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Language management theory as a basis for the dynamic concept of EU language law

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Language law is a tool used to manage problems of linguistic diversity in the EU. The paper analyzes the processes in which language law is found in the discursive practice of agents addressing the Court of Justice of the European Union with their language problems. The theoretical–methodological basis for the research is Language Management Theory, in which language management is defined as behavior toward language [Nekvapil, J., & Sherman, T. (Eds.). (2009a). *Language management in contact situations: Perspectives from three continents*. Frankfurt/Main: Peter Lang]. This theory systematically considers the power relations among the participants as well as the interconnection of the macro- and micro-levels of language use, and the necessary integration of law in books and law in action [Dovalil, V. (2012). Language as an impediment to mobility in Europe. In P. Studer & I. Werlen (Eds.), *Linguistic diversity in Europe* (pp. 259–286). Berlin: Mouton de Gruyter]. Drawing upon this conceptual and theoretical basis, the following research questions are posed: (1) In which domains have language problems arisen recently? (2) To what extent is it possible to argue that this case law strengthens the equality of languages in the EU?

Keywords: language law; language management; law in books; law in action; case law

Introduction

Multilingual practices in the EU entail numerous language problems of various types. The ways in which these problems are treated and solved represent frequent cases of language management. The participants in such disputes consider the seriousness of these conflicts individually and unequally relevant, which makes them look for diverse strategies of solutions. Some of the disputes achieve such a degree of social relevance that their participants address public institutions to solve them. One of the most powerful agents participating in the management processes are courts in the member states and the Court of Justice of the EU (hereafter CJEU), which are believed to make impartial and legitimate decisions about language disputes of the natural as well as artificial persons (private corporations and public institutions). Although the agents try to enforce their own interests, they are not allowed to act entirely freely. What restricts their activities are legally pre-defined patterns of behavior. These can be classified according to various ethnographic criteria reflecting the diversity of the contexts in which such multilingual practices are managed. Bringing the disputes to courts means making the management processes more unified, however.

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The discursive acts of these agents involved in the disputes are characterized by their metalinguistic nature. An appropriate theoretical framework through which such agents' behavior toward language can be analyzed is found in Language Management Theory (hereafter LMT). The paper starts with a conceptual discussion of the crucial notions. They are interpreted primarily from the perspective of jurisprudence, which provides us with a useful complement to the existing sociolinguistic and political debates (Kibbee, 1998; Kontra, Phillipson, Skutnabb-Kangas, & Várady, 1999; Kymlicka & Patten, 2003; May, 2005; Wee, 2011; Pertot, Priestley, & Williams, 2009). This approach enables us to put the notions on a more systematic and unified basis, which should reduce the social complexity of the language disputes to its legally relevant substances. This, in turn, aims to interconnect the discourses of jurisprudence and sociolinguistics and to accentuate their interdisciplinary character. The conceptual part is followed by an overview of the theory clarifying the dynamic nature of the processes in which agents find solutions to the disputes. The data analysis is based on selected cases decided by the CJEU accessible in the database EUR-Lex (<http://eur-lex.europa.eu>).

Language law and language rights: definition of the notions and the classification of the subject

All law is related to the regulation of human behavior. Language law regulates the segment of this behavior that consists in language use. From the objective legal perspective, language law is conceived of as a set of valid legal norms regulating language use in various communicative domains (Knapp, 1995, p. 193; Turi, 1994, p. 113). In the system of the European continental law, this language law represents a branch of the public law (typically the constitutional, administrative, or penal law), within which legal persons are not allowed to negotiate the contents of their mutually interconnected legal duties and rights by themselves. These rights and duties are laid down by states or their administrative units (or by international organizations). It is unthinkable, for example, for a company to determine that Arabic or Russian would become official and working languages of the European institutions. This feature emphasizes the difference from the private law in which the legal persons, on the contrary, are allowed to negotiate their rights and obligations abiding by the objective law. Thus, private corporations are obviously allowed to negotiate the languages to be used in their communication as a part of a business contract.

From the subjective legal perspective, language rights are defined as entitlements of legal persons to use individual languages (Knapp, 1995, p. 193; Turi, 1994, p. 113). They are enshrined by legally binding norms in the objective law. These entitlements of a person (beneficiary) are interrelated with, and correspond to, another person's duties (obligor). This conception fits within the ambit of linguistic human rights of linguistic minorities (Grin, 2003; Neumann, 2009; Shuibhne, 2002; Skutnabb-Kangas & Phillipson, 1994). They refer to the right to use a language in such domains as education, public administration, justice, media, etc. Thus, the rights of persons belonging to language minorities (beneficiaries) correspond to the duties of employees of the public institutions (obligors) to use the minority languages in both written and oral interactions.

These first remarks indicate further conceptual features that should be analyzed more systematically. The primary subject-matter of the interrelated rights and duties is created by four forms of behavior. These are derived from Roman law and can be expressed by the following verbs: *dare* – *facere* – *omittere* – *pati*. Accordingly, the subject-matter of a beneficiary's right may consist in an obligor's duty to give a thing to the beneficiary (*dare*), or to act in favor of this beneficiary (*facere*). The third kind of a beneficiary's

right corresponds to an obligor's duty to omit an activity toward the beneficiary (*omittere*). The subject-matter of the last right consists in an obligor's duty to put up with the beneficiary's activity and to tolerate it (*pati*).

Another criterion taken from the general theory of law consists in differentiating the secondary subject-matter of the rights (Knapp, 1995, p. 203). The rights can relate to things as material possessions, animals, to other persons' rights and to the results of intellectual activities as intangible assets. Gerloch (2007, pp. 176–177) adds values of human personality (life, health, dignity, freedom, honor) and transplants more specifically. Languages are not listed among such subject-matters.

