Department of Law

All Originals: Fiction and Reality of Multilingual Legal Drafting in the European Union and Canada

Agnieszka Doczekalska

Thesis submitted for assessment with a view to obtaining the degree of
Doctor of Laws of the European University Institute

Florence, November 2008

EUROPEAN UNIVERSITY INSTITUTE
Department of Law

All Originals: Fiction and Reality of Multilingual Legal Drafting in the European Union and Canada

Agnieszka Doczekalska

Thesis submitted for assessment with a view to obtaining the degree of
Doctor of Laws of the European University Institute

Examining Board:

Professor Jacques Ziller, Department of Law, European University Institute (EUI Supervisor)
Professor Bruno de Witte, Department of Law, European University Institute
Professor Patrick Glenn, Faculty of Law, McGill University, Canada
Dr Manuela Guggeis, the Directorate "Quality of legislation", the Council of the European Union

ABSTRACT

The phenomenon of multilingual law stems from official multilingualism, which usually requires not only that the law should be enacted in all official languages, but also that texts of a single legal instrument expressed in different official languages be treated as equally authentic. Since all authentic language versions are equal, all of them should be taken into consideration and none of them should prevail for interpretation purposes. In order to guarantee this equality, the principle of equal authenticity presumes that all authentic language versions are originals and render the same meaning. However, in practice, multilingual law is often drafted by means of translation. Hence, there is a risk that those language versions prepared by means of translation will be deemed of questionable reliability, and therefore will not be considered when a multilingual legal instrument is interpreted. Contradictions between the presumptions behind the principle of equal authenticity and practice of multilingual legislative drafting draw attention to a paradox which can and has challenged the equality between authentic language versions.

The thesis provides strong evidence – through a comparative study of multilingual legislative drafting in the European Union and Canada – that legal presumptions established by the principle of equal authenticity and the practice of legal multilingualism are more congruent than may appear at first glance. In particular, the study reveals that the equality between authentic language versions results not only from legal presumptions and provisions but can also be assured in practice throughout the drafting process. This is evident in the bilingual co-drafting process currently applied in Canada at the federal level. But it is also discernible in EU multilingual legislative drafting methods, which combine elements of translation and co-drafting. The detailed examination of legal drafting within EU institutions demonstrates that all languages participate in all drafting stages and influence each other. Therefore, although some elements of translation are involved in the drafting of EU multilingual law, by the end of the drafting process none of the language versions can be identified as a pure original, thus guaranteeing that the equality of all language versions is preserved.

ACKNOWLEDGEMENTS

Foremost, I would like to thank my supervisor, Professor Jacques Ziller, for his guidance and support through the whole research, for his trust and patience, which allowed me to develop and mature my ideas, and for his enthusiasm for my work that always motivated me to keep going. Thank you very much indeed.

I would also like to express my appreciation to Professor Marek Zirk-Sadowski from the University of Łódź who first brought me into the world of research and has been a cornerstone in my professional development. I wish to thank him for his belief in me and for his intellectual inspiration.

I am deeply grateful to the late Dr Mateusz Oleksy. I would not start this research without his support. He remains for me an unequalled model of the conducting of academic work and fighting for one's dreams.

I would like to express my gratitude to the drafters and jurilinguists in the Department of Justice Canada and the legal revisers in the European Commission and the Council who helped me to understand the process of drafting Canadian bilingual law and EU multilingual law, respectively. I am especially grateful to Mr Andre Labelle, Chief Jurilinguist and Legislative Counsel in the Legislative Services Branch of the Department of Justice Canada, for his great assistance during my stay in Ottawa and for sharing with me his experience, knowledge and enthusiasm for co-drafting. I would also like to thank, in particular, Mr Tito Gallas, Head of the Legal Revisers Group in the Legal Service of the Council, Mr Bevis Clarke-Smith, Director of the Quality of legislation team in the Commission Legal Service, and Mr Marek Kaduczak, Legal Reviser in the Legal Service of the Commission, for their abundant help and comprehensive and very interesting explanations on the drafting process. My stay in Brussels and Ottawa was a fascinating experience. Thank to all of you who agreed to share with me your knowledge and observations.

Lastly, and most importantly, I would like to thank my mother, Elżbieta Doczekalska. She has always supported and encouraged me to do my best in all matters of life. To Her I dedicate this thesis.

TABLE OF CONTENTS

INTRODUCTION

In the case of a multilingual law, due to the principle of equal authenticity, it is presumed and required that all official language versions render the same meaning, and as such are all equally authentic. As far as multilingual legislative drafting is concerned, in legal terms it is requisite to draft a legal act in all the official languages. In practice, however, the most traditional and frequent way of providing the same meaning in a number of languages is drafting a version of a legal act in one language which is then translated into other official languages. The use of this method is dilemmatic because of the two following reasons. First, the act of translation is an approximation; hence the meaning expressed in two or more language versions cannot be identical. Second, the product of translation is usually regarded as inferior to the original, thus the equality between language versions is difficult to maintain. Consequently, this traditional method of drafting involving translation does not satisfy the presumptions and requirements of the principle of equal authenticity.

In general, the aim of the present thesis is to find out how the challenge of legislative drafting in two or more languages can be coped with. In particular, the thesis aims at founding the drafting method(s) that can fulfil requirements of the principle of equal authenticity not only due to legal fictions and presumptions but also thanks to technical solutions applied in practice; especially, methods which avoid drawbacks of classical translation are sought.

Based on comparative study of drafting methods applied in the European Union and Canada, the following thesis statement is demonstrated in this dissertation: the equality between authentic language versions results not only from legal presumptions and provisions but can also be assured in practice throughout a drafting process. This thesis statement is evident in the case of co-drafting process applied in Canada at the federal level. It is also true in the case of the production of EU multilingual law which combines elements of translation and co-drafting. This dissertation demonstrates that if it is not possible to distinguish a source (original) and target (translated) language versions in the multilingual drafting process (assumption), the equality between authentic language versions is assured throughout that process (proposition to be demonstrated).

The access to law in a language that is known to a citizen is considered as a fundamental democratic right. In the case of multilingual law, in order to fulfil this right all official language versions should be equally authentic. The equal authenticity of language versions is provided and guaranteed by law. However, actual equality between language versions should be assured already at the drafting process. Therefore, the confirmation of the thesis statement will be significant in the context of that democratic right.

Methodology

The research is based on a comparative study of drafting methods applied in Canada and in the European Union. Both legal systems accept the principle of equal authenticity and both require their legislation to be d r a f t e d in all the official languages. Canada has been chosen because of its unique drafting method – co-drafting - applied at the federal level. Since, according to that method, two language versions are simultaneously drafted, they are both originals, and consequently they are considered equally authentic not only because the same is required by law but also because of the way they have been drafted. Canadian co-drafting method is regarded as ideal model for a comparison with drafting methods applied in the European Union. Thorough analysis and comparison between Canadian co-drafting and drafting methods applied at EU institutions should reveal whether EU multilingual drafting process can as well guarantee equality of all authentic language versions. Study of drafting methods applied in Canada and the European Union provides examples of translation: only governmental public acts and to some extent, regulations are co-drafted in Canada; in the case of the EU, *acquis communautaire* is translated into new official languages before the accession of new Member States. As co-drafting process is contrasted with translation, translation studies' methodology and terminology is applied in order to define translation and analyse differences between the two methods. Translation terminology is used to conduct the analyses, however, according to a legal standpoint, a term 'translation' should not be applied in reference to the production of a version that is to become authentic. Therefore, a term 'subsequent drafting' is proposed for denoting 'translation' as a legislative drafting method.

Structure

The thesis is divided into the two main parts.

The first part of the thesis gives an overview on linguistic system and policy in the European Union and Canada, as well as on legal traditions of both systems. The aim of this examination is not only to provide the background for further research on multilingual drafting methods but to find out common elements of the language system that justify comparison of drafting techniques in the two settings. The main common element is the principle of equal authenticity between all the official languages which is also the basis of the legislative drafting. The analysis of the legislation and case law of Canada and the European Union discloses that this principle is understood in the same way in both legal systems. Consequently, the principle has the same impact on legislative drafting in the European Union and Canada, specifically due to this principle the aim of drafting in the two systems is to produce laws whose all official and authentic language versions convey the same legal message, are coherent, congruent and all of them participate in the meaning of the single legal act. The common objectives of legislative drafting in the two legal systems are the reason for undertaking the comparison of drafting methods applied in the European Union and Canada.

The first part includes two chapters. The first one examines linguistic system and policy in the EU and Canada. The second chapter analyses, in the context of bilingualism and multilingualism, bijuralism in Canada and multiculturalism of EU legal system. In both chapters, the analyses of linguistic and cultural situations in Canadian and EU legal systems are preceded by the sections providing theoretical framework for further analysis, especially concepts and terms that are used throughout chapters are explained.

The second part analyses and compares legislative drafting methods used in the European Union and Canada. It is divided into four chapters. The first one – chapter 3 – provides theoretical framework for the analysis of legislative drafting in the European Union and Canada conducted in the following chapters. In particular, it includes conceptual and terminological explanations, theoretical analyses of legislative drafting techniques applied for drawing up multilingual law, and especially comparison between translation and drafting (chapter 3). Chapter 4 contains of the overview of sources of EU and Canadian law. The focus of this chapter is on explanation which legislative instruments are the subject of the next chapter (chapter 5) that deals with methods applied to draft EU multilingual law and Canadian bilingual law. Moreover, chapter 5 examines drafting techniques which allow the drawing up of law in a manner respectful of the autonomous character of the EU legal system and the

bijural nature of Canadian legal system. The last chapter (chapter 6) investigates drafting methods which are exceptional for both the European Union and Canada, i.e., subsequent drafting. These methods are applied in order to draw up new language versions of legal acts that have been already adopted.

Since the research on multilingual legal drafting requires some references to linguistics and translation studies, the thesis is completed with the glossary providing definitions of translatological and linguistic terms which are used throughout the thesis

Owing to the comparative and interdisciplinary character of the research, the thesis includes the subject matter bibliography where the general references regarding law, translation studies, linguistics and jurilinguistics (including bibliography on legal language, legal drafting and legal translation) are listed separately. Then the separated bibliographies on the European Union and Canada are attached. Both references on the European Union and Canada comprise literature regarding general information on respectively EU and Canadian legal system and legal culture, language regime, legislative and drafting process in the two settings. Finally, the subject matter bibliography includes literature on bilingual and multilingual drafting in other settings than the EU and Canada, to which some comparative references are made. To facilitate the search of the reference in question, the alphabetical bibliography is also provided.

Sources

Apart from classical academic materials (books, articles, see bibliography), the research is based on legislative acts and case law of the European Court of Justice, the Court of First Instance and the Supreme Court of Canada, as well provincial Courts of Appeal (see list of cases) which disclose rules on language use in EU and Canadian federal institutions, and principles on the drafting and interpretation of multilingual and bilingual law.

Moreover, legal documents on drafting strategy and rules, and reports on quality and progress of drafting law are also regarded. For instance, research on subsequent translation of EU *acquis* into national languages of candidate states has been based on analysis of national legal documents concerning preparation for membership in the European Union[1] and EU

[1] For example, in case of Poland, the National Programme of Preparation for Membership in the European Union (approved by the Council of Ministers of the Republic of Poland on June, 12 2001) has been taken into consideration.

documents, especially Phare Reports or other reports on progress towards the accession, as well as on TAIEX reports. The information has been gathered also from websites of national Translation Coordination Units (TCUs) as well as from statutes or by-laws establishing a TCU in question. Results of such research are quite valuable since websites of some of those TCUs which were established only for purpose of translation of the *acquis* do not exist any longer. Important data has been provided also from the content of articles or – more often – of conference paper prepared by persons involved in pre-accession translation process.

Furthermore, in order to find out how drafting process is conducted in practice internal documents of legislative and revision services in EU institutions and the Department of Justice in Canada, like drafting guidelines and manuals, have been analysed. Moreover, in order to enhance the research, the interviews have been conducted with legal revisers in Legal Services of the European Commission and the Council, as well as with co-drafters and jurilinguists in the Legislative Services Branch of the Department of Justice, Canada (see tables of interviews).

PART I

Legal languages, traditions and cultures of the European Union and Canada
Background of and rationale for the further comparison

It is the diversity that makes the European Union what it is: not a 'melting pot' in which differences are rendered down, but a common home in which diversity is celebrated, and where our many mother tongues are a source of wealth and a bridge to greater solidarity and mutual understanding.

From "A New Framework Strategy for Multilingualism"
Commission of the European Communities
Brussels, 22.11.2005
COM(2005) 596

A fabric is woven of many threads. Those of us who speak English and those of us who speak French - ourselves made up of many different elements - have joined together to weave a social fabric called Canada.

From the emblem of the Office of the Commissioner of Official Languages

INTRODUCTION

In his *Consideration on Representative Government* (1861/1972), John Stuart Mill states that a culturally and linguistically unified nation is required in order to create a unified polity. One century later opposite opinion was expressed by Walter Hallstein (1962) who considered cultural diversity – with regard to the European Union – as a value, especially when it is translated into integral multilingualism[2] expressed by equality of Member States' national languages.[3]

The European Union is build out of many diverse nations, communities, cultures and language groups. The same can be said, although to less extent, about Canada. For both – the EU and Canada – cultural and linguistic diversity is not an obstacle, but a value, the basis of their identity and a method of integration.

