Chapter 12
Language as an impediment to mobility in Europe (An analysis of legal discourse)

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1 Introduction

This article seeks to explore the problems concerning linguistic diversity and the relationships of these problems to the free movement of workers, goods and expertise throughout Europe. Using language disputes taken before the EU institutions, its main emphasis is to provide examples of concrete language-related barriers that affect the European market. Selected cases are analyzed that are characterized by common socio-economic features, i.e., the market participants' economic motivation and their use of foreign languages. The article specifically addresses the question how these barriers are managed and reflected by the European Court of Justice. The paper demonstrates in which sense the language use in the European Union is not entirely free, but instead is regulated by legal discourse that unites the social practices of "law in action" and "law in books". This regulation of differing interests pursued by different participants in their discourse both causes and reflects language problems simultaneously. The problems reveal themselves as an expression of socio-economic relations and political power. To address these issues, the paper is based upon Language Management Theory (LMT). It demonstrates how organized language management works and how the micro and the macro levels of social reality are interconnected in the domain of language law.

The shift from the traditional industrial economy to the knowledge economy has had profound implications for language in society. Contemporary globalization is intertwined with the processes of deregulation in a wide range of human activities. Deregulation requires and contributes to the higher mobility and free movement of the labor force, goods, services, and capital. The implementation of these principles of European integration has essentially liberated the economy from the constraints of

individual state regulation. The four freedoms set out in the original EEC Treaty formed the basis of the Single Market that exists today. The subsequent sucessful mobility in the market depends to a large extent on the knowledge of foreign languages. Foreign language knowledge is required by employers. At the same time, the social reality of the European labor market is obviously influenced and regulated by Community law. Within this regulation, the participants in the European market pursue different interests, causing wide-ranging problems including language problems.

The situation in every market is determined by two market forces – supply and demand. Language-specific commodities, knowledge and education can be taken for commercial products and considered a productive asset. Unlike most resources that deplete when used, knowledge and language skills can be shared and actually grow through application. Knowledge and information move to areas where demand is higher and barriers are lower. Their value depends heavily on context. Thus the same knowledge and language skills can have different values for different people, which can change rapidly in a short time (Grin 1999, 2003).

The interplay between supply and demand for goods and services is limited by several factors, one of the most effective of these being the legal norms that are applied by the judiciary. This legal regulation holds true for language use as well. Unlike in the case of e.g. Common Agricultural Policy regulating the market with agricultural commodities, there is no "Common Language Policy" with comparable legally binding norms. It is EU member states that create legally enforceable language policies. Obviously, they have to comply with the Community law.

The European institutions are conscious of the fact that inadequate knowledge of languages can significantly inhibit business activities of both small and middle entrepreneurs (cf. ELAN). For example, the Commission submitted a decision on the adoption of a multiannual program to promote the linguistic diversity of the Community in the information society (the MLIS program) in November 1995. It was argued that industry and all other players must work out adequate solutions to overcome linguistic barriers if they are to benefit from the advantages of the single market and thereby remain competitive in the world. At the same time, the Commission addressed the fact that the private sector involved in international business consists mainly of small and medium-sized enterprises that face considerable difficulties in addressing different markets. These enterprises must be supported, especially when their role as a source of employment

is considered.[1] No matter how much attention is paid to these questions by the European institutions, the European market generates various situations whereby language use reveals itself as the core of problems with consequences beyond the framework of "mere" linguistic analysis.

2 Theoretical background

The analyses of some legal cases exemplifying the language problems and the regulation of the language use in the European Union are based on Language Management Theory. The presentation of the theory draws upon texts written primarily by J. V. Neustupný, B. Jernudd and J. Nekvapil (Jernudd and Neustupný 1987; Neustupný and Nekvapil 2003; Nekvapil 2006; Nekvapil and Nekula 2006: 309–313; Nekvapil 2009: 1–11; Nekvapil and Sherman 2009). These texts present a cohesive theory. The authors' accurate observations and analyses provide useful inferences applied in this article.

The theory enables the incorporation of not only the whole of language, defined in the traditional narrow sense, but of a wide range of more general communicative and socio-economic problems that arise as a result of individual interactions: politeness, intercultural communication, speech therapy, language cultivation and standardization, or literary criticism. It is important to note here that two processes can be differentiated in language use. On the one hand, discourses are produced and interpreted, on the other hand discourses and their interpretations are managed. These metalinguistic activities, the object of which is the production and interpretation of discourses, demonstrate the forms of the behaviour toward language.

Acts of language management can appear both in individual interactions at the micro-level, and in institutions and social networks of various complexity at the macro-level. The former kind of management is called simple management, while the latter is organized management (Jernudd and

1 Discussing this topic, it is interesting to take into account that the adoption of this program became a case that had to be solved by the European Court of Justice. The problem revolved around whether the question of the legal basis of such a program should have been only Article 130 (Industry) of the EC Treaty, or should be considered together with Article 128 (Culture). For more details, see the Case C-42/97 that was decided by the European Court of Justice on February 23, 1999.

Neustupný 1987). Organized management is characterized by the following features (Nekvapil 2009: 6):

- more persons in social networks participate in the management process, institutions (organizations) are involved;
- communication about management takes place;
- management acts are trans-situational;
- the object of management acts is not only language as discourse, but the object can become language as system;
- theory and ideology intervene.

Since these features are present to varying degrees, there is a gradual transition between the two extremes: simple and organized. LMT maintains that, in principle, language problems are identified by interlocutors in discourse, i.e. at the micro-level, and from there they can be transferred to the macro-level (Neustupný and Nekvapil 2003). That is, organized management arises from simple management. In turn, organized management influences simple management. This reflects the natural and realistic integration of macro and micro-approaches to the study of language problems.

Language management acts are conducted in several phases. LMT presumes the existence of norms/expectations for linguistic behaviour, which different participants possess, in different situations. The first stage therefore involves the deviation from a norm/ expectation.[2] The norm is a flexible entity, and, in fact, through the process of language management, we are able to observe the fluctuation of norms over time and space, within a given community.

