

Languages and the Institutional Dynamics of the Court of Justice of the European Communities: A Changing Role for Lawyer-Linguists?

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Abstract

The role of language and translation in the production of the jurisprudence of the Court of Justice (and Court of First Instance) of the European Communities is a significant one. That multilingual jurisprudence consists mainly of collegiate judgments drafted by jurists in a language that is generally not their mother tongue; it also undergoes many permutations of translation into/out of up to 23 different languages and thus is necessarily shaped by the particular way in which the Court of Justice works and by the actors within it. This paper considers the role played by language in the institutional dynamics of the Court of Justice, focusing in particular on those whose job it is to translate the jurisprudence of that Court, the lawyer-linguists. Based on qualitative data largely obtained from empirical fieldwork research, the first part of the paper considers the role of the Court's lawyer-linguists prior to the 'mega-enlargement' of the European Union in 2004; the second part of the paper focuses on the implications of enlargement within the Court of Justice and considers whether such enlargement requires the rethinking of existing problematics and the development of new ways of functioning for that institution.

* This paper is based on the results of periods of participant observation at the Court of Justice of the European Communities undertaken between 2002 and 2006 as part of fieldwork research for my PhD thesis (2006); all comments/criticisms are welcome (k.mcauliffe@exeter.ac.uk).

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Introduction: Language at the ECJ

The rules governing language use at the Court of Justice and the Court of First Instance are set out in their respective Rules of Procedure (Chapter 6 (Arts 29-31) ECJ; Chapter 5 (Arts 35-37) CFI)¹. For every action before the Court of Justice and Court of First Instance there is a language of procedure which must be used in written pleadings or observations submitted and for all oral pleadings in the action. At present any of the 23 official languages of the European Union may be used as the language of procedure in a case² (including Irish)³. The language of procedure of the case must also be used by the Court in any correspondence, report or decision addressed to the parties in the case. Only the texts in the language of procedure are ‘authentic’ (i.e. legally binding). Unlike other EU institutions, the Court operates using a single internal working language – French⁴. The Rules of Procedure provide that a Judge or Advocate-General may request the translation of any document into the language of his/her choice⁵. However, Members

¹ The Court of Justice is subject to the general linguistic guidelines set out in Council Regulation No 1/58 determining the languages to be used by the European Economic Community (JO 34, 29/05/1959). However, under Article 7 of that regulation it may develop autonomous rules in respect of language use for proceedings

² These are, in English alphabetical order: Bulgarian; Czech; Danish; Dutch; English; Estonian; Finnish; French; German; Greek; Hungarian; Italian; Irish; Latvian; Lithuanian; Maltese; Polish; Portuguese; Romanian; Slovakian; Slovenian; Spanish and Swedish. The official order of these languages is to list them according to the way they are spelled each in their own language. Until June 2005 Irish was regarded as an official language only where primary legislation (that is, the Treaties) were concerned, however, on 13 June 2005 Irish was granted full status of an official language of the European Union – this came into effect on 1 January 2007. However, because of the lack of qualified translators of Irish mother tongue, the Council has adopted a ‘partial derogation’ whereby only key legislation must be translated into Irish. After a transitional period of four years, this derogation, will be reviewed (Council Regulation (EC) No 920/2005 of 13 June 2005 amending Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community and Regulation No 1 of 15 April 1958 determining the languages to be used by the European Atomic Energy Community and introducing temporary derogation measures from those regulations).

³ However, up until now Irish has never been used as the language of procedure in a case; judgments and references for a preliminary ruling are not translated into Irish and there is no Irish language division at the Court.

⁴ Note: Article 9(5) of the Rules of Procedure of the Court of Justice and Article 35(5) of the Rules of Procedure of the Court of First Instance state that *The President of the Court and the Presidents of Chambers in conducting oral proceedings, the Judge Rapporteur both in his preliminary report and in his report for the Hearing, Judges and Advocates General in putting questions and Advocates General in delivering their opinions may use one of the [official] languages other than the language of the case* – in practice the language used is French.

⁵ See Article 30 of the Rules of Procedure of the Court of Justice and Article 36 of the Rules of Procedure of the Court of First Instance.

have been obliged to forgo that possibility in order not to increase the workload of the translation service.

The significance of language and translation in the working of the Court of Justice is thus clear to see. In spite of this, however, there has been very little research into the dynamics and situational factors behind the production of that court's multilingual jurisprudence. The Court of Justice of the European Communities is not merely a legal machine producing page after page of jurisprudence in up to 22 languages, but is a multicultural institution in which culture, identity, languages, institutional dynamics and other factors affecting day to day life are significant⁶. This chapter is based on an anthropological investigation of the functioning of the Court of Justice. It draws on fieldwork carried out at that Court between 2002 and 2006 and focuses on those whose job it is to translate the jurisprudence of that Court, the lawyer-linguists. The paper thus highlights the contribution made to the institutional culture of the Court of Justice by those lawyer-linguists, who effectively give the Court its 'voice'.

Lawyer-Linguists

Article 22 of the Rules of Procedure of the Court of Justice states:

"The Court shall set up a translating service staffed by experts with adequate legal training and a thorough knowledge of several official languages of the Court."