The question on the diversity can be analysed from distinct standpoints. The thesis deals with this issue from a legal perspective. Law should reflect cultures and traditions of the society. If the society is culturally and linguistically diverse, the value of cultural diversity can be – in the afore-mentioned words of Hallstein - translated into the principle of integral multilingualism that requires equal recognition of languages. Consequently, the reflection of the respect to linguistic and cultural diversity is multilingual law. The answer to the questions: which languages are recognised as equal in the European Union and Canada (1), how they are chosen (2) and, especially, how their equality is maintained in the process of drafting (3) is the focus of this dissertation.

The answer to the two first questions is provided in the first part of the thesis. The aim of this part is to give the background and context within which the research of drafting of multilingual law is conducted. This survey is based on the comparison of process and

[2] Integral multilingualism of EU institutions is the policy that grants official and working status to all Member State official languages and confers to EU citizens the right to choose the language before EU institutions.
[3] For further details on the two opposite views and other opinions on cultural and linguistic diversity of a political and legal system, see Kraus 2004: 299-314 and Savidan 2004.

methods applied in the European Union and Canada to draw up law in more than one language.

The characteristics of the European Union and Canada, that impelled me to base my research on the study of the two settings, are not only the recognition of more than one official language and requirement to draft and enact law in two or more equally authentic languages, but also the fact that the multilingual law is applied within different legal cultures and families of law. EU law is applicable, often directly, in Member States, thus in common law system – as in the case of Great Britain and Ireland, as well as in civil law systems – as in the case of continental Member States. On the other hand, in Canada federal law is applied in common law provinces and in Quebec which is a civil law province. Furthermore, in some Canadian territories, especially in Nunavut, elements of aboriginal law are recognised and respected.

Owing to the two features that are common for the European Union and Canada and can be denoted as legal multilingualism and multiculturalism, this part is divided into two chapters. First chapter deals with language regime in the European Union and Canada, while the second describes legal cultures and families that contribute to and compose European and Canadian law. Since the subject of the thesis is legal multilingualism, the main concern is on language regime. Each chapter includes three sections. The first gives a theoretical framework for the investigated subject matter (language regime and legal multilingualism in the first chapter and legal cultures and families in the second one). The second section provides description and analysis of the issues related to language regime[4] (first chapter) and to legal cultures and traditions (second chapter) in the European Union, whereas the third section of each chapter deals with the same matters but in Canada. In the conclusions to the first and second chapters some comparison between multilingualism in the European Union and bilingualism in Canada (in the first chapter) as well as between European legal culture and Canadian bijuralism (in the second chapter) is drawn. The aim of this comparison is to find out whether there are any common features of official and legal multilingualism and legal traditions in the European Union and Canada that make the comparison of drafting multilingual law in both settings plausible. Those features are indicated and explained in the conclusion to the first part.

[4] The following issues are *inter alia* examined: the explanation of reasons for legal multilingualism and its legal basis, the overview on various statuses of languages (i.e., official, legislative, judicial, additional and authentic languages), the use of languages in institutions and for drafting purposes.

CHAPTER 1
Language regime in the European Union and Canada

Introduction

This dissertation aims at analysing how linguistic versions of a single multilingual legal act, which are endowed with equal authenticity, are drafted. This analysis is based on the comparative study of two multilingual legal systems, i.e., of the European Union and of Canada. In order to examine the drafting process and drafting methods, first, some aspects of language regime in these multilingual settings should be investigated. Language regulation comprises language policy, language status and language rights.[5] The objective of the first chapter is, however, to scrutinise only this language regulation that influences the drafting process, specifically, the regulation regarding language status and language use throughout drafting and legislative process. In particular, in this chapter, the following issues regarding language regime in the European Union and Canada are clarified: firstly, which languages are official and authentic, in other words, which linguistic versions of a legal act are equally authentic and, consequently, in which languages legislation is drafted; secondly, which languages are used in the institutions involved in drafting and legislative process (i.e., what languages are *de facto* working and drafting languages).

In the first section some clarification and explanation is provided regarding terms and concepts that are common for the description of language regime in the EU and Canada and are used throughout this chapter and the whole thesis. While the second section describes multilingualism of the EU, the third one deals with the language regime in Canada at the federal, provincial and territorial level. Although the main concern of both subsections is the

[5] *Cf.*, for instance, Florian Coulmas (1991b: 4-17) distinguishes five areas where the European Union deals with language: (1) language status, (2) language use by and with EU institutions, (3) translation and terminology formation, (4) language education for citizens of EU Member States, (5) minority protection. The research focuses only on the first three domains.

description of language regime and of its development, especially of official, legislative and to less extent judicial multilingualism, respectively in the European Union and Canada, the structures of the two sections differ from each other. The second section - dedicated to the European Union - is divided into four subsections which analyse the following issues of EU language regime: reasons for (subsection 1.2.1) and legal basis of (subsection 1.2.2.) EU multilingualism, the meaning of the principle of equal authenticity in the European Union (subsection 1.2.3.) and languages of the EU (subsection 1.2.4.). The last subsection (1.2.4.) focuses mainly on official languages and languages of special status (treaty and additional languages), on authentic languages and on the use of working languages in EU institutions. The third section - devoted to Canada - includes only two subsections, the first describing language regime at the federal level and the second characterising language regime at the provincial and territorial level. Special attention should be paid to paragraph 2 of subsection 1.2.1. on the equal authenticity rule that is the basis of Canadian legal bilingualism.

Since language regimes in the European Union and in Canada are analysed separately, the focus of the conclusion is on the comparison of EU multilingualism and Canadian bilingualism in the legal perspective. The results of this comparison shall explain - to a certain extent - why analyses conducted in this thesis are based on the study of multilingual legal drafting in the European Union and in Canada.

SECTION 1.1.
Theoretical overview of multilingual language regime - explanation of concepts

Introduction

The objective of this chapter is the description of language regime in the European Union and Canada. Since the notion of 'language regime' is quite broad, some clarification is necessary. A language regime can be defined for the purpose of the thesis "as a set of official languages and a set of rules governing their use" (Pool 1996: 164). Due to the fact that language regime in the European Union and Canada relates to more than one language, first, the concept of 'multilingualism', and especially of 'official multilingualism', is explained (subsection 1.1.1.). Subsection 1.1.1 indicates different aspects of official multilingualism and specifies which of them are to be mainly concerned. The next subsection (1.1.2.) deals with the principle of equal authenticity that is the basis of both EU multilingualism and Canadian bilingualism. The last subsection (1.1.3.) explains the specific meaning of the following terms: 'text', 'version', 'authentic/authoritative text', 'official text' and 'official translation'. These terms have established meaning in international law and are used slightly different in multilingual national and supranational law.

Subsection 1.1.1.
Official multilingualism and its aspects

Since the term 'multilingualism'[6] can refer to different phenomena and is used in a variety of ways, the meaning of this term should be explained before we continue. For the purpose of the research and throughout the thesis, the term 'multilingualism' is used in the sense of 'official multilingualism' which refers to a setting (a territory, a province, a state, or an international or supranational organization) that has more than one (official bilingualism) or more than two (official multilingualism) official languages. The term 'official multilingualism' does not refer to the degree of individual multilingualism of the population, or in other words, to personal multilingualism, i.e., it does not mean that all or most of citizens are multilingual.[7] On the contrary, it can be even stated that official multilingualism allows a person to remain monolingual, or putting differently, to preserve personal monolingualism. Accordingly, in this dissertation multilingualism is not regarded as a sociolinguistic phenomenon and is not examined at either a personal (individual), or societal (collective) or interaction level (*cf.* Carson 2003). Instead, legal and institutional aspects of official multilingualism are analysed.

Official language is a language that is specifically designated and granted with official status by the law. Although national languages[8] usually become official,[9] the term 'official multilingualism' refers only to the latter and the term 'official language' should be

[6] Hereinafter in section 1.1 the term 'multilingualism' is used, but all statements refer also to 'bilingualism'. The only difference is that the former describes a situation where a few (more than two) languages are involved and the latter refers to a situation where two languages are used. Some authors call 'multilingualism' a more radical form of bilingualism; see Macdonald 1997: 126.

[7] *Cf.* Robert Phillipson who considers multilingualism of the EU as a democratic right of the peoples of Europe and notes that "[t]he right in question [the right to multilingualism] seems to refer to the right of each European 'people' to their own language (a right to monolingualism?), which converts in the EU into the right to be informed in the relevant official language" (2003: 129-131). 'The right to be informed in the relevant official language' requires certainly that legislation is expressed in all official languages.

[8] The exception to this rule can be illustrated by the example of the language regime in Cameroon that is a multilingual country comprising some 248 indigenous languages, one *lingua franca* (pidgin English) and two official languages (English and French). English and French – the two official languages - are not national languages of Cameroon. The choice of the two languages as official was, on one hand, a continuation of colonial language policy, but on the other one, it was an easier solution than the choice of an official language or languages from 248 national languages. The example of Cameroon illustrates very well the difference between 'official multilingualism' and 'multilingualism' which describes a multilingual country where two or more languages are spoken widely, as well as the difference between official and national languages. For details on official bilingualism and language regime in Cameroon, see *int. al*. Echu 2001: 335-343.

[9] This statement refers to multilingual states. In case of international or supranational organizations, the official languages of their institutions are usually selected among official languages of their member or party states. For instance, as far as the European Union is concerned, the official languages of EU institutions are stipulated during the membership negotiations (Wagner, Bech and Martínez 2002: 5); for further details see subsection 1.2.4., paragraph 1.

distinguished from the term 'national language'. Sometimes law refers to national languages and makes a clear and strict distinction between national and official languages.[10] If the language is not recognised as an official one by the law but it is commonly used in a state (or other setting), especially by the institutions, this language may be denoted as *de facto* official language. For instance, it is the status of the English language in the United States where no legal provision expressly provides for its official status[11] and of English and/or French in most Canadian provinces.[12]

In case of official multilingualism, all official languages have the equal status which means that one language cannot prevail over the other(s) (Jané 2001: 4). In addition, laws must be enacted in all official languages. François Dessemontet and Tuğrul Asnay in *Introduction to Swiss Law* states, referring to German, French and Italian as official languages, that "(t)he use of the word 'official' means that all legal texts are published in these three languages and that all three are considered equally authentic" (1995: 11). The requirement to legislate multilingually is called legislative multilingualism.[13] However, in some legal systems such requirement exists although only one language or no languages are recognised as official by law. The languages, to which the requirement refers, are called official languages of the legislation even if they are not official languages of a setting.[14] Since all versions of a legal act drawn up and authenticated in official languages are equally authentic, none of official language version of the legal act prevails over the other for interpretation purposes and all of them participate in the meaning of the legal act.

Moreover, official multilingualism usually provides citizens with the right to use any official language in the courts and institutions. These language rights are related to the

[10] For instance, Swiss Federal Constitution has described German, French, Italian and Rhaeto-Romanic (Romansh) as national languages, but only German, French and Italian as official languages. Nowadays (since the constitutional reform in 1996) Rhaeto-Romanic (Romansh) is recognised as an official language between Confederation and a person who speaks Rhaeto-Romanic (Romansh). However, the distinction between official and national languages remains (Šarčević 2002: 81). Moreover, legal texts are required to be published in three official languages, i.e.: in German, French and Italian, but not in Rhaeto-Romanic (Romansh); see Dessemontet and Ansay 1995: 11.

[11] For more details on the status of English in the United States an attempts to grant English the status of the official language of the United States, see Balmer 1992: 433-448.

[12] Among ten Canadian provinces, only in New Brunswick, English and French are granted with the official status pursuant to Section 16(2) of the *Constitution Act, 1982*, and only in Quebec, the *Charter of the French Language*, *1977 (Bill 101)* recognises French as the official language; for more details, see this thesis, subsection 1.3.2.

[13] The term 'legislative bilingualism' has been used in this sense, for instance, by Michael J.B. Wood (1996: 66, 67) in reference to Canada and Ontario.

[14] For example in Canada, Quebec recognises only French as the official language of the province; however, the legislation should be drafted and enacted in both French and English languages (legislative bilingualism). The same requirement is provided in Ontario and Manitoba which did not indicate any official language of the province; for further details, see this thesis, paragraphs 1 (on Quebec), 3 (on Ontario) and 4 (on Manitoba) of subsection 1.3.2.

concept of 'institutional multilingualism' which can be defined as an obligation of institutions to use all official languages and provide services to the public in all official languages.

In particular, the use of languages in courts is regulated. The situation where the administration of justice operates in many languages is denoted as 'judicial multilingualism'.[15] While discussing judicial multilingualism, three issues should be distinguished: firstly, what languages can be used in process and pleadings in courts (in this context, judicial multilingualism is related to institutional multilingualism); secondly, what language versions of legal acts have to be taken into consideration for interpretation purposes (in this aspect judicial multilingualism refers to legislative multilingualism and the principle of equal authenticity); and finally, what languages are used to draft judicial decisions and in which languages the decision is authentic.

Official multilingualism and the requirement to publish legal texts in all official languages pertain to the concept of legal multilingualism, which means that the same law is expressed in two or more official languages (Macdonald 1997: 119, 127) and all official language versions of the legal act enacted in prescribed way are equally authentic and therefore all of them have to be taken into consideration for interpretation purposes. Consequently, it can be stated that the phenomenon of legal multilingualism encompasses legislative and judicial multilingualism.

To sum up, all the above-mentioned terms - i.e., official multilingualism, legislative multilingualism, judicial multilingualism, institutional multilingualism and legal multilingualism - refer to the same phenomenon but describe it from different perspectives. The distinction between multilingualism in a legal sense and multilingualism in a sociolinguistic sense is important for my research. The former originates from the latter (regarded at societal level). The main concern of this dissertation is the drafting of multilingual law; i.e., legislative aspects of multilingualism. However, in order to examine the drafting process official and institutional multilingualism have to be investigated. The former indicates which languages are recognised as official in the setting in question and explains their status. The latter states what languages are used in practice in the institutions and how they are used; in other words, how and which languages are actually utilized in drafting of legal acts. The analysis of all those aspects of multilingualism will bring the depiction on legal multilingualism, i.e., on law drawn up and authenticated in more than one language.