In the next stage of language management, a deviation from expectation may be noted, and the noted deviation may be evaluated. Subsequently, an adjustment plan may be selected. In the last stage the plan may be implemented. The process of language management may end at any point: a

2 The concept of norm can be conceived of as historically mutable contents of human consciousness with an intersubjective mode of existence based on reflection of social phenomena, the function of the norms being the regulation of language behaviour and expectations. These contents of human consciousness are related to communicative situations of the same type but of undetermined quantity. The norms consist of three parts. The first (the antecedent) is interpreted as the circumstances and conditions under which the second part (the implicate) can, or must, or must not be carried out. If the antecedent is provided, but the language behaviour in the implicate is not carried out, then the third part (sanctions) enters. The function of sanctions is to enforce the language behaviour as it is adequate with the implicate related to the respective antecedent (for more details see the analysis in Dovalil 2006: 20–27).

deviation from an expectation may be noted, but not evaluated; an adjustment plan may be neither selected nor implemented, etc. What language management seeks to investigate is the types of deviations that exist – where, when, and how they are noted and evaluated and the types of adjustment plans that are formed – where, when and how they are implemented. Power, ideologies and social inequalities can underlie all phases of language management. Thus, the implementation of the designed adjustments will typically depend on the more powerful participants (or networks). Whether a phenomenon is to be evaluated negatively (i.e. something has become a real problem that should be solved) or positively will also depend on power or ideology. Finally, ideological points of view may co-decide essentially about which language problems will be noted at all as deviations from (some ideologically-based) expectations.

The four phases of the language management process (noting a deviation from the expectation, evaluation, adjustment design, and implementation) interconnect the micro and macro-level in various ways. As described by Nekvapil (2009: 7), first, ideally, the language problems experienced by ordinary language users are noted by linguistic experts. The problems can be solved and the adjustments designed by institutions (e.g. linguists) are implemented by ordinary language users (micro → macro → micro). Second, the problems experienced by ordinary speakers/writers are noted by experts, who are not able to find an appropriate solution or whose designed adjustments are not accepted by ordinary language users (micro → macro). Third, in institutions, experts design adjustments without considering actual language problems of ordinary users; nevertheless the designs are implemented at the micro-level (macro → micro). Fourth, problems experienced by interlocutors are solved only in ongoing interactions (micro only). Fifth, in institutions, experts hardly note problems experienced by ordinary speakers/writers; linguists pursue science for its own sake and design adjustments without considering their implementations at the micro-level (macro only).

The management of language does not occur in isolation, but it is rather motivated by external socio-economic factors. The theory assumes that solutions to language problems should start with the solutions to the related socio-economic and communicative problems. According to LMT, the right sequence may be socio-economic management → communicative management → linguistic management (Neustupný and Nekvapil 2003). Thus, language management acts that do not take the socio-economic basis into account may fail to reach their goals. In other words, teaching foreign languages to the citizens of the EU (e.g. German in the Czech Republic, Irish in the Netherlands, Dutch in Spain) is conditioned by successful

communicative management, which means that common social networks with the respective language are established. This in turn draws upon successful socio-economic management (for example, providing jobs which could lead to the establishment of Czech-German and many other multilingual networks). Therefore in order to solve communication problems, it is first necessary to deal with them at the socio-economic level.

This order of the management acts suggests that language problems always have a socio-economic basis. This fact is derived from differing interests of the participants reflecting the unequal distribution of power (and vice versa) in the various social networks. These inequalities in the social distribution of power are reflected in the language use.

The acts of language management are encompassed by larger sequences of interaction without any clear beginning and end. In order to be able to describe such situations, LMT integrates *pre-interaction* and *post-interaction* management when potential language problems in future interactions are anticipated (for example looking up words and phrases in a dictionary or looking up norms of standard variety in a grammar, bringing along an interpreter, thinking out appropriate strategies for achieving goals, thinking out avoidance strategies) or when the problems are discussed after an interaction event (Nekvapil and Sherman 2009). Participants can learn lessons from past interactions for use in the next interaction. That is, a post-interaction management act can turn out to be a specific anticipation of a situation to come, i.e. an act of pre-interaction management at the same time.

3 Language problems in legal discourse

The legal discourse of the language problems is described in this section. Herein, the concept of discourse is interpreted as a sum of communicative acts (texts) united by a common topic. The participants in this type of discourse conduct communicative acts to pursue their individual interests. These acts are observable both at the micro-level of individual interlocutors, and at the macro-level of the institutions. As they are interrelated within the social network of the respective agents (both individuals, and organizations) they constitute the whole discourse as social practice (Fairclough [1989] 2001: 18–26).

In legal discourses of language management, the focus of the legal regulation is language behaviour. The legal regulation of the use of language in the regions, member states and in the international organizations represents one type of organized language management. Language problems that are identified at the micro-level in individual interactions by individual interlocutors are delegated to organizations. Experts from these organizations

evaluate the problems and design the most appropriate adjustments. One of those organizations may be the judicial system. The solutions developed at the macro-level by experts are then implemented at the micro-level. New interactions among (the same or different) agents may demonstrate whether the original problem has/not been resolved.

Judicial decisions affect everyday life with its problems: A judgment as a result of the language management process comes into being only if there is something to manage (i.e. if there is a language problem reflected in interactions). Feelings of discrimination are a good example. Obviously, it is a problem if someone applies for a job in the European labor market and the potential employer is not allowed to employ this applicant due to his/her poor knowledge of a (specific) language or for administrative reasons. One can imagine that these cases will be taken to court. However, not all problems are handled in this way. Language discrimination can initiate the process of language management that will end in the phase of negative evaluation. And although discrimination is considered to be a negative phenomenon, it is not always the case that an adjustment is designed to eliminate discrimination. Consequently, there is nothing to implement.

