

THE EFFECT OF THE LAW OF THE EUROPEAN UNION ON LANGUAGES

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I. Introduction

1. Languages and Culture

Discussing the relationship between European law and culture, we are justified in first examining the question of languages and European regulation, language being a prerequisite, an expression and preserver of any community culture.¹ To quote T.S. Eliot: “For the transmission of a culture – a peculiar way of thinking, feeling and behaving – and for its maintenance, there is no safeguard more reliable than language.”²

Moreover, everyday culture is largely made up of the totality of linguistic commonplaces, turns of phrase, beliefs, fairy-tale figures, nursery rhymes, well-known quotations. For the foreigner, these expressions rich in meaning remain but puzzling allusions.³ The deep-structure and the notion stock of a language define both the way of thinking, the turn of mind of a community⁴

¹ Ernő TAXNER-TÓTH, “Nyelv, megértés, hagyomány” [Language, Understanding, Tradition]. In: *Magyar Szemle*, vol. X, nos. 9-10, October 2001, pp. 116-127. Let me also quote a beautiful passage from the novelist Bulcsú Bertha’s *Balatoni évtizedek* [Decades at the Lake Balaton] (1973): “It was during one of these odd, wind-battered, whistling winter nights that it dawned on me that I belong to a definite community. I mumbled names of villages, and they allured me, bound me in an emotional ring. If I repeated *Iszkáz*, they seemed to call for perpetuation just as much as *Örvényes*, *Csopak* or *Dörgicse*. Ever since, I have sworn by the magic words, magic names. They are wondrous; they define me. Just as the landscape, the heights of the mountains, the depths of the waters, the climate, and geographic latitude do.” Quoted in: László Grétsy, *A mi nyelvünk. Íróink és költőink a magyar nyelvről* [Our Language: Our Writers and Poets on Hungarian Language]. Budapest: Tinta Könyvkiadó, 2000, pp. 62-63.

² T. S. Eliot, “Notes toward a Definition of Culture” in: *Christianity and Culture*, New York: Harcourt, Brace and Co. 1949, p. 130.

³ István BART, *Angol-Magyar Kulturális szótár* [English-Hungarian Cultural Dictionary]. Budapest: Corvina, 1998, p. 269.

⁴ Endre MIKLÓSSY, *Túl a tornyon, melyet porbul rakott a szél. Magyar gondolkodók a XX. században* [Beyond the Tower of Dust Built by the Wind]. Hungarian Thinkers in the 20th

and the cultural identity of the individual.⁵ Moreover, members of a community are emotionally attached to their language.⁶ Language creates community; it creates and assumes a linguistic community⁷ as “it is only our mother tongue we can know well.”⁸

On the other hand, languages are not self-enclosed worlds isolated from one another – nor have they ever been. Commerce between peoples and states, religion-based migration, Europe-wide warfare, the great artistic trends have all enriched European languages with thousands of new expressions from mediaeval times to the present. By way of example, some 38,000 words are believed to have gone into the English language between 1450 and 1750. Furthermore, some have gone as far as to suggest that the English, the Italian and the Spanish were hybrid languages due to the significant proportion of vocabulary they took over from one another.⁹

Yet, the interaction between languages does not exclude their competition and the requirement of increasingly general use, from diplomacy through commerce to literature. In contrast, however, movements to purify and protect languages came into being in reaction to the reception of foreign vocabulary. The *Académie française* itself was established in order to cleanse the language; and the aspirations to purify languages were given an added emphasis with the birth of nation states in the 19th century.

2. Language and State

Understandably, states, including the Member States of the European Union, employ a wide variety of means to protect the use of their languages, even the use of the language of a minor ethnic community, because the fundamental

Century]. Budapest: Széphalom Könyvműhely, 2001, pp. 201-202. The quote refers to Sándor Karácsony's train of thought. Béla Hamvas puts the same idea this way: “Each language knows something it alone knows, no other.” “Interview.” In: *Patmosz I*, p. 296.

⁵ Erik JAYME, “Multicultural Society and Private Law. German Experiences.” Address before Centro di studi e ricerche di diritto comparato e straniero in Rome, 1999, p. 5.

⁶ “Let dance be as it is danced; let the word be as it is still said. If there's truth in the skies, it lets mothers call their sons Hungarian.” Gergely KOLTAI's text on the 2003 album, *A forrás felé*, [Towards the Source] of the group Kormorán. Or note Tibor DÉRY's statement in 1945: “I believe the Hungarian language is my greatest earthly treasure, and I protest with all my heart against its any perversion, spoliation, betrayal, and dispossession.” In: Angéla Molnos, *Magyarító könyvecske* [A Little Hungarianising Book]. Debrecen: LSZM Alapítvány, 2001, back cover.

⁷ Loránd BENKŐ, *A nemzet és anyanyelve* [The Nation and its Mother Tongue]. Budapest: Osiris Kiadó, 1999, p. 36-37.

⁸ The idea of the Transylvanian Hungarian writer Zoltán Panek, quoted by the linguist Géza Balázs in the radio programme “Egy csepp emberség” (A Drop of Humanity) on Radio Kosuth, aired 2 April, 2004.

⁹ Peter BURKE, “The hybridization of languages in early modern Europe.” In: *European Review*, 2006, no. 1, pp. 105-110.

condition of the survival of a language is its continued and general use in everyday life.¹⁰ A common language also reinforces the state.¹¹ States raise a certain language or languages to official rank. They provide for their being taught at schools, used in courts and parliamentary debates, in the rooms and corridors of ministries, in the press or the mass media.¹² Languages are “codified”: academies of science established or supported by the state lay down their vocabularies and grammatical rules. True enough, state intervention has but a limited influence on the autotelic life and the organic development of a language.¹³ Nevertheless, states may prescribe the use of a given language in labelling goods and products, or they might likewise define the linguistic requirements for company names or shop signs.¹⁴ They may happen also to stipulate linguistic conditions, such as the certified knowledge of the official language of the state, for practicing certain professions and occupations.¹⁵

As law protects language, so language is the means whereby law is manifest. In the course of the centuries, national legal languages have also developed, which are closely related to the characteristics, traditions and cultures of their respective states.¹⁶

¹⁰ Bruno DE WITTE, “Language Law of the European Union: Protecting or Eroding Linguistic Diversity?” In: Rachael Craufurd Smith (ed.), *Culture and European Union Law*. Oxford: Oxford University Press, 2004 [Bruno de Witte, 2004a], pp. 205-241, especially 210-219.

¹¹ Analysing the example of the United States of America, many believe a common language to be the condition of a durable federation; see Larry SIEDENTOP, *Democracy in Europe*. London: Penguin Books, 2001, p. 12.

¹² Abram DE SWAAN, “Language and Culture in Transnational Society.” In: *European Review*, vol. 7, 1999, no. 4, p. 508.

¹³ The limits of state intervention is attested also by the rather mixed reception and limited acceptance in Germany of the German orthography reform of 1996 (*Rechtschreibreform*).

¹⁴ See for an assessment of the Act no. 94/665 of August 4 1994 on Protecting the French Language, Florian Endrös, “Das französische Sprachschutzgesetz und seine Unvereinbarkeit mit EG-Recht.” In: *Recht der Internationalen Wirtschaft (RIW)*, 1995, no. 1, pp. 17-25. With regard to its Hungarian equivalent, Act XCVI of 2001 on the publication in Hungarian of economic advertisements shop signs and notices of public concern, it is worth quoting its introductory lines: “Hungarian language is the most important manifestation of our existence, the expression of our national belonging, the most important vehicle of Hungarian culture, science and communication. It is therefore a common responsibility of the living generations to protect the Hungarian language, and to pass it on to their descendants, to preserve the intactness of our linguistic environment, and to maintain its healthy adaptability.”

¹⁵ See case C-379/87, Anita Groener v. Minister for Education and the City of Dublin Vocational Educational Committee, ECR, 1989, p. 3967.

¹⁶ Réka SOMSSICH, “A jogfogalmi megfeleltetés problémái a közösségi jogban, az irányelvek átültetésének szintjén – a jogi ‘fordítás’ sajátos formája” [The Problems of Appropriate Rendering Legal Concepts in Community Law at the Level of Transposing Directives – a Characteristic Form of Legal ‘Translation’]. In: *Magyar Jog*, 2003, no. 12, pp. 746-751, especially 746. With respect to language rights, the various models of modern states are examined by György ANDRÁSSY, *Nyelvi jogok. A modern állam nyelvi jogának alapvető kérdései, különös tekintettel Európára és az európai integrációra* [Language Rights: The Fun-

3. European Integration and Languages

Established upon different considerations and for different purposes, the law of the European Community functions in a fundamentally different linguistic environment. European integration obviously lacks the cohesive force of a common language; it is not a language community.¹⁷ In response to this situation, Community law acknowledges the equality and importance of the various languages, the value of linguistic and cultural richness, diversity. It even announces programmes to support language learning and linguistic diversity. On the other hand, it intends to bring about a unified and efficient institution system and a single market where the main factors of the economy, workers, companies and goods circulate freely; where regulation is fundamentally homogeneous, and where extra-economic factors, such as language, present no obstacle. To put it generally, universality struggles with particularity, with acknowledging uniqueness and locality.¹⁸ The single market of Europe (including the labour market) has its skirmishes with national cultures and even the protection of languages within.

This is the brief outline of the background of the issue of Community law and languages: as far as actual regulations are concerned, they have to be examined at several levels. The relationship of Community institutions and language, the integration policy in language matters, the connections between economic integration and language call for separate examination. We will therefore begin our discussion with the regulation of authentic and official languages, which are used in legislation, administration and the activities of authorities; then we will go on to introducing language programmes, reviewing the relationship between the free movement of persons and language requirements, and then finally assess this same question with respect to the cross-border movement of goods.

damental Questions of the Language Rights of Modern States with Special Regard to Europe and European Integration]. Pécs: Janus Pannonius Tudományegyetem, Európa Központ, 1998, pp. 17-48.

¹⁷ The lack of a language community should not be underrated, there being many who attribute decisive importance to a common language in the lasting existence of the United States: "The American experience might reasonably be understood as establishing that a shared language is a prerequisite for a workable federal system, providing an indispensable civic bond... Could the United States long survive without a shared language? Many students of American government doubt it." Larry SIEDENTOP, *Democracy in Europe*, London, Penguin Books, p. 12.