[15] The term 'judicial bilingualism' has been used, for instance, by Guy Jourdain (2002: 246) in the reference to Manitoba and Northwest Territories.

As mentioned above very important feature of official multilingualism is the equality between languages granted with official status. In the aspect of drafting and application of multilingual law, this characteristic is expressed by the principle of equal authenticity of all official language versions. The principle alongside with related to it theory of original texts is explained in the following subsection (1.1.2.).

Subsection 1.1.2.
Principle of equal authenticity and theory of original texts

The present subsection explains and analyses the principle of equal authenticity and the theory of original texts that are the basis of legal and official multilingualism.[16] Multilingualism consists not only in the coexistence of two or more languages but also in the equality of these languages. Wagner, Bech and Martínez, while referring to the multilingualism of the European Union, notice that the term 'multilingual', regarded in the context of the EU,[17] goes beyond the dictionary definition of 'multilingual' that refers to a person "speaking or using many languages" or to a text "written or printed in many languages". This is so because multilingualism, concerned from a legal perspective, has the additional meaning of "equal rights for all official languages" (2002: 1).

As regards drafting and application of multilingual law, "equal rights for all official languages" are expressed and reflected in the principle of equality of authentic texts.[18] As mentioned above, official multilingualism requires that law should be enacted in all official languages. Furthermore, texts (of a single legal act) expressed in official languages are equally authentic; in other words, they are equally (legally) valid (Wagner, Bech and Martínez 2002: 4). The principle of equal authenticity requires no single authentic version prevail for the purpose of interpretation because all the authentic language versions of a single legal act contribute to the common meaning of that act. It is presumed that all authentic versions of the same act have the same meaning. However, when an ambiguity or divergence of meaning arises, all language versions should be consulted and the meaning should be detected in all language versions by means of ordinary methods of interpretation. If it is not possible, a court

[16] The term 'principle of equal authenticity' has been proposed by Susan Šarčević (2000a: 64). However, it should be kept in mind that other terms are also used, e.g., the 'principle of plurilinguistic equality' (van Els 2001: 311). Due to the reference to 'equality' and 'authenticity', the first term reflects the best - from the legal standpoint - the significance and meaning of the principle. Therefore the term 'principle of equal authenticity' (sometimes replaced by the 'principle of equality of authentic texts') is chosen and used throughout the thesis.
[17] This statement is also relevant as regards multilingual countries.
[18] On the meaning of 'authentic text' see next subsection 1.1.3.

should resolve which meaning best reconciles the texts. In some multilingual countries, the highest court's decisions on the official languages are published (Šarčević 2000a: 20, 67).

Although language versions of equally authentic texts are very often prepared by means of translation, the term 'translation'[19] is not used, either in legislative texts (e.g., in statutes) or in legal science texts. "The term 'translation' implies inferiority and is thus inconsistent with the principle of equally authentic texts" (Šarčević 2000a: 20). For this reason, from the legal point of view, all authentic texts are originals regardless of the way in which they are produced. This statement is the main assumption of the theory of original texts (*ibidem*).

Sometimes, equally authentic texts of the same legal instrument expressed in two or more languages are also called 'parallel texts' (Šarčević 1994: 301; 2000a: 21). 'Parallel texts' are defined as texts of a legal instrument that are authenticated in two or more languages. This term refers to the legal status of texts; namely, if texts are parallel they are equally authentic (valid).[20]

When the meaning of the term 'authentic' or 'original' is considered, one has to admit that only one text can be authentic or original. Accordingly, the expression 'original texts of a single legal act' is a contradiction in terms.[21] The same can be said about the concept of 'multiple authenticity' stemming from the principle of equal authenticity. According to Emma Wagner, this contradiction is a legal fiction of equivalent originals and of multiple authenticity which is, however, necessary to safeguard language equality (2000: 2 and 2001b: 67). In the second part of the thesis, it is investigated whether the contradiction between the practice of multilingual legal drafting and the presumptions of the principle of equal authenticity and theory of original texts is real or fake.

[19] The term 'translation' is used neither when referring to authentic texts, nor to a process of drafting of these texts. For further details on the use of the term 'translation', see next subsection 1.1.3.; on a status of legal translation, see subsection 3.2.1.

[20] The term 'parallel texts' is also used in translation studies (TS) and is understood as "a text that represents the same text type as the source text" (Delisle, Lee-Jahnke, Cormier 1999: 166; see glossary). The TS definition refers to a text type not to the content of the source and target texts (e.g., Delisle, Lee-Jahnke, Cormier notes that "for instance, advertising texts in the 'target language' can be viewed as parallel texts, even if they do not deal with the same product" (1999: 166). Thus, according to TS, only text types have to be parallel not the content of the texts, whereas – from legal viewpoint - the same content of the legal parallel texts of the legal act is a condition *sine qua non* for equal authenticity of the texts. Hence, the usage of the legal term 'parallel texts' should not be confused with its usage in translation studies (Šarčević 1998:282, 2000a: 21). In order to avoid the confusion, the term 'parallel text' is not used in the thesis.

[21] However, in the ideal case, when texts of a legal act are independently drafted in two or more languages at the same time, all of them are literarily original. Consequently, sometimes this contradictory expression reflects the actual practice of a legal drafting.

Subsection 1.1.3.
Clarification of terms pertaining to multilingual law of international organizations, the European Union and Canada

While the meaning of 'principle of equal authenticity' has been explained in the previous subsection, the terms 'authentic text', 'version' and 'translation' have been applied. Throughout the thesis, these terms are used to describe legal multilingualism and legal drafting in the European Union and Canada. Since the same terms have established and precise meaning in international law, some clarification is requisite at this point.

The term 'authentic text' is used in international law and denotes the text(s) which are "deemed to prevail in case of a difference or incompatibility between the different versions" (van Calster 1997: 364). Accordingly, it is the same meaning as this term conveys in the context of the EU or Canada. However, since in international law the number of authentic texts is limited,[22] there are as well official texts besides authentic texts. The latter are adopted by the states parties, the former are signed but not adopted by the parties (Tabory 1980: 37; Šarčević 2000a: 20). Official text is the text upon which "the contracting parties have reached consensus and which have been signed […] by them" (van Calster 1997: 364).

Moreover, there are also official translations that are prepared by a government or an international organization on its own responsibility. The example of an official translation can be also indicated in the European Union which recognises additional languages (at the time of writing, they were only Basque, Catalan and Galician) into which legal acts can be translated by the Member State (at the moment by Spain). Such translation is only a certificate translation but not the authentic version of the legal act.[23] Moreover, the possibility of preparing official translation has been also provided by the *Treaty establishing a Constitution for Europe*, since according to Article IV-448(1) the Constitution Treaty may be translated into other languages, which have, according to the constitutional order of Member States, official status in all or part of their territory.[24] Official translations in international law and in EU law are not authentic versions of legal acts.

[22] Usually a treaty designates which its language version(s) should be considered as authentic text(s). If there is no such a provision, the International Law Commission presumes that each version, the treaty was drafted in, is authentic; for more details see Tabory 1980: 37.
[23] For further details on the status of additional language and certificate translation in the EU, see subsection 1.2.4., § 2.
[24] OJ of 16.12.2004 C310/191; this provision has been adopted due to the proposition of Spanish government as a compromise between reluctance of Member States to extend a number of official languages and requirements of some autonomous communities, especially Catalonia and Basque Country, to confer on their languages the status of official language of EU institutions (Ziller 2005a: 64). The Catalan translation of the Constitution

In international law in order to avoid misunderstandings and also to circumvent the use of the term 'translation', the International Law Commission has proposed that the term 'text' is to refer to authentic texts, i.e., to the texts adopted by Member States or by rules of procedure and the term 'version' is to be used to denote all other language versions (Tabory 1980: 171); e.g., to official translation.[25]

Although in international law the term 'authoritative translation' is used (see Tabory 1980: 37, see also this thesis, subsection 3.2.1.), this term is applied neither in the European Union nor in Canada because linguistic versions of legal acts drawn up in official languages are equally authentic regardless how they were drafted. Therefore when the term 'translation' is used while referring to EU or Canadian laws, it is always non-authoritative translation (e.g., official translations of the *Treaty establishing a Constitution for Europe* into Basque, Catalan and Galician are not authentic versions of the Treaty). All authoritative, or in other words, authentic language versions are never denoted as translations.

When it is compared how and in what meaning terms related to legal multilingualism are used in international law and in the EU and Canada, the terminological distinction between 'text' and 'version' should be especially considered in order to avoid confusion. It should be kept in mind that, in the thesis the term 'version' is used to denote an authentic language version,[26] whereas in international law the term 'version' usually indicates language versions others than the authentic text. Thus, in this dissertation, the term 'version' conveys a different meaning than the same term does in international law.[27] In the European Union and Canada, terms 'authentic text' and 'authentic version' are used interchangeable. To illustrate the usage of the terms 'text' and 'version' in the European Union, one can refer, for instance, to *Treaty establishing the European Community* where in the same Article the two terms 'text' and 'version' are used and both are described as authentic; it is Article 314 that indicates in which languages the Treaty is authentic.

Treaty has been submitted. Nowadays Catalan, Basque and Galician, as mentioned above, have the status of additional languages.

[25] The concept of 'legal text' as a text for special purposes in translation studies is discusses in subsection 3.1.2, see also the linguistic definition of the term 'text' in glossary.

[26] However, the use of the term 'version' in the thesis does not implicate its authentic character, since sometimes the term 'version' is used just to denote a language version of the text which is not authentic; for instance, in case of additional languages in the European Union; additional language versions of a legal act are only the certificate translation, and are not authentic; for details on status of additional language in the EU, see subsection 1.2.4., § 2.

[27] For more details on discussion on terminological differences between 'text' and 'version' and on the choice of the proper term, see Tabory 1980: 171; on 'authentic languages' in the European Union, see in the next section: subsection 1.2.4., § 4.

When the *Treaty establishing the European Economic Community* (renamed afterwards by the *Treaty of Maastricht* to *Treaty establishing the European Community*) was signed by France, Germany, Italy, Belgium, the Netherlands and Luxembourg, Article 314 provided that:

> This Treaty, drawn up in a single original in the Dutch, French, German, and Italian languages, all four **texts** being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the Governments of the other signatory States. [emphasis added]

After the accession of new states the Treaty has been authenticated also in official languages of the new Member States and Article 314 has been completed by the provision where the term 'version' has been used:

> Pursuant to the Accession Treaties, the Czech, Danish, English, Estonian, Finnish, Greek, Hungarian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish **versions** of this Treaty shall also be authentic. [emphasis added; the text as amended after 2004 enlargement but before 2007 enlargement]

As it is illustrated by the example of the usage of the term 'text' and 'version' in Article 314, in case of EU legal multilingualism, both 'texts' and 'versions' can be equally authentic. As regards Canadian bilingual legislation, it can be noted that the term 'version' is applied - like in the EU - to denote authentic text. It can be illustrated by the provision of Section 18(1) of the *Canadian Charter of Rights and Freedoms* that state as following:

> The statutes, records and journals of Parliament shall be printed and published in English and French and both language **versions** are equally authoritative. [emphasis added]

Canadian laws use the expression 'equally authoritative', whereas in the European Union the phrase 'equally authentic' is applied. However, it seems that the both terms are used in the same meaning (Tabory 1980: 64-65, endnote 205). This observation should be kept in mind because in the thesis, the term 'authentic' is generally used and 'authoritative' is applied in the meaning of 'authentic' in reference to Canadian legal texts in accordance with Canadian legal terminology.

The last explanatory remark of this subsection considers two terms "official language" and "authentic language". Although the two terms are interrelated and usually versions of the legal act drafted in official languages are authentic versions (hence official languages are the same as authentic languages of the act), the terms should not be treated as synonymous with each other. While analysing multilingual legal drafting, it should be born in mind that official languages are languages of the setting (e.g., official languages of the state or of institutions of

international or supranational organization), whereas authentic languages refer to the legal text (e.g., legal act or court decision). In order to find out in which languages law should be drafted, it should be examined what are official languages of the setting or of legislation. On the other hand, in order to identify which versions should be considered for interpretation purposes it should be scrutinised in which languages legal act is authentic. Generally, legislation is authentic in all official languages, but there are some exemptions. For instance, the Northwest Territories in Canada recognises English, French and several aboriginal languages as official languages of the territory, but acts of legislature are equally authentic only in English and French.[28,29] Recognition of official languages of Canada and the European Union and authentic languages of Canadian and EU law is crucial for research on multilingual legal drafting in these settings, therefore the next two sections of this chapter focus on these issues.

Conclusion to section 1.1.

The present section has provided the theoretical overview on multilingual language regime which introduces the analysis of EU legal multilingualism and Canadian legal bilingualism conducted in the two subsequent sections. This section explains that the important characteristic of multilingual law is equality of authentic versions of the legal acts expressed in the principle of equal authenticity. Next sections shall demonstrate that this principle is the basis for both EU legal multilingualism and Canadian legal bilingualism. Therefore, it should be noted – as it stems from the introductory remarks and terminological analysis and clarifications provided in the first section - that in order to examine legal drafting in settings based on that principle, it should be indicated, at the outset, not only in which languages law is drafted but also which languages are authentic languages of law. The answer to these questions should be brought by the analysis of language regime, especially of language status. Therefore, the next two sections examine language regime in the European Union and Canada. With this analysis in place, the second part of the thesis provides the comparison of legal drafting in the European Union and Canada which focuses mainly on the search for equality of official legislative languages during the drafting process, mainly on the investigation of co-drafting elements.