Regarding the nature of the rights and the characteristics of the group of obligors towards whom the rights are applicable, absolute and relative rights are distinguished (Knapp, 1995, pp. 195–196). Absolute rights are applicable *erga omnes* and their contents consist in *pati* or *omittere* of obligors. Acting in terms of *pati* means tolerating somebody else's behavior (by doing nothing). Acting in terms of *omittere* means omitting one's own activity against somebody else's behavior. The effect of these kinds of behavior is that no interaction between beneficiaries and obligors takes place. If a beneficiary wants to speak or to write, for example, Arabic in a private interaction in a tram in France or Vietnamese in the Czech Republic all bystanders (the obligors) not only have to tolerate it, but also have to omit such activities which would impede the speakers in using the languages (for more details concerning the freedom of language as part of fundamental rights see Arzoz, 2009, pp. 566–569 and Arzoz, 2010, pp. 105–107).

Although these two kinds of behavior are not entirely identical, they are sometimes simplified and put together as non-acting (i.e. *non facere*) of the obligors. However, the difference between *omittere* and *pati* helps to clarify the substance of what Kloss (1971, pp. 259–261) designated tolerance-oriented rights, according to which the obligors are not allowed to encroach on the language use of beneficiaries (see also Arzoz, 2009, p. 545). The states (or international organizations) have to intervene only if such activities are not omitted. These duties of obligors correspond to the fundamental human rights as absolute public rights. If people make use of them, the states and other persons have to act in terms of *omittere* or *pati* (Boguszak, Čapek, & Gerloch, 2004, p. 235). However, Skutnabb-Kangas (2012, pp. 91–93) gives evidence of Kurds, for instance, who were not allowed to use Kurdish freely in society, including schools.

Unlike the absolute rights, the relative rights are applicable only to exactly defined obligors (*inter partes*) whose duties consist in active behavior (*facere*) in favor of the beneficiaries. Such relative rights are categorized not as fundamental, but as social rights (Boguszak, Čapek, & Gerloch, 2004, p. 235). Related to Kloss (1971) once more, *facere* as a kind of behavior encompasses various forms of active promotion (promotion-oriented rights). To differentiate some more subtle nuances within *facere*, Patten and Kymlicka (2003, pp. 27–29) refer to distinguishing between the norm-and-accommodation regime and the official-language-rights regime. In the former regime, *facere* means, for instance, having to provide persons charged with a crime with an interpreter in order not to encroach on their rights to defend themselves in a chosen language. In the latter regime, *facere* means turning the language of the person charged with a crime into the official language.

The difference between the absolute and relative rights is relevant for the systematization of linguistic human rights. Should they be taken for fundamental human rights, then the scope of duties of the obligors could not be expected to reach too far. To avoid potential misunderstandings, the extent of the duties of obligors could be larger only if the rights were interpreted not as fundamental, but as social ones. Only in this case the obligors would have to act in favor of the beneficiaries, which would correspond to *facere* as the

substance of their duties. This differentiation is particularly relevant for current discussions on migrants' linguistic rights (for more details related to new minority rights of migrant workers within language rights see Arzoz, 2010, pp. 112–115).

Hence, Patten and Kymlicka's (2003, p. 35) skepticism 'that the only sorts of language rights that can be defined in this universal way are minimal rights, primarily tolerance rights plus a few very modest promotion or accommodation rights' can be confirmed by the theory of law very well. Arzoz (2009, p. 542) argues 'that only the rights to learn and to use one's mother tongue and to learn at least one of the official languages in one's country of residence can qualify as inalienable, fundamental linguistic human rights'. The nature of language rights as relative social public rights appears to be an important concomitant of the debates on linguistic discrimination and equality. Particularly if the equality of languages is interpreted in terms of the quality of language services and their availability (Dovalil, 2013, p. 152) provided by public bodies, the extent and quality of *facere* becomes the decisive factor. On the other hand, the non-discrimination and equality of languages based on *omittere* and *pati* of the obligors is feasible quite easily, of course.

Another argument why it is useful to distinguish between absolute and relative language rights is based on the fact that this difference influences the very existence of a legal relation between two or more legal persons. The theory of law usually applies this concept only to persons between whom some interrelated rights and obligations exist (typically the relative rights and duties – Knapp, 1995, p. 202). Knapp (1995b, p. 203) recommends avoiding the concept of legal relations, when absolute rights applicable *erga omnes* are discussed, because the obligors are not clear – who is *omnes*? (see also Boguszak, Čapek, & Gerloch, 2004, p. 125). The legal person of the obligor becomes identifiable when the absolute rights are violated, because they can only be violated by individual persons (at the micro-level). In that case, the absolute rights are turned into the relative ones applicable to precisely known persons to which transparent duties can be attributed (i.e. *inter partes*).

Another criterion for the classification of language law is the division into the substantive law and the procedural law. Procedural law regulates the ways leading to the issuing of a legally binding decision. The language in which such a procedure takes place is regulated by the norms of this procedural law (e.g. the right of citizens to a trial taking place in an individual language, which corresponds to the duty of an institution to use this language or to arrange for interpretation). The substantive law regulates the rights and duties which are the actual purpose of the legal regulation (e.g. the right to education in one's mother tongue).

The last criterion for the classification of language law is provided by the theory of language planning (Cooper, 1989; Haarmann, 1990). Language planning identifies its subjects in three (or four) thematically based dimensions which can be – more or less – regulated by means of legal norms: status, corpus, acquisition and prestige planning. Unlike in the first three cases, the fourth dimension consisting in prestige planning can hardly be regulated in a way comparable to status, corpus or acquisition planning. Imaginable are sanctions for behavior which denigrates the prestige of a language. Such sanctions are a part of administrative or penal law.

The existence of rights and duties becomes particularly apparent when they are violated or at least questioned and negotiated in legal discourses as law in action. They consist of several types of texts through which the agents try to realize their interests. Law in action is typically represented by suits and judgments, whereas the law in books is realized through sources of law (legislation) and expert literature on the law. These texts are interconnected in the metalinguistic discourse of language management. The language rights of plaintiffs are clarified with reference to all three genres outlined above. The tie between the

sources of law and the final judgment must be particularly strong. The cases decided by courts may influence future disputes if the judgments are referred to and if they are reflected in later judgments (for more details concerning the pragmatic background and the structure of the legal discourse see Dovalil, 2012, pp. 264–270).