¹⁸ The legal aspect of this tension is all too obvious: "Integration lässt sich mit Bleckmann als ein Prozess verstehen, in welchem 'eine Vielheit allmählich zu einer Einheit zusammenschmilzt' als einen „allmählichen Übergang vom Pluralismus zum Monismus der europäischen Rechtsordnungen". Irene KLAUER, *Die Europäisierung des Privatrechts. Der EuGH als Zivilrichter*. Baden-Baden: Nomos Verlag, 1998, p. 27.

II. The Institutions of the European Union and Languages

1. Authentic Languages

The Treaty of Rome has several provisions on language: Article 314 (248) treats authentic languages.¹⁹ The Treaty was originally made in one single copy in French, Dutch, German and Italian each; these language versions are equally authentic. In accordance with later accession treaties, the English, Danish, Finnish, Greek, Irish, Portuguese, Spanish, and Swedish language versions of the Treaty are equally authentic. Pursuant to Article 61 of the 2003 Accession Treaty, the texts of the Treaty rendered in Czech, Estonian, Polish, Latvian, Lithuanian, Hungarian, Maltese, Slovak, and Slovenian are likewise authentic, under the same conditions as the languages listed in Article 314. Article 18 of the 2005 Accession Treaty provides for the same status for the Bulgarian and the Romanian languages.²⁰

Authentic languages acquire particular significance in the course of exercising the rights of citizens of the European Union provided for by Article 21 (8d), whereby they may write to the institutions or bodies of the Union in one of the languages mentioned in Article 314,²¹ and receive an answer in the same language. It could be a matter of interpretation whether the languages that appear as authentic languages only in the 2003 Treaty of Accession enjoy the status provided for by Article 21; in other words, could one write to and get answer from the European Ombudsman in, for instance, Hungarian? But the answer is quite obvious because these languages are authentic under the same conditions as the ones mentioned in Article 314.

It is worth noting the authorising or conferral rule in Article 290 (217) of the Treaty according to which the rules governing the languages of the institutions of the Community shall, without prejudice to the provisions contained in the Statute of the Court of Justice, be determined by the Council, acting unanimously.

2. Official and Working Languages

Upon the authorisation mentioned above, the Council adopted Regulation No. 1 in 1958. Linguistic diversity is formally provided for in the Union: according to the text of the regulation in effect at the end of 2004, there were twenty official

¹⁹ Expressly, the Treaty of Rome does not use the term “authentic language”, but the literature on law does. German sources in particular use the term “*authentische Sprachen*”.

²⁰ Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded.

²¹ The institutions or bodies referred to are the ones mentioned in this Article or in Article 7. These are as follows: the European Parliament, the Commission, the Council, the Courts of Justice and Auditors, being the institutions, and the Economic and Social Committee and the Committee of the Regions, the Ombudsman, being the bodies.

and working languages in the Union, and, as of 1 January, 2007, there are twenty-three;²² the *Official Journal of the European Union* is therefore published in twenty-three languages.²³ This undoubtedly means an acknowledgement of the importance of languages for nations and national cultures,²⁴ and it also provides for a fundamental condition of the democratic functioning of the Union, its transparency for its citizens. The generic terms of authentic, official and working languages covered not quite overlapping circles of languages until recently. It was an anomaly that, though Irish was regarded an official language, i.e. Irish citizens could write in Irish to the institutions of the Community, but Community law was not published in Irish because it was not an official and working language under the regulation. This was a rather peculiar situation; in terms of preserving language and culture, its insufficient explanation was that Ireland had another official language – English. Thirty years after Ireland’s accession, Council Regulation 920/2005/EC accorded official language status to Irish,²⁵ and thus the *Official Journal of the European Union* was to be published in twenty-three languages as of January 1, 2007. However, it provided for a temporary derogation whereby the institutions of the European Union need not draft every legal act in Irish and publish it in Irish in the *Official Journal of the European Union*, with the exception of the regulations adopted jointly by European Parliament and the Council.

A marked appreciation of language was the fact that, with the accession of Austria, the use of certain Austrian terms was justified, supplementing the German vocabulary in Germany.²⁶

²² EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community, *OJ B017*, 10.7.1958, pp. 385-386. As of the 2003 amendment of Article 1 of the regulation, the official and working languages of the institutions of the Union are as follows: English, Czech, Danish, Estonian, Finnish, French, Greek, Dutch, Polish, Latvian, Lithuanian, Hungarian, Maltese, German, Italian, Portuguese, Spanish, Swedish, Slovakian, and Slovenian. This list is eked out by the Irish and, due to the 2007 enlargement, Bulgarian and Romanian.

²³ Pursuant to Article 5.

²⁴ Lorna WOODS, Culture and the European Union.” In: Martijn van Empel (ed.), *“From Paris to Nice”: Fifty Years of Legal Integration in Europe*. The Hague, London, New York: Kluwer Law International, 2003. 109-129. pp., p. 120.

²⁵ Council Regulation 920/2005/EC of 13 June 2005 amending Regulation No 1 of 15 April 1958 determining the language to be used by the European Economic Community and Regulation No 1 of 15 April 1958 determining the language to be used by the European Atomic Energy Community and introducing temporary derogation measures from those Regulations, *OJ L 156*, 18.06.2005, p. 3-4.

²⁶ Protocol No. 10 on the use of specific Austrian terms of the German language in the framework of the European Union, *OJ C 241*, 29.8.1994, p. 370, includes mostly supplements on foodstuffs. Thus a Community regulation could use not only “*Blumenkohl*” but “*Karfiol*”; not only “*Aubergine*”, but “*Melanzani*”; not only “*Quark*” but “*Topfen*”, and not only “*Tomaten*” but “*Paradeiser*”, too.

The twenty-three official languages have naturally not only benefits but costs, too. According to a communication of the Commission, the translation and interpreting services of all the institutions of the European Union together cost the equivalent of 1.05% of the total budget of the Union for 2004, or €2.28 per citizen per year.²⁷ Taking the whole population of the Union together, this means a vast sum of money, around € 1 billion. Small wonder that some members of the European Parliament were rather inquisitive about the costs of raising new languages to official status at the time of the 1995 enlargement and again when Irish was made official.²⁸

3. The Official Use of Further Languages in the Institutions and Bodies of the Union

There are nearly sixty linguistic communities in Europe²⁹ whose languages have no official status, which creates a kind linguistic inequality before the law,³⁰ although the European Commission has made efforts to support minor languages.³¹ The Conclusions the Council adopted on 13 June, 2005, were intended to partially remedy this inequality before the law.³² In order to give further expression to linguistic diversity, the document provides for Member States to enter into administrative agreements with the Council or other institutions to use non-official languages. The entry into such agreements is conditional on several factors. Primarily, such agreements can be concluded in respect of the languages the constitution of the Member State concerned acknowledges the legal standing of in all or part of its territory, or that can be

²⁷ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: A new framework strategy for multilingualism, Brussels, November 22, 2005, COM (2005), point IV.2.

²⁸ Written Question No. 2097/96 by *Eryl McNally* to the Commission. Financial implications of adding to the official languages of the EU. *OJ C 385*, 19. 12. 1996, p. 93; as well as Written Question E-2372/05 by *Koenraad Dillen* (NI) to the Council.

²⁹ Not mentioning the non-indigenous languages brought by immigrants.

³⁰ See György ANDRÁSSY, "Fönnmarad-e Európa és az Európai Unió soknyelvűsége a XXI. században?" [Will the Multi-lingualism of Europe and the European Union Survive in the 21st Century?]. In: *Európát Kutatva*. Budapest: Tempus Közalapítvány, 2001, pp. 39-44, 42. A more uneasy tone is struck by Miklós Györffy, "Anyanyelvünk Európa" [Our Mother Tongue: Europe]. In: *Vigília*, 2001, no. 7, pp. 523-527.

³¹ The EP has passed several resolutions concerning the issue, e.g. Resolution on linguistic and cultural minorities in the European Community (A3-0042/94), *OJ C 61*, 28.2.1994, pp. 110-113. The *European Bureau for Lesser Used Languages* was also established. Cf. Lorna Woods, op. cit., p. 120. The cause of minor languages was espoused by the European Charter for Regional and Minority Languages, 1992. For our more detailed analysis, see the section (§) on the Language Policy of the European Communities.

³² See Council conclusions of 13 June 2005 on the official use of additional languages within the Council and possibly other Institutions and bodies of the European Union, *OJ C 148*, 18.6.2005, pp. 1-2.

used as national languages under its law. Another condition is that the direct and indirect costs of the agreement be borne by the Member State requesting the agreement. The requesting Member State's government must also be capable of providing the European Parliament and the Council with the official translation of the most important secondary sources of Community law, the acts of the European Parliament and the Council into the requested language. The Member States might also ensure that their citizens may write to the institutions or bodies of Union in any these officially used languages. In such cases, they will have to put in place an additional translation stage, which rendering a submission from, for instance, Breton into one of the official languages of the European Union and the answer vice versa. The first such agreement was concluded on the use of the regional languages in Spain, Catalanian and Basque, between Spain and the Committee on Regions in November, 2005.³³

4. Central European Characteristics

As a result of the divergence of linguistic, national and state borders in Central and Eastern Europe, one official language may happen to be not only the language of the Member State but also that of a national minority living in neighbouring countries. Thus, for instance, the official status of Hungarian may strengthen the language conditions of the Hungarian minority in Slovakia, reinforcing its orientation in matters of European integration, and may even put Hungarians living in non-member Serbia and Ukraine in a relatively advantageous position. With help of the European Community, Hungarian language therefore is relieved from linguistic oppression in these areas of historical Hungary.

5. Constitutionality and Language

The acknowledgement of the official languages of the Member States³⁴ as the official and working languages of the European Union is not merely proof of the equality of the Member States, nor is it only a safeguard of cultural diversity and of the durable future of languages, but, hopefully, it will also contribute to the international recognition and awareness of a language that has acquired official status and to the growth of its vocabulary with the characteristic expressions of European unification.³⁵

³³ For the significance of the language issue in Spain, see Andrés BARRERA-GONZÁLEZ, "Language, Collective Identities and Nationalism in Catalonia, and Spain in General." Florence: European University Institute, EUF Working Paper No. 95/6, 1995.