[28] For further details on official and authentic languages in the Northwest Territories, see subsection 1.3.2., § 5.
[29] For details on authentic languages in the European Union, see subsection 1.2.4, § 4.

SECTION 1.2.
Language regime of the EU - multilingualism

Introduction

The following section describes the language regime in the European Union in order to provide background for the analysis of EU multilingual legal drafting process and then for the comparison of that process with the bilingual drafting in Canada. At the outset, the rationale for legal multilingualism and official multilingualism of EU institutions is explained (subsection 1.2.1.) and the legal bases of official multilingualism are indicated (subsection 1.2.2.). Then, the principle of equal authenticity - already explained in subsection 1.1.2 of this chapter - is analysed in the context of EU legal multilingualism (subsection 1.2.3.). The last subsection of the present section discusses the range of issues related to languages of the European Union (subsection 1.2.4.). Firstly, it is explained which languages are official languages of EU institutions and how the language is granted the status of official language (§ 1). Secondly, special status of some languages (status of treaty language and of additional language) within the EU is described (§ 2). Thirdly, the distinction between official and working languages is explained and the use of languages in and by EU institutions is analysed (§ 3). Then some remarks are made on the concept of 'authentic language' in the European Union (§ 4). Finally, two issues - the necessity of distinction between legal languages of the EU and national legal languages, as well as, the possibility of indication of one legal language for the EU – are discussed (§ 5). The analyses provided in this section, especially information on authentic languages of EU law, on the variety of language status, and on language use in the EU institutions, are crucial for examination of drafting EU law in several languages which is to be compared with legal drafting process in Canada in the second part of the thesis.

Subsection 1.2.1.
Reasons for EU multilingualism

The rationale of EU multilingualism is explained in the words of Phoebus Athanassiou as follows:

> [T]he concept of multilingualism stands out as one of the most prominent symbols of European historical, political and cultural diversity and has gradually assumed, in addition to its inherently symbolic dimension, the mandatory nature of a legal imperative and the significance of a political necessity" (2006: 5).

The European Union is founded on 'unity in diversity'[30] or - in other words - European unity itself is based on diversity.[31] It is the diversity of cultures, customs, beliefs as well as languages. Linguistic diversity is an important factor of the European integration (Brackeniers 1995: 91). Alain Fenet in the introduction to his article on language diversity in the European Communities states:

> L'Europe ne peut construire son unité que dans le respect de sa diversité linguistique, élément essentiel de son identité (2001: 235).

The important feature of EU linguistic diversity is equality between EU official languages expressed by the principle of equal authenticity described above.[32] Multilingualism understood as equal co-existence of official and national languages of Member States "represents the recognition of the identity and equality of all Member States, regardless of their economic power and the extent to which their languages are spoken" (Moratinos Johnston 2000: 59).[33] Hence, the first reason for EU multilingualism can be

[30] See Article I-8 of Treaty establishing a Constitution for Europe providing that the motto of the Union shall be 'United in diversity' (OJ of 16.12.2004 C 310/13); see also *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*, 22.11.2005, COM (2005) 596.
[31] See *European Parliament Resolution on cultural cooperation in the European Union*, OJ (2002) C72E/142; see also M. McDonald 1996: 47.
[32] The general information on the principle of equal authenticity is provided in subsection 1.1.2; for details on the principle of equal authenticity in the European Union, see subsection 1.2.3.
[33] EU multilingualism does not represent all languages spoken in Member States. Even not all official languages of Member States are recognised as official languages of EU institutions; see the case of Irish that gained the status of EU official language in 2007 or the case of Turkish that is along with Greek official language of Cyprus but not official language within the EU. Nevertheless, the EU takes measures to promote minority languages or lesser used languages. This subject-matter is, however, much beyond the scope of this thesis. On the criteria and ways of choice of a language that is to be granted the status of official language of EU institutions, see § 1 of subsection 1.2.4.

described as political equality between Member States identified with equality between their languages that became official languages of EU institutions.

From the legal standpoint, the most important reason for EU legal multilingualism and equality of language versions arises from the fact that the law of the EU is in some cases directly applicable (i.e., takes effect within the Member States, without the need for transposition or implementation by national authorities) or has a direct effect[34] (i.e., provides rights and obligations to individuals enforceable in a national courts).[35] For that reason citizens should be able to understand - consequently should have an access in the language he knows to – all acts that affect them and which they can invoke before court (Moratinos Johnston 2000: 26). Therefore, EU legislation should be formulated in all official languages and applied according to the principle of equal authenticity.

Furthermore, EU multilingualism is considered as a democratic right of the peoples of Europe.[36] Such a democratic right includes the possibility of participating in the EU decision-making process and the possibility of communication in citizen's own language with the authorities. Consequently, citizens should have a possibility to be elected to the European Parliament irrespective of their knowledge of languages and they should be able to speak their own language during Parliament sessions. Besides, all citizens should be able to communicate with EU institutions in the official language of their choice.

According to Bruno de Witte, these reasons intertwine in the sense that powers transferred by Member States to the Communities should be exercised in languages known by the citizens of all Member States (2004: 219).

The next subsection describes how official multilingualism is regulated by EU law and illustrates how the two afore-mentioned reasons are expressed and fulfilled in EU legislation.

[34] The principle of direct effect was established by the European Court of Justice in the case *Van Gend en Loos v Nederlandse Tariefcommissie*, C-26/62, 5 February 1963, ECR 1; see also *Costa v Enel*, C-6/64, 15 July 1964, ECR 585.

[35] For further details on direct applicability and direct effect, see *int. al.* Davies 2001: xxviii, 61-67; Pescatore 1983: 155-177, Szpunar 2005: 4-17; Winter 1972: 425-438.

[36] See Phillipson 2003: 129-131 and *supra note* 7 on the right to monolingualism (at a personal level).

Subsection 1.2.2.
Legal basis of EU official multilingualism

The European Union respects linguistic diversity and promotes multilingualism.[37] It is expressed in a range of provisions of the Treaties. The *Treaty establishing a Constitution for Europe* indicates among its objectives that the Union "shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced" (Article I-3 (3)).[38] Moreover, Article 22 of the *Charter of Fundamental Rights of the European Union* (included in Part II of the *Treaty establishing a Constitution for Europe*, Article II-82)[39] refers to the protection of linguistic diversity within the European Union, stating that "[t]he Union shall respect cultural, religious and linguistic diversity". Although the *Treaty establishing the European Community* and the *Treaty on European Union* do not refer directly to linguistic diversity,[40] nevertheless, their provisions underline the respect to national diversity and national identity of Member States which is reflected in MS national and official languages.[41]

Moreover, it is declared that the ultimate aim of the European Union is "an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen".[42] Since legislation produced by the institutions of the European Union is in some cases directly applicable to all citizens in all the Members States, legislation must be available in all official languages in order to guarantee certainty of the law and equality before the law (Cunningham 2001; Wagner, Bech & Martínez 2002: 1-3).

It should be noted, however, that the very first Treaty – *Treaty establishing the European Coal and Steel Community* (signed in Paris on April 18, 1951)[43] was authentic only

[37] For details on the significance of language rights and linguistic diversity in the European Union, see, *inter alia*, Aziz 2004: 282-295.
[38] OJ of 16.12.2004 C 310/12.
[39] OJ of 16.12.2004 C 310/46.
[40] The *Treaty establishing the European Community* refers to respect for linguistic diversity but in the context of education, see Article 149(1).
[41] *Cf.* Article 151(1) of the *Treaty establishing the European Community* which provides that "[t]he Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore". The *Treaty establishing a Constitution for Europe* in Article III-280(1) expresses almost the same provision (it says 'the Union' instead of 'the Community'); OJ of 16.12.2004 C 310/125. *Cf.* also Article 6.3 of the *Treaty on European Union* which states that the *Treaty on European Union* states that "The Union shall respect the national identities of its Member States".
[42] Article 1 of the *Treaty on European Union*.
[43] Since the *Treaty establishing the European Coal and Steel Community*, which entered into force on 23 July 1952, has been concluded for 50 years. Hence, it already expired in 2002.

in French and mentioned no multilingualism and set no rules on language matters (Huntington 1991: 329).[44] Nevertheless, Treaties of Rome of 1957[45] guaranteed multilingualism by recognising equal authenticity of its linguistic versions drafted in each official language of the Members State (Truchot 2003: 101). The language regime of institutions of the European Union was set out in Article 290 (ex 217) of the *EC Treaty*[46] which states that, "the rules governing the languages of the institutions of the Community shall (...) be determined by the Council, acting unanimously".

When the Treaty of Rome entered into force on 1 January 1958, the Council of Ministers adopted on 15 April 1958 the *Council Regulation No 1 of 1958 determining the languages to be used by the European Economic Community*[47] (hereinafter Regulation 1/1958). The Council indicated in Regulation 1/1958 languages that are the official languages and the working languages of the Community institutions (Article 1).[48] Moreover, the Council Regulation provides that regulations and other documents of general application shall be drafted in all the official languages (Article 4). It follows that the texts concerned are equally authentic in all the language versions (Wagner, Bech & Martínez 2002: 5-7, McCluskey 2001; Truchot 2003: 101). In addition, Regulation 1/1958 states that the documents sent to the Community institutions by a Member State or a person subject to jurisdiction of a Member State may be drafted in any of the official languages and the reply should be in the same language (Article 2). Regulation 1/1958 requires also that the documents sent by the Community institutions to a Member State or a person subject to jurisdiction of a Member State should be drafted in the language of such state (Article 3).

---

[44] See Article 100 of ECSC Treaty that states that only French text is authentic. However, at the meeting on 23rd and 24th of July, 1952 in Paris, the ministers of foreign affairs of the original six Member States decided that Dutch, French, German and Italian are to be official and working languages of the Community. This decision has never been published. For more details on the decision, see Reuter 1953: 81-82. See also Stevens (1967: 703-704) who refers to the Protocol on the Language Regulation of the ECSC establishing the principle of the equality of Dutch, German, French and Italian.

[45] *Treaty establishing the European Atomic Energy Community* (*Euroatom Treaty*) signed in Rome on March 25, 1957, and *Treaty establishing the European Economic Community* (the *Treaty of Rome* or the *EEC Treaty*) signed in Rome on March 25, 1957. The name of EEC Treaty was changed into 'Treaty establishing the European Community' (EC Treaty) by the Treaty on European Union and then into 'Treaty on the Functioning of the European Union' by the Lisbon Treaty (Article 2(1)). Since, at the moment of writing this thesis, the Lisbon Treaty has not been adopted yet, the name 'Treaty establishing the European Community' or 'EC Treaty' is used throughout the thesis.

[46] Article 290 in the consolidated version of the *Treaty establishing the European Community* (OJ C 325/148 of 24.12.2002). The same competence for the Council provides Article III-433 of the *Treaty establishing a Constitution for Europe* (OJ C 310/184 of 16.12.2004).

[47] OJ 017, 06.10.1958, pp. 385-386. The Council Regulation 1/1958 is called *The European Union's Language Charter* in the brochure of the Directorate-General for Translation of the European Commission titled *Translating for a Multilingual Community* (2005).

[48] For details on the official and working languages of the European Union, see subsection 1.2.4, especially § 1 and 3.

In the context of multilingual legal drafting, the most important provisions are those specifying official and working languages of the institutions and requiring documents of general application be drafted in all official languages. The same requirement, although not directly, stems from Article 255 of the *EC Treaty* - introduced by the *Amsterdam Treaty* – which provides that "[a]ny citizen of the Union [...] shall have a right of access to European Parliament, Council and Commission documents". Apparently, the accessibility implies providing versions of documents in the language that a citizen can understand.

As far as the legal basis of multilingualism in the second and third pillars of the European Union is concerned, Article 28 and 41 of the *Treaty on European Union* states that the language regime will be that of the Community in the fields of Common Foreign and Security Policy (Article 28) and Judicial Cooperation in Criminal Matters (Article 41). Moreover, *Declaration 29 on the Use of Languages in the Field of the Common Foreign and Security Policy*, annex to *Final Act of the Treaty on European Union* provides that the use of languages shall be in accordance with the rules of the European Communities.

Subsection 1.2.3.
The principle of equal authenticity within the European Union

As explained above (subsection 1.1.2.), the principle of equal authenticity of language versions of a legal act is the basis of legal multilingualism. It will be understood, that the EU multilingual legal order is also based on this principle. However, the afore-mentioned Council Regulation 1/1958 (subsection 1.2.2.) that determines the languages to be used by the European Community and the languages the secondary legislation to be drafted in, does not directly state that all official language versions of a legal act are equally authentic.[49] Nevertheless, such conclusion follows from Article 1 of Regulation 1/1958, indicating which languages are official and working languages of the Community, and from Article 4, stating that regulations and other documents of general application shall be drafted in all the official languages.[50] According to Dessemont and Asnay (1995: 11), the term 'official languages'

[49] In EC legislation the term 'authentic language' can be, however, come across. For instance, the *Rules of Procedure of the European Commission* provide the definition of 'authentic languages' for the purposes of these Rules. According to Article 17 (5) of the Rules "'authentic languages' means all the official languages of the Communities, […], in the case of instruments of general application, and the language or languages of those to whom they are addressed, in other cases" (OJ L 347/87 of 30.12.2005).

[50] The principle of equal authenticity is very often laid down directly; for instance, in case of bilingual Canada, section 18 of the *Canadian Charter of Rights and Freedoms*, 1982 provides that English and French versions of the statutes are equally authoritative; or in case of Hong Kong, since 1987 the *Interpretation and General*

means not only that legal texts are published in these languages but also that all official language versions are considered equally authentic.