LMT as a theoretical framework for language law and rights

There are two approaches conceptualizing the language law and rights by means of LMT. On the one hand, this theory can serve as a tool for analyses of the processes in which relevant agents negotiate in their networks (legislative bodies of states or international organizations) language legislation resulting into the sources of law operating from the macro-level (law in books). On the other hand, analyses can concentrate on disputes arising from the multilingual practices representing dynamic processes starting at the micro-level (law in action). As sketched above, they consist in both written and oral texts making up large trans-situational discourses. It is, therefore, necessary to be able to identify the forms of the agents' behavior toward language appearing in such discourses (expressed both in *facere*, and in *omittere/pati*) and to be able to analyze the phases in which these dynamic processes – finding solutions to the language disputes in judicial proceedings – take place. Additionally, the agents participating in these processes become members of social networks in which social roles re/produced in the discourses emerge. Not only with respect to the procedural law structuring the steps of the judicial proceedings, we can observe that cycles of the processes in which the multilingualism is managed are not arbitrary or haphazard, but they are structurable in a transparent way as well. The language law represents one of rather strictly institutionalized discourses of metalinguistic character.

These (ethnographic) circumstances of how the law operates explain why LMT is the relevant basis for these research questions (for more details see Nekvapil & Sherman, 2009a; Nekvapil & Sherman, 2009b, pp. 182–185; Nekvapil & Nekula, 2006; Neustupný & Jernudd, 1987). LMT is interested in how the language problems are treated and solved by the agents who identify them. Strictly judicial solutions are obviously only a part of such practices. Drawing upon the bottom-up approach, the theory does not try to define the concept of language problem from an objective point of view. Rather, it counts on the fact that the same difficulty appearing in interactions may be, or not taken for a problem by two different language users. Hence, what is a language problem depends on the agents themselves, their expectations, social contexts and the networks in which they use the language. This is a very important circumstance for the language law in action as well, because not all difficulties are presented to, and decided by courts, no matter how exactly they may be defined in the sources of law.

At the same time, the theory does not assert that all language problems are brought about by circumstances at the micro-level of the interactions. Spelling reforms imposed by institutions from the macro-level and enforced by means of legal regulation may, for example, bring about such problems in the written language at the micro-level subsequently, although the users of the previous spelling have not perceived the existing spelling as problematic. What turns out to be the deciding factor is that the language users encounter new problems in their interactions anyway (and independently of their origin).

The answer to the question of which phases a language management process (in terms of *facere*) consists of is sketched as follows. The agents communicate with certain expectations which may draw on their previous successful practices. As long as two (or more, of course) language users communicate successfully with each other and as long as they achieve their communicative goals no language management is needed, because no

language problems – much less legally relevant disputes – have arisen. The expectations of such agents are fulfilled. The necessity to manage the generated utterances in interactions becomes apparent if the agents identify some deviations from their own expectations. From the legal point of view (especially regarding the procedural law), noting a deviation from the expectations of one agent means noting this expectation on behalf of another (including a court). This other agent is drawn into the management process by a procedural act (submitting a suit). If the deviations are noted, they may be evaluated, or not. The evaluation may oscillate between the negative and positive pole of the evaluative continuum. A language problem has arisen if an agent has noted a deviation from the expectation and evaluated it negatively. Related to the legal substance, this is typically manifested in the behavior leading to the formulation of the suit. Pleas in law express those features of the noted deviations from the expectations which will be legally relevant, that is, which are expected to be interpreted as infringements of language rights. The positive evaluation (gratification) means that the agent may have noted a deviation from his or her expectations, but this deviation is not managed (i.e. changed, or replaced by another alternative). Unlike in the case of the negative evaluation, the positive evaluation will contribute to the stabilization of this newly identified deviation in the language use. The management process goes on if the negative evaluation causes changes of (and in) the previous utterances. The agents may design an adjustment, or not, which depends on their intellectual and other abilities. These adjustment designs represent the actual solutions to the language problems. From the perspective of law in books, for instance

[t]he fundamental goal of all language legislation is to resolve, in one way or another, the linguistic problems arising from those linguistic contacts, conflicts and inequalities, by legally determining and establishing the status and use of the languages in question. (Turi, 1994, pp. 111)

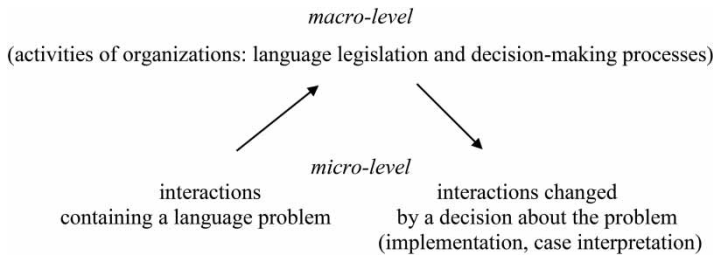
In terms of law in action, the adjustment designs are formulated as demands for relief in the suits in which the plaintiffs come up with optimal suggestions reflecting their interests. In order to succeed in enforcing them, they need to look them up in the legislative texts (i.e. the sources of law, which are a part of the law in books) or in the previous judgments (law in action). The parties to a case expect the final judgments to be implemented. However, the problems are really solved only if the agents are capable of projecting these adjustments into the language use. In other words, the solutions formulated as demands for relief replace the previous negatively evaluated language use. The implementation is the last phase of one complete language management cycle after which the managed practices are free of the previous language problems. A new cycle may start if one of the agents comes to a conclusion that his or her expectations are not fulfilled once again.

To sum up from the legal perspective, firstly, it is important for an agent to recognize which legal facts are relevant to be noted with regard to the existing legislation. Second, it is necessary to know which evaluation of these legal facts is laid down in the legislation, and, third, which solutions to the language problems (i.e. adjustment designs) the legislation comes up with. Their implementation – interpreted here as execution of a decision – is laid down in the procedural law.

One of the advantages of the management process consists in the fact that its phases allow for the identification of the critical moments in which the process is interrupted. This feature increases the explanatory value of LMT. If a participant is not powerful enough to impose his or her interests expressed, for instance, in the negative evaluation of some allegedly discriminatory practices in European multilingualism policy on the

others, the process will not go on. Similarly, if an institution fails to develop an acceptable spelling reform or if a government fails to come up with a realistic concept of the promotion of foreign languages, the management process is finished in the phase of designing an appropriate adjustment.