The translation directorate of the Court of Justice of the European Communities is the largest directorate within the Court, currently employing over 800 people – almost half of

⁶ It is generally accepted that language cannot be divorced from culture; and that the cultural, or multicultural, aspect of an institution will necessarily affect its output (see, in particular I. Bellier, "European identity, institutions and languages in the context of the enlargement" (2002) 1 *Journal of Language and Politics* 85-114.). However, the present chapter concentrates mainly on the multilingual as opposed to the multicultural aspects of the dynamics within the Court. The reason for such choice of focus lies in the nature of that Court's 'output': the Court of Justice aims to produce statements of law that mean exactly the same thing in every language in which they are published and through such statements to ensure the uniform application of EU law. 'The law' is an overwhelmingly linguistic institution. EU law, and in particular the jurisprudence of the Court of Justice, is coded in language, and the concepts used to construct that law are accessible only through language. Thus, the role of language and translation in the production of the Court's jurisprudence is of primary importance.

the entire staff of the Court. More than two thirds of that directorate's current staff are lawyer-linguists (the remainder being made up of administrative staff and managers of the various divisions). Lawyer-linguists are responsible for the translation of the judgments of the Court of Justice as well as all other internal and outgoing documents produced by the Court as well as those documents received by the Court.

The title 'lawyer-linguist' brings to mind two very different professions: lawyers and translators. There exists a vast literature on the subject of 'lawyers' – who they are, what they do, their role definitions – as well as on the concept of the 'legal profession'⁷. While such role definitions and concepts of legal professions may differ between states and legal orders, those orders nonetheless have many legal professional norms in common⁸. Such norms relate to the need to remain faithful to 'the law' or the effort to avoid an uncertain rule of law⁹ and are referents for lawyers' behaviour¹⁰. In order for 'the law' to function, it has to be considered definite, precise and deliberate. Lawyers' role definitions are thus grounded in a specific, positive concept. A similar literature exists concerning the profession of translators¹¹. That literature focuses on concepts such as the power of the translator¹², the translator as author¹³ and the limitations or constraints of the

⁷ See, as a starting point: R. L. Abel and P. S. C. Lewis, *Lawyers in Society: The Common Law World*, vol. I, (Berkeley; Los Angeles; London 1988), p. 399, R. L. Abel and P. S. C. Lewis, *Lawyers in Society: The Civil Law World*, vol. II, (Berkeley; Los Angeles; London 1988), p. 459, R. L. Abel and P. S. C. Lewis, *Lawyers in Society: An Overview*, (Berkeley, California; London 1995), p. 340.

⁸ R. L. Abel and P. S. C. Lewis, *Lawyers in Society: The Common Law World*, vol. I, (Berkeley; Los Angeles; London 1988), p. 399; R. L. Abel and P. S. C. Lewis, *Lawyers in Society: The Civil Law World*, vol. II, (Berkeley; Los Angeles; London 1988), p. 459.

⁹ This notion of an obligation on the part of 'lawyers' to be faithful to 'the law' is an underlying theme in much of the literature concerning the sociology of legal professions. See, for example R. L. Abel and P. S. C. Lewis, *Lawyers in Society: An Overview*, (Berkeley, California; London 1995), p. 340; R. L. Abel, *Lawyers: A Critical Reader*, (New York 1997); A. Francis, *Lawyers, Legal Executives and the Phantom of Legal Professionalism*, *Socio-Legal Studies Association Conference*, (University of Bristol 2001); H. M. Kritzer, "The Professions are Dead, Long Live the Professions: Legal Practice in a Post-Professional World" (1999) 33 *Law and Society Review* 713-759.

¹⁰ For a discussion of the relationship between the concept of professional norms and cultures and the behaviour of lawyers see: R. E. Rosen, *What Motivates Lawyers*, *Socio-Legal Studies Association Conference*, (University of Bristol 2001).

¹¹ See, for example, D. Goulet, "Le cas du traducteur fonctionnaire" (1966) 11 *Meta* 127-138; T. Martin, *Image and Self Image: Public and Private Perceptions of the Translator*, In C. Picken (ed.), *XIII FIT World Congress (Fédération Internationale de Traducteurs): Translation - the Vital Link*, vol. 1, (London 1993).

¹² Cf. N. G. Round, "Interlocking the Voids": The Knowledges of the Translator, In M. Coulthard and P. A. O. de Baubeta (eds.), *The Knowledges of the Translator From Literary Interpretation to Machine Classification*, (Lampeter, Wales 1996), pp. 1-30; P. Kaseva, *The Initiator of Translations*, *English Studies*, (Helsinki 2000), p. 72.

translator¹⁴. Underlying those role perceptions is the implicit (and in many cases explicit) acknowledgement of the indeterminate nature of translation. Indeed, the role of the translator is defined by that indeterminate nature of the act of translation. Translation is considered a process of negotiation and translators as mediators¹⁵: their work is, at best, a compromise. The contradictions between those two professions are significant. On the one hand, lawyers are defined relative to a definite and determinate concept of 'the law'; on the other hand, translators' role definitions are based on the acceptance of the indeterminate nature of language and translation. The two professions, and their respective professional norms, appear to be incompatible; yet, in the context of the lawyer-linguists at the Court of Justice of the European Communities, they are brought together.