Moreover, the principle of equal authenticity has been directly expressed and confirmed several times in the case law of the European Court of Justice and of the Court of First Instance, as well as in the opinions of the Advocates General.[51] The Court stated that that the different language versions are all equally authentic and that an interpretation of a provision of Community law involves a comparison of the different language versions.[52]

Unlike secondary legislation, in the case of which Council Regulation 1/1958 determines the languages of the legal instruments, each treaty indicates the languages in which it was drafted. Furthermore, the final provisions of treaties directly express the principle of equal authenticity for the treaty. For instance, it follows from the provisions of Article 314 of the *Treaty establishing the European Community*,[53] Article 53 of the *Treaty on European Union*,[54] Article 13 of the *Treaty of Nice*,[55] and Article IV-448 of the *Treaty establishing a Constitution for Europe*[56] that treaties have been drawn up in a single original in official languages and that the texts in each of these languages are equally authentic.

According to Emma Wagner, a former head of the Translation Service Department at the European Commission, the principle of equal authenticity is "a feat of legal magic which

---

Clauses Ordinance in Part II A, section 10B(1) states that both English and Chinese texts of an Ordinance shall be equally authentic. Moreover, section 10B(2) presumes the provisions of a statute to have the same meaning in each authentic language text. The principle of equal authenticity has been also directly stated in international law in Article 33 on interpretation of treaties authenticated in two or more languages of *Vienna Convention on the Law of Treaties* of 1969 (United Nations, Treaty Series, vol. 1155, p. 331).

[51] As far as the opinions of Advocates General are considered, see, for instance, the opinion of Advocate General Alber delivered on 16 May 2002 in *Case C-257/00 Nani Givane and Others v Secretary of State for the Home Department* [2003] ECR I-345 who in par. 29 states "[i]n accordance with the settled case-law of the Court, Community Regulations must be interpreted uniformly in the light of the versions existing in the other official languages"; or the opinion of Advocate General Stix-Hackl delivered on 10 May 2005 in *Case C-247/04 Transport Maatschappij Traffic BV v Staatssecretaris van Economische Zaken* [2005] (not published in ECR at the moment of writing the thesis) who in par. 17 asserts that "[t]he interpretation of a provision of Community law involves a comparison of all of the different language versions"; the same confirms Advocate General Leger in the opinion delivered on 13 November 2003 in *Case C-371/02 Bjornekulla Fruktindustrier AB v Procordia Food AB* [2004] ECR I-5791. As regards ECJ and CFI judgment, see footnote 52.

[52] See the following judgments of the ECJ: judgement of 6 October 1982 in *Case 283/81 Srl CILFIT* [1982] ECR 3415, par. 18; judgment of 24 October 1996 *in Case C-72/95 Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeputeerde Staten van Zuid-Holland* [1996] ECR I-05403, par. 25 and 28; judgment of 17 July 1997 in Case C-219/95 P Ferriere Nord SpA *v* Commission of the European Communities [1997] ECR I-04411, par. 12; judgment of 17 December 1998 in case C-236/97 Skatteministeriet *v* Aktieselskabet Forsikrinsselskabet Codan [1998] ECR I-08679, par. 25; see as well the judgments of the CFI: judgment of 6 April 1995 in case T-143/89 Ferriere Nord SpA *v* Commission of the European Communities [1995] ECR II-00917, par. 31; judgment of 6 October 2005 in joined cases T-22/02 and T-23/02 Sumitomo Chemical Co. Ltd and Sumika Fine Chemicals Co. Ltd *v* Commission, [2005] ECR II-04065, par. 42.

[53] Consolidated text in *OJ* C 321E/180 of 29 December 2006.

[54] Consolidated text in OJ C 321E/35 of 29 December 2006.

[55] OJ C 80 of 10 March 2001.

[56] OJ C 310/191 of 16 December 2004.

defies all logic but is nevertheless necessary, to safeguard linguistic equality" (2000: 2). She notes that in accordance with dictionary definitions of the terms 'original' and 'authentic', only one object can be original and authentic. Therefore, the presumption of 'multiple authenticity' and 'equivalent originals' stemming from the principle of equal authenticity and theory of original texts is a legal fiction (Wagner 2000: 2 and 2001b: 67). Wagner bases her observation on Article 314 of the *Treaty establishing the European Community* which provides the principle of equal authenticity for the Treaty in the following way:

> This Treaty, drawn up in a single original in the Dutch, French, German, and Italian languages, all four texts being **equally authentic**, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the Governments of the other signatory States.
> Pursuant to the Accession Treaties, the Czech, Danish, English, Estonian, Finnish, Greek, Hungarian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish versions of this Treaty shall also be **authentic**.[57] (emphasis added)

Since other treaties comprise the corresponding provision laying down the principle of equal authenticity, it suffices to base the analysis on Article 314. The English version of the Article speaks about a single original version although expressed primarily in four and finally in twenty-three languages,[58] and provides that all the language versions are equally authentic. In order to discover the meaning of the term 'authentic', not only English but also other authentic language versions of the Treaty should be taken into consideration. The phrase 'being equally authentic' is of special interest to the analysis and can be read as follows in some of authentic language versions of the Treaty:

(DE) wobei jeder Wortlaut *gleichermaßen verbindlich* ist
(EN) all four texts being equally authentic
(ES) cuyos cuatro textos *son igualmente auténticos*
(FR) les quatre textes *faisant également foi*
(IT) i quattro testi tutti *facenti ugualmente fede*
(NL) zijnde de vier teksten *gelijkelijk authentiek*
(PT) *fazendo fé qualquer* dos quatro textos
(PL) teksty w każdym z tych języków *są na równi autentyczne*
[emphasis added]

[57] Consolidated text in OJ C 321E/180 of 29 December 2006.
[58] Since 1 January, 2007 Bulgarian and Romanian were added to the list.

The comparison of this phrase in various languages reveals that the principle of equal authenticity is formulated in the same way and the exact equivalent of the term 'authentic' is used in most of the language versions.[59] Nevertheless, the French, Italian and German versions shed light on the meaning of the term 'authentic'. Although the word *authentique* appears in the French language and *autentico* in Italian, the phrase 'being equally authentic' is rendered in French as *faisant également foi*[60] and in Italian as *facenti ugualmente fede* meaning 'equally legally binding and valid'.[61] The French expression *faire foi* can also be translated into English as 'authentic version'.[62] German also contains the word *authentisch*. However, the German version of Article 314 applies the expression *gleichermaßen verbindlich*. The main dictionary meaning of the German term *verbindlich* is not 'authentic' but 'binding' followed by 'authoritative' (*cf.* HarperCollins German Dictionary 2000, Oxford-Duden German Dictionary 2005). The use of the German term *verbindlich* in the meaning of 'authoritative' is in accordance with Article 33 of Vienna Convention, stating that a treaty is equally authoritative in all languages in which a treaty has been authenticated.[63] Moreover, the comparison of the meaning of the principle of equal authenticity in other multilingual legal systems, such as bilingual Canada[64] or Hong Kong,[65] confirms that the principle requires language versions to be considered as equally authoritative.

---

[59] *Cf.* for instance, the following equivalents of 'equally authentic': *igualmente auténticos* (ES), *gelijkelijk authentiek* (NL), *na równi autentyczne* (PL).

[60] It is, however, possible to use the French term *authentique* in the sense of *faisant également foi*; for instance, *cf.* the authentic French text of Article 85 of the *Vienna Convention on the Law of Treaties* providing that "L'original de la présente Convention, dont les textes anglais, chinois, espagnol, français et russe sont **également authentiques**, sera déposé auprès du Secrétaire general des Nations Unies" (emphasis added).

[61] *Cf.* the Portuguese version of Article 314 using the phrase ***fazendo fé qualquer*** *dos quatro textos* (emphasis added).

[62] For instance *Le Grand Dictionnaire Terminologique*, available at the website of the Office québécois de la langue française http://www.granddictionnaire.com, proposes English term 'authentic version' as equivalents of French expression *faire foi*.

[63] *Cf.* the French version of Article 33, which is along with Chinese, English, Russian and Spanish, the authentic text of the *Vienna Convention*. The French text of paragraph 1 of Article 33 applies the expression *faire foi* (*cf.* "Lorsqu'un traité a été authentifié en deux ou plusieurs langues, son texte **fait foi** dans chacune de ces langues, (…)." [emphasis added]). The Spanish authentic text of paragraph 1 of Article 33 of the *Vienna Convention* uses the phrase close to the French *faire également foi*; *cf.* "Cuando un tratado haya sido autenticado en dos o más idiomas, el texto **hará igualmente fe** en cada idioma, (…)" (emphasis added), whereas the Spanish authentic version of article 314 of the EC Treaty applies the phrase similar to English 'equally authentic'; *cf.* "(…), cuyos cuatro textos son **igualmente auténticos**, (…)" (emphasis added). The German version is not analysed, since the *Vienna Convention* is not authentic in that language.

[64] It is interesting to compare English and French version of Section 18 the *Canadian Charter of Rights and Freedoms*, 1982. The English text states simply that English and French language versions are equally authoritative; *cf.* "The statutes, records and journals of Parliament shall be printed and published in English and French and **both language versions are equally authoritative**" (emphasis added), whereas the French version provides the principle of equal authenticity in more descriptive way; *cf.* "Les lois, les archives, les comptes rendus et les procès-verbaux du Parlement sont imprimés et publiés en français et en anglais, **les deux versions des lois ayant également force de loi et celles des autres documents ayant même valeur**" (emphasis added). Accordingly, this comparison reveals that language versions that are equally authoritative have the same force of law.

Hence, this short analysis of the term 'authentic' in Article 314 of the EC Treaty and the comparison of various language versions of that provision demonstrates that the term 'authentic' does not express the standard dictionary meaning of 'genuine' or 'not copied' but is used in the sense of 'authoritative' and conveys the meaning of 'legally valid', 'legally binding' or 'having legal force' rather than of 'original'. Consequently, 'multiple authenticity' - described by Wagner as a legal fiction – means that several authenticated language versions have the same legal force.

It should be born in mind that treaties have a character of international agreements concluded between Member States and as such they are the subject of the *Vienna Convention on the Law of Treaties* of 1969 (Czapliński 2002: 34).[66] The final provisions of treaties that lay down the equal authenticity of language versions are in accordance with Article 33 of the Convention, which regulates the interpretation of treaties that are authenticated in two or more languages (paragraph 1 and 3). Paragraph 1 of this Article provides that "when a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail". Moreover, paragraph 3 lays down that "the terms of the treaty are presumed to have the same meaning in each authentic text". In addition, paragraph 2 regulates the situation that the Union deals with in case of enlargement that usually causes extension of the number of official language versions. It gives the possibility of authentication of a version of the treaty in a language other than one of those in which the text was authenticated.[67]

[65] *Cf. supra note* 50.
[66] United Nations, Treaty Series, vol. 1155, p. 331. On the application of the *Vienna Convention* and international law to and by the European Union, see subsection 4.1.2. on language of international agreements concluded by the European Union. See also Manin 1987: 457-481and Verwey 2004.
[67] See Article 33(2) that provides: "A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree".

Subsection 1.2.4.
Languages of the European Union

§ 1. Official languages

Council Regulation 1/1958, which constitutes the legal basis for multilingualism within the European Union, has never been changed in substance, only updated by the Council acting unanimously[68] as new official languages have been added.[69] Usually extension of new official language(s) stems from the accession of new Member States. However, in 2005 the Council granted the status of official and working language of the European Union to Irish, although the Republic of Ireland joined the EC in 1973.

In the case of a multilingual country, national languages usually become official languages of that state.[70] Since national languages of the European Union are not recognised[71] and not all official languages of Member States are official languages of the EU, it is necessary to explain how a language acquires the status of the official language in the European Union. As a general rule every Member State's official languages is an official language of the EU.[72] [73] However, the 'official language' of each Member State is not that

[68] See Article 290 (ex 217) of the *EC Treaty* which states that the Council acting unanimously determines the rules governing the languages of the institutions of the Community.

[69] Since, at the beginning, the Community was made up of six countries (Belgium, France, Germany, Italy, Luxembourg and the Netherlands) and some of them share the same official language, there were four official and working languages (French, Dutch, German and Italian); in 1973 Denmark, Ireland, and the United Kingdom joined and then Danish and English became official and working languages and Irish attained the status of a treaty language; in 1981 Greece and in 1986 Spain and Portugal became Members States and Spanish, Greek and Portuguese – the official and working languages, in 1995 Austria, Finland and Sweden joined and three new languages were added to the list of the official and working languages of the institutions of the EU. After 2004 enlargement, the list included 20 official and working languages and 21 treaty languages. The situation changed in 2007, when Irish became 21st official and working language of EU institutions (on the status of Irish as treaty language and on the change of this status see § 2 of this subsection). Moreover, on the first of January of 2007, Bulgarian and Romanian became EU official languages due to the accession of Bulgaria and Romania to the European Union and the number of official languages increased to twenty-three. For further details on the development of language regime in the EC and than the EU, see Creech 2005: 15-21.

[70] The case of Cameroon as an example of the exception to this rule is explained in *supra note* 8.

[71] On the functions of 'national language' and on the reasons why national languages cannot be recognised in the EU, see Héraud 1981: 8-9.