The behavior conducted by agents in individual interactions at the micro-level – designated as simple management – represents only one form of the language management processes. The sum of the management acts carried out by organizations at the macro-level (i.e. outside the interactions) is designated organized management (for more details see Nekvapil, 2009, 6). This constellation represents a very typical case in the handling of legal disputes by courts:



The way how the final judgments concerning the language disputes are implemented in the everyday language use of the agents is a separate ethnographic question.

This interconnection represents a specific challenge, because the agents – especially those creating the law in books – regulate the behavior of individuals from their top-down perspective. It is not surprising, because it is the actual purpose of the legislation to be applied to the situations of the same type but of undetermined quantity. In other words: the legislation has to be general enough not to be disturbed by too many details of the micro-level. This is true about the case interpretation with its details reflecting the indexicality of the contexts in which the individuals encounter the problems. On the other hand, the law in action regularly starts at the micro-level of individual needs (bottom-up approach projected into individual suits).

LMT also allows for the possibility of anticipating language problems before the agents experience them in reality (Nekvapil & Sherman, 2009b, pp. 184–185). Hence, future behavior toward language can be managed and thought over when potential problems are expected and taken for serious enough. The cases of such pre-interaction management influenced by the existing language legislation or by judgments of precedent character are not rare.

All phases of language management create partial discourses in which the agents negotiate their interests. The success of such negotiations depends on the power being at their disposal. The concept of power may be interpreted in various ways (Skutnabb-Kangas, 2012, p. 99). What matters are not only economic resources of the agents, but also their education, social capital, persuasive strategies enabling them to make competitors act differently and many more subtle aspects of human behavior. Reducing the social complexity to its legal substance, we can refer to a tool that helps to clarify the hierarchies of the positions of the agents of language management. These positions are, to considerable extent, pre-defined by the procedural law. The CJEU is the most powerful agent in the EU (language) law, the courts in the member states have to abide by its decisions. Typically, this holds for references for a preliminary ruling initiated by courts in the member states

dealing with the compatibility of the EU and national law. The system and hierarchy of the sources of law including the relation between the international, EU as well as national law also contributes to higher transparency of the power relations (for a systematic overview of the sources of EU law see Svoboda, 2013, pp. 96–142; Tomášek & Týč, 2013, pp. 100–120). The behavior of an agent regulated by a source of the secondary law (e.g. in the European regulations or directives) cannot collide with, or even be preferred to, the behavior regulated by the primary law (as set, e.g. in the Lisbon Treaty).

This very important element of power is integrated into the theoretical basis in one more way which helps to explain the better or worse implementability of the interests of the agents. LMT pays systematic attention to the sociocultural or socioeconomic aspects of the contexts in which the management processes take place (Nekvapil & Nekula, 2006, pp. 311–312). These sociocultural features are integrated into the theory as parts of the general ethnographic way of thinking (language ecology). If the sociocultural basis of the management processes is not favorably disposed to the intentions of the agents it logically impedes the implementation. May (2005, pp. 333), for instance, summarizes arguments of sociocultural nature which impede the mobility of speakers of minority languages. When minority languages have primarily a sentimental value and only a low instrumental one, when they delimit an individual's mobility, or when learning a minority language is not economically advantageous in terms of opportunity costs, then the minority language speakers will have good reasons to prefer the majority language at a given time. This happens typically in case of the lack of financial means or political will supporting the minority language (and multilingualism). Hence, other – for example ideological – aspects of sociocultural management must prevail if the process is supposed to go on. Related to the language law, both the language legislation (law in books), and – even more – the practices realized in the law in action are a part of the sociocultural management. Another level of language management has to do with the communicative practices taking place in social networks composed of language users (and organizations). Taking this communicative management into account precedes the third level which is the linguistic management in the narrow sense of the word. It has to do with phonetic, lexical, grammatical and pragmatic features of language use.

The sense of these three levels of language management put in this order (i.e. sociocultural/socioeconomic → communicative → linguistic management) consists in the following argumentation: if a language problem is expected to be solved, its solution should start with the analyses of the socioeconomic or sociocultural preconditions of the intended management processes. Then, the communicative management reflecting the social networks of the users should be studied. The usual preference to the 'traditional' language knowledge (grammar, vocabulary as well as the pragmatics) comes only as the last step of the whole process. This sequence helps to explain why well intended efforts to support some minority or indigenous languages fail to be implemented when these efforts concentrate primarily on strengthening the legal status in international covenants or in constitutions, regardless of the real socioeconomic preconditions for this support (Neumann, 2009; Skutnabb-Kangas, 2012, pp. 88–91). This may also hold for a normative theory of language rights (Kymlicka & Patten, 2003, pp. 32–37) trying to integrate these rights into the system of human rights which would be believed to be somewhat more easily enforceable. Their universal character collides with the lack of their sociocultural and socioeconomic differentiation.

This general description can be exemplified by various kinds of language problems projected into the language legislation and its changes. They are easily identifiable in all dimensions of language planning – status planning, corpus planning, as well as in the processes of language acquisition planning. To provide one very recent example reflecting a change in

the legislation of an EU member state: various agents (e.g. German, Austrian and other foreign companies, German teachers, some regional politicians, parents, pupils, or students, embassies of both Germany and Austria, the Goethe Institute) have not been satisfied with the position of German as a foreign language in the Czech Republic since the late 1990s (Dovailil & Engelhardt, 2012). In terms of LMT, this dissatisfaction can be interpreted as a series of very apparent deviations from the expectations of the listed agents. These deviations are noted and evaluated negatively in various discourses. Some of these agents have been willing to design adjustments to manage the lack of interest in German. They started to participate in public discourses more actively and drew more attention of the Ministry of Education of the Czech Republic to some aspects of the English-only-ideology spread in the media. The Goethe-Institute in cooperation with both embassies started a campaign to publicize specific advantages relying on the good knowledge of German. They concentrated on the best practices of people whose success is connected with good knowledge of German, on numerous job opportunities offered by German and Austrian investors, on the surroundings and on other aspects of the geographical and sociocultural closeness of the countries. These strategies, accompanied by the good situation in the labor market in Germany and Austria (opened, by the way, for Czech citizens since May 2011) and the discourse on the European multilingualism, contributed to an interesting change in the legislation in the language-in-education planning in January 2013. A second mandatory foreign language was introduced in the Czech school system from the school year 2013/2014 on, which can be partially attributed to the efforts of German language teaching lobby. In terms of LMT, this means that new adjustments have been designed. A new version of the framework education program as one of the crucial legislative documents approved by the ministry was formulated and became effective from 2014 on. If the agents succeed in implementing it, the Czech population will become more multilingual as a result of better knowledge of foreign languages (successful linguistic management in the narrow sense).