To the outsider it must seem that the role of lawyer-linguist is purely translation or translation-related; however upon closer analysis it becomes apparent that their role is far more complex and difficult to define. In order to translate legal concepts from one language to another, lawyer-linguists need a comprehensive knowledge not only of their own legal systems but also the legal systems of other Member States, as well as a thorough understanding of the law of the European Union and the jurisprudence of the Court of Justice. They are responsible for dealing with legal issues that may arise because of *linguistic* ambiguities in texts. While dealing with the classic problems of translation on a daily basis, the lawyer-linguists at the Court of Justice also attempt to balance a dual professional identity – that of lawyer *and* linguist. On top of this there is an undercurrent of feeling misunderstood and sometimes under-appreciated on the part of

¹³ Cf. B. Mossop, "The Translator as Rapporteur: A Concept for Training and Self-Improvement" (1983) 28 *Meta* 244-278; T. Hermans, "The Translator's Voice in Translated Narrative" (1996) 8 *Target* 23-48.

¹⁴ See, for example: W. Koller, "The Concept of Equivalence and the Object of Translation Studies" (1995) 7 *Target* 191-222; V. Leonardi, "Equivalence in Translation: Between Myth and Reality" (2000) 4 *Translation Journal*; G. Steiner, *After Babel: Aspects of Language and Translation*, 3rd ed., (Oxford; New York; Toronto 1998), p. 538.

¹⁵ Cf. U. Eco, *Mouse or Rat? Translation as Negotiation*, (2003), p. 200; C. Nord, Translation as a Process of Linguistic and Cultural Adaptation, In C. Dollerup and A. Lindegaard (eds.), *Second Language International Conference 'Teaching Translation and Interpreting 2: Insights, Aims, Visions'*, 2: Insights, Aims, Visions ed., vol. 5, (Elsinore, Denmark 1993), pp. 59-67.

the Court's lawyer-linguists¹⁶, all of which contributes not only to the dynamics of this unique profession but also to the dynamics of the Court of Justice itself.

Lawyer-Linguists prior to the May 2004 enlargement

The first part of the fieldwork research upon which this article is based was carried out prior to the May 2004 enlargement (when ten new member states joined the EU), and so involved interviews with lawyer-linguists from the 11 'old' language divisions concerning their roles, professional identities and perceptions of how they were viewed by others at that time¹⁷.

Role perceptions

A number of the lawyer-linguists interviewed insisted that they were not translators but lawyers:

"...lawyer-linguists are simply lawyers who work exclusively with a particular sphere of law..."

Indeed, many feel that the work of lawyer-linguists at the Court of Justice is actually an exercise in comparative law:

"In order to be able to translate a legal term from one language to another in which that translation will also have force of law the lawyer-linguist must be able to understand both the concept in the source language and the meaning of that concept within the relevant legal system as well as the legal system of the country in which the target language is spoken".

Others asserted that they were not lawyers but translators. Interestingly, however, each and every lawyer-linguist who described him/herself as a translator immediately qualified their statement by pointing out that, as translators of judicial texts, with law degrees, they are "*much more than simply translators*". They insisted that "*mere*" translators (i.e.

¹⁶ This was certainly the case prior to the May 2004 enlargement. However, as detailed *infra*, such perceptions on the part of lawyer-linguists appear to be changing.

¹⁷ Interviews were carried out with 45 lawyer-linguists across all 11 language divisions of that Court. In addition, four heads of language divisions and four managers within the translation directorate were interviewed, as well as 20 interviews with members of the Court and their staff.

translators who do not have a legal qualification) would not be able to follow the line of (legal) argument of a judicial document:

“In order to be able to translate a judgment you have to be able to understand and follow the legal reasoning [of that judgment] – otherwise how can you possibly even begin to attempt to translate it? Mere translators, those without any legal qualifications, experience or training, are unlikely to be able to do this.”

Many of those interviewed feel that a lawyer-linguist is something distinct from both a lawyer and a translator – a sort of hybrid between the two. The job requires expertise in law and expertise in translation, and most find it very satisfying to be able to ‘tie-up’ their interest in law and their love of languages. In short, the work of a lawyer-linguist is much more than translation – it is the manipulation of the law as language and language as law.

While the lawyer-linguists at the Court of Justice take their responsibilities as translators very seriously, it was clear that they also feel responsibility as lawyers since they are effectively giving the Court of Justice its ‘voice’. The struggle to successfully merge those two professions sets those who work in the Court’s translation service apart from both lawyers and translators. As one lawyer-linguist pointed out:

“[the lawyer-linguists at the Court] are walking a tightrope, continuously trying to balance their responsibilities as linguists with their responsibilities as lawyers”.

There appear to be two approaches to the attempt to balance that dual professional identity. Some lawyer-linguists see themselves primarily as lawyers and have a different approach to the role from those who consider themselves primarily linguists:

“Those who are primarily linguists sometimes overlook or fail to appreciate legal issues and those who are primarily lawyers can often make crass linguistic mistakes but they better see the relevant legal issues”.

