ARTICLES

INTERPRETATION IN EU MULTILINGUAL LAW

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ABSTRACT: The European Union as a supranational entity that unites many different legal systems, each with its own linguistic category and distinct legal vocabulary, presents unique challenges in legal translation of European legislation. This *Article* examines the process of legal-linguistic finalization of EU multilingual law and considers the difficulties arising from interpretation of EU acts in light of the linguistic diversity of the Union's 27 Member States. The inquiry reaffirms the importance of the role of the Court of Justice of the European Union to guarantee the uniform functioning of law. Joining the views of some leading researchers in the field, this *Article* defends the view that a shared European legal discourse is necessary to achieve clarity in European Union law.

KEYWORDS: Court of Justice – language translation – linguistic relativity – multilingual European Union law – common European discourse – uniform language interpretation.

I. INTRODUCTION

Increased supranational cooperation between Member States, part of the European family, has undoubtedly changed the face of public relations in Europe. As a result, in recent decades, there has been a significant increase in Union legal sources and in their role in regulating public relations within individual domestic legal systems. EU law has specific principles of functioning that determine the need for equal linguistic meaning of its norms in all official languages. Linguistic meaning is a property of the norms' linguistic expression preserved in translation or interpretation and explains what the subjects of law understand and apply in their behaviour as a consequence of those norms. It can even be said that EU law's legitimate action needs this presumption of linguistic meaning

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ISSN 2499-8249
doi: 10.15166/2499-8249/564

uniformity. Otherwise, fundamental principles of law, equal treatment for instance, would not hold. For the European Union to function correctly and thoroughly its law should be established, applied, and respected by all Member States. It is incumbent upon individual Member States to take care that the necessary action is taken to ensure compliance with the European rule-making framework within their domestic legal systems with the proviso that the corresponding set of rules must be first clearly expressed in an accessible way in the language of the respective countries. Given the cultural and linguistic diversity that European Union comprises, coming to a clear understanding is not an easy task for the European and national legislators. This *Article* considers some of the difficulties in legal translation and interpretation of the multilingual EU law and possible ways of overcoming them. Section II draws the contours of the current situation with legal translations in the EU. Section III, in the light of culture relativity and Quine's thesis about indeterminacy of translation first addresses the issue of legal drafting and legal translation of the European legislation. Even though *de jure* all language versions are authentic, *de facto*, we usually have European legislation drafted in English or French and only subsequently laws are translated in all official languages. The question here is whether we achieve equal linguistic meaning of legal norms in all official languages. Perhaps we can only rely on multiple language versions of the same normative act? This Section also argues that the different methods European institutions use are insufficient to provide uniformity in EU law. Considering the procedure of legal-linguistic finalization and so-called culture free EU rule-making style, a comparative analysis of relevant examples is preformed to highlight differences between multiple language versions of European legislation. Based on the examples and the nature of the existing translation/interpretation procedures, an argument against extreme culture relativity is offered. Then further ways of overcoming linguistic discrepancies are critically examined. In section IV, joining the views of some leading researchers in EU law, this *Article* offers an argument for the thesis that only via a common European legal discourse as a system of interpretative rules and methods, the consequences of indeterminacy of translation and cultural relativity would be minimized. The author suggests that a common European discourse is realizable through uniformity that will not be a result of uniform interpretation, but of mutually recognised linguistic meaning accepted by all. Thus, clarity – *i.e*. coherence and intelligibility – in European Union law would be achieved and the ideal of function with equal meaning in all official languages will be neared.

II. The multilingual European Union law

Currently, the European Union unites 27 Member States and is host to 24 official languages which are all accorded equal footing according to EU's language equality policy. Such linguistic diversity creates challenges in the drafting of European legislation as EU law shall function in a corresponding manner for each of its official languages. These difficulties can be described by the so-called strong language theory, whose main

proponent is Legrand.[1] He insists that the meanings of words and expressions are basically objective and therefore stable and depend mainly on the language as a system of rules and not as actual usage. The ensuing legal order, says the theory, can be only monolingual. As one of this theory's critics, Engberg, puts it, "in such an approach a number of equally stable and fixed relations, which are not compatible, will clash as every language tends to characterize the world differently, which, for example, makes automated translation a difficult task".[2] As McAuliffe affirms: "ideally, EU legislation would be drafted simultaneously in all languages. However, – she continues – this is neither feasible nor possible in the EU".[3]

Since the establishment of the Union, it has been agreed that legislation should be drafted in one main language (English or French) and then translated into the other official languages. As López-Rodríguez maintains, "multilingualism causes a considerable delay in the legislative procedure",[4] because every act issued within the European Union shall be translated into all the official languages. "Without that they cannot be binding",[5] according to Semov. Moreover, it is not officially stated that the texts are to be subsequently "translated, but that they are prepared, written or created. The term 'translatio' has also been deliberately omitted, as from a legal point of view it is an authentic language version".[6] In practice, translation is used in the process of implementing the act by the individual Member States. This translation is then seen as manner by which the act acquires its specific fixed meaning in each of the 24 official languages. Further, all these language versions have to be standardized, which means that each shall be the same – the content and formatting of the text shall be strictly adhered to (each article, paragraph, and subparagraph shall be located in the same place in all language versions). Furthermore, it is essential that the linguistic meaning of each of these translations coincides entirely with the meaning embedded in all 24 of official language versions.