Language problems as cases of language management in EU language law

The disputes arising in the EU member states, or directly in the European institutions which are decided by the CJEU (or European Court of Justice (ECJ) before the Lisbon Treaty came into force) can be classified according to the sociolinguistic criteria of the domain and of the social position of the litigants pursuing their interests (agency). As for the legal substance of the disputes, the nature of the rights claimed by these litigants is also taken into account. Details concerning the sources of law and the procedural details of the cases are of peripheral importance.

In most of the cases analyzed below, status planning dominates the language problems. The cases clarify which practical consequences are to be derived from the status of a language as an official language at the micro-level. The dispute classifiable as corpus planning is exemplified in the very first case which concerns personal names (Jernudd, 1994). Generally speaking, the plaintiffs feel discriminated against, because other agents acting as adversaries limit language choices or impose other languages on the plaintiffs. The linguistic discrimination is based on the following patterns: either the plaintiffs expect the adversaries not to act (i.e. *omittere* or *pati* related to the plaintiffs' choices), or they expect the adversaries to act more in favor of the plaintiffs (*facere*). All cases have in common that the plaintiffs note apparent deviations from their expectations and evaluate them negatively, which initiates the management process. The core of the processes can be found in the evaluative phase.

Domain of proper names

In the Vardyn-Wardyn case (C-391/09, decided in May 2011), the dispute concerned the right of Malgożata Runevič-Vardyn, a Lithuanian citizen belonging to the Polish minority, to her name registered in accordance with the rules of the Polish spelling. After living and working in Poland for some time, she married a Polish citizen in Lithuania in July 2007. On the marriage certificate issued by the Vilnius Civil Registry Division, only Lithuanian characters were used. Having evaluated this deviation from her expectation negatively, she submitted a request to this division for her name, as it appears on her birth certificate (Malgożata Runevič) and on her marriage certificate (Malgożata Runevič-Vardyn), to be changed to ‘Małgorzata Runiewicz-Wardyn’. She argued with serious inconvenience arising from the previous situation for her private as well as professional life, particularly related to her husband’s name, spelled Łukasz Paweł Wardyn, which restricts her free movement. Having been dismissed by this authority, she addressed the court. The Lithuanian court referred to the CJEU with a question for a preliminary ruling. It concerned the compatibility of the Lithuanian Civil Code laying down the rules of the Lithuanian spelling for the names with the European law. The CJEU acknowledged that it is legitimate for a member state to ensure that the official national language is protected in order to safeguard national unity and preserve social cohesion (see also the Groener case below), but it is only for the national court to decide whether the refusal to amend the joint surname of the couple, who are EU citizens, causes serious inconvenience to them and their family at administrative, professional as well as private levels. This means, generally speaking, that the principle of the free movement of persons (laid down in the primary law in Art. 21 TFEU) allows the authorities of a member state to refuse changes of names on the birth and marriage certificates of their citizens. However, the consequences how serious this inconvenience would be must also be taken into account. It is the national court that is responsible for the final decision on merits and for its implementation.

Domain of judicial proceedings

The following three cases representing language rights within the procedural law are other references for a preliminary ruling of national courts. They not only reflect the principle of fair trial, according to which parties are expected to be entitled to understand and to be understood. As these cases are not decisions on merits, they cannot be interpreted as implementation either. Just like the Vardyn-Wardyn case, they are located at the phase of designing adjustments following the negative evaluation on the part of the plaintiffs. The substance of the conflicts also consists in the collision of the national law aimed to protect linguistic minorities and the free movement of persons (one of the crucial principles of European integration at all).

The Mutsch case (C-137/84) was ruled in the mid-1980s. It concerned the lawfulness of Belgian rules on the use of languages in the national courts. Those rules provided that, where a person of Belgian nationality charged with a crime resided in a German-speaking municipality, the proceedings before the criminal court in question were to take place in German. Robert H. M. Mutsch, a citizen of Luxembourg residing in Belgium, sought to rely on that provision and expected the use of German. However, the Belgian Ministère Public argued that, since he was not of Belgian nationality, he could not do so. The ECJ shared Mr Mutsch’s negative evaluation and ruled essentially that denying Mr Mutsch the benefit of the provision on the ground of his citizenship amounted to discrimination. Mutsch would have been deprived of an opportunity to enjoy the principle of the free

movement of workers (Art. 48 of the EC Treaty of that time) and the right to use the language interpreted by the ECJ as his social advantage (as used in Article 7 (2) of the Council Regulation No. 1612/68 applicable back then). Representing one of the crucial principles of the European integration, these provisions entitle a worker who is a national of one member state and habitually resides in another member state, under the same conditions as a worker who is a national of the host member state, to require that criminal proceedings against him take place in a language other than the language normally used in proceedings before the court which tries him. (The other language would have been French). This right plays an important role in the integration of a migrant worker and his family into the host country, and thus in achieving the objective of free movement for workers.