The components of the whole legal discourse can be sketched as follows. Language problems are reflected in various ways:

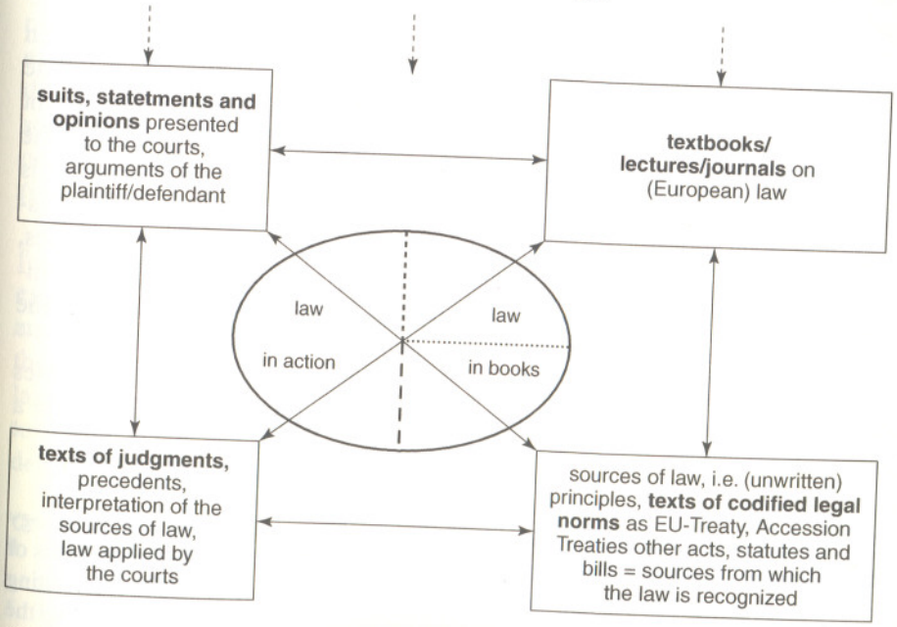

Figure 1. The structure of legal discourse

This legal discourse takes place against the background of the more general discourse(s) of language management/policy (for more details see Studer et al. 2008). These more general discourses contain more than merely legal elements (e.g. the phenomenon of socio-economic power and the ways in which this power is exercised, negotiation of political decisions before they are turned into legally binding norms). Hence, the background showing the plurality of these discourses is taken into consideration. As not all conclusions of political discourses become the sources of law, the social and political background in the model is not overgeneralized.

All texts of the legal discourse refer to one another. The right-left-division of the ellipse is based both on different pragmatic functions of the texts, and on the difference between applied law and non-applied law.[3] This division is an analytical one. Here, applying the law means obtaining one's rights through a set of individual actions (i.e. language use).

The line within the law in books is derived from the specific category of the sources of law. A text can become a source of law only on condition that it is approved by unique authorities (typically by parliaments in the member states, or by the Council and European Parliament in the EU) in a unique procedure, unlike what is accomplished through publication of textbooks or journals. As a result, *its specific form* turns an "ordinary" text into a source of law. This occurs in and through specific discourses and procedures.

Apart from this fact, the model demonstrates the permeability between both types of law. Moreover, the model enables the identification of the agents constituting the social networks in which the language management process takes place. Consequently, the participants' social roles and the power relations among them can be described. Thus, the discourse is shaped by those agents who take on the social roles of participants in a dispute (plaintiff and defendant), judges, other legal experts beside judges, and of the representatives of citizens. The representatives – typically members of parliament – are a part of the political elite who co-creates the legislation.

The following description places emphasis on the position of the judges in the legal discourse because it is a judge who makes a final decision in a concrete dispute. The pragmatic functions of the various texts differ from each other.

3 These concepts are widely used in the theory of law as well as in the sociology of law (Knapp 1995; Ehrlich 1962). Law (in books), as formulated in the texts of the sources of law, should not be confused with the social reality of existing legal norms that regulate and influence the behaviour of people, including the acts of enforcement (law in action).

3.1 The pragmatics of interests and persuasion – law in action I

Law in action is based on the recorded texts of suits, statements, and opinions. These texts are formulated and used by two crucial agents – the plaintiff and the defendant. The plaintiff aims at taking initiative and presenting a problem to court. Therein, the arguments are not formulated in a "neutral" or "objective" way. This interest-based approach also holds for the interpretation of the texts of the sources of law. The substance of the lawsuit sums up the data that are relevant for the plaintiff, whereby this participant in the discourse could win the dispute.

The arguments of the plaintiff and the counterarguments of the defendant must be appropriately detailed if the court is expected to deal with them at all. Thus, crucial elements of the language problems stemming from the interactions are summarized for judicial purposes. As only selected details are necessary for the legal evaluation and decision-making (only those relevant for the final decision, i.e. noting), the judges need not examine the original interactions. The suits and related statements/opinions are the data source providing information about the interactional events at the micro-level. Organized language management depends on the preceding interactions in just this indirect way: Either relatively long sequences of repeated interactions may be summarized and reconstructed[4], or the noting and evaluation are related to unique individual interactions (i.e. tokens).

The texts of suits, opinions, and statements have a strong persuasive function. All these features are characteristic for the defendant, the only exception being the original initiation of the dispute. Both the plaintiff and the defendant have to refer to the sources of law in order to support their respective interests. The suit pre-determines the activity of the court later. If no suit is formulated and presented to the court, there is nothing to decide.[5] The lawsuit ends with a suggestion of the formulation of the desired decision (demand for relief).

4 This methodological problem is acknowledged by the concept of management summaries (Nekvapil 2004).

5 This is reflected in the principle *vigilantibus iura* (i.e. only those *who are vigilant have their rights*).

3.2 The pragmatics of "impartial" evaluation and decision-making – law in action II

The texts of the judgments are primarily derived from suits themselves because the judges are allowed to make decisions that are related only to the suits (noting). The tie between the sources of law and the texts of judgments is very strong. Referring to the sources of law means being capable of interpreting the texts. Admittedly, different participants in the discourse may interpret the sources of law in different ways. However, unlike in the case of the plaintiff/defendant, it is the unique authority and power of the judges as the participants in the discourse that is brought to the forefront (according to the principle *iura novit curia*).[6] Their evaluations and interpretations are the decisive ones.

The pragmatic function of the texts of the judgments is to indicate the (final) decision that must be followed by all participants. The participants expect an "objective" or "impartial" judgment, which differs from the pragmatics of the plaintiff/defendant. In addition, once a suit is presented to the court, the judges must make a decision. The judgments are the most powerful component of the discourse for the implementation at the micro-level. Moreover, the effect of the judgments may go beyond the individual case as they may be used as precedent in future litigation, when the expert discourse among specialists refers to the past decisions that gained support. On the other hand, the applied law may reveal numerous practical problems that have to be solved by new codified legal norms.