According to Sarcevic, "to guarantee the underlying principle of equal treatment, plurilingual communication in the law is based on the presumption that all the authentic

[1] P Legrand, 'Law's Translation, Imperial Predilections and the Endurance of the Self' (2014) The Translator 290–312.

[2] J Engberg, 'Word Meaning and the Problem of a Globalized Legal Order' in P Tiersma e LM Sokan (eds), *The Oxford Handbook of Language and Law* (Oxford University Press 2012) 177-178.

[3] K McAuliffe, 'Language and Law in The European Union: The Multilingual Jurisprudence of the ECJ' in P Tiersma e LM Sokan (eds), *The Oxford Handbook of Language and Law* cit. 18.

[4] A M López-Rodríguez, 'Toward a European Civil Code Without a Common European Culture? The Link Between Law, Language and Culture' (2004) BrookJIntlL 1212.

[5] A Semov, *Kakvo tryabva da znaem za Evropeyskiya sayuz: Narachnik za rabota s evropeyskite institucii prilagane na pravoto na ES* (Far BG 2004) 170.

[6] S Šarčević, 'Die Übersetzung von mehrsprachigen EU-Rechtsvorschriften: der Kampf gegen Sprachdivergenzen' in M Gotti and S Šarčević (eds), *Insights into Specialized Translation* (Peter Lang 2006) 127.

texts of a legal instrument are equal in meaning, effect, and intent".[7] But can we achieve equal meaning in the European legislation and can it function in a uniform manner in all the official languages? Perhaps the more important derivative question here is how should a translation be rendered in order to sufficiently reproduce the legislative intention of the European lawmaker, if Quine is right that the translation itself is always indeterminate? "The thesis is then this: manuals for translating one language into another can be set up in divergent ways, all compatible with the totality of speech dispositions, yet incompatible with one another. In countless places they will diverge in giving, as their respective translations of a sentence of the one language, sentences of the other language which stand to each other in no plausible sort of equivalence however loose".[8] Roughly put, this means that there are various ways to say one and the same thing that are equally appropriate. Thus, we don't have an objective criterion for determining the best way. Similarly, Sarcevic says that "indeterminism says we cannot be sure of communicating anything, at least not in any exact sense. We cannot assume there is a meaning that is encoded on one side and then decoded on the other".[9] Probably, that is the reason why when discussing linguistic equivalence in EU legislation, many researchers are inclined to limit it to, as Paunio puts it, "visual equivalence. [...] Equivalence is symbolic. This trait becomes visible when one considers how directives and other EU legislative instruments are drafted: the number of paragraphs has to match, and headings and subheadings have to be located in the same place as in other language versions. In fact, the policy of linguistic equality reduces translation to literal rendering and consequently equivalence to linguistic correspondence".[10]

In such a case, hypothetically, we could always achieve multiple language versions of the same normative act, which are authoritative, but function with a different meaning. However, we should ask ourselves to what extent such explanation situation satisfies the aim of the integrating European legal order. Leung asked: "[i]s 'equivalence' a legal fiction?".[11] Given that one of the most important requirements for the full functioning of European Union law is that of its uniform operation throughout the Union, an equal linguistic meaning becomes a prerequisite for unambiguous interpretation. But what is equal meaning and is it achievable? One answer comes from Pym who says that "the opposite of indeterminism might then be a theory that assumes 'codes', or 'transmission', or 'meaning transfer', or a 'conduit' [all those metaphors have been used] that is

[7] S Šarčević, 'Legal Translation and Translation Theory: A Receiver-Oriented Approach' (2003) Tradulex tradulex.com.

[8] WVO Quine, *Word and Object* (The MIT Press 1960) 24.

[9] A Pym, *Exploring Translation Theories* (Routledge 2014) 91.

[10] E Paunio, *Legal Certainty in Multilingual EU Law: Language, Discourse and Reasoning at the European Court of Justice* (Ashgate 2013) 8.

[11] J Leung, 'Translation Equivalence as a Legal Fiction' in A Wagner, L Cheng and KK Sin (eds), *The Ashgate Handbook of Legal Translation* (Ashgate 2016) 57-69.

somehow able to guarantee equivalence".[12] Probably this is the reason that there are different ways the European institutions attempt to provide the needed guarantees for the uniform functioning of the European law with equal meaning throughout the Union.