Similarly to the Mutsch case, in the Bickel & Franz case (C-274/96) decided approximately 10 years later, one Austrian and one German citizen – both native speakers of German – were not expected to use German in criminal proceedings in Bolzano in South Tirol. They evaluated this deviation negatively. The judge in Bolzano was not sure about the extent to which the right to speak German before the court should be reserved only to Italian citizens belonging to the German-speaking minority in the Province of Bolzano, which is one of the legitimate ways of protecting this minority. As German is the co-official language at the regional level (together with Italian), the ECJ shared both persons' negative evaluation and ruled that they would have been discriminated if they had not been allowed to use German. What mattered was the principle of applicability of originally minority rights which were extended to the protection of other EU citizens. Using German did not mean any additional costs for the court in Bolzano anyway.

These sociocultural circumstances are characteristic of one more comparable case from the same province which shows the desirable uniformity of resolution of disputes. The recent Ruffer vs. Pokorná case (C-322/13) concerning an action for damages following a skiing accident was decided in March 2014. Ms Ruffer wanted to draft the notice of proceedings in German. Although Ms Pokorná received a Czech translation of that notice, she submitted her defense in German. She raised no objection as to the choice of German as the language of the case. However, submitting Ms Pokorná's defense in German could have caused its invalidity. The language problem noted by the Italian court consisted in the question whether it is only Italian citizens residing in the Province of Bolzano who have the choice of using German before a court hearing a civil action, or whether that choice must also be offered to Italian citizens who do not reside in that province or to other citizens of the European Union residing in that province or even, as in the case in the main proceedings, to citizens of the member states who do not reside in that province. With regard to the previous Bickel & Franz case, the CJEU designed the same adjustment and ruled that the principles of non-discrimination and of the free movement of persons preclude such rules which would grant the right to use a language other than the official language of that state (i.e. Italian) in civil proceedings brought before the courts of a member state (i.e. Italy) which are situated in a specific territorial entity (Province of Bolzano), only to citizens of that state who are domiciled in the same territorial entity. Hence, Ms Pokorná was also allowed to use German, and the proceedings in German remained valid.

These cases show that provisions ratified by national laws of member states aimed at the protection of linguistic minorities are interpreted dynamically with a tendency in favor of 'a bit more' absolute rights. Although the beneficiaries are pre-defined quite clearly – these provisions are applicable to the citizens of the respective member state, which is a typical feature of the relative rights – the CJEU extends them to a broader scope of

beneficiaries who are EU citizens independently of the member states. This extended group of beneficiaries of such originally minority language rights will not go beyond the EU citizenship in the direction of the usual absolute rights applicable *erga omnes*. Hence, it cannot be expected that US citizens, for example, would also be allowed to use German before the court in Bolzano.

The right to a fair trial is applicable to other kinds of administrative proceedings in which no specific minority issues are solved, of course. One of such cross-border cases was decided in January 2010 and had to do with Czech and German as official languages of two countries whose authorities were to use an instrument permitting enforcement. In the Kyrián case (C-233/08) based on a reference for a preliminary ruling from the Administrative Supreme Court of the Czech Republic, the substance of the dispute consisted in the extent to which it is possible to use German in documents issued by a German customs office when a Czech person is the addressee and debtor. The legal context was characterized by Council Directive 76/308 on mutual assistance for the recovery of claims relating to certain levies, duties and taxes. As the CJEU ruled, the addressee (Mr Kyrián, a Czech person, in this case) must receive the notification of an instrument permitting enforcement to be placed in a position to enforce his rights in an official language of the member state in which the requested authority is situated (in the Czech Republic). Thus, Mr Kyrián could not be forced to have the documents issued by the German customs office translated into Czech at his own costs.

Translation of the sources of law

Similarly to the Kyrián case, a formal question concerning translation predominates two more closely related cases (both references for a preliminary ruling). What mattered was the problem if the relevant sources of law are translated into the official languages of the new EU member states or not. This should influence their applicability. In the Skoma-Lux case (C-161/06), a Czech private company was accused of breaking the tax law including Regulation No 2454/93. It argued against the notice of the customs office in Olomouc that this regulation could not be used in the dispute, because it was not published in Czech in the Official Journal of the EU. The customs office objected that Skoma-Lux had operated on the European market and that it had already known the contents of this regulation. Moreover, the regulation had been published in an electronic version. Referring to Art. 58 of the 2003 Act of Accession regulating the question of authenticity of the acts of the institutions, the court in Ostrava solving this dispute addressed the ECJ to have the question of the applicability of untranslated texts clarified. The ECJ ruled in December 2007 that Article 58 of the 2003 Act of Accession precludes obligations contained in EC legislation which had not been published in the Official Journal in the language of a new member state, where that language is an official language of the EU, from being imposed on persons in that member state, even though those persons could have become acquainted with the legislation by other means. The acts cannot produce legal effects unless they have been published in the Official Journal. In the Polska Telefonia Cyfrowa case (C-410/09, hereafter PTC), the Polish national regulatory authority decided that this telecommunication operator had significant market power in July 2006. Consequently, certain regulation should be imposed on this private company. In the context of an appeal brought before the Polish Supreme Court, PTC claimed that the 2002 guidelines, on which that decision was based, could not be referred to, because it had not been published in Polish in the Official Journal of the EU. Unlike in the Skoma-Lux case in which the regulation imposed some obligations on persons, the 2002 guidelines do not lay down any obligation which could

be imposed on individuals. Hence, the CJEU ruled in May 2011 that the fact that these guidelines had not been published in Polish in the Official Journal did not prevent the Polish regulatory authority from referring to them in a decision addressed to a person.

The companies have in both cases a speculative intention in common. It consists in their economic interest to avoid certain behavior and the language management is used as a tool for these purposes. The result of the management process conditions the result of the main proceedings. In the former case, the management process – started and projected into the dispute by the company – is finished, because the CJEU shares the company's evaluation of the fact that the crucial act is not translated and published in Czech in the Official Journal. In the latter case, however, the Court's evaluation corresponds to that of the regulatory authority, which entails the continuation of the proceedings. The obligation of Skoma-Lux could have arisen only if the acts had been translated into Czech, which would have had to be an effect of language management to be finished. No translation was necessary in the Polish case, which means that the 'language-management-intention' failed.

Labor market

The next four cases – all but one also references for a preliminary ruling – outline language problems in the labor market of various professions. Moreover, the national law collides (or seems to collide) with the principle of the free movement of workers. They have to do with the problem of the protection of minority languages as well.