Although almost completely pre-determined by the sources of law, the evaluation is the key and the most independent activity of the judges whereas noting is simply derived from the suits. Moreover, it is not the evaluation carried out by the plaintiff/defendant, but the evaluation carried out by the judges that stops the language management process, or that moves this process further along. The adjustment design depends entirely on the sources of law. Implementing the judgment means managing the originally problematic language interaction through this decision. In other words: the organized management affects, and returns to, the micro-level because the judgment is enforceable even against the will of the unsuccessful party in the dispute.

6 This principle means that *the court knows the law*.

3.3 The pragmatics of information and instruction – law in books I

The pragmatics of the lectures, textbooks, and journals consists primarily in informing and instructing. Herein, the agents – authors of these texts – take on the social role of experts. As all judges have studied and continue to study law, their knowledge of law has been shaped by this specialized literature in general (e.g. journals). The same kind of intertextual ties exists between the plaintiff/defendant and the discourse of textbooks and journals. Using the acquired knowledge based on the specialized literature is a universal component of their professional approach. The diagonal tie between the judgments and the textbooks demonstrates the recontextualisation of influential precedents in the textbooks.[7] All phases of language management but implementation may be included.

3.4 The pragmatics of the pre-formulated adjustment designs – law in books II

The pragmatic function of the sources of law is actually to provide adjustment designs as prepared solutions to language problems. They are the most visible expression of the overt language policy, and they can be conceived of as a specific kind of pre- or post-interaction management at the same time.[8] The authors of these texts are representatives of the citizens. This fact contributes to the legitimacy not only of this unique type of text, but also – through their numerous ties between the law in books and the law in action – indeed to the legitimacy of the whole legal discourse. Legally binding norms as they are formulated in the sources of law are an expression of political power and underlying ideologies. The unique role of political representatives as agents of language management processes is that they are the most powerful

7 It is interesting to find out which cases are discussed in which textbooks written in which languages. Unlike in the literature written in German, the cases (e.g. the Kik case in Streinz 2005 or the Groener and Kik cases in Schübel-Pfister 2004) are not mentioned in the Czech textbooks of Community law (Tichý 2006).

8 It does not mean that the existence of the covert policy is denied. At the same time, it cannot be inferred that the covert policy would be located "outside" the legal discourse automatically. All practices, or language management acts complying with the sources of law, are a part of law in action. Law in action, in turn, separates the legal practices from the illegal ones that – admittedly – may be noted and evaluated in covert language policy.

participants in the processes that create the designing of adjustments at the macro-level. The authors of the texts of the sources of law interconnect the legal discourse with a more general political discourse (and vice versa), the analysis of which would exceed the scope of this article.[9]

4 Law in action – analyses of the cases

The language management process within the discourse of law in action can be presented in the following way: "Secondary" interactional data summarized by the parties in the case and presented to the court as suits, statements and opinions (i.e. noting at the micro-level; the respective party's evaluation, and an adjustment design) is a condition for making judicial decisions (evaluation and adjustment design at the macro-level). They may lead to managed interactions (implementation) back at the micro-level eventually.

In this part, five thematically different cases are selected.[10] Nevertheless, they possess several common features:

1. All cases concern language problems at the European level. Not only did the judges in the member states deal with them, but these judges also needed to address the European Court of Justice to get some advice.
2. The language problems contain, and are based on, the socio-economic components of the motivation of the plaintiffs' actions.
3. The plaintiff is not limited by his/her operation within the member states, but he/she participates in the European market.
4. The plaintiff counts on the necessity of his/her mobility and flexibility in this market, which reflects the free movement of workers, goods, services, and capital.

9 The political representatives may be influenced during their own decision-making in too numerous and varying ways to analyze in this article. Also many more agents take part in the general political discourse on language policy (e.g. people in political parties, executive bodies as governments), of course. Unlike the policy-makers from the legislative bodies, the acts of the policy-makers from the executive bodies depend on, and have to comply with, the legislation. In other words, for instance the acts of the members of governments must not exceed the competences predetermined by the members of parliament. This corresponds with a part of the complex checks and balances between the legislative and executive power.

10 The analyses reflect only the Community law as it was valid during the period of the respective case. Amendments are referred to only in connection with the cases of the labelling of foodstuffs (e.g. the Goerres and Piageme cases).

5. The economically motivated effort of the plaintiffs to assert themselves in the market is limited by the legal norms of the member states and is related to the language use within the member states, which generates the need to evaluate the compliance of these legal norms with the Community law. In some cases, this problem has to do with the protection of minority languages.

Language Management Theory facilitates the unification of sociolinguistic analysis in that it is able to connect the micro and macro-level of the actions conducted by the agents. Moreover, it is possible to identify the point at which both levels meet (especially in courts). What comes during the evaluation is the most important moment for the transference of language management acts from the micro to the macro-level in dealing with the language problem.[11] The management process goes on if the judges as decisive agents agree with the plaintiff that an issue analyzed has to be evaluated in another way than merely positively.

The total number of all language-related cases that have been decided by the European Court of Justice (ECJ) so far is too complicated to reconstruct. The data on which these analyses are based comes from the database EUR-Lex (http://eur-lex.europa.eu).

Two of the cases (Groener and Angonese) show a language problem originating from labor law. Another two cases (Goerres and Piageme) concern language use in the labelling of foodstuffs offered in the European market and the question of a *language easily understood by purchasers*. The last case (Kik) demonstrates an attempt of an EU-citizen to call into question a valid language regulation in a European institution. The summaries of the cases can be found in the Appendix.

4.1 Groener and Angonese Cases

The plaintiffs, Groener and Angonese, wanted to get a job. Both of them felt discriminated against for administrative reasons. In the Groener case, the reason consisted in the fact that Irish knowledge was required from a Dutch citizen (Anita Groener) who was going to teach full time in Ireland

11 This, however, does not mean that language problems cannot be noted by judges. As described above, the social role of a judge participating in such a problem as a plaintiff/defendant would be obviously different. Or admittedly, a judge may note a language problem as a judge, but will not act according to the social role, which will stop the language management.

at a public college in Dublin with English as the language of instruction, following experience teaching there part-time. At the micro-level, it turned out that the central problem of this case consisted in the use of the Irish or the English language: Mrs. Groener expected she could continue teaching her classes in English. A very apparent deviation from these expectations arose when she found out that it would not be possible. She noted and evaluated it negatively, as she addressed the Minister of Education. According to the expectation of this institution, she was supposed to be able to speak Irish. After Mrs. Groener had not succeeded in passing a required exam in some Irish, the courts were involved. She brought the language management process to the macro-level once more. In this phase, the language problem was evaluated by an Irish court first. It turned out that the evaluation conducted by the Irish court might not be clear enough, which caused this court to delegate the evaluation to the European Court of Justice as a reference for a preliminary ruling. An adjustment for further procedures was designed. This management act was derived from, and pre-determined by, the sources of law. It was stated that "a permanent full-time post of lecturer in public vocational education institutions is a post of such a nature as to justify the requirement of linguistic knowledge [...] provided that the linguistic requirement in question is imposed as part of a policy for the promotion of the national language which is, at the same time, the first official language [...]". This adjustment design was the last phase of language management at the European level.