However, provided that the translation divisions are organised and managed properly, and the ‘house practice’ for certain important issues is made clear, those two approaches adopted by the lawyer-linguists can actually complement each other.

One failing that both of those approaches do have, however, is the unwillingness on the part of the lawyer-linguists to translate very literally in certain cases. Those who consider themselves primarily linguists tend to object to producing texts that do not read well, that “*read as translations*”, while those who deem themselves primarily lawyers find it difficult not to use the obvious or closest legal equivalent in the target language. However, it is sometimes very important to produce a literal translation, so as not to resolve an ambiguity where the Court has wanted to preserve one. Ultimately it is the revisers who decide what approach is best in a particular case. If, for example, the problem concerns a point that has been settled long ago in the case-law of the Court of Justice and there are no new legal terms to deal with, then the lawyer-linguist can generally translate it in any way he or she wishes. However, if it concerns an important new point then great care must be taken. In such cases it is the reviser who decides what approach is best. As one reviser stated:

“If you’ve been here long enough you’ll see your chickens coming home to roost! Often you see a word or phrase that sounds very clumsy and you translate it using something that’s not quite literal but sounds neater in [the target language] and then a few years later the phrase comes back to you in another case and you realise you shouldn’t have translated it the way you did in the first place because you’ve resolved an issue that shouldn’t have been resolved at that time. That is why we tend to translate very literally at the Court even though the translation may sound very awkward – the idea is to preserve ambiguity where [the members of the Court] want it. Often the wording of a judgment is a compromise formula as a result of disagreement in the deliberations and must therefore be translated very literally”.

The difficulty with translating ambiguity represents the issue at the very core of the lawyer-linguists’ role: the reconciliation of the notions of ‘law’ and ‘translation’. As noted above, it is generally accepted that translation of any kind, including legal translation, involves some measure of approximation. This concept of approximation in translation, however, does not sit easily with traditional notions of law – an authoritative

force, necessarily uniform throughout the jurisdiction within which it applies, in particular in the European legal order where the principle of uniformity has formed the basis for the most important doctrines of EU law introduced by the Court of Justice. Indeed, that court is able to function precisely because those working there are aware of and accept the necessary compromise resulting from the struggle to reconcile the notions of ‘law’ and ‘translation’ in the production of a multilingual jurisprudence¹⁸.

Relations with the ‘rest’ of the Court

Many of the lawyer-linguists interviewed prior to the May 2004 enlargement observed that they felt so remote from the Court and so “*out of the loop*” that they don’t even really understand how the Court of Justice works – they are effectively translating in a vacuum. A number of lawyer-linguists who had previously worked as lawyers in the arena of European Union law noted that, in their previous work, they used to be aware of almost everything that was going on in the European legal arena but that since coming to the Court of Justice they don’t even know what is happening at the Court itself!

Those lawyer-linguists interviewed prior to the May 2004 enlargement seem to be quite defensive about their profession and clearly feel that they must continuously justify their role. This may be due to their perception of negative attitudes within that institution towards the importance of their work and their profession¹⁹. In spite of their relatively high salary scales²⁰, lawyer-linguists feel that they are at one of the lowest levels within the hierarchy of the Court of Justice. The majority feel that their work is under-appreciated, in particular by those who work in the cabinets of the various judges. They

¹⁸ See further, K McAuliffe “Law in Translation: The Production of a Multilingual Jurisprudence by the Court of Justice of the European Communities” Ph.D Thesis 2006 The Queen’s University of Belfast.

¹⁹ Whether or not such attitudes are actually present within the Court is irrelevant since, if the lawyer-linguists believe that they are, the consequences will be the same nonetheless.

²⁰ Lawyer-Linguists are recruited to the EU institutions with a starting grade of AD7, which corresponds to a basic salary of €4878.24 per month. ‘Translators’ recruited to the EU institutions start at grade AD5, corresponding to €3810.69 per month basic salary (Staff Regulations of Officials of the European Communities; Conditions of Employment of other servants of the European Communities, 2004). In general, référendaires (legal secretaries at the Court) are recruited with a starting grade of AD7.

are under the impression that those individuals (in particular the référendaires²¹) fail to appreciate what translation entails and show a disregard for the lawyer-linguists by demanding translations within deadlines that are too short, sending last-minute amendments to texts, drafting in a disjointed, ambiguous way without any consideration of the fact that their text must be translated²²:

“to [those who work in the cabinets, translation] is purely a mechanical function of putting the text into another language”;

However, it is not only by référendaires that the majority of the lawyer-linguists feel unacknowledged, the behaviour of judges and advocate generals has also led those lawyer-linguists to feel under-appreciated. During the course of fieldwork carried out prior to the May 2004 enlargement, lawyer-linguists recounted countless anecdotes recalling brusque statements made in speeches by judges and advocate generals, irate memorandums exchanged between judges and heads of division of various language divisions within the translation directorate and off-hand comments concerning their work made by judges and référendaires at various functions or informal occasions – including one particular comment by a judge who stated:

“I can’t understand why a translator translates only seven pages a day when I can read more than one hundred pages a day”!