³⁴ If a Member State has several official languages, at least one of these becomes an official and working language of the European Union.

³⁵ For a detailed discussion of the hopefully beneficial effects, see György Andrassy, 2001, p. 43: "First, it might put an end to the feeling that Hungarian cannot be managed with in a

However, beyond all this, language has to do with a fundamental condition of the actual effectiveness of the rule of law and legal security. Thousands of regulations define the institutional set-up, the functioning and scope of the European Union and the European Community, as well as the very rights of its citizens, several of which are directly applicable, i.e. without any legislation by the Member States, and therefore provision should be made for all to understand them in their vernacular.³⁶

6. Habitually Used Languages

However, a more thorough analysis of Regulation 1 of the Council adopted in 1958 reveals serious uncertainties: it did not distinguish between official and working languages, and this differentiation has not been made ever since. This is exacerbated by its leaving it to the procedural rules of the institutions of the Communities to decide which language to use in individual cases,³⁷ as it were, further conferring the authorisation provided for by Article 290 of the Treaty; nevertheless, the institutions, the Commission and the Court of Justice never attempted to define the distinction between official and working languages. It was this non-regulation that gave rise to the practice of a “habitual use” of certain languages³⁸ – French in the beginning and English later, after the accession of the United Kingdom in 1973. Following them, comes German, but its positions are significantly weaker. It would not be precise to call these working languages, as the expression is reserved: Regulation No. 1 defines twenty-three languages as such, and I therefore use the term habitually used language for them. The experience is that, without knowledge of these languages, one cannot participate in the work of Community institutions, and cannot influence their decisions.³⁹

globalizing world; it might actually even increase its prestige, as Hungarian had never been an official language in an important international organisation like the European Union; finally, it might vitalise the language because full membership and winning official language status nearly coincide with the Hungarian millennium.”

³⁶ In this respect, see the opinion of the Greek government on Kik I (see below), according to which Community law does not recognise the precedence of any one official language over the other. Also on Kik I: “The Hellenic Republic recalls the importance for the citizen of being able to take cognizance of provisions which affect him in his mother tongue, in application of the principle that ignorance of the law is no excuse.” Case T-120/99, *Christina Kik v. Office for Harmonisation in the Internal Market (Trade Marks and Designs)*, *ECR* (2001), p. II-2235, and case C-361/01 P between the same parties, *ECR* (2003), p. I-8283.

³⁷ Article 6: “The institutions of the Community may stipulate in their rules of procedure which of the languages are to be used in specific cases.”

³⁸ Certain internal documents of the Community refer to English and French as “procedural languages”.

³⁹ “With the exception of the European Parliament, the number of (internal) working languages has been reduced in each of the institutions – reducing, in fact, the privilege of the true au-

Without the *de facto* dominance of the habitually used languages, the efficient working of the institutions would be difficult to imagine, but looking from the point of view of the twenty others it must be acknowledged that they have been downgraded in practice, because – apart from a handful of outstandingly important negotiations where almost all-round translation is provided between the official languages – they are not fit for preparing, negotiating and settling important “public affairs”, legislation issues. Just as one could not get far with his or her Hungarian in the *Balhausplatz* offices of the Foreign Ministry of the Austro-Hungarian Monarchy⁴⁰ in Vienna – one major difference being, however, that Brussels deals with not only matters of classical foreign relations. The significance of this will be glaringly clear when we consider the greatly increased scope of authority of the Community. Once falling under the jurisdictions of the Member States, “public affairs” – ranging from customs duties and agricultural policy through competition law to environmental and consumer protection and social policy – are now regulated at Community level. It would be hopeless to try to influence the preparation of decisions or the drafting of Community legislation related to these areas in Hungarian, Estonian, Italian or Portuguese in Brussels, in particular as drafts are drawn up in English or French, and translations into the official languages are made of draft legislation only when work is completed on them.⁴¹ To top this, the linguist lawyers working in Brussels have a significant say in the final versions of the translations, in the use of terms – often in opposition to the opinion of the Member States.

It is fact that virtually two or three languages – English, French and German – are used in the institutions of integration. In the procedures of the European Court of Justice, French has a primary role, while English a secondary one.⁴² As a result of the foregoing, national legal languages and vocabularies are bound to lose some of their significance. Generally speaking, there is an increasing tension between the often-declared intention to preserve European cultural and linguistic diversity and a more and more comprehensive legal system.⁴³ This situation is certainly going to decrease the efficacy of languages not habitually used, and downgrade their vivacity and the cultural capital their knowledge used to mean.⁴⁴

thenticity to the English, French and German versions of European law.” Nikolaus Urban, “One legal language and the maintenance of cultural and linguistic diversity.” Florence: European University Institute, manuscript, pp. 3-4.

⁴⁰ Its official name was: *Kaiserlich und Königliches Ministerium des Kaiserlich und Königlichen Hauses und des Aeusseren* (Imperial and Royal Ministry of the Imperial and Royal House and Foreign Affairs). See György Barcza, *Diplomataemlékeim 1911-1945* [My Memoires as a Diplomat 1911-1945]. Budapest: Európa Könyvkiadó, 1994, vol. I, p. 27.

⁴¹ However, all draft legislation is translated into the official languages before being submitted to the Committee of Permanent Representatives (COREPER).

⁴² Cf. Nikolaus URBAN, op. cit.

⁴³ Loc. cit., p. 4.

⁴⁴ For “cultural capital”, see Abram DE SWAAN, op. cit., p. 512.

In certain cases, it is even difficult to maintain the formal, external equality of languages. To no avail did Maltese become an official language of the European Union pursuant to the 2003 Accession Treaty, for it turned out only later that this could not be ensured in the lack of trained translators. Therefore, with the exception of the regulations adopted jointly by the European Parliament and the Council, the institutions of the Union were not obliged to draft and publish in Maltese language all their acts, including the rulings of the European Court, for a provisional period of 30 months.⁴⁵ Though the difficulties of the situation were somewhat mitigated by the fact that English is the second official language of Malta, it was not at all negligible. For it had been precisely in view of protecting Maltese culture and tradition that Maltese language had become an official language of the Union only a year earlier. The import of this will be greatly diminished if a whole array of regulations is not made available in this language for several years.

7. The Effect on National Legal Language

European law exerts considerable influence on national legal languages, primarily because it often endows terms used in a national legal language with new meanings, often raising special issues of interpretation,⁴⁶ and also because it creates wholly new concepts and their related new vocabulary. The measure of intervention depends on the nature of the Community regulation concerned: should it be directly applied, its legal terms immediately become parts of national legal language, with its content being defined by Community law and the European Court of Justice. If it is a rule to be transposed by the legislature of a Member State, i.e. a directive, there is some leeway for the application or preservation of the repository of national legal terms; in other words, for the enforcement of a sort of legal-language policy. “The difference between direct application and transposition is thus manifest not only in legal effect, but also in very powerful linguistic consequences.”⁴⁷

In this case, we essentially have a dual process of translation. First, the text of a directive is prepared in all official languages; in other words, it is translated from English or French.⁴⁸ Second, we have the transposition or implementation

⁴⁵ Council Regulation 930/2004/EC of 1 May 2004 on temporary derogation measures relating to the drafting in Maltese of the acts of the institutions of the European Union, *OJ L 169*, 01/05/2004, p. 1–2. (The temporary period has already passed.)

⁴⁶ “Die Juristen der Mitgliedstaaten, die das Gemeinschaftsprivatrecht anwenden, müssen sich der europäischen Dimension dieses Rechts bewusst werden... Ihre Terminologie weicht zwangsläufig von der gewohnten nationalen Terminologie ab.” Irene Klauer, *op. cit.*, pp. 28 and 27.

⁴⁷ The phenomenon is discussed in detail in a ground-breaking study by Réka Somssich, 2003, pp. 746–751 and 746–748 in particular.

⁴⁸ The translation of the several thousands of pages of the *acquis communautaire* from the English or the French into the various languages of the Member States is itself a rather complex

of the Community legislation into the legal systems of the Member States, which might be regarded as another “translation”, in so far as it is not merely announced, but an attempt is made to take over its precise content using the terms, expressions and traditions of the national legal language. It should be noted that the full equivalence of the various language versions of a piece of legislation cannot be assured even at the first stage of translation; and they certainly increase in the course of transposing directives.⁴⁹ The literature talks only of “an approximate equivalence” as an aim even in the case of the English, French and German versions.⁵⁰

8. Once Again on the Relationship between Constitutionality and Languages: the Accessibility of Community Law in the Languages of the Countries Acceding in 2004.⁵¹

The belated publication of the translations in the official languages of the newly acceding states, as for example in Hungarian,⁵² endangered the constitutional application of Community law. Community legislation in effect was only partially available in Hungarian translation and only on the Internet for several months after their accession. The situation arising as a result of the delay in publication was virtually as though laws adopted by national parliaments were thought to have been applicable without appearing in their respective official journals, but were accessible in foreign languages or through electronic databases for people who have suitable computer or Internet facilities. This would obviously endanger the rule of law and legal security because the majority of citizens could not get to know their rights and duties in this way. Moreover, accession to the European Union was conditional on the consistent enforcement of the rule of law in the candidate countries, and so it was all the more disconcerting to experience that the application of Community law in the new Member States began with an infringement of legal security.

exercise: the translator has to not merely render a system of concepts in the language of his or her mother tongue, but also face a characteristic way of thinking, conceptual associations and a turn of mind encoded in the original language of the law.

⁴⁹ Réka SOMSSICH, 2003, p. 748, refers to the rendering of the expression “true and fair review” in Directive 78/660/EEC as “*den tatsächlichen Verhältnissen entsprechendes Bild zu ermitteln*” in Germany and as “*ein möglichs getreues Bild*” in Austria.

⁵⁰ “The idea, however, that at least in regard to these three versions, a linguistic, systematic, functional and teleological equivalence of meaning would be possible is highly unrealistic. It neglects the fact that in modern states the language of the law is a highly complex code, and the professional translators of European law can only aim for an approximate equivalence.” Nikolaus URBAN, *op. cit.*, p. 4.