In the Angonese case, an Italian citizen from the province of Bolzano speaking German as his mother tongue wanted to get a job in a bank. However, he did not possess a language certificate issued by the right authority of this province. This case provides a similar type of noting and negative evaluation as seen with the job-seeker on the micro-level in the first case. Unlike the Groener case, however, the substance of this case was more an issue of administrative procedure because what mattered was the authority issuing a language certificate, not the knowledge of the language. Unable to evaluate the problem in an unambiguous way, the Italian court also addressed the European Court of Justice. The management process continued through designing an adjustment by this Court. It decided that the Community law "precludes an employer from requiring persons applying to take part in a recruitment competition to provide evidence of their linguistic knowledge exclusively by means of one particular diploma issued only in one particular province of a Member State". Thus, the minority language (German in South Tirol) was protected from administrative formalities (implementation).

4.2 Goerres and Piageme cases

The common feature of the Goerres and Piageme cases consists in the choice of the appropriate language(s) for the labelling of foodstuffs. Mr. Goerres offered products for sale in his shop in Germany that were not labelled in German. He noted and evaluated negatively that an authority fined him for infringing upon the German law according to which the labels in German were required. The same problem was addressed in the Piagme case for the language used for labelling French and German mineral waters sold in Belgium. The Belgian law imposed an obligation to use the dominant language of the region in which the product was placed on the market (Dutch). According to the original Council Directive (valid at the time of the case), the foods were supposed to be labelled in a language easily understood by the ultimate consumer, which meant that no specific language was allowed to be pre-determined for the labels. The evaluation of the ECJ differed from German and Belgian administrative bodies. The ECJ did not agree to their restrictive interpretation of "a language easily understood by the ultimate consumer".

In the Goerres case it was decided that the European law did not preclude "national legislation which, as regards language requirements, prescribes the use of a specific language for the labelling of foodstuffs but which also permits, as an alternative, the use of another language easily understood by purchasers. All the compulsory particulars specified [...] must appear on the labelling either in a language easily understood by consumers of the country or the region in question, or by means of other measures such as designs, symbols or pictograms".

In the Piageme case it was decided that the European law precluded "a Member State, with regard to the use of a language easily understood by purchasers, from requiring the use of a language which is that most widely spoken in the area in which the product is offered for sale, even if the use at the same time of another language is not excluded. [...] The ease with which this information supplied can be understood must be assessed in the light of all the circumstances in each individual case".[12]

12 These two language problems were not the only ones related to the labelling of foodstuffs that had to be presented to the ECJ. As these issues continued (e.g. in France) the European Council decided to approve a new Directive 2000/13 EC that replaced the original one from the late 1970s. However, new cases appeared. For example in 2002, the European Commission formally asked France to bring its national law on the use of languages for labelling foodstuffs into

4.3 Kik case

In the Kik case, the plaintiff attacked the language regulation of the European Office for Harmonization in the Internal Market (Trade Marks and Designs). The language problem was in this case noted when the plaintiff Christina Kik found out that she would not be allowed to use Dutch in all parts of the administrative proceedings where she would have preferred. She claimed that the limited number of official languages used in this Office according to Art. 115 of the Council Regulation 40/94, was discriminatory (English, German, French, Spanish, Italian). Her negative evaluation, supported by Greece, drew upon the argument that as languages should be equal, it is unlawful to determine which of all EU official languages are admitted as official languages in administrative proceedings of the Office.

However neither the Court of First Instance, nor the European Court of Justice shared this negative evaluation with her at the macro-level. They argued that the equality of languages was not a fundamental principle because it could not be derived from the EC-Treaty. Both courts followed the preformulated adjustment designs of the language regulation of the Office that determines which languages are to be used in which concrete proceedings. The European Court of Justice confirmed the validity of the language regulation of the Office and dismissed the lawsuit. The evaluation of the ECJ complied with the argumentation shared by the Council and Spain. The ECJ acknowledged that the solution to the expected language problems as was formulated by the Council in Article 115 (i.e. the adjustment design with five official languages) had to be evaluated positively and was more sophisticated than the original proposal of 1980 (one language). In this case, the language management ended with Ch. Kik's negative evaluation. Her adjustment design, which would have meant a change in Article 115, could not be implemented.

line with the European law. As it stood, French law provided that any particulars on the label of foodstuffs imported into France had to be written in French. The Commission referred to the case law of the Court of Justice and repeated that, e.g. the Directive 2000/13 EC "would allow a carton of chicken wings sold in a fast food restaurant in France to refer to the product concerned in a language other than French, such as the term "chicken wings", if the carton carried a photo clearly depicting its contents" (Commission Press Release (IP/02/1155), July 25, 2002). Thus, efforts of the European institutions to support the organized language management at the macro-level are being made.

5 Conclusions

Community law, on the one hand, partially constrains national language policy and language law, but on the other hand, the active creation and implementation of language policy goes beyond the competence of the European Union. The European Union is not allowed to impose its own language policy on the member states without their agreement. Only the member states are authorized to implement their own language policy, whereas the European institutions determine where the implementation has to stop. The decisions of the ECJ show the concrete limits of the interplay of the member states' language policy and the EU in individual situations. Thus, the cases analyzed prove the phenomenon of negative integration (Manz 2003).

Noting and negative evaluation of the same language problems conducted by individuals may become relevant both for policy-makers in the member states (members of parliaments with legislative power), and for those in the EU institutions (the Council with its legislative power). Their common negative evaluation of problematic issues makes them formulate the texts of the sources of law, in order to avoid more complicated situations (pre- or post-interaction management). This legislation results from the first type of language issues in which the organized management acts originate at the micro-level and reach the macro-level. A part of the law in books is created in this phase. In other words, at least a contingent of the political decision-makers shares the problems with ordinary language users who had noted and negatively evaluated the problems. Nevertheless, the adjustments designed by the respective legislative bodies (e.g. the texts of the language law of the member states and the texts of the regulations of the Council, as mentioned in the individual cases) may differ from one another.