All of this seemed to lead to a feeling among the lawyer-linguists that *“it is a case of them against us”*.

At best, the interviewees in question felt invisible to the rest of the Court. They felt that they were seen as a translation machine and that the judges and advocate generals and their staff probably only thought about translation when it went wrong:

²¹ Legal secretaries working for Members of the Court of Justice.

²² It must be noted that most of the référendaires interviewed pointed out that they are aware of the fact that the texts often seem disjointed and ambiguous but that their hands are tied in that regard because of very strict rules on drafting at the Court of Justice (see further K McAuliffe “Law in Translation: The Production of a Multilingual Jurisprudence at the Court of Justice of the European Communities”, Ph.D Thesis 2006, The Queen’s University of Belfast).

“To [the judges, advocate generals and their référendaires] we are a machine that produces pages of translations ...as long as the pages of translations keep being churned out there is no need for [those who work in the cabinets] to think of the lawyer-linguists at all unless something goes wrong!”

How many of those perceptions were actually valid and how much was simply misinterpretation on the part of lawyer-linguists is debatable. However, whether or not there is any justification for the majority of lawyer-linguists’ perceptions of how they are viewed by others within the Court, the fact remains that, certainly prior to the May 2004 enlargement, there was a huge gulf and lack of communication between lawyer-linguists on one hand and those who work in the cabinets of the members of the Court on the other. As a result of the feelings of isolation, defensiveness and under-appreciation on the part of lawyer-linguists, the interaction between them and the rest of the Court of Justice is fascinating. When lawyer-linguists speak of “*the Court*” they do not actually mean “*the Court of Justice of the European Communities*” of which they are an integral part – they are instead referring to those people who work in the Court of Justice other than those in the translation directorate. Many lawyer-linguists make an effort to project themselves into the professional life of the Court by taking part in seminars or talks, attending various formal or informal functions and even simply having lunch or coffee in the main court building. However, only three of the 45 lawyer-linguists interviewed had ever been inside the Court’s library (until 2004 there was a separate library housed in the T-building, which was closed in that year to make room for offices for new staff); only one had ever given a talk as part of the internal seminar series run within the Court; and less than half of those lawyer-linguists interviewed regularly attend formal Court functions to which they are invited. Indeed the translation directorate even has its own annual Christmas party, separate from the ‘Court of Justice’ Christmas party! When attending meetings, functions or merely having lunch in the ‘main’ Court building, the majority of lawyer-linguists tend to dress much more formally than they normally would in the translation directorate building and their appearance at “*the Court*” is sufficiently uncommon to be commented upon by others when they do attend.

The gulf between the cabinets and lawyer-linguists thus seems to be bound up in a vicious circle: the lawyer-linguists feel isolated and under-appreciated as a result of

behaviour (that they perceive) towards them together with a lack of understanding of their role, both within the Court of Justice and in society in general; consequently they tend to feel inadequate and compelled to defend their whole profession, which in turn results either in their unwillingness to project themselves into the professional life of the Court, or in their overcompensating by presenting themselves very formally in one situation (i.e. when in “*the Court*”) while having more informal relationships in other situations (i.e. when with other lawyer-linguists in the translation building).

Enlargement at the Court of Justice

The enlargements of 2004 and 2007 saw the greatest increase in membership of the EU to date. Ten new member states joined the ‘club’ of 15 in May 2004 and two further accessions in January 2007 brought the total number of member states to 27 and the population of the Union to about half a billion. For the Court of Justice, enlargement meant a huge influx of people to staff new divisions in the administrative hierarchy of the Court; including 24 new judges’ cabinets (12 at the Court of Justice and 12 at the Court of First Instance) and 11 new language divisions in the translation service. The second part of this paper draws upon fieldwork carried out following the May 2004 enlargement, which, as well as periods of participant observation, involved both ‘follow-up’ interviews with individuals previously interviewed (see *supra*) and interviews with lawyer-linguists, judges and other staff recruited from the ‘new’ member states²³.

Relations between lawyer-linguists and the ‘rest’ of the Court

As regards interaction with lawyer-linguists, judges from ‘new’ member states and their staff appear to have very good professional relationships with the translation service. This is partly due to the fact that new members and cabinet staff followed a structured

²³ During the second period of fieldwork research 38 interviews were carried out: 17 ‘follow-up’ interviews with people who had already taken part in interviews during the course of the first period of fieldwork research (nine lawyer-linguists; one judge; one advocate general; four référendaires and two managers); 11 interviews with lawyer-linguists from new EU member states; four with judges from new EU member states as well as three of their référendaires and three interviews with people in new management positions within the translation service.

induction/training programme and so learned about the role and expertise of the Court's lawyer-linguists, but also because of the very close contact between 'new' members and lawyer-linguists from their respective states during the first six months to one year following the May 2004 enlargement. The addition of nine new languages to the list of EU official languages meant that the Rules of Procedure of the Court of Justice and the Court of First Instance had to be translated/drafted²⁴ in each of those 'new' languages. The translation of those rules was carried out by lawyer-linguists in the new language divisions of the Court in collaboration with the judges from the relevant member states. The judges had the final word with regard to the terminology used in the Rules of Procedure, however, not being linguists themselves they tended to rely heavily on advice from the lawyer-linguists:

"...working so closely with the lawyer-linguists on that project simply increased the respect I already had for their profession..."