III. Guarantees of clarity in Union law

Once translated by translators who know the linguistic specificity of the language concerned, European legislation undergoes legal-linguistic finalization by a lawyer-linguist. This becomes a key prerequisite for achieving clarity and uniform interpretation, given that the European Union, as a supranational union, forms a community that brings together different legal systems and cultures, each with its legal institutions and regulatory means, where the latter in many cases may be absent in one or more of the other legal systems in the Union. This is most evident if we look at the decision-making process in the ordinary legislative procedure (OLP). Given that the majority of EU legislation is adopted by means of the OLP, it is becoming the main legislative method in the Union. In this process of co-decision between the Parliament and the Council, legal meanings are exchanged between legislators coming from very different legal linguistic backgrounds. Such diversity is frequently offered as an argument for the particular difficulties inherent in legal translation. In addition, the final text of a piece of legislation is repeatedly the result of a compromise between the Commission, the Parliament and the Council, so that it is "often formulated with deliberate deviations in meaning".[13] It can be seen clearly in the processes of political trialogues following the negotiations between these institutions.

It is in such a context that the figure of the lawyer-linguist is most salient. For McAulife this role is "something distinct from both a lawyer and a translator: lawyer-linguist is a perfect synthesis of a lawyer and a linguist".[14] Experts from the EU institutions have extensive specialized knowledge on the one hand in linguistics and on the other in the field of legal vocabulary. Therefore, the minimum requirement for these experts is that they must have a thorough knowledge of at least two other official languages of the Union in addition to their mother tongue (which must be one of the 24 official languages). Other essential requirements for experts holding this position are to have acquired legal education in a Member State and have some practical experience in the field.

To illustrate this process of legal-linguistic finalization, let me consider a relevant example from European legal acts. This is a decision of the European Parliament of 9 March 2021,[15] to waive the immunity of a Portuguese MEP who has had the *status* of a party to a lawsuit. Examining the Bulgarian version of the decision in question, we find the

[12] A Pym, *Exploring Translation Theories* cit. 91.

[13] S Šarčević, 'Die Übersetzung von mehrsprachigen EU-Rechtsvorschriften' cit. 128.

[14] K McAuliffe, 'Language and Law in The European Union' cit. 211.

[15] Decision P9 TA(2021)0063 of the European Parliament of 9 March 2021 on the request for waiver of the immunity of Nuno Melo (2020/2050(IMM)) europa.eu.

following translation of the matter: private complainant (*частен тъжител*) and private complaint (*тъжба*). These terms in the English version are formulated as civil party ("граждански ищец")[16] and civil indictment ("граждански обвинителен акт").[17] Taking a closer look at the linguistic context of this decision, it may be seen that these terms come in the Portuguese legal system and that the person whose immunity is requested to be waived is constituted as a civil party following a civil indictment due to the alleged commission of several offences of insulting and defamation.

Though such a wording seems nominally satisfactory from a linguistic point of view, it raises certain questions of a legal and technical nature, for expression as "civil indictment" is absent in the Bulgarian legislative vocabulary. It can be easily established that in Bulgarian law, the cases that concern the offences of insulting and defamation, there are no formulations like the ones mentioned above. Therefore, when translating or understanding a culture other than one's own the task is complicated by such determining differences in the legal vocabulary. Such linguistic differences can be explained by the so-called "real local relativity".[18] According to it, each community has its own, unique concepts for describing the world, which may be missing in other communities. Difficulties in translating of legal texts arise precisely because of these determining differences in each legal system, which decide the specifics of its vocabulary. Therefore, carrying out this legal translation, it can be said that the expert's task is not to translate texts, but rather "to translate another culture".[19]

The expert's primary aim is to transform the normative text so that it becomes sufficiently close to the Bulgarian national language. That will allow its seamless understanding and will enable those familiar with the national law to get acquainted with the act. To achieve this, we must first ask ourselves the question of Buzov: "How can we know that two cultures are so different that neither mutual understanding nor translation of their fundamental norms and values is possible between them?"[20] To make such a comparison, a common criterion is needed to serve as a "frame of reference",[21] to find and compare the extent to which two cultures or societies differ from each other. Such "a meta-system"[22] can be discovered in our common shared world because, notwithstanding the many discrepancies in rules and categories, all natural languages refer to the same world, serve to describe the same things, and organize similar relationships. The Bulgarian philosopher Gerdjikov argues: "[o]ntology may be relative, but language is not. There is something absolute in the

[16] My translation.

[17] My translation.

[18] S Gerdjikov, *Filosofiya na otnositelnostta* (Ekstrem Press 2008, 2012) 83.

[19] D Katan, *Translating Cultures: An introduction for Translators, Interpreters, and Mediators* (Routledge 2014) 325.

[20] V Buzov, *Filosofiya na ezika* (Odri Press 2002) 112.

[21] *Ibid*.