If individual disputes of language users are presented to, and decided by, the ECJ, then the adjustment designs begin to be implemented. The macro-level is split into two parts – one step of implementation can be recognized in the acts of the courts (or other executive bodies) within the member states, the other in the acts of the ECJ (including the Court of First Instance), eventually. Such language management acts demonstrate another type of event in which the transference of the acts from the micro to the macro-level occurs. Unlike in the "legislative" example above, in which the language management resulted in an adjustment designed by the legislative bodies at the macro-level, the acts in this example result in the implementation at the micro-level. Or, if not implemented immediately, then at least a more concrete adjustment is designed by the ECJ that will be

adopted by a court in the member state.[13] The ECJ's decisions have to be followed in the further phases of the proceedings in the member state. These decisions (including their implementation) result from the second type of language issues in which organized management acts originating at the micro-level reached the macro-level and returned to the micro-level. This exemplifies law in action.

Apart from these theoretical and analytical conclusions, some other effects of the language policy in the European market can be found. The decision of the Groener case aimed to support Irish, which was the most apparent objective of the Irish language policy. However, the effect of the judgment could also be interpreted in terms of the protection of the Irish labor market. It is not known if A. Groener's low command of Irish made her continue learning this language in order to pass the required exam, or if she found another job (in Ireland or elsewhere). The principle of free movement of workers did not predominate over the competence of one member state to enforce its language policy: A. Groener's negative evaluation was not shared by the ECJ, which stopped *her* intended language management. This also held for Ch. Kik's negative evaluation of the existing adjustment design of the Office for Harmonization. Her own adjustment design, supported by Greece, was dismissed. Like the Groener case, the organized management also ended at the macro-level and was stopped in the negative evaluation phase. In the Kik case, the language policy within the European institution (Office for Harmonization) was confirmed and defended by another European institution (ECJ). However, the decisions of the ECJ in all other cases demonstrate the negative evaluation shared by the language users and by this institution. The free movement of workers and goods as fundamental principles of integration predominated over the restrictions created by the member states.

Language Management Theory shows how the differing evaluations of the parties in the disputes, i.e. the very cause of having the courts decide the cases, can be integrated into the dynamics of human behaviour towards language in a transparent way. Generally speaking, evaluation is reflected in many different studies on language policy but the position of the evaluation in the discourse appears somewhat undefined. (cf. individual examples in Cooper 1989; Grin 2003; Manz 2003; Liddicoat and Baldauf 2008). However, the position of evaluation can become more transparent in this

13 This is typically the case when preliminary questions that address the European Court of Justice are raised by the courts in the member states.

analysis because evaluation is a theoretically grounded phase representing a crucial point in which language management acts meet – both in terms of the micro-macro-connection, and in terms of what precedes it (i.e. noting) and what can follow (adjustment design).

The adjustments designed for the respective cases make further conclusions possible. Some of them support language diversity (the Groener and Angonese cases), some others not necessarily (the Goerres, Piageme, and Kik cases). Thus, as demonstrated in the Groener case, the judgment was going to impose on the language user an additional language (Irish), whereas in the Kik case, the limited number of official languages as designed in the source of law was confirmed. The differences can be derived from the previous phases of language management. The original expectation in the Groener case was that fewer languages would be allowed to be used (only English). The deviation from this expectation consisted in the necessity to add one more language (Irish), which was repeated in the adjustment design eventually. However, the original expectation in the Kik case was that more languages would be allowed to be used for her purposes, and the deviation from this expectation consisted in the necessity not to increase the number of languages.

In addition, the analysis of the cases shows that the implementation consists in various activities. On the one hand, the language users were supposed to act, e.g. to learn a foreign language (the Groener case). On the other hand, the language users were supposed not to act, e.g. not to abide by a rule being an administrative obstacle, or not to increase the number of languages used in specific domains (the Angonese, Goerres, Piageme, and Kik cases).

The socio-economic basis of language management explains why the implementation in the Groener case failed. A. Groener used English in her social network at the Irish College of Marketing and Design, and she supported herself financially from this job. Although she did not require Irish in her everyday working life, the Irish certificate was imposed on her by the Irish Ministry of Education. However, it did not to pay off to learn Irish in her case. The attempt of Ireland to spread Irish in this way turned out to be an administrative impediment for Groener's mobility in one sector of the Irish labor market (permanent jobs at public colleges). The market demand for Irish, however, remained low.

Appendix

Summaries of the analyzed cases:

The Groener Case: Groener/Minister for Education and the City of Dublin Vocational Education Committee (C-379/87)

In July 1984, Mrs. Anita Groener, a citizen of the Netherlands, applied for a permanent full-time post as a lecturer in an English program in art at the College of Marketing and Design in Dublin, which falls under the authority of the City of Dublin Vocational Educational Committee. The Minister gave his approval on condition the applicant passed the special oral examination. The oral test took place on 28 May 1985 and the applicant failed. The College, her employer, sought authorization to employ her for the academic year 1985-86 as a full-time lecturer under a temporary contract. This was refused by the Department of Education on the grounds that she had failed the oral test. Finally, Mrs. Groener wrote directly to the Minister to ask for the waiver of the obligation to prove her knowledge of the Irish language. By letter of 27 September 1985, the Minister replied that the condition could not be waived under the terms of Circular Letter 28/79 since other fully qualified persons had applied for the post in question.

After having informed the Commission of the European Communities and the European Parliament by means of a petition to its President, Mrs. Groener commenced proceedings for judicial review before the High Court, Dublin, against the Minister and the City of Dublin Vocational Educational Committee. During those proceedings she maintained that the conditions imposed by the Minister in Circular Letter 28/79 and Memorandum V7 were contrary to Community law and in particular to Article 48 of the EEC Treaty and Regulation (EEC) No 1612/68.