Moreover, because of difficulties in recruiting heads of division for new language divisions²⁵ judges from the relevant member states acted as heads of division (insofar as they provided guidance and made final decisions on terminology to be used, standard phrases to adopt etc.) until those posts were filled.

"Working with the lawyer-linguists in this way made me appreciate just how difficult their job really is..."

That very close contact between 'new' members and lawyer-linguists diminished when heads of division were finally recruited to the new language divisions and the translation of the Rules of Procedure was completed. For the most part, once the drafting/translating of those rules was completed the 'new' members saw no reason why they should have much input into translation at the Court of Justice:

"I took a great interest in the translation of the Rules of Procedure... but now that that is done I don't feel that there is any need for me to 'check' any translations – the lawyers in the translation service are highly trained to do that job and they

²⁴ The Rules of Procedure of the Court of Justice and the Court of First Instance were considerably revised in 2005 – the most recent versions of those rules were published in December 2005.

²⁵ See further, K McAuliffe "Law in Translation: The Production of a Multilingual Jurisprudence by the Court of Justice of the European Communities".

should be trusted to do it... there must be a separation between the jobs done by the lawyers in the translation service and the lawyers in the cabinets...".

Interestingly, all of the judges and référendaires from 'new' member states interviewed referred to the Court's lawyer-linguists either by that title or as "*the lawyers who work in the translation service of the Court*". This contrasts sharply with the results of fieldwork carried out prior to May 2004 when many of the judges and référendaires interviewed were unaware that the individuals who worked in the translation service of the Court of Justice had legal qualifications!

Relationships seem to be good between lawyer-linguists in the 'new' language divisions and those cabinet staff. In contrast to the lawyer-linguists interviewed prior to May 2004, none of those from the 'new' language divisions reported any feelings of under-appreciation – in fact there appears to be a mutual respect between the 'new' lawyer-linguists and those who work in the cabinets:

"Sometimes référendaires don't understand why it is important for us to use a particular translation in some cases but they usually accept our advice on such matters. In the same way if they have a particular reason for wanting to say something in a certain way they just have to explain it to us – it's not for us to question the reasoning or drafting of a judgment..."

Lawyer-linguists' role perceptions

When asked how they viewed their role of lawyer-linguist, all of those from the 'new' language divisions interviewed stated that they felt very much connected to the law and considered themselves lawyers who work in a linguistic field of law. A number also commented that they felt as though they were developing a new role for lawyers who want to work with languages:

"...in this job, while we are not 'creating' law, by developing the terminology of EU law in our language we are doing something more than just using law or manipulating the text of laws – I certainly feel very close to the law in this job..."

Much of the sense of professional identity felt by lawyer-linguists from the ‘new’ language divisions at the Court of Justice comes from the fact that their job largely consists of developing the terminology that will be used in the future – i.e. they are a part of the creation of the language of EU law in their own languages. This is entirely different from the job done by lawyer-linguists from the ‘old’ language divisions who simply work with a terminology already existing in their respective languages.

Development of terminology and a new legal language

One aspect of the work of the lawyer-linguists in the ‘new’ language divisions that differs significantly from that of the lawyer-linguists in the ‘old’ language divisions is the development of new EU terminology in their respective languages and the subsequent construction of a new EU legal language. Within each ‘new’ language division there is a ‘terminology team’ made up of the head of division, revisers and in some cases a number of the most competent lawyer-linguists. Those teams work in collaboration with the judges from their respective member states and are responsible for developing the EU terminology in their language to be used in translation at the Court of Justice:

“...in order to be able to do this job well you have to have a very strong knowledge of your own legal order and court system and also to be an expert in EU law”.

In previous enlargements, an EU terminology and legal discourse tended to already exist in the languages of the states joining the Union²⁶. However, while, to a certain extent,

²⁶ Even then there were often problems and difficulties as a result of mistranslations of concepts or from the fact that the discourse on EU law was generally developed by academics who simply used their own translations of terminology, which were subsequently rejected by the translators and lawyer-linguists who translated the *acquis communautaire* into the relevant languages. For example, in the dispute giving rise to Case 157/79 *Regina v Pieck* [1980] ECR 2171, the unofficial English translation of a pre-accession directive on free movement included the statement: “No entry visa or equivalent document may be demanded”. That did not adequately translate the French “*Aucun visa d’entrée ni obligation équivalente ne peut être imposé*”, because it was the obligation that was to be equivalent rather than any particular document. The UK government failed in its submissions on account of the mistranslation (see, in particular, the remarks of Advocate General Warner in his opinion on that case – p. 2190). Such discrepancies between translations are still causing problems today - see for example Case C-150/99

there was an EU legal discourse in a number of the May 2004 accession states²⁷, this was not the case in some of the CEECs that joined the EU in 2004:

“...many EU concepts and notions did not exist in the Slovakian legal system...”;

“...nothing similar to much of EU law existed in Latvia prior to its accession to the European Union”.