[22] *Ibid*.

world, i.e., beyond the confines of the individual and the community. Because of this, language is possible, while only because they live the world can people transmit and receive something to and from each other".[23] In this way, we are able to speak of "a partial impossibility of translation"[24] rather than of "complete impossibility"[25]. Similar thoughts can be found in the works of the American 20th century philosopher Davidson who points out that "a language that organizes similar things should be a language very similar to ours".[26] This applies no less to the languages of law. Although different for each legal system, they perform mainly similar functions, as law governs similar social relations. Otherwise, "no meaning can be found in the total impossibility of translation".[27]

This in itself implies that the respective normative text should be translatable in any legal system precisely due to its universality and generality. We can define this as "operative convention which derives from a sequence of phenomenological assumptions about the coherence of the world, about the presence of meaning in very different, perhaps formally antithetical semantic systems, about the validity of analogy and parallel".[28]

In such a hypothesis, only after accepting this as a principle, despite the inevitable semantic discrepancies in the translations, we can accept the translation into Bulgarian as equivalent and reproducing as accurately as possible the text of this decision. It seems to me that here Gerdjikov's principle of "global relativity"[29] is applicable because it states that "all communities are still human forms and therefore the transfer of meanings is possible. This is confirmed in translations between different cultures. One meaning cannot be transferred from one life process to another but only induced (author's emphasis) in search of the strongest resemblance".[30] However, if in the translation we find "a lack of equivalents, shifts in meaning, diverging systems, desemantization",[31] then probably the foreign legal formulation, unknown to the Bulgarian legal system, could be understood by comparing it with the language solutions – the language formulations that the Bulgarian legislation in similar hypotheses gives. In the latter case, Sarcevic maintains that the expert "is mainly forced to carry out a comparative analysis of the law in addition to a linguistic comparison in order to determine whether there is a potential equivalent in the target legal system that adequately reflects the meaning of the term legal system of origin to be translated".[32] Now let me return to the example considered above: in the Bulgarian Penal Code, the offences

[23] S Gerdjikov, *Filosofiya na otnositelnostta* cit. 203-204.

[24] D Davidson, 'On the Very Idea of a Conceptual Scheme' (1973-1974) Proceedings and Addresses of the American Philosophical 7.

[25] *Ibid*.

[26] *Ibid*. 14.

[27] *Ibid*. 7.

[28] G Steiner, *After Babel: Aspect of Language and Translation* (3rd edn, Oxford University Press 1998) 312.

[29] S Gerdjikov, *Filosofiya na otnositelnostta* cit. 105.

[30] *Ibid*. 106.

[31] R Masiola and R Tomei, *Law, Language and Translation: From Concepts to Conflicts* (Springer 2015) 5.

[32] S Šarčević, 'Die Übersetzung von mehrsprachigen EU-Rechtsvorschriften' cit. 13.

of insulting and defamation are qualified as some of the few crimes of a private nature. They are subject to prosecution, and in these cases, the legal means by which the Court is seized of such acts is called private complaint, not a civil indictment. The person who filed the private complaint is constituted as a private complainant, *i.e.*, in the Bulgarian legal system, this person is not qualified as a civil party. In the Bulgarian translation of the decision in question, the terms used are private complaint and private complainant. But although, in this way, the linguistic expression differs in the two language versions, the meaning of these expressions can be defined as partially equivalent. Here, the expert "produces texts that are equal in legal effect".[33] He translates a normative text, so to speak, transferring the meaning embedded in the context or the meaning from the point of view of pragmatics, and not the pure mechanical reproduction of the semantic meaning. But in such a case, as Sarcevic points out, vagueness can arise from the so-called "semantic differences".[34] Thus, Pym purports that if we try to "make sense of the foreign text, we turn it into our sense, our culture, which can only lead to ethnocentric translation".[35] Translation viewed in this way is understood by Nobles and Schiff as "an attempt to re-create the meanings of one culture using the language of another",[36] which shows that language is dependent on the culture of a given society. Therefore, the linguistic transposition of concepts immanent to one legal system/culture to another is the most challenging task in translating legal texts. This is due to this cultural conditioning of legal vocabulary. Consequently, in European Union law, a legislative style is established that avoids vague, too abstract formulations and the use of so-called culturally charged linguistic expressions. Thus, a more neutral legal language is being developed in European law.

On one hand, such a (allegedly) universal, culture-free rulemaking style aims to mediate the translation and transposition of European legal texts into the individual legal systems of the Member States. On the other hand, in the process of interpretation of these acts in the national context of the Member States, such "a neutral position is an illusion".[37] In a language which transmits information about the phenomenal world between different individuals, there are, naturally, discrepancies.

Engberg's weak language theory emphasizes the contingent aspect of communication in that it

> "lays more weight on the individual side of a language, on the importance of the parole. The communicative experiences and activities of these individuals are of major importance, as each individual experience will possibly have an impact on the 'copy' of the

[33] S Šarčević, 'Legal Translation and Translation Theory' cit.

[34] S Šarčević, 'Die Übersetzung von mehrsprachigen EU-Rechtsvorschriften' cit. 143.

[35] A Pym, *Exploring Translation Theories* cit. 100.

[36] R Nobles and D Schiff, 'Legal Pluralism: A System Theory Approach to Language, Translation and Communication' in M Freeman and F Smith (eds), *Law and Language: Current Legal Issues* (Oxford Scholarship Online 2013) 114.