[72] It should be underlined that Article 1 of Regulation 1/1958 uses the expression "the official languages and working languages of the institutions of the Community" (emphasis added) not about official languages of the Community. However, since the term 'EU official languages' or 'official languages of the EU' is commonly used, in the thesis the term 'EU official languages' or 'official languages of the EU' are used in the sense of official languages of the institutions of the EU. Creech, for instance, notes the common usage of the

one which is designated as an official language of a State by the law of the Member State but the one which has been stipulated during the membership negotiations (Wagner, Bech & Martínez 2002: 5; Rowe 2002: 6). Consequently, official languages of Member States do not become official languages of the European Union automatically. In practice, however, if the language has an official status within the territory of the (Member) state and does not share it with another language, it becomes official and working language of the European Union. If there is more than one official language recognised within the state, first, the state has to express whether it wants all or some or only one of its official languages to obtain the status of official and working language of the EU (state's request); then the decision which languages acquire this status is made during the negotiations.[74] However, a formal establishment of the language status is made by the Council in accordance with the general rules of the legislation of the State (Gazzola 2002).[75] Usually, if one of the official languages of the state is already official and working language of the European Union due to its official and working language status in another Member State, the other languages do not attain this status in the EU (Milian i Massana 2002).[76] Hence, the main criterion to become the official language of the European Union is that a language is a national official language of a state. Moreover, a state has to will to translate the *acquis communautaire* into this language[77] and

above mentioned terms which do not reflect correctly the status of languages, and proposes instead the use of the term 'Regulation language' (2005: 15). This term, however, is not used in the dissertation.

[73] The Council in the preamble of the Regulation 1/1958 states that each of the languages "in which the Treaty is drafted is recognised as an official language in one or more of the Member States of the Community".

[74] The situation was unclear when the United Kingdom (where Welsh is official languages for some purposes) and Spain (where Catalan, Basque and Galician are official regional languages) became Member States (Wright 2000: 163); especially the use of Catalan was discussed (see: Resolution of Parliament (OJ NOC 19/42, 28 January 1991) rejected by the Council and Commission).

[75] Article 8 of Regulation 1/1958 states: "If a Member State has more than one official language, the language to be used shall, at the request of such State, be governed by the general rule of its law".

[76] Example of this rule is Turkish that is along with Greek official language of Cyprus that become a Member State in 2004; since Greek has been already official language of the European Union due to Greece accession in 1984, Turkish did not become official language of the EU. Another example is the case of Luxemburgish (or Lëtzebuergesch) that did not become official language of the EU when the House of Deputies of the Grand Duchy on 24 February 1984 gave the status of national and additional official language to Luxemburgish (it was the decision of Luxembourg government not to claim the right to make Luxemburgish a Community language); Luxemburgish is, however, included in the Community's linguistic programme *Lingua* as well as in the *Socrates* programme (see e.g. Milian i Massana 1995: 503, Yasue 1999: 279). The exception to this rule is the case of Maltese (the official language of Malta) that became the official and working language of the EU although Malta recognises also English as its official language. Furthermore, the accession negotiations between Malta and the EU were conducted only in English; English is also most often used language in administration and business; Maltese is, however, a daily language of the majority of Maltese citizens (Laighin 2004).

[77] On July 27, 2001, Günter Verheugen, on behalf of the Commission, answered to the written question (E-1610/01) of Jonas Sjöstedt, Member of the European Parliament, whether Maltese would be an official language of the European Union if Malta were to join, as following: "Any candidate country wanting its national language to become an official language of the European Union is under the obligation to translate the *acquis communautaire* into that language, using its own resources. In that case the Commission can give technical assistance to help these countries set up the framework needed to carry out the work" (translation from French in Laighin 2004).

the government of a state has to make a request to the Union that its national official language be an official language of the Union (Laighin 2004); especially if a state recognises more than one official language (see Article 8 of Regulation 1/1958). The case of Irish (Gaelic) language,[78] that is (along with English) official national language of Ireland[79] and has not become the official language of the European Union when the Republic of Ireland joined the EC, in the comparison with the case of Maltese[80] that is along with English official language of Malta and that granted a status of official language of the EU when Malta became a Member of the Union, illustrate how these rules works in practice.

To sum up, it can be stated that official and working languages of the EU are those which have been unanimously agreed upon by the Council of European Union. Since several Member States share the same official language there are now twenty-three official languages. They are (in alphabetical order): Bulgarian (since January 2007), Czech, Danish, Dutch (Netherlands and Belgium), English (the United Kingdom, Ireland and Malta), Estonian, Finnish, French (France, Belgium and Luxemburg), German (Germany, Austria, Belgium and Luxemburg), Greek (Greece and Cyprus), Hungarian, Irish (since January 2007),[81] Italian, Latvian, Lithuanian, Maltese,[82] Polish, Portuguese, Romanian (since January 2007), Slovak, Slovene, Spanish, and Swedish (Sweden and Finland).

[78] On the status of Irish language as a treaty language after the accession of the Republic of Ireland in 1973 and on the status of Irish as the official language of the EU after the amendment of Council Regulation 1/1958 in June 2005, see § 2 of this subsection.

[79] Irish is even recognised as a first official language of Ireland.

[80] For further details on the status of Maltese as official language of the EU, see *supra note* 76 and footnote 77.

[81] At the beginning, for a period of five years, only regulations adopted jointly by the European Parliament and the Council under the co-decision procedure and correspondence with the public will be translated into Irish (Article 2, 3 and 4 of Council Regulation 920/2005; OJ L 156/3, 18.6.2005); for further details, see next paragraph (subsection 1.2.4., § 2).

[82] Although Maltese became EU official language in 2004, due to lack of Maltese linguists and qualified translators, until the 1st May of 2007 there was three-year derogation for drafting of all acts, including judgments of the Court of Justice, in Maltese and for publication them in that language in the *Official Journal of the European Union*; see *Council Regulation No 930/2004 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 169/1). This derogation is known as 'Maltese Derogation' (McAuliffe 2007).

§ 2. EU languages of special status - treaty language and additional languages[83]

In June 2005, the Council enacted a regulation and conclusion concerning language matters within the EU which for the first time have not been directly related to enlargement. Both Council enactments pertain to the special status of languages; the first (the regulation) changes the status of Irish as a treaty language, the second (the conclusion) gives a possibility to confer a status of additional languages of the EU to official regional languages. This paragraph explains the concepts of 'treaty language' and of 'additional language'. Moreover, the afore-mentioned enactments of the Council are examined.

On the request of the Irish Government tabled in November 2004 to accord to Irish the same status as that accorded to the national languages of the other Member States, the Council unanimously enacted on 13 June 2005 the *Regulation No 920/2005 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 language to be used by the European Atomic Energy and introducing temporary derogation measures from those Regulations* (hereinafter Regulation 920/2005).[84] Due to the amendment of Regulation 1/1958, Irish became the 21st official and working language in the EU - amended Article 1 now nominates Irish as an official and working language of the institutions of the European Union. Consequently, regulations and other documents of general application shall be drafted also in Irish (in the twenty-three official languages[85] as amended Article 4 states) and the *Official Journal of the European Union* shall be published in Irish (in the twenty-three official languages as amended Article 5 provides). The amendments regarding status of Irish have applied from 1 January 2007 (Article 4 of Council Regulation 920/2005). This intervening period is set up for practical reasons to enable the institutions of the EU to arrange Irish language services responsible for Irish translation and interpreting. At first only EU legislation adopted jointly by the Council and the European Parliament will be translated into Irish (Article 2 of Regulation 920/2005). Then the scope of documents to be translated into Irish can be extended. Such decision shall be made unanimously by the

[83] As far as EU language policy is concerned, the terms: 'regional languages', 'minority languages' or 'less-used languages' can be come across. In the dissertation, the explanation of these concepts is left aside, since they are of little assistance in analysis of official, legislative or judicial multilingualism and then multilingual legal drafting. For further details on the issue of 'regional languages', 'minority languages' or 'less-used languages' see *int. al.* Berteloot 1999: 358-361, Kronenthal 2003; on sociolinguistic situation of language minorities in the European Union and on EU activity carried out in order to promote less-used languages, see Mori 2001: 48-60.
[84] OJ L 156/3, 18.6.2005.
[85] Due to enlargement of 2007, when Bulgaria and Romania joined the EU, the number of EU official languages increased to twenty-three.

Council within four years after adoption of Regulation 920/2005, and thereafter at five-yearly intervals (Article 3).

Before the afore-mentioned Council Regulation 920/2005 amending the Council Regulation 1/1958 came into force, Irish had a status of a treaty language. This special status of Irish was laid down in the Agreement between Ireland and the Community, 1971.[86] Although Irish is along with English an official language of Ireland, only the primary legislation of the European Union has been drawn up in Irish. Thus, it was considered as a language of treaties but not as the official or working language of the EU institutions. However, it was possible to use Irish as a working language in sessions of the European Parliament, on the condition that notice is given in order to provide interpretation (Rowe 2002: 7). It could also be used as the official language for cases in the European Court of Justice. Moreover, the Court's rules of procedure also have existed in Irish (Wagner, Bech & Martínez 2002: 4 and Laighin 2004).[87]

Not only Irish has a status of a treaty language, also all official languages (to which Irish belongs since 2007) are treaty languages. Distinction between 'official language' and 'treaty language' is, however, still plausible, since only primary legislation is drawn up in treaty languages and primary legislation texts are equally authentic in all treaty languages, whereas secondary legislation is drafted and authentic in official languages. Before the new arrangement established by the Council came into force in 2007, the notion 'treaty language' has been usually used in reference to Irish. When Irish has been granted the status of official language, the list of official languages became the same as the list of treaty languages. However, some differences between official and treaty languages can still be recognised. First, since treaty languages are languages of primary legislation, languages of the Treaty (treaty languages) are not determined in Council Regulation 1/1958 - where official languages are specified - but indicated directly in the treaty in question. In practice, treaties are drawn up in the same languages that are recognised as official languages. However, the final provisions of a treaty never refer to the notion of 'official languages' but always indicate all languages

[86] Before the accession of Ireland the Irish Minister for Foreign Affairs, Mr Patrick Hillery wrote to the President of the Council on 23 July 1971 as following: "We fully realise that the official translation into Irish of all Community acts could give rise to serious difficulties of a practical nature. We would, therefore, propose that […] there should […] be provision to limit the extent to which Irish translations of Community texts would have to be prepared. What we have in mind here is that there should be an authentic text of the accession treaty in the Irish language and that official texts in Irish of the existing Treaties should also be prepared"; quoted after Rowe 2002: 6-7.

[87] For further details on the status of Irish as a treaty language, see the Commission's answer to Written Question No 896/86 by Mr Thomas Raftery: The status of the Irish language in the Community, OJ No C 082, 30.03.1987 P 11. For details on language regime in the Court of Justice and the Court of First Instance, see next paragraph (subsection 1.2.4., § 3(B)).

by their names.[88] On the other hand, languages, in which the secondary legislation is drafted, are unanimously determined by the Council based on Article 290 of the consolidated version of the *Treaty establishing the European Community*.[89] As already explained (see section 1.2.3), the Council in the Regulation 1/1958 has indicated what official languages are (Article 1), and stated that regulations and other documents of general application shall be drafted in all the official languages (Article 4). Consequently, it is not necessary to state in what languages the act of secondary legislation has been drafted and is authentic, whereas in case of treaties, languages of a treaty are stipulated in the final provisions of each treaty. Moreover, each treaty implicitly provides that the treaty has been drawn up in a single original in all the treaty languages and the texts in each of these languages are equally authentic.

Another reason for distinction between 'official languages' and 'treaty languages' stems from the fact that some provisions refer directly to treaty, not to official languages. For instance, the status and use of treaty languages has been explained by Article 21 of the *Treaty establishing the European Community* according to which every citizen of the Union may petition the European Parliament, apply to the Ombudsman and write to the Council of the European Union, the European Commission, the European Court of Justice, the European Court of Auditors and the Economic and Social Committee and the Committee of the Regions, in any of the treaty languages and obtain an answer in the same language.[90] Moreover, Article I-10 (2d) of the *Treaty establishing a Constitution for Europe*, confirmed these rights, using however the term 'Constitution's language', and provided that citizens of the Union have "the right to petition the European Parliament, to apply to the European Ombudsman, and to address the Institutions and advisory bodies of the Union in any of the Constitution's languages and to obtain a reply in the same language".[91] Furthermore, the *Constitution for Europe* guaranteeing the right to good administration states: "every person

[88] For instance, Article 314 of the *Treaty establishing the European Community*, lists the following treaty languages: Dutch, French, German, Italian and, pursuant to the Accession Treaties, Danish, English, Finnish, Greek, Irish, Portuguese, Spanish, Swedish and, since May 2004, Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak, Slovene, and since January 2007, Bulgarian and Romanian. See and compare as well: Article 53 of the *Treaty on European Union* (consolidated text in OJ C 325 of 24.12.2002), Article 13 of the *Treaty of Nice* (OJl C 80 of 10.03.2001), and Article IV-448 of the *Treaty establishing a Constitution for Europe* (OJ C 310 of 16.12.2004).

[89] OJ C 325/148 of 24.12.2002. See also Article III-433 of the *Treaty establishing a Constitution for Europe* (OJ C 310/184 of 16.12.2004).

[90] However, according to *Rapport au Parlement sur la langue française dans les institutions internationals* prepared by Délégation générale à la langue française in 2000, citizens contact EU institutions usually in English (DGLF 2000 after Truchot 2003: 103).