Furthermore, the legal systems of those states are still being developed, which makes slotting the EU legal order into such legal systems quite difficult:

“...the notion of company law didn't exist in Latvia until very recently and so, since Latvia's accession to the EU all of the terminology to do with that area of law has been put into Latvian using very direct translation – because even lawyers weren't sure how to describe it not having any experience of such law – presumably the terms etc. used will be adopted into the Latvian legal system and the notion of company law will develop within the Latvian legal system but introducing an entirely new area of law, based on translation from EU law, is extremely difficult...”

From a linguistic point of view ‘lifting’ entire concepts from EU law can be a good thing as the resulting legal language is likely to read less like an awkwardly constructed ‘eurospeak’ and more like a natural language:

“...the translations into Hungarian done at the Court... actually read like ‘proper’ Hungarian – possibly because none of the concepts in EU law existed in Hungary until now so there was no need to make a distinction between EU law and national law – most of Hungarian law was just lifted from the EU legal order anyway!”

However, there is a risk in such cases that the distinction between EU law and national law could be blurred in areas which actually differ. The solution generally adopted in such cases is to adopt the French terms to describe certain concepts of EU law:

“If a concept of EU law does not exist in our legal system... we usually try to explain the notion in a descriptive sense and then adopt the French term – for

Svenska staten (Swedish State) v Stockholm Lindöpark AB and Stockholm Lindöpark AB v Swedish State [2001] ECR-493, in particular paragraph 59 of Advocate General Jacobs’ opinion in that case.

²⁷ See further, K McAuliffe, “Law in Translation: The Production of a Multilingual Jurisprudence by the Court of Justice of the European Communities” Ph.D Thesis 2006 The Queen’s University of Belfast.

example 'acte clair' – this French term has been adopted in many EU official languages so we do the same..."

More difficulties arise when similar concepts to EU legal concepts exist within the member state in question:

"The main difficulty is when you come across concepts in EU law that are in some ways the same as concepts in Polish law but not exactly the same. In such cases you can't use the term that is used in Poland even if it does mean approximately the same thing because of the danger of misleading Polish lawyers – they need to be reminded that EU law is distinct from national law. The language of EU law, by its very nature is a compromise and you have to make that clear when translating it into your own language";

"...occasionally, if [an EU legal concept] is not one hundred percent the same [as a national law concept] but is perhaps ninety percent the same then we will adopt the terminology used in our language – but it will then have an EU meaning distinct from its meaning in national law..." (interviewee's emphasis)

All 'new-language' lawyer-linguists interviewed complained of their frustration at being forced to follow the official translations of the *acquis communautaire* carried out prior to May 2004:

"...our job is made particularly difficult because in reality we have control only over how secondary law is translated. The primary law – treaties and regulations – were already translated in the preparation for accession (and very often not by lawyers). Then you are stuck with those translations which ties you down and prevents you from developing good terminology in the case law";

However, far from simply accepting that there is nothing they can do in such cases, lawyer-linguists from the 'new' language divisions at the Court of Justice tend to be quite proactive in their approach:

"At present we are trying to have more contact with the other institutions to attempt to modify incorrect translations or to have some more input in the development of terminology at the drafting stage"²⁸

²⁸ Whether such efforts are likely to be successful remains to be seen. Given the complicated EU drafting procedures, however, that is unlikely (see further: K McAuliffe, "Law in Translation: The Production of a Multilingual Jurisprudence by the Court of Justice of the European Communities" Ph.D Thesis 2006 The Queen's University of Belfast).

In spite of the difficulty involved in the development of a new EU legal terminology and construction of a new EU legal language, all lawyer-linguists from the ‘new’ language divisions interviewed stated that this very challenge made their job interesting:

“...the challenge of creating a new terminology and being part of the development of a new EU legal language is what motivates me and makes my job fascinating”;

“At the moment the work I do is very creative – it is not simply translating but actually creating and developing the terminology – and I love that aspect of it!”
(interviewee’s emphasis)

A changing role for lawyer-linguists?

While the experiences and role perceptions of ‘new country’ lawyer-linguists seem to be very different to those of their colleagues in the ‘old’ language divisions, enlargement has also wrought changes in the working practices of those lawyer-linguists from ‘old’ language divisions. The introduction in 2004 of ‘pivot’ translation at the Court has affected the role of lawyer-linguists from pivot language divisions. In addition, since 2002, advocate generals at the Court have been drafting their opinions, not in their own mother tongues, but in one of the Court’s pivot languages. Obviously this has involved a significant role adjustment on the part of lawyer-linguists from pivot language divisions who provide ‘linguistic assistance’ to those advocate generals and their référendaires.

Lawyer-linguists at the Court of Justice have also experienced the gradual introduction of changes to their working methods: in addition to their ever-increasing workload many technological changes at the Court in general, and within the translation service in particular, were introduced. The introduction of this new technology, while not a result of or linked to enlargement, coincided with the May 2004 enlargement at the Court of Justice. In addition to the impact of those technological changes on their working methods, all lawyer-linguists interviewed commented that, since the May 2004 enlargement, they have noticed small changes in the way they work with and relate to each other:

“...with our workload getting bigger everyday and the migration to Windows as well as the introduction of pivot translation... you can see [lawyer-linguists] beginning to work together a little more than they have done in the past...”;

“...you have to rely on and communicate more with your colleagues now...”