[37] S Gerdjikov, *Filosofiya na otnositelnostta* cit. 28.

> language system present in the mind of the individual. And the individual will use this copy in subsequent communicative interaction and thus has at least the potential to influence the 'copy' of other individuals and thus gradually adjust the collective system, which is seen as inherently unstable and subject to constructions by the individuals".[38]

Therefore, discrepancies appear in meaning derived from the various subjects in this process.

As Paunio notes, although the European legislator uses terminology and linguistic apparatus which presuppose their uniform interpretation, regardless of the legal system or the national language in which the process of interpretation is carried out, "even when we are talking about concepts belonging to the autonomous sphere of EU law, some confusion as to their meaning (intension and extension [intension is what is being thought about the object and extension is the referred object itself – author's note]) may nonetheless exist when 'imported' into the national context by national judges and authorities".[39]

On this basis, we may assume that although it is practicable to reach a formally correct translation of the same semantic content equivalent in the two legal systems, each of the interpreters can hypothetically reach different interpretive results, or in other words, the pragmatic content will be different. The main reason for this is the initial indefinability of language, as a result of which Quine tends to attribute uncertainty even to cases where no translation is needed: these are cases of "communication between individuals using identical language; of an individual's attempt to specify (for himself) the objects of his own thinking and language".[40] If we were to arrive at a parallel linguistic expression that reproduces the linguistic meaning in a way as close as possible to the original text, the meaning found by the addressees – even when representatives of the same language – might differ. According to Quine, this phenomenon is due to the fact that interpreters from the same language group may decide not to apply a similar interpretive approach at all but choose to interpret the messages embedded in the text in a completely different way. These difficulties in the processes of interpretation are most evident when European law uses concepts that are absent from the legal vocabulary of one or more Member States. One such a term is entity. This term can be found in several Union regulations. In its essence, "is an entity" is an underdetermined predicate, uniting in itself many potential referents, the exact definition of which presupposes the need for further refinement. Only through legal interpretation can the respective concretization of the addressees of the concept be realized. In this process, we can often reach divergent and even contradictory results. The national law of Bulgaria knows concepts such as natural entity as well as legal entity. Nevertheless, such a concept as "an entity" is missing in the national legal system. So, the translator's task here is not to translate a legal concept, but to create a new one for the Bulgarian legal system. In this sense, it can be said that in

[38] J Engberg, 'Word Meaning and the Problem of a Globalized Legal Order' cit. 177-178.
[39] E Paunio, *Legal Certainty in Multilingual EU Law* cit. 9.
[40] B Mollov, *Lekcii po filosofiya na ezika* (Proektoria Press 2014) 38.

determining the referents that unite this underdetermined predicate, the interpreters from the same language group would apply divergent interpretive criteria. This problem is further complicated when it comes to interpreters that are representatives of multicultural and multilingual communities, as such are united within the EU. In order to be more precise, Masiola and Tomei say that "an original text is 'interpreted', and its multilingual translation is re-interpreted. In this sense, there is 'one linguistic translation' and 'two' conceptual interpretations which come from one translation".[41] This is because, like any type of thinking, the legal one cannot be separated from the language in which it is performed. It is, so to speak, determined by it. López-Rodríguez writes: "law and language are closely connected in that they usually are products of the same social, economic and cultural influences. In the same sense, cultural heritage is embedded in law, including the linguistic dimension."[42] This becomes obvious if we look at a particular category of legal norms, namely the relatively defined ones. They are very broad and are being used to determine the elements of the factual composition of the legal norm (its formative hypothesis) or the legal consequences (the respective disposition), and they are concepts – as V. Petrov states – "the content of which is necessarily imprecise, variable and elastic".[43]

Most often such wording is avoided in the European legislative process, though their use is inevitable. Such broad concepts can be found even in the primary legislation itself. There are many examples to support this. However, here we will only mention the second paragraph of art. 4 TEU, which states: "the Union shall respect the equality of the Member States before the Treaties and their national identity inherent in their basic political and constitutional structures, including concerning local and regional self-government".

The use of broad concepts as "respect for national identity" requires the experts/lawyers in the individual Member States, through legal interpretation, to make the appropriate specification about the meaning of the text in a given legal discourse within the domestic legal system of a particular Member State. Given that respect for the national identity of the Member States is one of the fundamental principles of European Union law, in some cases, it could lead to the non-application of a certain legal provision of that law. Thus, a precise legal assessment of the applicability of the principle in the specific case is required.

This happens because, as Semov writes: "although this is an important real possibility of incidental limitation of the effect of individual Union legal norms, it is only a minimal

[41] R Masiola and R Tomei, *Law, Language and Translation* cit. 58.

[42] A M López-Rodríguez, 'Toward a European Civil Code Without a Common European Culture?' cit. 1211.