Article 8 of the Constitution of Ireland codifies the status of the Irish language as the national language and the first official language of Ireland. English is recognized as a second official language. Article 23 of the Vocational Education Act (1930), as amended, provides that the numbers, qualifications, remuneration and appointment of all officers of each vocational educational committee must be approved by the Minister of Education. According to the Circular Letter 28/79 of the Ministry all candidates for permanent full-time posts as senior lecturer, lecturer or assistant lecturer in vocational education institutions had either to hold a certificate of knowledge of the Irish language or to take a special oral exam in the Irish language ('An Ceard-Teastas Gaeilige'). The examination had to be taken before the candidate could be appointed to the vacant post. If the candidate

failed the examination, the institution was not allowed to appoint that person to a full-time or part-time permanent post. However, it was possible for it to appoint the candidate to a temporary post for the remainder of the academic year if it was not possible to fill the post in accordance with principles set out in the Circular Letter 28/79. Furthermore, the Minister confirmed a provision of an earlier memorandum, V7, whereby a derogation from the obligation to establish the required competence in the Irish language might be granted to a citizen of a country other than Ireland (or to a candidate born and educated in Northern Ireland) who possessed all the other necessary qualifications if there was no fully qualified candidate.

The High Court in Dublin referred three preliminary questions to the European Court of Justice, the most important of them being: Is the term 'public policy' in Article 48(3) of the EEC Treaty to be construed as applying to the policy of the Irish State to support and foster the position of the Irish language as the first official language? And closely related to this: If so, is the requirement that persons seeking appointment to posts as lecturer in vocational educational institutions in Ireland, who do not possess 'An Ceard-Teastas Gaeilige' (i.e. the special oral examination as mentioned above), shall undergo a special examination in Irish with the intent of satisfying the Department of Education's requirement of their competency in Irish, a limitation justified on the grounds of such policy?

The European Court of Justice decided on 28 November 1989: A permanent full-time post of lecturer in public vocational education institutions is a post of such a nature as to justify the requirement of linguistic knowledge, within the meaning of the last subparagraph of Article 3(1) of Regulation No 1612/68 of the Council, provided that the linguistic requirement in question is imposed as part of a policy for the promotion of the national language which is, at the same time, the first official language and provided that that requirement is applied in a proportionate and non-discriminatory manner.

The Angonese Case: Roman Angonese v Cassa di Risparmio di Bolzano SpA (C-281/98)

Mr. Angonese, an Italian citizen whose mother tongue is German and who was residing in the province of Bolzano, studied in Austria between 1993 and 1997. In August 1997, he applied to take part in a competition for a post with a private bank in Bolzano, the Cassa di Risparmio. One of the conditions for consideration for the competitive position was possession

of a type-B certificate of bilingualism (in Italian and German), which was to be required in the province of Bolzano for access to managerial careers in public service. The certificate is issued by the public authorities of the province of Bolzano after an examination which is held only in that province. It is usual for residents of the province of Bolzano to obtain the certificate as a matter of course for employment purposes. Obtaining the certificate is considered an almost compulsory step as part of normal training. The national court found, although Mr. Angonese did not possess the certificate, he was in fact perfectly bilingual. He submitted a certificate showing completion of his studies as a draftsman and certificates attesting to his studies of languages (English, Slovene and Polish) at the Faculty of Philosophy at Vienna University. He also stated that his professional experience included practising as a draftsman and translating from Polish into Italian. On 4 September 1997, the Cassa de Risparmio informed Mr. Angonese that he could not be considered for the position because he had not presented the certificate. (The requirement for the certificate imposed by the Cassa de Risparmio was founded on Article 19 of the National Collective Agreement for Savings Banks of 19 December 1994, which is the Collective Agreement).

Mr. Angonese complained that the requirement to have and present the certificate was unlawful and contrary to the principle of freedom of movement for workers laid down in the EC Treaty (Art. 48, after amendment Art. 39).

The European Court of Justice decided on 6 June 2000: Article 48 of the EC Treaty (now, after amendment, Article 39 EC) precludes an employer from requiring persons applying to take part in a recruitment competition to provide evidence of their linguistic knowledge exclusively by means of one particular diploma issued only in one particular province of a Member State.

That requirement puts the citizens of the other Member States at a disadvantage, because persons from other provinces have little chance of acquiring the certificate of bilingualism, and it will be difficult, or even impossible, for them to gain access to the employment in question. The requirement is not justified by any objective factors that would be unrelated to the nationality of the persons concerned nor in proportion to the aim legitimately pursued. In that regard, even though requiring an applicant for a post to have a certain level of linguistic knowledge may be legitimate and possession of a diploma such as the certificate may constitute a criterion for assessing that knowledge, the fact that it is impossible to submit proof of the required linguistic knowledge by any other means, in particular by equivalent qualifications obtained in other Member States, must be considered disproportionate in relation to the intended aim of the requirement. Therefore, the requirement constitutes discrimination on grounds of nationality contrary to Article 48 of the Treaty.

The Goerres Case: Administrative penalty proceedings against Hermann Josef Goerres (C-385/96)

This case demonstrates the difficulties in labelling of products (foodstuffs) launched on the Single Market. Specific products, such as pharmaceuticals are not covered in this case.

Mr. Goerres ran a food market in Eschweiler, near Aachen. On 13 January 1995, he offered products for sale in his shop that were not labelled in German but only in French, Italian or English.

On 6 July 1995, the Oberkreisdirektor imposed an administrative penalty of DM 2 000 on Mr. Goerres for infringement of Paragraph 3(3) of the Regulation on the designation of foodstuffs, i.e. some particulars have to appear on the packaging in German: the trade name, the manufacturer's name and address, the list of ingredients, sell-by date. All these must be in a clearly visible place.

Mr. Goerres lodged an objection to the penalty notice before the court in Aachen. He argued that the use of a particular language could not be imposed; that, under Article 14 of Directive 79/112/EEC, the decisive factor was the intelligibility of the labelling; and that, in the case of products which were well known to the public, the use of labelling in a foreign language did not adversely affect the consumer's interest in receiving information. He further stated that he had placed in his shop, adjacent to the products in question, supplementary signs giving the required information in German.

The European Court of Justice decided on 14 July 1998: Article 14 of Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer does not preclude national legislation which, with regard to language requirements, prescribes the use of a specific language for the labelling of foodstuffs but which also permits, as an alternative, the use of another language easily understood by purchasers.