Lawyer-linguists feel that these subtle professional changes are only the dawn of a new role:

“Down the line there will need to be more collaboration between translation divisions and the lawyer-linguists will have to start learning to work in teams...”;

“In the future, especially when the [references for a preliminary ruling] from the new member states start coming in, there will have to be much more collaboration between language divisions in the translation service...”

Although, prior to 2004 there were signs that the role of lawyer-linguists at the Court of Justice needed to change, or indeed was beginning to change, it was not until the May 2004 enlargement that such changes really became apparent. If the lawyer-linguists interviewed for the purposes of the present paper are to be believed, the transformation of their role will continue to gather momentum over the coming years.

Conclusion

The introduction to the Court of such a large cohort of staff from new member states certainly adds an element of diversity to that institution but also impacts the institutional balance within that court. The question posed by this paper is whether that impact on the institutional dynamics of the Court of Justice, particularly in relation to the role of language and the translation regime at that court, is so significant that it heralds a changing role for the Court's lawyer-linguists.

As regards language and translation at the Court and the role of lawyer-linguists: it seems that the situation is one of the role changing to meet the need. Institutionally, what appears to be happening at the level of the language divisions is less about translation and more about managing and manipulating legal information. The roles of the lawyer-

linguists in the 'old' language divisions appear to be shifting from 'simply' translating to managing legal information, particularly for those lawyer-linguists involved in editing advocate generals' opinions. Lawyer-linguists from the 'new' language divisions, however, are more concerned with mapping concepts and developing terminology.

Lawyer-linguists from new member states seem to view their role, to a certain extent, as one of creating law as opposed to acting as cultural mediators by creating a language for EU law that will be able to be interpreted within their own culture²⁹. They are very conscious of creating new terminology instead of using language or terminology that may already exist but refer to a slightly different concept in their own respective language. Of course, such choice is related to the fact that, unlike the situation that had existed in any of the 'western European' countries joining the EU in the past, the literature surrounding EU law in many of the 'new' languages was relatively meagre. Moreover, the entire legal systems of some new member states are in a relatively early stage of development and therefore the language of national law as well as that of EU law has to be created.

The role perceptions held by the lawyer-linguists from the 'old' member states on the other hand, are very different. They seem to be concerned with laying down and expressing EU concepts in a legal language already in existence. While that language may be distinct from their own countries' legal languages, that is simply a reflection of the concepts that are part of EU law³⁰.

Thus, even in the early stages following the May 2004 and January 2007 enlargements (in particular the May 2004 enlargement), the resulting changes and shifts in dynamic at the ECJ are beginning to affect the definition of 'translation' at that institution as well as the role of lawyer-linguists. Those lawyer-linguists appear to be involved in a process of

²⁹ It is arguable that this has been the case for every country joining the EU. However, never before has there been such a structured and visible procedure for such 'language creation' as there has been at the Court of Justice since 2004 (source: interviews with former lawyer-linguists working at the court at the time of their respective countries' accessions). In addition, as mentioned *supra.*, in previous enlargements an EU terminology and legal discourse tended to already exist (at least in the form of academic discourse) in the languages of the states joining the Union.

³⁰ See *ibid.*

directing, receiving and responding to the new demands of producing the Court's multilingual jurisprudence. The question that arises is whether this is merely a transitional role or whether it will actually embed a new and different role for lawyer-linguists in the Court of Justice. Will lawyer-linguists currently embracing that new role gradually be absorbed into the mainstream of the institution and socialised into its existing norms? Or will they be able to reshape those norms (insofar as their 'new' working methods may better correspond to the evolving role and environment of the institution)?

The experience of the staff of the ECJ recruited from 'new' member states, in particular lawyer-linguists, is a distinctive one. That group of lawyer-linguists have acquired a very different insight to the working of the Court to that of their predecessors and colleagues from 'old' member states. Furthermore, lawyer-linguists from the 'new' member states tend to be young, very talented lawyers with similar educational backgrounds. Whether the experience of those newer and younger recruits will ultimately translate into the institution is likely to depend on whether they leave that institution to pursue careers elsewhere. While any discussion on the possible implications of the distinctive working methods between judges and lawyer-linguists from 'new' member states is necessarily speculative, the possible dynamics of changes are indeed exciting.

The changes so far noticeable following the enlargements of 2004 and 2007 remain incremental, and (as would be the case with any staff intake in any institution) it is unlikely that the new cohort of staff will have any major impact in the very near future. That said, the institutional norms of the Court are being reshaped insofar as the existing relationships between some of the 'old' member state lawyer-linguists and members of the Court are changing (in relation to those advocate generals who now draft their opinions in a pivot language). In addition, there appears to be a new role perception for lawyer-linguists from the 'new' member states. There is, therefore, a possibility that, as a result of the 'mega enlargement of 2004 and the subsequent 2007 enlargement, the Court of Justice will in fact become better attuned to the diversity of its socio-cultural environment.

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