In the oldest Groener case (C-379/87) that took place in the 1980s, the free movement of workers collides with the entitlement of Ireland to promote Irish. Anita Groener, a citizen of the Netherlands, was engaged on a temporary basis as a part-time art teacher in the College of Marketing and Design in Dublin with English as the language of instruction. After two years, she decided to apply for a permanent full-time post at that college which supported her plans. To get the job, she needed an Irish certificate (the *Ceard-Teastas Gaeilge*), which she did not have. Ms Groener asked for an exemption, but the request was refused. The reason for the refusal was that there were other fully qualified candidates for the post. The minister of education, however, gave his consent to her being appointed provided she first passed the examination. Ms Groener followed a four-week beginners' course, but she failed to pass the exam. Her negative evaluation continued. She felt discriminated by the Irish legislation and raised an objection that it restricts the free movement of workers. The High Court in Dublin referred several questions to the ECJ related to the compatibility of the Irish and European law. The ECJ decided 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 in terms 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. In other words: working as a teacher in the public education in Ireland means having to have some knowledge of Irish, although the language of the instruction is English. This adjustment design promoting the language is a legitimate interest of the Irish government that may restrict the free movement of workers.

The knowledge of the local languages served as a precondition for gainful employment in the following two cases as well. In the Haim case (C-424/97), Italian citizen S. Haim wanted to work as a dentist in Germany. He had obtained his dentistry qualification in Turkey in 1946 and permission to practice as a self-employed dentist in Germany in 1981. His diploma was recognized by Belgian authorities one year later. He worked

in Brussels under a social security scheme in the 1980s. However, the Association of Dental Practitioners of Social Security Schemes in Nordrhein, a public-law body, did not share Mr Haim's expectation and refused to enroll him on the register of dentists in Germany, because he had not undergone a preparatory training period and could not prove sufficient knowledge of German. The CJEU also evaluated this fact negatively and ruled in July 2000 that the reliability of a dentist's communication with patients and administrative authorities constitutes an overriding reason of general interest such as to justify making the appointment as a dentist under a social security scheme subject to language requirements.

In the *European-lawyers-in-Luxembourg* case (C-193/05), European Commission brought an action for failure to fulfill obligations against Luxembourg. This member state wanted to defend a similar requirement of language examinations (in French, German and Luxembourgish) as a condition of registration as a 'European lawyer' in the Bar Register. A problem arose to what extent such a condition would be contrary to Directive 98/5 aimed to facilitate practice of this profession in a member state other than in which the qualification was obtained. Although this directive does not contain any explicit provisions regarding language exams, Luxembourg referred to the *Groener* and to the *Haim* cases. It emphasized that language knowledge is important for communication with clients and authorities of the respective member state. Thus, lack of language knowledge affects the substance of activities of the 'European lawyers' and restricts them. Sharing the negative evaluation of these objections with the European Commission, the Court of Justice argued, however, that the profession of lawyer is not comparable with that of teacher. It is not the task of lawyer to safeguard the language as an expression of national identity. The *Haim* case was not taken for relevant, because S. Haim had obtained his dentistry qualification outside the EU and his case referred to other sources of law. The means of protection provided for in respect of legal knowledge operate to protect against insufficient language knowledge. Making lawyers subject to the professional rules of the host state prevents prejudice to clients. The applicable rules of the Code of Professional Conduct adopted by the Council of the Bars and Law Societies of the EU entail an obligation, the breach of which may be sanctioned, not to handle matters which the lawyer knows or should know s/he is not competent to handle. This is obviously applicable to the lack of language knowledge as well. It means that a lawyer is required not to handle the matter in the same way as where s/he has inadequate knowledge of the law. Hence, the Court of Justice declared in September 2006 that, by making registration with the competent national authorities subject to a language exam for lawyers who had obtained their qualification in a member state other than Luxembourg and who wish to practice under their home-country professional title in the latter member state, Luxembourg had failed to fulfill its obligations under Directive 98/5 to facilitate practice of lawyers.

The *Las* case (C-202/11) was ruled in April 2013. Anton Las, another citizen of the Netherlands, was employed by PSA Antwerp, a multinational company operating port terminals whose registered office is in Singapore. His employment contract was drafted in English. It stipulated that he was to work in Belgium, although some work was conducted from the Netherlands. Mr Las was dismissed by a letter drafted in English in September 2009. The linguistically relevant part of the dispute concerned the fact that his employment contract – as Mr Las, referring to the Flemish Decree on Use of Languages regulating the languages in relations between employers and employees, objected – should be deemed null and void in accordance with the sanction provided for in Art. 10 of the decree. The CJEU – referring to the *Groener* case – ruled that the provisions of EU law do not preclude the adoption of a policy for the promotion of one or more official languages of a member state and that this objective, in principle, justifies a restriction of the free movement of workers. The

decree lays down that in the drafting of cross-border employment contracts concluded by employers whose established place of business is located in the Dutch-speaking region of Belgium, only the Dutch text is authentic. The CJEU viewed this provision as going beyond what was strictly necessary, and therefore, as not proportionate. Parties to these contracts do not necessarily know the official languages of the member state concerned (i.e. Dutch). In such circumstances, they must be allowed to draft their contract in a language other than the official language of that member state (i.e. in English).

The economic interests of the plaintiffs are in the foreground once again. Ms Groener expected the Irish Ministry of Education to not make her learn Irish, because the socioeconomic management (not only) of the vocational educational system generates high demand for English and constitutes such social networks in which it pays off to speak English (communicative management). However, this is not the only component of the sociocultural context of acquisition planning depicting the situation of Irish in the country, because the more powerful ECJ did not share Ms Groener's negative evaluation of the duty to acquire some knowledge of Irish as an expression of the language promotion. This brought about the end of the management process initiated by her. This result corresponds analogically to the Haim case, although this judgment is based on different arguments having nothing to do with the protection of language diversity. The Las case demonstrates some speculative expectations of the plaintiff. The fact that his contract was drafted in English initiated no language management originally. The management process was supposed to help him to bring about annulment of the contract, the purpose of which was to receive higher severance payments. Mr Las's language rights were turned discursively into a tool used for another strategy. No matter how little linguistic discrimination was the topic of this issue, the case – if compared to the Groener case – helps to identify a border between the adjustments which promote the minority languages and are taken for proportionate and those which are not. To sum up in a somewhat simplified way, it remains to be seen, in which professions other than teachers (providing us with an example of workers) or dentists as practitioners, on the one hand, languages may impede the mobility in Europe when it is clarified, on the other hand, that the free movement of lawyers (an example of a profession other than worker) cannot depend on prior exams in local languages.