[43] V Petrov, 'Otnositelno opredeleni pravni normi' (2010) Ezik: Nasoki za pisane I redaktirane na pravni tekstove 142.

exception to the general effect (and meaning) of the principle of the supremacy of European Union law".[44]

It is probable that in the interpretation process contradictory results may appear, which would hinder the full functioning of these prescriptions as a uniform meaning, as here the determinant is, according to Masiola and Tomei, "the personal, social and cultural context in which any reader's reaction to the written text takes place".[45] From the latter perspective, a person or a society can find meaning in the text that exceeds the intention of its author. Therefore, Masiola and Tomei assert that in such cases "the original intention embedded in the relevant text may in a sense be displaced by the reader's interpretive results".[46]

This may mean that in some cases the original rulemaking intention remains partially or entirely incomprehensible when understanding the act in the social, political, and linguistic discourse of the individual society.

> "Therefore, whenever he/she considers that an applicable Union law is contrary to national constitutional identity, the national judge is obliged to ask the Court of Justice of the European Union to interpret this Union law, and only the Court of Justice can establish/declare whether the specific union legal norm is in contradiction with the national constitutional identity of the state in order to "allow" the non-application of this union legal norm".[47]

This explains why the European legislator uses terminology and linguistic apparatus though presupposing clarity in European law that does not depend on the legal system and the national language in which the translation is performed, there is often a discrepancy. It is because, as argued previously, it is difficult to ensure a neutral position in the processes of interpretation. Thus on the one hand, we observe cultural relativity and the inevitable indeterminacy of the foreign text, which probably leads to the gap in meaning between the two languages. On the other hand, there is the requirement for proper and accurate law enforcement, requiring the text to be interpreted as precisely as possible.

The requirement of proper and accurate law enforcement is largely the reason for the existence of a specialized procedure for the interpretation of EU acts, carried out directly by the Court of Justice of the European Union (ECJ). ECJ has undoubtedly established itself as an authority, ensuring the uniform interpretation and correct application of European law. As Borchard puts it: "any system will endure only if an independent authority supervises its rules. What is more, in a union of states, the common rules – if they are subject to control by the national courts – are interpreted and applied differently

[44] A Semov, 'Neprilagane na pravoto na ES poradi zachitane na natsionalnata identichnost' (16 November 2020) NewsLex news.lex.bg.

[45] R Masiola and R Tomei, *Law, Language and Translation* cit. 14.

[46] *Ibid*.

[47] A Semov, 'Non-application of EU Law Due to Respect for National Identity' cit.

from one state to another. The uniform application of Union law in all Member States would thus be jeopardized".[48]

According to Popova, the ECJ is empowered by the founding treaties with the exclusive competence to "interpret EU law, and rule on the validity of the Secondary law".[49] The Court of Justice of the European Union exercises this exclusive competence through the so-called preliminary rulings proceedings. The purpose of the reference for a preliminary ruling is to ensure that EU law is uniformly applied throughout the Member States. Popova maintains that through this specialized legal method "differences in the interpretation of Union law to be applied by national courts are prevented. It seeks to ensure this application by providing the national judge with a means of eliminating the difficulties that the requirement of ensuring the full functioning of Union law within the judicial systems of the Member States may cause".[50]

According to art. 36 of the rules of procedure of the Court of Justice of the European Union, any proceedings may be conducted in any of the official languages of the EU. As regards preliminary ruling proceedings, the language in which it is conducted must always be the national language of the Court that has made the reference.

To eliminate the possibility that one of the language versions of a legislative act may take precedence over the others, the Court of Justice has developed an interpretative method by which it interprets the meaning by comparing the different language versions of the same legislative act. Semov writes: "the provision must not be considered in only one of the language versions, but must be interpreted in the light of their entirety, without one of them being decisive in the absence of precise linguistic version compliance".[51] In cases where the language versions of the same legislative act differ from each other, the Court conducts an interpretation that establishes the most appropriate meaning among "competing interpretations".[52] For these reasons, Paunio concludes that in cases where the Court found any discrepancy between the different translations (*i.e.*, there is a discrepancy of meaning in the language versions of the same normative act), "a choice must be made between different meanings in language versions. This implies that the ECJ needs to create a new meaning for one or more languages involved".[53] In this process, the Court uses as an interpretative basis the context of EU law as a whole, thus enabling the Court of Justice to provide a correct interpretative result based on the objectives or, in other words, on the

[48] K Dieter-Borchardt, *The ABC of EU Law* (Publication of the European Union 2017) 80.

[49] J Popova, *ravo na Evropeyskiya sayuz* (2nd edn, Ciela Press 2012) 425.

[50] *Ibid*. 429.

[51] A Semov, 'Nay-vajni resheniya na Sada na Evropeyskite obshtnosti: S komentari' (2007) Institut po Evropeysko pravo 107.

[52] J R Siegel, 'The Inexorable Radicalization of Textualism' (2009) UpaLRev 117-130.

