lords UKSC United Kingdom Supreme Court

UN United Nations VAT value added tax

VGH Verwaltungsgerichtshof (German Court of Appeal for

Administrative Matters)

vol. volume

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Chapter 1

Language and Culture in EU Law: Introduction and Overview

Susan Šarčević

Introduction

The accession of Croatia to the EU on 1 July 2013 provided an opportune occasion for European scholars and EU practitioners to gather at the Jean Monnet Inter-University Centre of Excellence in Opatija for a multidisciplinary conference to discuss the vital role of language and culture as driving forces in the dynamics of EU law. The chapters in this volume are based on the papers presented at the conference although all of them have been expanded and fine-tuned. Each chapter examines certain aspects of the unique role of language and culture in shaping EU law, which is founded on the principles of linguistic and cultural diversity. The goal therefore is not only to investigate the multilingual and multicultural character of EU law, but first and foremost to show how multilingualism and multiculturalism have influenced its development.

Since EU law is made by the EU institutions but must be integrated into national law and applied by the national courts, the linguistic and cultural processes at work have a direct impact on both EU and national law. The pluralistic character of the authorship enables the multi-levels of these interactive processes to be examined from a multitude of perspectives. First, there are 'insider' and 'outsider' perspectives. Quite logically, the insider perspectives are provided by the practitioners who work in the EU institutions and have a hand in shaping these processes from within, while the scholars from European universities present the perspectives of 'outsiders' who are active participants in these processes at national level. Second, the views presented are multidisciplinary in nature thanks to the mixed backgrounds of the authors who include both lawyers and linguists representing a wide variety of specialist domains. The academic authors on the legal side are from the areas of European private and public law, comparative law and philosophy of law, on the linguistic side from translation studies, terminology studies, cultural studies and communication studies. The practitioners from the EU institutions also have mixed backgrounds: a lawyer-linguist from the legal department of the Council and a linguist from the Commission's Directorate-General of Translation (DGT) who is a specialist for quality management.

The individual chapters cover a broad spectrum of topics, all of which shed light on two complementary but also contradictory strands running throughout the

book - the linguistic and cultural diversity of EU law, on the one hand, and the desire and need to build unity in diversity, on the other. Two dynamic processes of Europeanization are at work to achieve this goal: the creation of a common language for expressing EU law that will be equally 'foreign' to all Member States (chapters 5, 6, 7, 8)1 and the construction of a common European legal culture of shared values and standards (chapters 2, 6, 10).2 Another common leitmotif that stands out is the vital role to be played by educators and universities in shaping these processes with the aim of building a 'common culture' through the Europeanization of legal education (chapters 2, 5 and 10).³ From the insider point of view, a 'shared culture' already exists and is founded in the treaties of primary law (Chapter 3). At the level of secondary law, outsiders, especially comparative law scholars, have joined forces throughout Europe in an attempt to create a common terminology in areas of private law as a precondition for achieving greater harmonization aimed at removing barriers to cross-border transactions (Chapter 2).4 As a result, considerable progress has been made over the past decade by the completion of the academic Draft Common Frame of Reference (DCFR),5 which has been followed up by the Commission's Proposal for a Common European Sales Law (CESL) (Chapter 5).6

These efforts have resulted in a new variety of a neutralized English⁷ which is taking on the role of a *lingua franca*. Instead of diminishing the need for translation, the use of a neutral *lingua franca* opens up new frontiers for legal translation in which EU translators have the task of deculturalizing their national

¹ See Dannemann (2012: 96–119); also Pozzo (2012: 184–200).

² See Helleringer and Purnhagen (2013: 3–15) on the impact of a European legal culture; also Smits (2007: 143–51) who describes legal culture as 'mental software'.

³ On the Europeanization of legal education, see Arzoz (2012), also Simantiras (2013), who discusses the possibility of building a common culture through legal education. Citing the advantages of the McGill Law School's programme of trans-systemic law teaching, De Mestral suggested over a decade ago that students would 'cease to think in terms of a single national legal paradigm' if law were taught from a multi-systemic perspective at European universities (2003: 805–6). In this context the Europeanization of higher education in other areas should also be mentioned, especially the EMT – European Master's in Translation (see Chapter 13).

⁴ See Dannemann et al. (2007: XXXIII–XL); also Ajani and Rossi (2006; 90).

⁵ In light of the DCFR and other events since the publication of his celebrated book *A New European Legal Culture* (2001), Hesselink speaks about a transformation from a 'rather formal, dogmatic and positivistic legal culture into a more substance-oriented and pragmatic European legal culture' (2013).

⁶ See Perfumi's analysis of the DCFR and the CESL and their role in the emergence of a common contract law terminology which could lead to a 'shared European culture'. As she puts it: 'In striking a balance between unity and diversity, a common terminology should express at the same time a shared European culture and the respect of diversity in language, culture and traditions' (Perfumi 2013: 135).

⁷ Robertson (2012: 1233) regards EU legal English as a new genre.