All the compulsory particulars specified in Directive 79/112 must appear on the labelling either in a language easily understood by consumers of the country or the region in question, or by means of other measures such as

designs, symbols or pictograms. Placing a supplementary sign in a shop adjacent to the product in question is not sufficient to ensure that the eventual consumer is informed and protected.

The Piageme Case: Piageme and Others v Peeters NV (C-85/94)

This case is very similar to the previous one. Herein, the plaintiffs (a group of companies called Piageme and others) imported and distributed various French and German mineral waters in Belgium. They considered that the defendant selling the mineral waters in the Flemish-speaking region infringed upon Belgian legislation because the bottles offered for sale were labelled either in French or German, whereas in that region, according to the Belgian Royal Decree of 13 November 1986, the labelling was supposed to be in Dutch. Article 11 of this decree provided that the labelling had to appear at least in the language or languages of the region where the foodstuffs were offered for sale. However, Article 14 of the Directive 79/112/EEC provided that Member States refrain from laying down requirements more detailed than those already contained in its Articles 3 to 11 concerning the manner in which the particulars provided for in Article 3 and Article 4(2) were to be shown. The Member States were only to ensure that the sale of foodstuffs within their own territories was prohibited if the particulars provided for in Article 3 and Article 4(2) did not appear in a language easily understood by purchasers, unless other measures had been taken to ensure that the purchaser was informed. This provision was not meant to prevent such particulars from being indicated in various languages.

As the Court ruled, the expression a language easily understood used in Article 14 of the Directive was not equivalent to the official language of the Member State or the language of the region. The aim of Article 14 is to ensure that the consumer is given easy access to the compulsory particulars specified in the Directive. The consumer should be provided with information rather than imposed the use of a specific language. (By the way, this circumstance makes the Directive 79/112/EEC different from the Directive 92/27EEC according to which official language or languages of a Member State must be used when medicinal products are placed on the market).

The European Court of Justice decided on 12 October 1995: Article 14 of Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer precludes a

Member State, with regard to the use of a language easily understood by purchasers, from requiring the use of a language which is most widely spoken in the area in which the product is offered for sale, even if simultaneously the use of another language is not excluded.

The Kik Case: Christina Kik against the Office for Harmonisation in the Internal Market (C-361/01 P)

This case was an appeal against a judgment of the Court of First Instance dismissing an action brought by Christina Kik against the Office for Harmonization in the Internal Market (Trademarks and Designs) in which she essentially sought to bring into question the rules governing the use of languages at this Office.

Article 115 of Council Regulation 40/94 determines that the application for a Community trademark should be filed in one of the official languages of the EC. The languages of the Office shall be English, French, German, Italian and Spanish. Apart from that, the applicant must indicate a second language, which should be a language of the Office, the use of which he or she accepts as a possible language of proceedings for the opposition, revocation or invalidity proceedings. If the application is filed in a language which is not one of the languages of the Office, the Office shall arrange to have the application translated into the language indicated by the applicant.

On May 15, 1996, the applicant Christina Kik, a lawyer and trademark agent in the Netherlands submitted an application for an EC trade mark to the Office. The trademark requested to be registered was the word "Kik". In her application, which was written in Dutch, she indicated Dutch as the second language. In a decision from March 20, 1998, the Office dismissed the application on the grounds that the requirement concerning the second language (English, French, German, Italian or Spanish) was not satisfied. The applicant appealed this decision because she considered it unlawful as it was based on unlawful legislation. The Board of Appeal of the Office dismissed the appeal in a decision from March 19, 1999 (hereby referred to as the 'contested decision').

The applicant appealed to the Court of First Instance seeking annulment or revision of the contested decision on the ground that the Office had infringed upon the principle of non-discrimination in Article 12 of the EC-Treaty because it favors certain official languages and hence certain citizens of the EU. Kik argued that the language regime did not comply with the fundamental principle of equality of languages. Referring to Article 12 of

EC-Treaty, she pointed out that no discrimination could be justified on the grounds of practical convenience, and that even if the language regime could be justified in this way, it would not be proportionate. The applicant was supported by Greece, the Office by the Council and Spain.

The Court of First Instance rejected the argument of the applicant and dismissed the action. So did the European Court of Justice when Kik appealed. In its judgment from September 9, 2003, the ECJ confirmed the arguments of the First Instance that Article 115 of Council Regulation 40/94 was not discriminatory. Both courts agreed that the regulation of language use was adopted for the legitimate purposes of reaching a solution to language problems in cases where opposition, revocation or invalidity proceedings between parties who do not have the same language preference and the participants cannot agree amongst themselves on the language of proceedings. Thus, the Council was pursuing the legitimate aim of seeking an appropriate solution to these language problems when it determined the official languages of the Community which may be used as languages of proceedings in opposition, revocation and invalidity proceedings. Similarly, even if the Council treated the official languages of the Community differently, its choice to limit the languages to those which are most widely known in the European Community is appropriate and proportionate. No principle that all official languages of the Community must be treated equally in all circumstances may be inferred from the EC-Treaty.

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Chapter 13
Language use in multinational companies in Europe: A theoretical and methodological reframing

Tamah Sherman, Oliver Engelhardt and Jiří Nekvapil

1 Introduction

Europe's economy is changing, and with it the nature of enterprises, jobs, skills, and most of all, strategies for solving problems. The industrial age has long since passed, and the direction of the current shift is toward that of the knowledge-based economy. This economy is defined as "one that encourages its organisations and people to acquire, create, disseminate and use (codified and tacit) knowledge more effectively for greater economic and social development" (Dahlman and Andersson 2000: 32). On the job market of the knowledge-based economy, there is an emphasis on dynamism as opposed to specific skills, processes as opposed to products, and knowledge is understood as something which is continually developed.

This article explores one sector of this new type of economy, that is, the functioning of multinational companies. It is the nature of multinationals that they involve a range of people speaking different languages. This is a further step in the expansion of the study of the knowledge-based economy, moving from areas such as information and communication technology to include knowledge of various languages. Languages, particularly those used as a lingua franca, such as English, interact with state labor markets and create diglossic relationships between various international, national and regional languages. Labor markets no longer operate merely on a national level, but rather, due to globalization and the continual development of the free-market system, there are international corporations which are based at least in part on the mobility of people, hence they draw upon the European Single Labor Market, which, in theory, allows citizens of the EU to work in other EU countries without the necessity of