

ENGLISH – AS THE WORST LANGUAGE CHOICE FOR LEGAL COMMUNICATION IN THE EU

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The idea of the article was inspired from the discourse of Prof. Filip Krepelka *Legal and political multilingualism in the European Union endangered with multiple crises* presented within the Czech-Polish Conference on Institutional Translation “Quality aspects in institutional translation” held at the Institute of Translation Studies from Prague, in 2016. The professor emphasized that we cannot speak about accuracy in institutional legal translation with English as the first choice language of communication and not even as source or target language for the translation of other languages. The reason behind this axiom is simple: **incongruity of legal systems (common law and civil law), and subsequently – incongruence of concepts and terminology.**

Besides the linguistic and doctrinal rhetoric about English as the worst language choice for legal communication in the EU, a political rhetoric is currently and widely popularized in the halls of EU institutions after the Brexit was voted, which is insignificant in terms of direct influence, and has exclusively a declarative nature marked by frustration and language rivalry.



The main cause of why English is the worst language choice for legal communication in the EU is that English is the official language of the common law system, while EU member states are mostly civil law countries. Making English the parent language of law in the EU leads to terminological and conceptual inconsistencies and incongruities. Helen Gubby, in her work *English legal terminology*, states that “translating the workings of a civil law system into English (common law) terminology can be extremely difficult. The reason for the complexity is simple: translating from one system to another system is far from straightforward.”

According to recent studies on mixed legal systems (EU has a mixed legal system), English, as the language of common law, generally tends to overpower the language of civilian elements, and subsequently, common law elements gradually replace their civilian counterparts. Unfortunately, there is still little research why common law prevails civil law taking into consideration that from 28 member countries of the EU, 3 countries (Cyprus, UK, Ireland) have common law system and 3 (Cyprus, Malta and Scotland) have mixed common law and civil law systems. Thus, it is a mystery that minority towers above majority.

English did not become the parent language of legal communication in the EU by itself. Some factors contributed in creating the phenomenon, and namely:

1. RAMIFICATION OF LEGAL SYSTEMS - as it is known, common law is used in the UK, USA, Canada, Australia and some former English colonies, while civil law dominates practically all Europe and other countries. Even though these systems managed not to interfere during the times, today common law legal drafters are more exposed to civil law terminology. The causes of this phenomenon issue from the globalization process, the fact that English became the language of communication at all levels, the fact that businesses are done in English and everything resumes to English. All these together made English the basis for all terminology, even in the legal field.

2. HARMONIZATION - the process of approximating the law of the member states of the EU to make them uniform or mutually compatible, under English language;

3. TEXTISM - which means that today the law prefers paper more to orality. Directives, regulations, agreements, drafts, rules, and other documents are published daily by the bodies of the EU. Multilingual glossaries provided by different bodies of the EU, as well as IATE – which is the terminology database of the European Union, and Terminology Coordination Unit (TermCoord) – which is a supporting unit to the translation units of the Directorate-General for Translation (DG TRAD) of the European Parliament and has the aim to stimulate and coordinate the terminology work of the 24 translation units of the European Parliament in Luxembourg – are also mechanisms of textism by standardizing terms, concepts and definitions;

4. TRANSLATION - the EU has 24 official languages but one should distinguish between “official and working” languages. Theoretically, all official languages are also considered working languages, but it is not a secret that only three languages are widely and unofficially accepted as EU working languages – English, German and French. According to official figures from the Translation Directorate General of the European Commission, in 2012, a total of 1 760 615 pages was translated. The greatest percentage of translated pages was into English – 14,92%. Through translation, terminology was unified under the aegis of English;

5. ACTORS - lawyers, legal drafters, translators, terminologists, lawyer-linguists, etc., who participate consciously or unconsciously to the unification of terminology, both at linguistic and doctrinal levels. This objective is achieved through detecting, evaluating, accommodating, standardizing terms and concepts;

6. SUPRANATIONAL PRINCIPLE or primacy of European Union law principle – describes the relationships and hierarchy of laws, policies and legal measures in the EU. In other words, when there is conflict between European law and the law of Member States, European law prevails. The question is about the language of EU law and the way it reconciles the legal systems of EU member states or what language and legal system represent the primacy principle. Moreover, if the statistic is true and EU applies a mixed legal system, a reasonable question comes to light: how many people speak the official language of a legal system and what is the proportion between common law and civil law EU member states.

7. LEGAL LINGUISTICS - studies legal language exclusively through the perspective of terminology, and how terms indigenous to one legal system can be conveyed in the equivalent terms of another legal system. Galdia explains the role of legal linguistics as follows: “a legal term under legal system A, understood as a systemic term, is transformed into another term under legal system B by finding a term under legal system A”. It is legal linguistics that commissions the task of establishing a relationship of equivalence between source and target texts to translators, but translators are not legal comparatists.

Conclusion: The general trend or expectations in legal language rely on the desire for approximation at legal systems, concept and terminology levels, in other words - unification or globalization of legal language. But what would be the language of “approximation”. Will it be English, French, German or Serbian, for example? Samantha Hargitt considers that globalization leads to confusing and misunderstanding legal language. She also believes that “current state of international system is poorly equipped to develop a global legal language”. I support this approach and consider that comparative law is the best medium for legal communication (translation).