⁵¹ The thorough discussions of the issue by my colleagues Réka Somssich and Pál Sonnevend have greatly assisted me in writing the following section. For the possible mistakes, however, I myself bear all responsibility.

⁵² The first version of this section was written three months after the accession of Hungary (1 May, 2004), the use of the present tense was justified [in the Hungarian original] at the time.

As far as the details are concerned, it is common knowledge that certain rules of Community law are directly applicable in Member States. By definition, it is Community regulations that bind states, private persons and companies without recourse to any transposing law. One of the most important areas controlled by Community regulations is customs law, the Community Customs Code. Apart from this, there are Community decisions that directly impose obligations on legal entities under private law. However, Community directives that had been previously transposed into Hungarian law through its own national legislation did become effective in the country, and the legal situation disputed above therefore did not arise in this respect, unless a piece of Community law had been taken over defectively, posing the question of the direct effect of the original act.

The problem thus arose as a result of the legal sources that had been adopted and had become effective in the period just before accession. The reason for this was that the regulations concerned had not been published in the *Official Journal of the European Union* by the time of the accession. The European Commission issued a notice acknowledging this shortcoming, and stated that the publication would take place by the end of 2004.⁵³ According to the notice, however, the electronic version of the texts was available on the homepage of the European Union, which the Commission deemed to constitute official publication.⁵⁴

Unfortunately, this notice fell short of solving the problem of publication in the new Member States. On the one hand, a Commission notice was and is not a binding legal source, and thus could not lead to a change in the governing legal conditions. On the other, however, neither did Article 58 of the Act of Accession cited in the notice nor did the treaties establishing the European Communities provide legal ground to have deemed publication on the Internet to have legal effect. According to Article 58 of the Act of Accession, the texts of the pre-accession acts by Community Institutions and the European Central Bank translated into the official languages of the new Member States were to be regarded authentic from the time of accession under the same conditions as the texts of the then-current eleven languages had been. These texts were to have been published in the Hungarian version of the *Official Journal of the European Union*. The Treaty establishing the European Community simply does not recognise the possibility of publication on the Internet as legally effective.

⁵³ The Hungarian edition of the *Official Journal of the European Union* is 'Az Európai Unió hivatalos lapja', special 2004 edition.

⁵⁴ It is worth quoting the notice containing an apparent legal mistake: "Pending publication, the electronic version of the texts is available on EUR-Lex and will in the meantime constitute publication in the *Official Journal of the European Union* for the purposes of Article 58 of the 2003 Act of Accession." *OJ L 169*, 4.5.2004, p. 1.

Being a general legal principle in Community law, too, that only the acts appropriately published and thus knowable by subjects of law are to be deemed obligatory, it is highly doubtful that the acts not published in the *Official Journal of the European Union* in the languages of the new Member States were to be regarded as compulsory and applicable in those countries. The situation was further exacerbated by the fact that the homepage of the European Union did not contain the Hungarian translation of all acts; moreover, it did not have instructions in Hungarian on its use. President Ferenc Mádl repeatedly called attention to these severe shortcomings, pointing out the irregularities in a submission to the Constitutional Court and referring to the unresolvedness of the problem in an address he gave at the Congress of Hungarian Lawyers.⁵⁵

9. Kik Case I-II, or Official and More Official Languages

Ensuring the equality of official languages in the procedures of the organisations of the European Union and in cross-border lawsuits is a particular problem. We mentioned above that the equality of the official and working languages of the European Community vanishes in practice.⁵⁶ This tendency is powerful enough to achieve even legal sanction in certain cases.

To a degree, this is what happened in Regulation 40/94/EC on the Community trade mark.⁵⁷ According to this regulation, an application for a Community trade mark is to be filed in one of the official languages of the European Community at the Office for Harmonisation in the Internal Market (Trade Marks and Designs).⁵⁸ Nevertheless, the languages of the Office are not twenty-one but five: English, French, German, Italian, and Spanish.⁵⁹ Furthermore, the applicant has to indicate a so-called second language which, in the lack of an agreement of the parties to the contrary, will be the language of the proceedings

⁵⁵ See the presidential submission of April 13, 2004, objecting to the measures on the excessive commercial stockpiling of agricultural products. In Point 3.2, the President argues: "In my opinion, requirements of legal security as general principles of law apply also to the Community laws that have a direct application and can be enforced by Hungarian courts; this means that the rights and duties of citizens are to be regulated by laws appropriately published and readily accessible for anyone, and that publication becomes legally binding when the act becomes knowable to any citizen it applies to." He made a similar statement at the Balatonfüred Lawyers' Congress in 20 May, 2004; see *Köztársasági Elnöki Hivatal Évkönyve* [Yearbook of the Office of the President of the Republic] 2004, 189-198.

⁵⁶ As Nikolaus URBAN put it: „Gradual fictionalisation of linguistic equality,” *op. cit.*, p. 7.

⁵⁷ Council Regulation 40/94EC of 20 December 1993 on the Community trade mark, *OJ L 11*, 14.1.1994, p. 1-36.

⁵⁸ Hereinafter referred to as “the Office” (or otherwise: OHIM).

⁵⁹ Characteristically, the wording of the regulation uses not the expression “official and working languages” but “languages of the Office”: “The languages of the Office shall be English, French, German, Italian and Spanish.” See Article 115 of Regulation 40/94/EC.

should anyone oppose or initiate the revocation or invalidation of a Community trade mark. If the application is not in a “language of the Office”, it is translated into the second language indicated by the applicant, and the Office may issue “written communications” in the second language even if that is not the language used in the application.⁶⁰

The legality of this provision was at the heart of the *Kik* cases.⁶¹ A Dutch applicant – lawyer and trade-mark agent – had indicated Dutch as the second language of the proceedings, though it was not a language the Office used. The Office, referring to this, rejected the application for a Community trade mark. The applicant thought that the decision and the legal provision it was based on infringed the equality of official languages, and that it impaired her competition position with respect to those trade-mark agents who were fortunate enough to be able to run the whole procedure in their mother tongue. Therefore, she contested the decision at the Court of First Instance of the European Union, and then appealed at the European Court of Justice. Greece intervened on the side of the applicant, while Spain and the Council of the European Union on the side of the Office.

Though the courts were ready to hear the merits of the case brought to them, they rejected the arguments of the applicant. So the European Court of Justice declared that, although the Treaty of Rome has several references to the use of various languages, these “cannot be regarded as evidencing a general principle of Community law that confers a right of every citizen to have a version of anything that might affect his interests drawn up in his language in all circumstances.”⁶² Article 21 (8d) of the Treaty of Rome, which we discussed above, according to which the institutions of the European Community correspond with Union citizens in the languages mentioned in Article 314 (248), cannot be deemed as to be applicable to all organisations, including the Office.

Furthermore, the institution of the Community trade mark does not concern all citizens, only some economic actors for whom it is naturally not compulsory to take this opportunity. In the course of the proceedings, the interests of the economic actors and the public interest related to the (translation) costs of the proceedings have to be put in the balance. On this basis, with a view to the fact that Regulation 40/94/EC designated the languages used most widely as the

⁶⁰ See Article 115 (3) and (4) of Regulation 40/94/EC.

⁶¹ Case T-120/99, *Christina Kik v. Office for Harmonisation in the Internal Market (Trade Marks and Designs)*, judgment of July 21, 2001, *ECR* (2001), p. II-2235, and case C-361/01 P, between the same parties, judgment of September 9, 2003, *ECR* (2003), p. I-8283.

⁶² Point 32 of the ruling in case C-361/01 P. It is characteristic of the situation in the European Union that even this judgement of the European Court has no Hungarian official translation, nor is there a deadline for the translation of its judgments, though this had been the practice during former accessions.

languages of the Office, the regulation is appropriate, and meets the requirement of proportionality.⁶³ The courts thus dismissed both the action and the appeal in full; the European Court making one single concession in its reasons adduced, namely: it prescribed a strict interpretation of the term of “written communications”, which were now to mean any communications which, judging from their content, could not be regarded as amounting to procedural documents.⁶⁴ In other words, where the applicant is the sole party in the proceedings for a Community trade mark, the use of the second language is limited – in stark contrast to the former practice of the Office.

10. The Limits of the Equality of Languages

Fundamentally, the European Court of Justice had two options to choose from: it either required the equal use of all authentic languages provided for by Article 314 (248) of the Treaty of Rome without taking into account the costs of translation and the related extension in time and complications of the proceedings, or regarded the solution provided by the regulation as a reasonable method of reconciling competing interests. The Court accepted the fact that certain organisations use only some of the authentic languages of the Union in certain proceedings, and it thus rejected the principle of the equality of languages. The reasonableness of the judgment can hardly be disputed; it nevertheless is a fact that it acknowledged that the citizens of the European Union have to use foreign languages in certain proceedings in their interests. Now, this necessarily reduces the use and usability of minor languages, indeed, the linguistic diversity of the Union. What this amounts to is not only that the civil servants and employees of the European Union, actually, the diplomats of the Member States, use two or three languages in the course of their work, but also private persons, the actors of economic life are forced to manage their affairs in foreign languages, at least in certain elements of the proceedings they initiate.

Certainly, it is not really the actual effect but the attitude of the judgment that is dangerous. For as yet, the authorities of the Member States are mostly responsible for the implementation of Community law, and the proceedings before the Office for Harmonisation in the Internal Market are exceptional. But as the scope of action of the European Community broadens, its executive rights also increase, and thus situations similar to the one giving rise to this judgment might occur in increasing numbers,⁶⁵ unless, of course, the enforcement of the equality of languages is stipulated as a condition of widening Community scopes of authority and executive rights.

⁶³ Points 89-94 of the judgment in case C-361/01 P.

⁶⁴ Points 45, 47 and 96 of the judgment in case C-361/01 P.

⁶⁵ It was no mere coincidence that the issues of the language of proceedings or their free choice were the subject of heated debate in the preparations for the regulation on Community patent. See Bruno de Witte, *op. cit.* 3, p. 223.