[91] OJ of 16.12.2004 C310/13.

may write to the institutions of the Union in one of the languages of the Constitution and must have an answer in the same language" (Article II-101 (4)).[92]

At the same day as the Regulation No 920/2005 concerning the status of Irish language was issued, the Council adopted the *Conclusion on the official use of additional languages within the Council and possibly other Institutions and bodies of the European Union* (hereinafter the Conclusion).[93] The Conclusion followed a *Language Memorandum* presented on 13 December 2004 by Spanish government (Climent-Ferrando 2005: 5, footnote 1).[94] Although the *Memorandum* required semi-official recognition of Basque, Catalan and Galician, the Conclusion relates not only to those three regional languages but to

> (…) languages other than the languages referred to in Council Regulation No 1/1958 whose status is recognised by the Constitution of a Member State on all or part of its territory or the use of which as a national language is authorised by law. (Paragraph 1 of the Conclusion)

Thus, the Council's Conclusion can be applied only to languages that have some status in the Member State. Although the Council in the Conclusion denotes languages as 'additional languages', the following terms are also applied to describe these languages in the context of its use in the EU: 'official less-used languages' (MERCATOR/Eurolang 2005) or 'semi-official languages' (Athanassiou 2006: 16). Theoretically, the additional language status could be granted, for instance, to such languages as Welsh, Scottish Gaelic[95] or Rhaeto-Romanic (Romansh),[96] whereas Breton, Occitan and Corsican spoken in French but having no status recognised by French law cannot become additional languages of the European Union (MERCATOR/Eurolang 2005). The Council Conclusion, however, does not automatically grant this special status to all languages described in paragraph 1. It is necessary to conclude an

[92] OJ of 16.12.2004 C310/50. See also Article 24 of *the Treaty on the functioning of the EU*, OJ of 09.05.2008 C115/58.
[93] OJ C 148/1, 18.6.2005; see also *Information from COREPER to the Council on adoption of Council conclusions on the official use of additional languages within the Council and possibly other Institutions and bodies of the European Union*, 10022/1/05 REV 1.
[94] See *Memorandum by the Spanish Government. Request for Official Recognition in the European Union of All Languages with Official Status in Spain*, Mercator: Dossier 17, available at http://www.ciemen.org/mercator/butlletins/60-46.htm, last consulted February 2006.
[95] Both Scottish Gaelic and Welsh have official status in part of Great Britain (in Scotland and Wales, respectively). Plaid Cymru – the Party of Wales is campaigning to confer on Welsh the status of official or semi-official language of EU institutions; see http://www.agencebretagnepresse.com/fetch.php?id=2267, last consulted in February 2006.
[96] The Swiss Federal Constitution recognises Rhaeto-Romanic (Romansh) as the national language and as the official language between Confederation and persons who speak this language; see *supra note* 10.

administrative arrangement between the Council and the requesting Member State.[97] Based on such an arrangement the Council will authorise the official use of the language (paragraph 4 of the Conclusion). Hence, it is a Member State that decides to apply provisions of the Conclusion and that requires an arrangement for its language(s).

In 2007, the agreement was concluded only with Spain and referred to Basque, Catalan and Galician.[98] All three languages have an official status at the regional level in Spain: Basque[99] in the Basque Country, Catalan[100] in Catalonia, the Balearic Islands and the Community of Valencia, and Galician[101] in Galicia, while Castilian is official language of Spain (at national level) and official and working language of the EU.[102, 103] Some pursuance to special status for those languages has been undertaken much before, especially as far as Catalan is concerned.[104]

---

[97] If other EU institutions follow the Council, the arrangement could be concluded with other than Council institution or body. However, official use of the languages has to be authorised by the Council according to point 4 of the Conclusion that is in accordance with Article 217 of the *EC Treaty*.

[98] See: Administrative Arrangement between the Kingdom of Spain and the Council of the European Union of 17.02.2006, No 2006/C 40/02.

[99] The Basque language (euskera) is spoken in Navarre and in the Autonomous Community of Basque Country (Comunidad Autónoma Vasca). Legal status of the Basque language is described in the Spanish Constitution of 1978 and the Basque Autonomy Statute of 1979. The latter states that Basque is official language of the Autonomous Community along with Castilian Spanish, which is official language of Spain. The Basque is also spoken in France in the Département of Pyrénées-Atlantique (there are around 80.000 Basque speakers in France; see Huntington 1991: 324, footnote 15), however it does not have any status there. For further details on Basque language, see *int. al*. Euromosaic (2005a, 2005b).

[100] Catalan is spoken by around seven million people in Spain. The Autonomous Statute of Catalonia of 1979 granted Catalan with the status of official language of Catalonia "alongside Spanish which is official language of the Spain State" (Euromosaic 2005d). The Autonomous Statute of the Balearic Islands of 1983 stated that Catalan is "the language of the Balearic Islands", thus has the status of official language (Euromosaic 2005c). Moreover, there are around 220.000 Catalan speakers outside Spain (Huntington 1991: 321, footnote 1), to be precise, in France (so-called northern Catalan or Roussillonnais is spoken in the Département of Pyrénées Oriental except the canton of La Fenolleda) and in Italy (around 12,000 in Alghero/Alguero on Sardinia; see: ELBUL, http://www.eblul.org, last consulted in February 2006). In France Catalan is considered as a regional language (Euromosaic 2005e).

[101] Galician (Galego) is spoken in northwest Spain, i.e., in the Autonomous Community of Galicia with a population of 2.750.000 people information from ELBUL website, http://www.eblul.org, last consulted in February 2006). The Galician Autonomy Statute of 1981 granted Galician with the status of an official language along with Castilian Spanish. Moreover, the Galician Linguistic Standardization Act of 1983 states that Galician is the official language of the regional administration. For further details on the status of Galician in Spain, see: Kronenthal 2003 and Euromosaic 2005f.

[102] The Spanish Constitution of 1978 in Article 3 lays down that Castilian is official Spanish language of the State, but other languages of Spain are also official in the respective autonomous communities in accordance to their statutes.

[103] For more details on legal languages and linguistic rights in Spain, see the recent analysis in Borja Albi 2005: 225-243.

[104] See, e.g., petition of Parliament of Catalonia to the European Parliament for proclamation Catalan as official language of institutions of the EU (petition no 113/88). Although Catalan did not become official language some success has been achieved, i.e., Catalan can be used as a contact language with European institutions in the European Union office in Barcelona in accordance with the Resolution of the European Parliament, 11th December 1990. Moreover, Catalan translation of the Treaty establishing Constitution was submitted (according to article IV-448(2) of the Treaty that gave the possibility of translating the Treaty into any non-official language, although such translation does not have any legal value). A common translation under the name

If an arrangement is concluded (as in the case of Catalan, Basque and Galician), languages, to which the arrangement refers, can be officially used within the European Union, in the way provided in the Conclusion. Firstly, acts adopted in co-decision by the European Parliament and the Council are translated into additional languages, then a certificate translation is send to the European Parliament and the Council by the government of a Member State and the Council adds the translation to its archives and provide a copy of it on request (paragraph 5 (a)). However, such certificate translation is not authentic version of legal act, because it does not have the status of law. Consequently, these language versions of legal acts cannot be referred to before a court for a purpose of judicial interpretation, since they do not participate in the meaning of a legal act. A lack of legal value of the version in additional languages differentiates those languages from treaty and official languages. Secondly, additional languages can be used in speeches at a meeting in the Council and possibly other institutions and bodies (European Parliament or Committee of the Regions). However, a Member State has to ask for a permission to use the language. If the request is made reasonably in advance of the meeting and the necessary staff and equipment required for interpretation are available, permission will in principle be granted (paragraph 5(b)). Finally, citizens can send communication to EU institution or body in an additional language and receive the reply in this language and in official language of the Member State (paragraph 5 (c)). If communication is in an additional language, a citizen has to send it, not directly to EU institution or body, but to an organ designated by a Member State. Then this organ will send the EU institution or body the text of a communication together with a translation into the language of the Member State, that is also the official language of the Union (paragraph 5 (c)). All costs of languages services or other direct and indirect costs connected with implementation of the arrangement are covered by a Member State (paragraph 5).

The Conclusion was enacted by the Council and it relates to the use of additional languages mainly in this institution. Nevertheless, the Council invites (already in the title and at the end of the text) the other institutions to conclude administrative arrangements on the basis described in the Conclusion. The Council encourages particularly the European Parliament and the Committee of Regions (CoR) (see paragraph 5(b)). As regards present

---

Catalan was submitted by Catalonia and the Balearic Islands and an identical translation was submitted under the name Valencian independently to the Spanish government by Valencia (Climent-Ferrando 2005: 4-5). For further details on the situation of Catalan in the EU before it has been granted semi-official status, see: Milian i Massana 1995: 504-5 and Montserrat 1992: 67-93.

additional languages in the EU - Basque, Catalan and Galician - the agreement approving use of these languages was signed between the CoR and the government of Spain (the Spanish Ambassador) on 16 November 2005 (Hicks 2005). At the time of writing this dissertation (January 2007), the European Parliament for the third time postponed the decision on the use of Basque, Catalan and Galician in this institution.[105]

§ 3. Language regime in the EU institutions – Official languages and working languages

A. Distinction between official and working languages

Before the language regime in the European Union is examined, the distinction between official languages and working languages should be explained. The terms and the distinction between them derive from international law (Phillipson 2003: 117-118).[106] As far as the European Union is concerned, the official languages of EU institutions are defined as "those used in communications between the institutions and the outside world", and working languages as "those used between institutions, within institutions and during internal meetings convened by the institutions" (Labrie, 1993: 82, after Gazzola 2002).[107]

Although some authors analysing EU multilingualism propose the definitions of official and working languages and distinguish between these two concepts (Berteloot 2001: 7-8; Labrie 1993: 82, Pieters 2004: 39-45), Regulation 1/1958 granting official and working status to EU languages does not define the two terms. Moreover, it stems from Article 1 of Regulation that official and working languages are the same. Therefore, the concept of official and working languages is regarded as a unitary one (Pujadas 2004). Robert Phillipson notes that Regulation 1/1958 "gives the same rights of both official and working languages to all EU languages" (2003: 118). The question on the difference between official and working

[105] The official reasons of this suspension of the decision were following: the technical difficulties that can appear especially after the EU enlargement in 2004 and addition of nine official languages and a fear of creating a precedent of using non-official languages in the Parliament what could encourage other states to require the same rights. For further details, see Mercator 2006, available at http://www.ciemen.org/mercator/notis.cfm?lg=gb#863, last consulted in January 2007.

[106] For instance, such a distinction can be observed within The League of Nations (later the United Nations) that granted Chinese, English, French, Russian, Spanish and (after 1973) Arabic the status of official languages but only English and French had a status of working languages.

[107] Berteloot (2001: 7-8) proposes a similar definition of 'official languages' as "the languages used by the institutions in their relations with the Member States and their nationals" and more narrow definition of 'working languages'. According to him working languages are "used internally by the respective institution" but only "for the adoption of documents".

languages was investigated by the Council due to the parliamentary inquiry.[108] The Council declared that neither the *EC Treaty* nor Regulation 1/1958 gives any answer to this question. Hence, the matter should be solved by each institution in accordance with Regulation 1/1958 and under its own responsibility. Additionally, the Commission, while replying to parliamentary questions on the use of languages in EC institutions, states constantly that "according to Council Regulation No 1/58 all the official languages are also working languages (Article 1), and everybody is therefore fully entitled to use them interchangeably in the institutions".[109]

It seems that Regulation 1/1958 provides an ideal solution of the same rights for both official and working languages to all EU languages (Phillipson 2003: 118). In practice, however, only a limited number of languages is used within the institutions. Such a possibility is foreseen in Article 6 of Regulation, authorising the institutions to "stipulate in their rules of procedure which of the languages are to be used in specific cases".[110] Thus, there is a legal basis for the institutions to lay down the internal language regime and to use a few working languages chosen from the official and working languages. It is not clear when which languages should be used, therefore Virginie Mamadouh (2002: 328) notes: "the list of languages does not necessarily imply that all languages should be used all the time." Official languages are used as working languages to different extent in various EU institutions, which apply Article 6 and establish the internal language regime in their rules of procedure; or sometimes without established rules, the choice of working languages results from common practice. For that reason, the distinction between working languages *de jure* (i.e., working languages listed in Article 1 of the Regulation 1/1958) and working languages *de facto* or internal working languages (i.e., these used in the institutions) is made.[111] In other words, all official languages have as well the status of working languages, i.e., they are working languages *de jure* and those languages chosen from working languages *de jure* and actually

[108] Written question no 1576/79 by Mr Patterson to the Council; OJ C 150, 18.06.1980, p. 17; see Šarčević 2002: 240-241.
[109] Answer to Oral Question no 53 by Alfredo Antoniozzi (H-0159/05) on the subject of the use of Italian in the EU institutions; *cf*. Commission answers to Written Question E-3124/03 by Mrs Muscardini (UEN) and Written Question E-2111/04 by Mrs Reynaud.
[110] This provision does not apply to the language regime of the Court of Justice that is obliged to lay down the languages to be used in the proceedings of the Court in its rules of procedure (Article 7).
[111] Apart of the term 'working languages *de facto*' or 'internal working languages', following terms are used: vehicular languages (Heynold 1995 and Truchot 2001 or 'langues véhiculaires' in Heusse 1999: 204), *de facto* drafting languages (Directorate-General for Translation of the European Commission 2005), in-house languages, administrative languages (Phillipson 2003: 118), unofficial working language (Tabory 1980: 26 while talking about French as a working language of the ECJ).

applied within institutions are called working languages *de facto*. Next paragraphs explain what languages are used in EU institutions and bodies.