[53] E Paunio, *Legal Certainty in Multilingual EU Law* cit. 119.

intention of the legislator, and not based only on the objective literal linguistic expression. In literature, this method is defined as "a teleological or contextual method".[54]

Similar to the rulemaking process in national law, where preparatory work can provide an initial interpretative basis on which the interpreter could extrapolate the initial intention embedded in a normative act when it comes to the interpretation of acts of secondary Union legislation, the Council minutes may provide a parallel interpretative basis. Of course, it should be borne in mind here that "the statements recorded in the minutes reflect the positions of their authors. They may not in any way limit the scope or legal consequences of the legal act, which the content of the act itself can only determine".[55]

When interpreting a provision, the statements based on which the interpretation itself is made should be used only as a guaranty confirming or rejecting the meaning obtained in interpreting the linguistic expression of the norm itself. Where semantics and pragmatics, taken separately, are incapable of serving as a solid basis for extrapolation of the correct linguistic meaning of the normative text, the recourse to semantics in context – *i.e*. paired with pragmatics – could give correct meaning to the acts of the Union.

All this aims at the following: when an act has been interpreted, regardless of the language in which it is created or translated, the process must lead to the establishment of the actual intention that underlies its creation by the rulemaking body, and to determining the applicability of the text in the specific discourse. In this sense, if we return to the considered principle of respect for national identity, we will find that (as Semov writes): "[b]ased on an active dialogue between the constitutional and other jurisdictions in the Member States, the Court has not only clarified and expanded the concept of protected national identity of the Member States but also required a comprehensive common understanding of the integration structure".[56]

This is just one of many examples based on which we can say without a doubt that the Court of Justice of the EU serves as a guaranty for the preservation of the unity and proper functioning of Union law in the territory of all Member States. Without the ECJ, it would have different meanings and different consequences. Therefore, "aid of the ECJ is constantly required. To the extent that EU law is multilingual, national courts and administrative authorities cannot rely solely on their own understanding of the European law drafted in their language".[57]

[54] K Davies, *Understanding European Union Law* (Routledge 2013) XXXI.

[55] Council of the European Union, *Comments on the Council's Rules of Procedure European Council's and Council's Rules of Procedure* www.consilium.europa.eu.

[56] A Semov, 'Neprilagane na pravoto na ES poradi zachitane na natsionalnata identichnost' cit.

[57] A M López-Rodriguez, 'Toward a European Civil Code Without a Common European Culture?' cit. 1213.

IV. Common European legal discourse as a way to overcome relativism

Difficulties in the process of interpreting EU multilingual law could be overcome through a shared unified legal culture because, like Katton notes: "[c]ulture, in fact, is not a factor but rather the framework (the context) within which all communication takes place".[58] That is why, through such a common intercultural legal discourse which is the necessary specific system of interpretative rules and methods and thus provides unambiguous interpretation within the specific legal system, a shared uniform linguistic meaning can be achieved in European legislation. In the context of Engberg's weak language theory, this shared European discourse could be seen as possible only "in the form of convergence between conventional relations of material entities and meant entities across languages. The primary prerequisite is that there are communicative instances in which communicators may engage with each other and build up experiences, which they will have recourse to in subsequent communicative instances and thus in subsequent semiotic processes".[59] This shared legal discourse could be achieved, apart from the legal lexicon used in a given legal system, by picking the totality of the shared European normative discourse. The totality of the shared European discourse includes all those specifics which constitute the language conventions and normative structures that are immanent to the individual legal order. Here I follow Davidson's views about linguistic conventions, who notes that "the conventional element in language can only be linked to people's desire to speak like the other participants in the communication process".[60] Thus, through this common European discourse, the linguistic conventions can be seen as equally recognised word's meaning, but not as an interpretative result. Fiss declares that "interpretation is constrained by disciplining rules and by the existence of an interpretative community which recognises standards and "a set of norms that transcend the particular vantage point of the person offering the interpretation".[61] Equal meaning in European legislation would not be the result of uniform interpretation, but rather of mutually recognised meaning. They would not have their meaning without the necessary context for their proper use, clarification of their specific origin, the way they are included, and their cultural contingency. The most appropriate method for achieving these ends is the epistemological analysis, as Sage-Fuller and others state: "epistemology requires a historical, ethical, and metaphysical inquiry to understand the meaning of words and expressions in a tradition. Semantics are insufficient as they are often ahistoric".[62] As López-Rodríguez writes, it is only within a shared general legal discourse that "even linguistic diversity will be a minor

[58] D Katan, *Translating Cultures* cit. 324.

[59] J Engberg, 'Word Meaning and the Problem of a Globalized Legal Order' cit. 177.

[59] A Pym, *Exploring Translation Theories* cit. 178.

[60] V Buzov, *Filosofiya na ezika* cit.

[61] OM Fiss, 'Objectivity and Interpretation' (1982) Stanford Law Review.