11. Cross-border Delivery of Documents and Languages

As Community law gradually expands so as to regulate civil procedure in several Member States, the issue of language necessarily crops up in this respect, too. In its judgment on the Lefler case,⁶⁶ the European Court of Justice, interpreting Regulation 1348/2000/EC of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, accepted that when an addressee rejects a document referring to its being written not in the language of the Member State it is transmitted to, or in a language the addressee can easily understand, the lack of a translation shall not render the delivery absolutely void. The sender may remedy the fault afterwards – by sending the translation. Moreover, if the sender subsequently posts the translation, the original day of reception will be deemed the reception date, although the addressee was not in the position to know its contents at the time.

The European Court thus attributed only relative significance to the fact that the document concerned had not been translated into a language the addressee could understand, and rejected the observations of the Finnish and the German governments that the legal consequences of the lack of a translation should be measured according to the laws of the Member States. The judgment of the European Court is obviously going to have a bearing on the competition between languages in the European Union, the language policies of the Member States and the “linguistic capital” of minor languages. The majority of documents to be transmitted will obviously be written in one of the major European languages, and the late transmission of their translations will virtually have no consequences on their effect. A private-law provision thus affects linguistic diversity.

III. The Language Policy of the European Community

1. The Role of the Council of Europe

Before dwelling on the narrowly conceived language policy of the European Community, it is worth noting that the Council of Europe has also dealt with the question of preserving linguistic diversity. First and foremost, we must refer to the European Charter for Regional and Minority Languages,⁶⁷ which states that the protection of the regional or minority languages of Europe contributes to the maintenance and development of Europe’s cultural wealth and traditions, and declares that the right to use a regional or minority language in

⁶⁶ Case C-443/03, Götz Leffler v. Berlin Chemie AG, *ECR* (2005), p. I-9611.

⁶⁷ European Treaty Series no. 148. For its Hungarian version, see *Magyar Közlöny*, 1999, no. 34; hereinafter: the Charter.

private and public life is an inalienable right.⁶⁸ Concurrently, it takes the traditional sensibilities of the nation states of Europe into consideration when propounding a flexible solution in so far as Member States of the Council of Europe shall apply at least thirty-five paragraphs or sub-paragraphs of Part III containing the substantial measures of the Charter – in point of fact, at least three in the fields of education and culture each, one in the fields of justice, mass communication and economic and social life each.⁶⁹ The Charter therefore provides certain latitude to Member States, but it also ensures that all Member States accept the critical mass of measures necessary for the protection of regional and minority languages. The Framework Convention for the Protection of National Minorities⁷⁰ also agreed under the auspices of the Council of Europe is likewise significant in stipulating several provisions supporting the use and protection of minority languages.⁷¹

2. The Language Policy of the European Community

The European Community has no comprehensive language regulation like that of the Council of Europe. The problem of languages became obvious only gradually as integration deepened and widened increasing the number of official languages from the original four to twenty-three,⁷² not to mention the regional and minority languages. As far as the primary legal sources are concerned, Article 13 of the Treaty of Rome, apart from regulating authentic, official and working languages, empowers the Council of Ministers to take appropriate measures against ethnic discrimination, which can obviously have impacts on language. Likewise does the prohibition of discrimination on grounds of citizenship of the crucial Article 12 of the Treaty, to which several Court rulings on language are related. Article 21 of the Charter of Fundamental Rights of the European Union is more explicit in so far as it prohibits discrimination on grounds of *language*, as well.⁷³ It is however clearly visible that none of the provisions mentioned create any scope for legislation on a language policy of European integration.

Beyond prohibitions, the language policy of the European Community is embodied in the programmes of the Commission. Since 1982, the Commission has provided modest budgetary support for regional and minority languages and

⁶⁸ See the Preamble of the Charter.

⁶⁹ See Article 2.2 of the Charter.

⁷⁰ European Treaty Series no. 157. For its Hungarian version, see *Magyar Közlöny*, 1999, no. 27.

⁷¹ See especially Articles 5, 9, 11, 12, and 14 of the Framework Convention.

⁷² The greatest leap occurred in 2004 when the number of official languages rose from 11 to 20, i.e. it almost doubled.

⁷³ *Bulletin of the European Union*, 12/2000, p. 171.

cultures.⁷⁴ Related to this programme, the European Bureau for Lesser-Used Languages⁷⁵ and the so-called *Mercator* Network⁷⁶ were established. This latter collects information on minority and regional languages, conducts and publishes analyses on languages especially from the point of view of legislation, education and the media.⁷⁷ All this has been rendered quite difficult by a 1998 ruling of the European Court of Justice according to which Community expenditure has to be based on the authorisation of provisions adopted previously.⁷⁸ Following this in 2001, the decision on the European Year of Languages was adopted,⁷⁹ which, though somewhat furtively, continued to make payments in support of regional and minority languages. The preamble of the decision emphasized the “equal value and dignity” of languages from a cultural point of view and the significance of learning languages in preserving cultural diversity. In this spirit, it urged measures to supply information on and support the enhancement of the awareness of cultural diversity and the promotion of multilingualism, life-long language learning from early school years and the dissemination of various language teaching and learning methods.⁸⁰

Virtually, these were the aims the action plan of the Commission for 2004-2006 developed further.⁸¹ With the slogan of “English is not enough,” the communication urges the citizens of the Union to learn at least two foreign languages. The document, in passing, mentions the support of communities speaking minority or regional languages. The issues of European multilingualism and integration were addressed most comprehensively by a new Commission framework strategy adopted in 2005, which was the first Commission communication to deal explicitly with this particular field of policy.⁸² Apart

⁷⁴ Bruno de Witte: “The Constitutional Resources for an EU Minority Policy,” in: Gabriel N. Toggenburg, *Minority Protection and the Enlarged European Union: The Way Forward*. Budapest: Open Society Institute: Local Government and Public Reform Initiative, 2004 [Bruno de Witte, 2004a], pp. 203, 118.

⁷⁵ The European Bureau for Lesser-Used Languages (EBLUL) was established as a non-profit organisation in 1982.

⁷⁶ See www.mercator-central.org.

⁷⁷ Many tongues, one family: Languages in the European Union, European Commission, Directorate General for Press and Communication, Brussels, 2004, p. 9.

⁷⁸ Case C-106/96, United Kingdom v. Commission, *ECR* (1998), p. I-2729.

⁷⁹ Decision 1934/2000/EC of the European Parliament and of the Council of 17 July 2000 on the European Year of Languages 2001, *OJ L* 232, 14.09.2000, pp. 1-5.

⁸⁰ The programme had a two-million euro expenditure in 2002.

⁸¹ Communication from the Commission to the Council, the European Parliament the Economic and Social Committee and the Committee of the Regions promoting Language Learning and Linguistic Diversity: An Action Plan 2004-2006, Brussels, 24.07.2003, COM (2003) 449 final.

⁸² A New Framework Strategy for Multilingualism, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Brussels, 22.11.2005, COM(2005) 596 final.

from affirming the commitment of the Commission to European multilingualism and providing it a special homepage,⁸³ this document specifically examines the relationship between the internal market and languages and a multilingual business environment.

IV. Languages and the European Internal Market

1. The Education of the Children of Migrant Workers

The command of languages, several European languages apart from one's mother tongue, has obvious significance for the free movement of persons. But it is not only workers that are concerned but their children, too. It was in recognition of this fact that the directive on the education of the children of migrant workers was adopted.⁸⁴ On the one hand, this prescribed the free tuition of these children, including, in particular, the teaching – adapted to the specific needs of such children – of the official language or one of the official languages of the host Member State. On the other hand, Member States must also take appropriate measures to promote the teaching of the mother tongue and culture of the country of origin of these children in order to preserve their cultural identities. Little information is available on the actual implementation of the directive. Teaching the mother tongue and culture of the country of origin is likely to cause serious problems in a European Union of twenty-seven Member States.

2. The Groener Case: the Protection of the Irish Language in Education

The Community-law view of language requirements in employment could actually be discussed as part of the issue of indirect discrimination. According to the founding fathers, the European Community is meant to seek to realize its aims of integration besides maintaining the linguistic and cultural diversity of the continent.⁸⁵ It is however quite difficult to reconcile the requirement of use of a mother tongue as a marked expression of national identity and the free movement of workers, a keenly protected fundamental principle of Community law. This was exemplified by the Court ruling in the *Groener v. Minister of Education* case.⁸⁶

⁸³ <http://europa.eu.int/languages>.

⁸⁴ Council Directive 77/486/EEC, *OJ L 199*, 6.8.1977, p. 32–33.

⁸⁵ Schuman, Robert, *Európáért*, [The Hungarian Edition of *Pour l' Europe*] Pécs, Pannónia Könyvek-Baranya Megyei Könyvtár, 1991, 180 pp., p. 51.

⁸⁶ Case C-379/87, *Anita Groener v. Minister for Education and the City of Dublin Vocational Educational Committee*, *ECR* (1989), p. 3967.

The Community-law background of the dispute was created by Regulation 1612/68/EEC, which prohibits requirements that, though not directly related to citizenship, limit the employment of citizens from other Member States. This same regulation, however, to some extent slackens the prohibition of hidden discrimination by attempting to find a balance between national and integration interests, stating: "This provision shall not apply to conditions relating to linguistic knowledge required by reason of the nature of the post to be filled."⁸⁷ Nevertheless, it was an obvious outcome of this provision that issues of regulating the use of language would arise not only with respect to the official and working languages of the Community but also the common market and the free movement of persons. In other words, the problem could crop up in everyday life circumstances not only in the administrative and procedural affairs of the European Community. As early as 1968, the Member States had to face a situation in which they no longer wielded supremacy and had no independence in regulating their own official languages and their use.⁸⁸ In principle, the relationship between language use and Community law can be brought up not only in the context of Brussels offices but also in respect of any employer and employee.

The Irish court deliberating on the Groener case petitioned the European Court of Justice for a preliminary ruling on the interpretation of the provision of regulation 1612/68/EEC referred to, with special regard to its applicability to the facts of the case.⁸⁹ For a thorough consideration of the matter, the following circumstances should also taken into account: (i) the Irish constitution recognizes two official languages: Irish, the national and primary official language, and English, the secondary official language; (ii) only about a third of the Irish population speak Irish as their mother tongue, and the Irish government has vigorously promoted its use for several decades; (iii) no one taught in Irish language at the Irish college concerned; and (iv) Anita Groener wished to teach painting.⁹⁰

In its judgment, the Court deemed the position Groener wished to take a post of such a nature as to justify the Irish legal requirement of linguistic knowledge provided that it was imposed as part of a cultural policy for the promotion of the national language and it was applied in a proportionate and non-discrimi-

⁸⁷ Article 3.1, Regulation (EEC) No. 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, *OJ L* 257, 19/10/1968, p. 2-12. In accordance with this provision Article 53. of Directive 2005/36/EC on the recognition of professional qualifications passed almost four decades later states the following: "Persons benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for practising the profession in the host Member State".