Multilingualism causes troubles in the labor market within the European institutions as well. The following open competitions case (C-566/10 P) concentrates on the quality and availability of services offered by the European personnel selection office (EPSO) concerning the recruitment of staff. The tendency to reduce the number of languages in which notices of open competition are published has become apparent since 2004/2005. This caused a language problem consisting in the defense of the principle according to which these notices should be published in all official languages and not only in English, French and German, as practiced by EPSO. Unlike in the previous cases, it was not a natural person who would have felt discriminated against, but it was a member state that acted as appellant. Being critical of this new practice preferring the three languages, Italy argued – among other things – that the Official Journal of the EU in which the notices are published must be available in all official languages (Art. 4 of the Regulation No 1/1958), which helps to strengthen the principle of non-discrimination. Moreover, Italy objected the infringement of the principle of the legitimate expectations reflecting the settled practice of publishing notices in all official languages before July 2005. The CJEU accepted the adjustments of Italy and annulled the contested notices in its judgment in November 2012. As the practices of EPSO went on during these proceedings before the final judgment, Italy succeeded in having several more notices annulled in an analogical

case (T-126/09) in September 2013 once more. These cases contribute to the confirmation of the equality of languages by referring to their equal legal status which, in turn, improves the quality and availability of services realized by means of languages. The obligor (EPSO or other European agencies and institutions) are forced to act more (*facere*). The implementation of these decisions on merits of the CJEU as a result of this language management can be verified quite easily in the language versions of the Official Journal.

Equality of languages

However, the expectation that official languages are treated as equally as in the cases above cannot be overgeneralized. The linguistic discrimination based on availability of services in another context was the core problem of the next case that was decided differently, although the activities of an office remain in the foreground again. In the Kik case (C-361/01 P), a citizen of the Netherlands, Christina Kik, expected the Office for Harmonization in the Internal Market in Alicante to accept Dutch as an official language, although Dutch does not belong to the languages of the office (Art. 115 of Regulation No 40/94). Her feeling of discrimination was underpinned by her expectation expressed in the action, according to which all official and working languages of the European institutions were supposed to be equal in all circumstances. She presented this opinion as a principle of the EU law which had to legitimate her negative evaluation of the fact that only five languages are the languages of the Office. However, due to the fact that all regulations are sources of secondary law, they do not contain any fundamental principles of European law which are – unlike, for example, the principle of non-discrimination – reserved only to the primary law (for more details see Dovalil, 2013, pp. 163–166). No principle that all official languages must be treated equally in all circumstances can be inferred.

Findings and concluding remarks

The CJEU contributed to clarification of several language problems. The most essential is and probably will remain the idea of general equality of official and working languages in the EU (in terms of the quality and availability of services). A *judicial* answer to this *sociolinguistic* question is formulated ex negativo: the thesis that all languages shall be treated equally in all circumstances cannot be inferred from primary law. The socioeconomic and ideological inequalities can hardly be balanced by means of substantive law. Should languages be treated equally in all circumstances, the linguistic rights would have to be of absolute nature applicable *erga omnes* connected to *facere* of obligors. This is unattainable.

However, languages are treated equally in the procedural law – not only according to the elementary principle of fair trial like in the Kyrián case, but also with the tendency to extent the originally minority rights to all EU citizens. The judgments from the area of procedural law support the free movement of persons unequivocally, which does not happen at the expense of the protection of minority languages. Equal treatment is also applied to job advertisements published in the Official Journal of the EU.

This unified decision-making is more exceptional than regular. In contrast, language rights may restrict the free movement on the labor market. Member states are allowed to set conditions relating to linguistic knowledge required by reason of the nature of the post to be filled. The extent of restriction depends on the profession and its public impact – particularly in connection with the promotion of national languages. This example shows that the domain of labor market provides us with opposing judgments delineating borders between them. What matters is the extent to which the free movement may

be restricted (the Groener and Haim cases on the one hand and the Las and European-lawyers case on the other). The Skoma-Lux case delineates the border from the PTC case in the domain of the translation of the sources of law. The borders are derived from the extent to which the sources of law constitute duties for individual persons.

The decisions of the CJEU can be classified as adjustments following the negative evaluation of the dissatisfied language users. These decisions do not represent the phase of implementation, because they do not reflect the multilingual practices changed by these decisions. No matter how legitimate it may be to expect that they will be implemented, they do not contain the relevant data yet (from the ethnographic point of view). However, the difference between an adjustment design formulated as a source of law and such a judgment (case law) is very apparent. These adjustments are designed by institutions, but the close tie between a judgment and the micro-level is indubitable. What also plays an important role is the fact that most of the cases represent references for a preliminary ruling. This means that the decisions on merits have to be made by the courts in the member states. Hence, jurisprudence helps to structure the second-to-last phase of language management process.

Most of the cases contain instrumental rights whose agents try to pursue economic interests (especially the Las, Groener, Haim, Skoma-Lux, PTC cases and the European-lawyers case). In some of them, speculative components come out and language management is turned into a device used for purposes other than language-related ones.

As far as the agents are concerned, not only natural persons as individual language users feel discriminated against and claim their rights. Italy as a member state was active in actions related to the languages in which open competitions were published. Similarly, the European Commission was successful with its action for failure to fulfill obligations against Luxembourg. These last two cases bring some interesting evidence of management processes initiated by institutions at the macro-level without individual speakers having identified problems in interactions. Italy and European Commission anticipated and managed language problems before individual speakers could have identified them in individual interactions. These actions correspond to the pre-interaction management initiated at the macro-level.

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