[62] B Sage-Fuller, F Prinz Zur Lippe and S Ó Conaill, 'Law and Language(s) at the Heart of the European Project: Educating Different Kinds of Lawyers' (2013) Law and Language: Current Legal Issues 500.

problem".[63] This will significantly facilitate the interpretation and application of European law by the various courts and administrative authorities in the Member States. Moreover, according to López-Rodríguez, "even the solutions for many legal issues could be "taken for granted" without having to constantly resort to the ECJ for a preliminary ruling".[64]

When we talk about a common European legal discourse linked to a single language, the question arises as to which language should this be? The question cannot be answered unequivocally, as the problem of linguistic diversity in the EU and respect for the national and linguistic identity of the Member States re-emerges. As a comparison, in the Middle Ages this problem did not exist, because then "Latin was used as a common legal language throughout Europe".[65] Common legal discourse, built on a single language, seems rather impossible, in light of the linguistic diversity in the Union. According to Sage-Fuller and others, such considerations motivate the need for "bilingual legal education or legal education through a language other than the dominant language of the jurisdiction",[66] that would allow students to act as a link between the various legal systems in the EU, as they would be able to observe "how the law of the EU cannot be affected by the linguistic diversity that exists in Europe".[67] This bilingual education is very reminiscent of the so-called by Gerdjikov "cross-cultural experience"[68] through which individuals adopt a culture that is new and unknown to them. In this process, students learn to create cognitive connections by which to recognize and understand their new culture, and thus to communicate with it. Such a procedure is inevitable in modern society, and it would be a logical continuation of the centuries-old tradition of intercultural and multilingual communication within European Union. In this regard, Habermas thinks that "translingual citizenship uniting such a numerous variety of different language communities is a novelty. But Europeans already share the principles and values of largely overlapping political cultures".[69] A common European legal discourse can be built only through direct cultural experience exchange between the various legal traditions. As Buzov points out, fruitful communication between cultures is at the heart of their better mutual understanding and shows the only alternative to a better future for humanity. Probably this is the process Katton refers to when he says that the first level of integration is the process in which "someone attains the ability to analyze and evaluate situations from one or more cultural perspectives".[70]

[63] A M López-Rodríguez, 'Toward a European Civil Code Without a Common European Culture?' cit. 1220.

[64] *Ibid*.

[65] *Ibid*. 1218.

[66] B Sage-Fuller, F Prinz Zur Lippe and S Ó Conaill 'Law and Language(s) at the Heart of the European Project' cit. 499.

[67] *Ibid*. 497.

[68] S Gerdjikov, *Filosofiya na otnositelnostta* cit. 252.

[69] J Habermas, 'An Exploration of the Meaning of Trans Nationalization Democracy, Using the Example of European Union' in P Deutscher and C Lafont (eds), *Critical Theory in Critical Times: Transforming the Global Political and Economic Order* (Columbia University Press 2017) 12.

[70] D Katan, *Translating Cultures* cit. 337.

Perhaps similar considerations shape the views of Sage-Fuller and others who write that "the relationship between European legal traditions is at the heart of the European Union and is indispensable to the creation of coherent European law and effective and efficient legal structures".[71] Thus, integration law would be uniform, discrepancies would be minimized, and coherence, clarity, and unanimity would be achieved. Here we can say that in this process, a significant role is played by the translator, who is, according to Kattan, "a cultural interpreter or mediator and has a supra-cultural mission: to improve cross-cultural cooperation, and build trust and understanding between communities".[72]

V. Conclusion

The EU is a supranational entity that unites many different legal systems. All these united legal systems have their own linguistic arsenal and legal vocabularies, which causes many difficulties in legal translation of European legislation.

There is much evidence for the thesis that translation indeterminacy and cultural relativity engender impossibility of uniformity and clarity of EU law, as many authors and I have shown. Notwithstanding the multitude of ways in which the European institutions attempt to provide uniformity, differences between the language versions of the European legislation can still be found, and ambiguity frequently appears in the interpretation of European legislation and in the national context of the Member States. So, this equality is often assessed as a legal fiction.

In this *Article*, I have argued that only through shared European legal discourse as a common system of interpretative rules and methods can overcome linguistic differences and ambiguities. The ultimate goal, or, as we may say, the ideal of the European law is that it come to function with equal linguistic meaning in all official languages. Without this, fundamental principles of law will be violated. A shared legal discourse could provide much-needed uniformity of meaning. This meaning would not result from incorrigibly uniform interpretation but from mutually recognised linguistic meaning that is accepted by all.

As I have already shown, a common legal discourse could contribute to the achievement of uniformity, minimizing the differences in meaning or even destroying the fiction, transferring the uniform meaning into reality. Therefore, only when we replace cultural relativism with cross-cultural interaction and only when we learn to use linguistic and cultural differences as a source of potential opportunities for development and enrichment of our own culture (which does not erase its own specifics and differences) and only if we share a common European discourse, then we can rationally discuss equality and share common linguistic conventions and unequivocal supranational law.

[71] B Sage-Fuller, F Prinz Zur Lippe and S Ó Conaill, 'Law and Language(s) at the Heart of the European Project' cit. 496.

[72] D Katan, *Translating Cultures* cit. 337.