⁸⁸ This has now become commonplace. As the preamble of Directive 96/664/ EC puts it: "language policies are a matter for the Member States, taking account of Community law". The directive will be discussed in detail below.

⁸⁹ *ECR* (1989), pp. 3990-3991.

⁹⁰ *ECR* (1989), pp. 3978, 3981, 3992-3993.

natory manner. As far as a (painter) lecturer post is concerned, the Court emphasized that the essence of teaching is not exhausted in delivering a subject; participation in the everyday life of a school and maintaining personal contacts with students are significant elements in it. And in view of this it is not unreasonable to require the knowledge of the national language.

But what did the proportionate and non-discriminatory application of a linguistic requirement mean at the time? The question is hardly easy to answer because a linguistic requirement can per se, essentially be discriminatory. Well, the European Court of Justice ruled that the principle of non-discrimination precludes the imposition of any requirement that the linguistic knowledge in question must have been acquired within the territory of a specified Member State, and that the opportunity to retake language examinations should be provided.⁹¹

The majority of the literature on law doubts the correctness of the ruling of the European Court,⁹² especially because the applicant obviously had an appropriate command of English, the second official language of the country. And Irish national identity would hardly have been infringed by a Dutch national using only English at a college teaching in English anyway. This is one of the interpretations of the Court judgment. The other approach starts out from the fact that the Irish people and language were persecuted for several centuries, and would provide an opportunity for the efficient and comprehensive protection of the Irish language, even at the expense of limiting the free movement of workers. With a view to the protection of language, education certainly has an outstanding importance because, being beyond mere curriculum delivery, it requires articulate intellectual and emotional relationships.

The Member States working towards integration are understandably sensitive to matters related to the use of language. This is all the more true of Ireland for obvious historical reasons. Moreover, France took sides with Ireland over the issue. True enough, upon the proposal of a Greek judge sensitive to linguistic, cultural and historical matters, the European Court delivered an extraordinarily broad interpretation of the requirements of “the nature of the post”, including even participation in the everyday life of the school. What we encounter here is a rather exceptional situation in which the European Court deployed its usual weapon, the broad interpretation of employment, in the interest of not the elimination of discriminations limiting the free movement of persons but of protecting language requirements. We do not have to go particularly far for an explanation.

⁹¹ *ECR* (1989), pp. 3967, 3994-3995.

⁹² George A. BERMANN (ed.), Roger J. GOEBEL, William J. DAVEY, and Eleanor M. FOX, *Cases and Materials on European Community Law*. St. Paul (Minn.): West Publishing Co., 1993, pp. 479-480, Paul Craig and Gráinne de Búrca, *EC Law Text, Cases and Materials*. Oxford: Clarendon Press, 1995, p. 658.

3. The Recent Jurisdiction of the European Court of Justice

In the ensuing decade, the European Court went along the direction set out by its ruling in the Groener Case when deliberating on the way Member States regulate certification of the knowledge of language, though it did limit to a certain extent the liberty of Member States to set rules. It re-affirmed, for example in its judgment on the *Angonese* case concerning the bilingual Italian territory of Southern Tyrol (Bolzano), that disproportionately difficult requirements must not be imposed.

Here one of the several requirements for employment was proof of bilingualism. The requirement was permitted by both Italian and territorial law. Proof was a certificate issued only by the Bolzano authorities after appropriate examinations. Applications for the examination were accepted only a few times a year to allow for thirty days to lapse between oral and written parts of the examination. The significance of this was that the post was to be filled within two months of announcement. And it was this very condition that was contested by a local Italian citizen who had been perfectly bilingual and had studied in Austria for four years, but had not obtained the particular Bolzano certificate. And the person believed that the linguistic requirement, or, to be more precise, its certification requirement, was at odds with the principle of the free movement of workers.

According to the judgment on the case,⁹³ Article 39 (48) of the Treaty of Rome precludes an employer from requiring persons applying to take part in a recruitment competition to provide evidence of their linguistic knowledge exclusively by means of one particular diploma issued only in one particular province of a Member State. This requirement would put workers at a disadvantage who are nationals of other Member States as they would have little chance of obtaining such qualification papers within deadlines. Language proficiency could therefore be certified by any other appropriate means with special regard to those that can be obtained in other Member States.

The facts of this case did not touch upon the sensitive linguistic and cultural issues of the Groener case, as the applicant had actually met the language requirements; all he disputed was the mode of certifying it. Nevertheless, what the ruling clearly pointed out was that the definition of language policy did no longer belong exclusively under the legislative authority of the Member States and their territories.

⁹³ Case C-281/98, *Roman Angonese v. Casa di Risparmio di Bolzano SpA.*, ECR (2000), p. I-4139.

4. Language Use in Criminal Proceedings

Issues of language rights in criminal proceedings seem to have become special a trend in the jurisprudence of the European Court of Justice. Since the accused in criminal proceedings can simultaneously be deemed to be periodical employees or entitled to services, Community law can also apply to such cases. There is however one essential difference from the cases discussed in that the point here is not language requirements imposed on people seeking employment, but linguistic rights to be guaranteed in the course of dispensing justice. These laws of the Member States have therefore little to do with the discriminatory language requirements that are addressed by Regulation 1612/68/EEC, but are rather related to the rights and protection of foreign nationals or members of national minorities.

5. The Rights of Employees from other Member States in Criminal Proceedings

In the Mutsch case,⁹⁴ a Luxemburg citizen living and working in the German part of Belgium referred to the special language rights the members of the German-speaking community of Belgium enjoy. In particular, he invoked the provision according to which if an accused is a citizen of Belgium and lives in the area of the German-speaking local authority, the criminal proceedings brought against him or her have to be conducted in German.

In its ruling, the European Court of Justice stated that Community law had been justly pleaded as the rights of an employee from another Member State were at stake. All the more so because the use of one's own language as a kind of social advantage significantly facilitates the integration of an employee from another Member State into the host country's conditions. Should German-language criminal proceedings be provided for Belgian citizens, this right must also be guaranteed to the nationals of other Member States under Article 39 (48) of the Treaty of Rome and regulation 1612/68/EEC.

6. The Free Movement of Services and Criminal Proceedings

Little over a decade later, the Bickel and Franz case⁹⁵ involved similar circumstances relating to the free movement of services, with the significant differ-

⁹⁴ Case 137/84, Criminal proceedings against Robert Heinrich Maria Mutsch, *ECR* (1985), p. 2681.

⁹⁵ Case C-274/96, Criminal proceedings against Horst Otto Bickel and Ulrich Franz, *ECR* (1998), p. I-7637. I briefly analysed the case in an essay of mine: "A nemzeti kisebbségek és az Európai Unió joga" [National Minorities and the Law of the European Union]. In: *Placet experiri. Ünnepi tanulmányok Bánrévy Gábor 75. születésnapjára* [Festschrift for Professor Gábor Bánrévy]. Budapest: Pázmány Péter Katolikus Egyetem, 2004, pp. 133-137.

ence, however, that the person now invoking language rights (as opposed to the Mutsch case) had not been permanently residing in the Member State where he now pleaded these rights, but had stayed there only transitorily.

In this case, criminal proceedings were initiated against Austrian and German citizens in the Southern Tyrol territory of Italy (Bolzano). The accused referred to the fact that, in the interest of the local German-speaking minority, the legal status of German language is equal to that of the Italian in this territory, therefore the German-speaking citizens of the territory were entitled to German-language court proceedings. In other words, the foreign, German-speaking accused claimed equal treatment with the inhabitants of the territory. In its referral to the European Court for a preliminary judgment, the Italian court deliberating on the case was seeking answers to two questions: first, whether the issue of language use fell within the scope of the Treaty of Rome; and, second, whether the Italian provision of law ensuring the rights referred to were in accordance with the provisions of the Treaty of Rome prohibiting discrimination on grounds of citizenship.

As far as the actual scope of the Treaty of Rome is concerned, the European Court quoted its own judgment in the Cowan case,⁹⁶ in which it had rendered a broad interpretation of the freedom to receive services, and had thus brought equal protection of nationals of a Member State travelling or staying in others with their own nationals under the scope of the Treaty of Rome.⁹⁷ As far as the merits of the legal dispute were concerned, the Court established that Article 12 (6) of the Treaty of Rome, which prohibits discrimination on grounds of citizenship, precludes the application of those rules of Member States that confer certain language rights on the inhabitants of a given territory speaking a particular language without conferring the same right on nationals of other Member States travelling or staying in that area whose language is the same.⁹⁸

⁹⁶ Case 186/87, Cowan, *ECR* (1989), p. 195.

⁹⁷ "The prohibition of discrimination laid down in particular in Article 7 of the EEC Treaty must be interpreted as meaning that in respect of persons whose freedom to travel to a Member State, in particular as recipients of services, is guaranteed by Community law that State may not make the award of State compensation for harm caused in that State to the victim of an assault resulting in physical injury subject to the condition that he hold a residence permit or be a national of a country which has entered into a reciprocal agreement with that Member State."

⁹⁸ For a detailed analysis of the ruling of the European Court and the opinion of the Advocate General from the point of view of its effects on the protection of minorities see: András Gyertyánfy, "Magyarország és egyes szomszédai európai uniós csatlakozásának várható hatása a határon túli magyarok helyzetére" [The Probable Effects of the Accession of Hungary and its Neighbours to the European Union on the Situation of Cross-border Hungarians], prepared for the Ministry of Culture and Education (manuscript, Budapest, October, 2002).

7. The Protection of National Minorities and the European Court of Justice

The ruling in the *Bickel and Franz* case does not mean that the European Court of Justice deems that the rules protecting national minorities contradict Community law in principle, but that it requires the extension of these rights to nationals from other Member States who are in similar condition in order to avoid discrimination on grounds of citizenship.⁹⁹ As the Advocate General delivering opinion on the case put it: “Refusing the use of German to visitors does not in any way serve that aim [i.e. the protection of the German-speaking minority]. If anything, it has the reverse effect: it reinforces Italian as the principal language even in the predominantly German-speaking region of Bolzano. If a German-speaking Bolzano resident invites a relative or friend from Germany, Austria or Switzerland to visit him, any criminal proceedings brought against that relative or friend would be in Italian. It is hard to see how that serves to protect the German-speaking minority in Bolzano.”¹⁰⁰

However, the contrary is also true: the ruling can justly be regarded as insensitive, because it does not consider the particular situation of national minorities and the specific means of their protection, deems the invocation of national-cultural arguments as insufficient,¹⁰¹ and applies the prohibition of discrimination on grounds of nationality mechanically. Georg Brunner has raised the issue that the extension of the advantages conferred by minority-protection measures might discourage Member States from adopting such measures.¹⁰² It should be noted that not even the European Commission was convinced of the discrimination, since Italian citizens in general had not been entitled to the special language rights – only actual residents of Southern Tyrol. Moreover, it is highly doubtful whether the situation of a lorry chauffer driving through Italy – as it was according to the facts of one of the cases – can be compared to the status of the members of the German minority community in Southern Tyrol. And if

⁹⁹ “*Bickel and Franz* is a significant development as it accepts culture and identity as worthy of protection in particular in connection with minorities. Nonetheless, although the ECJ accepted the principle, in practice it still found a problem with the national rules themselves...” Lorna Woods, op. cit., p. 121.

¹⁰⁰ *ECR* (1998), p. I-07637. Quoted and discussed also by András Gyertyánfy, op. cit., p. 17.

¹⁰¹ According to point 29 of the judgment: “The Italian Government’s contention that the aim of those rules is to protect the ethno-cultural minority residing in the province in question *does not constitute a valid justification in this context*. Of course, the protection of such a minority may constitute a legitimate aim. It does not appear, however, from the documents before the Court that that aim would be undermined if the rules in issue were extended to cover German-speaking nationals of other Member States exercising their right to freedom of movement” (italics added).

¹⁰² Georg BRUNNER, “Az Európai Unió kisebbségpolitikája és a nemzetállami törvényhozás.” In: *Magyar Jog (Hungarian Law)*, 2002, no. 3, p. 134.

the situations cannot be compared, discrimination is *per se* excluded. András Gyertyánfy has criticized the judgment from another angle: in his view, the argument of the Court holds in so far as the language right of the Germans of Southern Tyrol is interpreted as an advantage. However, if it is regarded as a fundamental right that one can use his or her mother tongue in his or her homeland then it becomes evidently clear that there is no discrimination whatsoever: German-speaking Austrians, Germans and Italians are equally entitled to this right.¹⁰³

In 2000, the Council of the European Union adopted a directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.¹⁰⁴ This rule is on the prohibition of discrimination¹⁰⁵ – in accordance with the provisions of the Charter of Fundamental Rights of the European Union.¹⁰⁶ On one point, however, the directive steps beyond the one-sided approach: it offers a definite opportunity for so-called positive discrimination, for special assistance and “positive action” in order to compensate for disadvantages linked to racial or ethnic origin – with a view to ensuring full equality in practice.¹⁰⁷ In respect to the language rights of minorities, this directive may set new directions for the jurisprudence of the European Court, which has up to now only emphasized the equal treatment of citizens.

8. The Free Movement of Goods and Languages

The tension between the rights Member States and Community law guarantee in matters of language use has not left the regulation of trade untouched in respect of the languages used in labelling. The related disputes go back to Council Directive 79/112/EC, which is no longer in effect, and which treated in detail the approximation rules of labelling, packaging and advertising in Member States.¹⁰⁸ It required the Member States to prohibit labels that were not in a language easily understood by purchasers, unless other measures were taken to

¹⁰³ András GYERTYÁNFY, op. cit., p. 19.

¹⁰⁴ Council Directive 2000/43/EC, *OJ C 258*, 19.7.2000, p. 12.

¹⁰⁵ See Article 2 of the directive.

¹⁰⁶ For the full text see *Bulletin of the European Union*, 12-2000, p. 171. Article 21 of the Charter referred to essentially follows Article 13 of the Treaty of Rome, as amended by the Treaty of Amsterdam, which sees the possibility of Community action against discrimination on grounds of belonging to a national minority.

¹⁰⁷ See Article 5 of the directive.

¹⁰⁸ Council Directive 79/112/EEC of 18 December 1978 on the approximation of laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer. *OJ L 033*, 2.8.1979, pp. 1-14. The directive was replaced by Directive 2000/13/EC of the European Parliament and the Council of the European Union, *OJ C 258*, 9.10.1999, p. 12.

ensure that the purchaser was informed. The regulation allowed the use of various languages on labels;¹⁰⁹ nevertheless, the interpretation of “a language easily understood” led to a whole series of legal controversies in the ensuing decade, which finally ended up before the European Court.

In *Piageme I*,¹¹⁰ the legal issue was whether Belgium could prescribe the exclusive use of the official language of the territory where the product was actually put into circulation as this would in all likelihood be easily understood by purchasers. According to the European Court, a rule of this kind laid down by a Member State was not in keeping with the directive and Article 28 (30) of the Treaty of Rome, which prohibits measures having the effect equivalent to quantitative restrictions in the trade between Member States.¹¹¹ The jurisdiction of Member States extended no further than to prohibit the sale of goods the labelling of which was in a language not easily understood, or on which no other means of informing the purchaser was provided. In other words, Member States – in order to ensure the free movement of goods – were not to impose requirements that were stricter than those included in the directive, they were therefore not allowed to prescribe the exclusive use of a chosen language. The European Court upheld its strict interpretation in *Piageme II*, as well,¹¹² declaring that the directive precluded the prescription of labelling in the “most widely spoken” language of the territory, even if the supplemental use of other languages was permitted.¹¹³

The European Commission issued a communication in the wake of the first judgment,¹¹⁴ stating that it interpreted the question in the relation to the free movement of goods and consumer protection, leaving the cultural aspects of language use unmentioned. The communication endorsed the interpretation of the Court, but it went beyond it in so far as it stated that there was no need of translating easily understandable foreign words and expressions in labelling.

¹⁰⁹ See Article 14 of the directive.

¹¹⁰ Case C-369/89, *Piageme and others v. BVBA Peeters*. *ECR* (1991), p. I-2971.

¹¹¹ “Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.”

¹¹² Case C-85/94, *Groupement des Producteurs, Importateurs et Agents Généraux d’Eaux Minérales Etrangères, WZW (Piageme) and Others*. *ECR* (1995), p. I-2969.

¹¹³ “What is particularly interesting from the perspective of the cultural analysis is that, in the second *Peeters* case, the Belgian government sought to argue that Member States were free to impose higher standards than those laid down in the directive in the light of the introduction of the specific consumer protection and cultural competence. This argument the ECJ rejected.” Lorna WOODS, *op. cit.*, pp. 121-122.

¹¹⁴ Commission communication concerning the use of languages in the marketing of foodstuffs in the light of the judgement in the *Peeters* case, *OJ C 345*, 23.12.93, pp. 3-6.

9. Further Decisions on Goods Labelling

The jurisprudence of the European Court was apparently not without contradictions either. In the Meyhui case,¹¹⁵ it did not demur the Community rule¹¹⁶ prescribing that the language or languages of the country in which certain categories of crystal glass are marketed are to be used so that consumers do not confuse it with actual lead crystal. The judgment did acknowledge that this is a measure restricting trade between Member States, and did affirm that the prohibition of quantitative restrictions or measures with equivalent effect applies to rules adopted by Community institutions, as well; nevertheless, it deemed the regulation of the use of the official languages of the Member States reasonable and proportionate on grounds of consumer protection.¹¹⁷ Moreover, it regarded the supposition, implicitly referring to the rules of Directive 79/112/EEC, that other languages might also be easily understood by consumers, as of secondary import. In its decision on the Goerres case,¹¹⁸ which can also be grouped among the more lenient judgments, the European Court ruled that the directive does not prevent the application of the national regulation that, though prescribing the use of a given language – German in this case – in labelling, allows the optional (alternative) use of another easily understandable language, so long as this has no adverse effects on informing customers.

If we however compare the facts of Piageme II with the circumstances bringing about the Goerres case, it becomes abundantly clear that there has been no actual change of heart. In the former case, a *supplementary* use of another language apart from the obligatory language had been allowed; while in the Goerres case, as noted, an optional use of another language easily understood was at stake; and the European Court of Justice came to its permissive decision in view of the latter rule allowing the two options. Finally, the attitude axiomatically protecting the free movement of goods prevailed in the Geffroy and Casino France case.¹¹⁹ Again, the Court made it clear that Directive 79/112/EC does not allow the application of national provisions prescribing the use of French language in labelling without ensuring labelling in another language easily understood or informing the purchaser through other means, trademarks or emblems.

¹¹⁵ Case C-51/93, Meyhui NV v. Schott Zwiesel Glaswerke AG, *ECR* (1994), p. I-3879.

¹¹⁶ Council Directive 69/493/EEC.

¹¹⁷ The legal literature has recognised the inconsistency in the practice of the ECJ: “One cannot avoid a suspicion that the determination of the Court to uphold the rule of law varies according to whether national or Community legislation is at stake.” Nick BERNARD, *op. cit.*, pp. 275 and 217-218.

¹¹⁸ Case C-385/96, Criminal Proceedings against Herman Josef Goerres, *ECR* (1998), p. I-4431.

¹¹⁹ Case C-366/98, Criminal Proceedings against Yannick Geffroy and Casino France SNC, *ECR* (2000) I-6579.

10. The New Directive on Labelling Foodstuffs

However, the Geffroy decision proved to be also a swan song of the controversial practice of the European Court of Justice. Having regard to the Court rulings concerned, the European Parliament and the Council amended Community provisions in 1997,¹²⁰ and subsequently replaced them with a new directive in 2000.¹²¹ As a result, the requirement of a language easily understood was eked out by the option that the Member State in which the product is marketed may stipulate that labelling particulars must be given in one or more languages which “it shall determine from among the official languages of the Community”. This was a solution that satisfied Member States¹²² because the “official languages of the Community” included their own languages, and they were thus essentially authorised to protect them and prescribe their obligatory use.

The disputes over the languages of labelling seemed to abate at this point. A review of the case law of the European Court however continues to be instructive to our day. Caution: in its proceedings, the Court would not treat the obvious cultural aspects of the issue, and considered the use of language in labelling exclusively from the point of view of the economy, competitiveness and consumer protection, and did not accept the possible correspondence between a language easily understood and the official languages of a Member State or a linguistic region. Finally, the Member States redressed this narrow interpretation by amending the directive. The unwillingness of the European Court to acknowledge the significance of cultural aspects can be observed in other cases as we shall come to see in the following.

11. The Community Act on the Protection of Linguistic Diversity and its Interpretation

In 1996, the Council adopted a decision to promote the linguistic diversity of the Community in the information society.¹²³ The adoption of the instrument launched a so-called legal-basis dispute between the European Parliament and the Council, which had to be resolved by the European Court of Justice.¹²⁴ The background of this debate is that the institutions of the European Community

¹²⁰ Directive 97/4/EC of the European Parliament and of the Council of 27 January 1997, *OJ L* 43, 14.2.1997, p. 21–23.

¹²¹ Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, *OJ L* 109, 6.5.2000, p. 29–42.

¹²² With exception of Ireland, Irish not being an official language of the European Community until 1 January, 2007.

¹²³ Council Decision 96/664/EC of 21 November 1996 on the adoption of a multiannual programme to promote the linguistic diversity of the Community in the information society. *OJ L* 306, 28.11.1996, 40–48.

¹²⁴ Case C-42/97, European Parliament v. Council of the European Union, *ECR* (1999), p. I-869.

have no authorisation for general legislation; in other words, they can only act when a given article of the Treaty of Rome explicitly empowers them to do so. The choice of a legal basis therefore determines both the decision-making procedure and the content of a piece of legislation. The disputed decision had been made by reference to Article 157 (130) of the Treaty of Rome, but the European Parliament claimed that Article 151 (128) should also have been invoked as a legislative authorisation. The issue did actually carry weight because, in cultural matters, the Council always makes its decisions on the basis of unanimity, meaning that any Member State can prevent the adoption of a measure, while qualified majority voting applies to decisions made in the area of industry.

As far as the merits of the dispute are concerned, the decision obviously emphasises its economic significance: even in its preamble, it mentions “*language industry*”, overcoming the “*linguistic barriers*” dividing the “*different language markets*” and the reduction of the costs of translation. In the interest of this cause, the legislation supports European cooperation in creating dictionaries and terminological databases with special regard to opportunities afforded by and the application of new computerized tools. It also provides resources for the development of new, multi-lingual data-processing tools and data transfer between various languages.

However, considering the indissoluble relation between language and culture, the cultural import of the issue can hardly be denied. In its preamble, the Community act refers to this when mentioning the cultural and linguistic richness and diversity of Europe, that the languages that remain excluded from the information society would run the risk of marginalisation. And, as it were, it even refers to high culture by way of mentioning, apart from other novel means of translation, literary translation as requiring specific creative effort. True enough, the Council finally rejected the amendments the European Parliament proposed which would have expressly stressed the maintenance of European linguistic diversity as an organic part of the protection of cultural heritage, and they would have also declared that the cultural and social aspects of information society are just as significant as the economic ones.

The European Court had little sensibility for the cultural bearings of the issue. In its ruling, it essentially limited the concept of culture to high culture, and ascertained that the contested legislation addresses not the personalities of cultural figures, novelists, playwrights, literary translators, but persons pursuing economic and institutional activities. Moreover, the ruling stated: “*languages are not a cultural element in the context of the decision.*”¹²⁵ The major and emphatic elements of the decision are “of an industrial nature”, while its cul-

¹²⁵ It is worth quoting the next sentence of Point 33 of the ruling, too: “The Parliament’s argument is, in its view, misconceived as to its basis and relies on terms taken out of context.”

tural connections are merely indirect, accidental and secondary. It would therefore not be justified to refer to the article on culture of the Treaty of Rome as a basis of legislation. This also meant that the chapter on culture of the Treaty would inevitably be degraded in consequence of the judgment.

V. Conclusion

The law of the European Community has obvious consequence on languages. The European Community has created a coordinate system for languages that is shaped by supranational legislation, the rules of which are interpreted by supranational bodies. As far as the authentic and working languages of the European integration are concerned, the Community seeks to ensure the equality of languages: European citizens can make appeals to the institutions of the European Community using any of the authentic languages. Moreover, even the group of official languages has kept expanding: in theory, even regional and minority languages, having met certain preconditions, have a role in the operation of the institutions of integration. However, the need to run Community institutions efficiently and economically as well as the natural gravitation of the single market point to the use of some languages and therefore to the practical limitation of linguistic equality.

Furthermore, the language policies of the Member States have been subjected to Community control in the spirit of the prohibition of so-called discriminatory measures. In the final count, it is the European Court of Justice that decides on whether a national provision or measure on language use meets Community law or not, whether it obstructs the free movement of persons and goods or not. The literature refers to this as “negative language policy”; hanging above as a sword of Damocles, Community law controls the language policies of Member States.¹²⁶

It is equally true, however, that the Community has opened up resources and started programmes for the protection of linguistic diversity. Nevertheless, the scale of these is necessarily limited, and it is doubtful whether they can counterbalance the forces that continually press towards unification by way of the natural gravitation of things.¹²⁷ This would require an extraordinarily conscious and consequent national language, cultural and educational policy, one that would make good use of available national and Community programmes.

¹²⁶ Bruno DE WITTE, *Language Law of the European Union: Protecting or Eroding Linguistic Diversity*. In: Rachael Craufurd Smith, op. cit., pp. 205-241. (Bruno de Witte, 2004b), p. 240.

¹²⁷ The literature dubs the limited scale of support for linguistic diversity „feel-good funding”, Bruno DE WITTE, 2004, p. 241.

In Central and Eastern Europe, however, due to the fact that linguistic, national and state borders do not correspond, it can happen that an official language of the European Community, e.g. Hungarian, is the language of not only a Member State but also that of a national minority living in neighbouring countries. In such a case, the rank of official language might increase the weight and the chances of survival of that national minority.

Another way Community law affects languages is that it penetrates national legal languages, shaping, bending, re-interpreting and perhaps even controlling their vocabularies. It is a characteristic feature that an ostensibly legal question, like the issue of the direct applicability of Community law, might acquire a profound linguistic significance in a Community system including as it does several languages and several legal systems. However, the contrary is equally true, a linguistic task, such as the translation of the *acquis communautaire* into the languages of the Central and Eastern European accession countries, can become a constitutional problem if not completed in time and appropriately. Furthermore, any conferral of power onto the European Community has linguistic consequences because decision making and the preparation and adoption of legislation will subsequently take place in a multi-lingual environment, which will nevertheless be dominated by English, French and German as habitually used languages.

Having reviewed the practice of the European Court of Justice, we are justified in saying that the body has failed to re-assert in recent decades the sensibility it had attested in its ruling protecting the Irish language in the *Groener* case. It has allowed its judgments to be dominated by an approach affirming the primacy of the economy and the protection of the single market as against the interests of language and culture, and has strictly applied economic and legal tools that had been developed in the fifties of the previous century even in the assessment of linguistic measures to protect minorities. It even went as far as to questioning the relationship of language and culture in one case. The programmes the European Commission adopted increasingly stressing linguistic diversity markedly differ from the judgments of the European Court.

As a sort of counter-proof, the question might be asked whether the linguistic effect of integration is felt in countries that are not members of the European Union, such as Norway and Croatia, but nevertheless maintain close relations with it. This would need a separate study, but conforming to Community law and the pressures towards legal harmonisation are quite palpable in these countries, too, with their equally powerful linguistic consequences.

SUMMARY

The Effect of the Law of the European Union on Languages

MIKLÓS KIRÁLY

The languages of the Member States of the European Union are no doubt affected by Community law as its statutes transcend national frontiers in effect and many of the institutions that interpret and apply them are supranational. As for the EU's official and working languages, the Community has been going out of its way to ensure their formal equality: the citizens of the European Union may use any of the EU's official languages when they turn to any of the institutions of the European Union. That having said, efficiency, budgetary considerations and spontaneous tendencies of the internal market of the European Union call for the use of just few languages. In other words, daily practice implicitly prompts the restriction of the equality of the languages used. The Union has set aside funds and launched various programmes to preserve linguistic diversity, yet such efforts have limited effect. It is doubtful whether those endeavours can counteract the natural tendency of linguistic unification in the long run.

RESÜMEE

**Die Wirkung des Rechts der Europäischen Union
auf die Sprachen der Mitgliedstaaten**

MIKLÓS KIRÁLY

Das Recht der Europäischen Union übt offensichtlich eine Wirkung auf die Sprachen aus. Die EU hat auch für die Sprachen ein neues Kraftfeld geschaffen, das von den supranationalen Rechtsvorschriften geformt wird, und die Normen werden von supranationalen Institutionen interpretiert. Was die authentischen, bzw. Amtssprachen und die Arbeitssprachen der Integration betrifft, so ist die Gemeinschaft bestrebt, die formale Gleichheit der Sprachen zu gewährleisten. Die Bürger der EU können sich sogar in jeder der authentischen Sprachen an die Institutionen der Europäischen Union wenden. Sowohl das

Bedürfnis nach dem effizienten und sparsamen Betrieb des Institutionssystems der Integration, als auch die Tatsache, dass der einheitliche Binnenmarkt naturgemäß immer schwerfälliger wird, weisen entscheidend in die Richtung der Verwendung von nur einigen wenigen Sprachen und dadurch in die Richtung der praktischen Einschränkung der Gleichheit der Sprachen hin. Die EU stellt zwar Ressourcen zur Verfügung und startet Programme zur Bewahrung der sprachlichen Vielfalt, aber das Maß dieser ist notgedrungen begrenzt, und es ist fragwürdig, ob diese dauerhaft diejenigen Kräfte ausgleichen können, die ständig, infolge der naturgemäß immer schwerfälliger werdenden Prozesse in die Richtung der Vereinheitlichung weisen.