B. The use of languages in EU institutions and bodies - Equality or hierarchy of languages

The study and analysis of the legislative and drafting process in the multilingual context requires, at the outset, the explanation what languages are used in practice by the institutions involved in the process of law drafting, which in the European Union are mainly: the European Parliament, the Council and the European Commission.[112] In order to make the depiction of the language use in the European Union more comprehensive, towards the end some observations are made on language regime in the European Court of Justice, the Court of First Instance, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions, the European Central Bank, the European Investment Bank, the European Ombudsman and the Office for Harmonisation in the Internal Market. At the outset, it should be noted that Regulation 1/1958 determines language use neither at the European Court of Justice, the Court of First Instance nor at the Civil Service Tribunal.[113] In principle, Regulation 1/1958 applies to bodies and agencies. However, the language regime of an agency can be regulated differently than in Regulation 1/1958.[114] The exception can be provided by the Community legislator, not by the agency.

Full multilingualism is observed within the European Parliament where the use of all the official languages is required in its works. Rule 138 of the Rules of Procedure[115] provides that all documents of the Parliament should be drawn up in the official languages (par.1). Moreover, the use of all the official languages is foreseen at all formal meetings of the Parliament and its components (standing committees, political groups, etc.; see Mamadouh 2002: 328), where all Members can use the official language of their choice and their speeches must be simultaneously interpreted into the other official languages and into any other language the Bureau may consider necessary (par.2).

[112] The internal rules as well as practice of the use of languages applied in the institutions and bodies of the EU are concerned.
[113] *Cf.* Article 290 (ex 217) of the *Treaty establishing the European Community*.
[114] *Cf. Kik v. OHIM* (case T-120/99, 12 July 2001).
[115] Rules of Procedure of the European Parliament, OJ L 44 of 15 February 2005.

Although it has occasionally been considered to limit the number of languages used by the Parliament,[116] all such suggestions have been rejected.[117] Contrary to these proposals, the Committee on Rules of Procedure stated in its Resolution of 1982 that, "any limitation of the number of languages used by the European Parliament would interfere with the democratic nature of Parliament".[118] The Committee also confirmed the rule of absolute equality between the official languages "whether used actively or passively, in writing or orally, at all meetings of Parliament and its bodies" in the same Resolution.[119] Moreover, the Committee admitted that each citizen has the right to stand for Parliament and be elected regardless of his or her linguistic ability (Wright 2000: 166).[120] The Code of Conduct on Multilingualism adopted by the Bureau of 4 September 2006 explains how 'controlled full multilingualism' should be applied, but at the same time, underlines that the right of Members of the Parliament to use the official language of their choice should be fully respected (Article 1.2.).[121] In practice, certainly, not all languages are used at the Parliament's informal meetings (Coulmas 1991b: 7, Wilson 2003: 4-6). It is demonstrated in the thesis when legislative drafting in the Parliament is examined (see subsection 5.3.2., paragraph 3). Truchot (2003: 102) notes that "the lower you get in the hierarchy or the less formal the meetings are, the less

[116] For instance, in 1978 Renée van Hoof, the director general of the Commission's Interpretation and Conference Service proposed the "asymmetric system" that would allow Members of Parliament to make speeches in their own language while speeches would be interpreted only into the two dominant languages, namely, French and English (Coulmas 1991b: 7, Morationos Johnston 2000: 26, Wright 2000: 166). The Podestà committee - with regards to the increase of a number of official languages due to enlargement - proposed in 2001 that a single working language should be used in the works of the Parliament (Phillipson 2003: 136).

[117] It should be, however, noted that especially, in the case of oral communication during Parliament debates, where interpretation from and into all official languages should be provided, i.e., interpretation for 506 language combinations, the special system called - relay system or pivot languages system is applied for interpretation purposes. Relay means interpreting between two languages via a third called a pivot language. Nowadays, English, French, German and Spanish are pivot languages. Interpretation is done first into these four languages and then from those languages into the remaining languages. Pivot system is also used in the Parliament during translation of documents that have to be provided in all official languages. Creech (2005: 27, ft. 94) indicates six pivot languages for translation purposes: English, German, Italian, Polish and Spanish. Another solution is 'retour' system. As the rule an interpreter translates into his/her mother tongue from foreign language. However, in case of rare language pairs, sometimes 'retour' system is applied, which means that the interpreter translates also out of his/her mother tongue into another language. For the first time this system was used in 1995 in case of Finnish language, which as Ural-Altaic language was the first non Indo-European language in the European Union; see Creech 2005: 18.

[118] Resolution on the multilingualism of the European Community, OJ C 292 of 08.11.1982, p. 0096, available at http://www.ciemen.org/mercator/UE19-GB.HTM, last consulted in February 2006.

[119] *Supra note* 118. Controlled full multilingualism is the policy that aims at providing full multilingualism but thanks to efficient use of language resources. For instance, in case of less widely used language combination, documents or speeches are not translated directly but through a relay language, i.e., English, French or German.

[120] On the arguments for the preservation of the principle of equality languages in the Parliament, see the Nyborg report of 1982 and the Galle report of 1994. On further details see *int. al*.: Coulmas 1991b: 1-43, Wilson 2003.

[121] PE 388.978/BUR/REV1; see also Ricci 2006: 140-141.

multilingualism is guaranteed".[122] This statement is also true in the case of other institutions, as the following example of the Council illustrates.

The Council of the European Union also attempts to respect full multilingualism in its work. In accordance with Article 14 of Council's Rules of Procedure,[123] the Council deliberates and takes decisions based on documents drafted in all the official and working languages (par. 1). However, in case of urgency, the Council acting unanimously can decide to work on the documents although they are not available in all the languages (par. 1). If the text of any proposed amendment is not drawn up in one of the languages referred to in par. 1, any member of the Council may oppose discussion (par. 2). As far as the adoption of a legal instrument is concerned, if the text of such an instrument is not available in all the official languages, the Council can debate the substance of an instrument and come to a political agreement on that substance (Pujadas 2004). Hence, it can adopt the legal act in fewer languages (Huntington 1991:331, Tabory 1980: 24). An act of general application cannot, however, enter into force as long as it is drawn up and published in all official languages. When the missing language versions are ready, they are adopted by the Council. The sole date of adoption of the act is that of its adoption by the Council in fewer languages.

The language regime of oral communication depends on the level at which meetings are organised. Namely, during meetings of the Council of Ministers, the representatives of the Member States may speak in a language of their choice and interpretation into the other languages is provided. The COREPER, on the other hand, works only in French, English and German (Fenet 2001: 247 and Sabino 1999:163). The language regime of Council working groups and preparatory bodies is based on the request-and-pay system introduced in May 2004 due to the enlargement (see Decision no 56/04 of 7 April 2004 of the Secretary-general of the Council/High Representative for the Common foreign and security policy concerning interpreting for the European Council, the Council and its preparatory bodies, not published). According to this system, Member States, which partially pay for interpretation, decide whether they need interpretation and for which languages.

[122] On language use in the European Parliament, see also Gómez de Enterria 1992: 425-434, European Parliament 2001, Mamadouh 1999: 109-124, Ricci 2006: 131-146.
[123] Council Decision of 22 March 2004 adopting the Council's Rules of Procedures OJ L 106 of 15.04.2004.

The Commission respects the principle that languages are equal as official and working languages.[124] However, for operational reasons, the number of languages used in internal meetings is limited. Consequently, some languages are used more often than others. Although the Commission made no arrangements as to the preference for one or more particular languages in internal communication, it is admitted that the most widely used languages in the Commission are English, French and to lesser extent German (Athanassiou 2006: 20).[125] Hence, as far as oral communication is concerned, the Commission applies the limited language regime. However, texts that are to be sent officially to other institutions and those that are to be published in the Official Journal have to be drawn up in all the official languages.[126] Since it is not possible to draft simultaneously in twenty-three languages, a text is drafted in one language (usually English or French, or sometimes German) and then translated into the others. Moreover, documents produced within the Commission for an internal use are always produced in English or French or German or in all of them. Those languages are unofficially denoted as 'procedural languages' or (*de fac*to) drafting languages of the Commission. The documents are prepared in procedural languages before the meetings of the Commission. Versions in the official but non-procedural languages have to be produced, but for a later deadline, usually 48 hours after the meeting (Wagner, Bech and Martínez 2002: 10). Furthermore, incoming documents in a non-procedural language are translated into procedural languages to make them understandable within the Commission (see section 20.3 of the *English Style Guide*[127]). Therefore, English, French and German are not only main source languages but also main target languages in translation conducted by Directorate-General for Translation of the European Commission (see Directorate-General for Translation of the European Commission 2005: 6 and 2007: 7 (graph 3)).

Table 1, which provides the statistics of the Directorate-General for Translation of the European Commission, illustrates from what languages translation is mostly made. Hence, table 1 demonstrates in which language texts are drafted the most often, or put another way,

[124] See the answer to Oral Question no 53 by Alfredo Antoniozzi (H-0159/05) on the subject of the use of Italian in the EU institutions; *cf*. Commission answers to Written Question E-3124/03 by Mrs Muscardini (UEN) and Written Question E-2111/04 by Mrs Reynaud.

[125] The choice of one of these languages depends often on custom and the policy being dealt with (Athanassiou 2006: 20, ftn. 80).

[126] Rules of Procedure of the Commission in Article 12 (1962-63 O.J.Spec.Ed. 9) say about the authentication of acts adopted by the Commission, at a meeting or by written procedure, in the language or languages in which they are binding. The authentication is made by the signatures of the President and the Executive Secretary (Huntington 1991:332).

[127] The *English Style Guide - A handbook for authors and translators in the European Commission*, the fifth edition of June 2005, last updated in April 2008, available at http://ec.europa.eu/translation/writing/style_guides/english/style_guide_en.pdf, last visited in May 2008; for more details on the *English Style Guide*, see subsection 5.2.1.

what drafting language (the source language in the terminology of translation studies) is used the most frequently. The statistics covers all types of documents translated in the Translation Service; not only texts with legislative effect ('legal acts') (Phillipson 2003: 131).[128] The statistic data demonstrates that dominant working languages are nowadays English, French and to less extent German. The enlargements of the EU in 1995 and 2004 to states, where English is the main foreign language and French is less known and used, made the position of English as a working language stronger.[129]

Table 1. Languages which Commission's texts were drafted in and then translated from

Year / Source (drafting) language	1970	1986	1989	1992	1997	2003	2004	2006
English	official language from 1973	26%	30%	35.1%	45.4%	58.9%	62%	72%
French	60%	58%	49%	46.9%	40.4%	28.1%	26%	14%
German	40%	11%	9%	6.2%	5.4%	3.8%	3.1%	2.8%
Other EU languages	-	5%	12%	8.8%	8.7%	8.9%	8.8%	10.8%

Source: for year 1970: Phillipson 2003: 130; **for years 1986 and 1989**: Claude Truchot 2003: 104; **for years 1992, 1997, 2003, 2004**: Directorate-General for Translation of the European Commission 2005: 6; **for year 2006**: Directorate-General for Translation 2007: 6.

[128] In the brochure *Translating for a multilingual community* the Directorate-General for Translation of the European Commission (2005: 5) lists, besides 'legal acts', following types of documents that are translated: "speeches and speaking notes, briefings and press releases, international agreements, policy statements, answers to written and oral parliamentary questions, technical studies, financial reports, minutes, internal administrative matters and staff information, scripts and captions for films and other promotional material, correspondence with ministries, firms, interest groups and individuals, web pages and publications of every size and format on a huge range of topics for opinion-formers and the general public."

[129] Until the beginning of 1990s, French has been main dominant language in EU institution (especially in the Commission). French was official language of three of founding states and the main institutions were established in Brussels and Luxembourg. Moreover, EU administration was based on the model of French system. Those are the most often suggested reasons for the dominant position of French. When United Kingdom and Ireland became EU Members (1973) English was introduced as *lingua franca* but it reached the position of the first dominant working languages in early 1990s. On the use of official languages in the EU institutions and the reasons for the dominant position of French, English and German as working languages in the EU see: Abélès 1992, Ammon 1991: 241-254, Ammon 2001: 32-41, Berteloot 2002: 81-99, Bellier 1995: 235-250, Benda-Peter 1999, DGLF 2000, Fosty 1985, Gehnen 1991: 51-63, Mamadouh 1999: 109-124, Phillipson 2003, Quell 1997: 57-76, Schlossmacher 1994: 101-122, Truchot 2001: 81-31 and 2003: 99-110.

At the European Court of Justice and the Court of First Instance - French, and at the Court of Auditors – English and French are recognised as working languages.

Although the Courts are not actors of legislative and drafting process, in order to give more comprehensive description of the use of languages in EU institutions, some attention will be drawn to the language regime especially at the European Court of Justice (hereinafter the ECJ) and the Court of First Instance (hereinafter CFI). Since Article 290 (ex 217) of the *Treaty establishing the European Community* does not entitle the Council to provide the rules concerning the language use in the ECJ, language regime of the European Court of Justice and the Court of First Instance is not determined by the Council in Regulation 1/1958, but in respectively the *Rules of Procedure of the Court of Justice*[130] and the *Rules of Procedure of the Court of First Instance*[131].

In order to describe language regime in the European Court of Justice,[132] I refer to the classification proposed by Harald Koch (1991: 155-156) who recognises three levels of language use in the ECJ: level of languages of procedure (of the case), level of working languages, and level of languages of publication. For the purpose of the thesis a fourth level shall be distinguished, i.e., the level of authentic languages of a Court decision. At the first level, any official language can be used as the language of procedure, in other words, as the language of the case.[133] In direct actions, the applicant chooses the language of the case. However, if a defendant is a Member State, a natural or legal person holding the nationality of

[130] See Chapter 6 (Articles 29-31) of the *Rules of Procedure of the Court of Justice of the European Communities* of 19 June 1991 (OJ L 176 of 4.07.1991, p. 7, and OJ L 383 of 29.12.1992 (corrigenda)); the *Rules* have been several times amended (for instance, in order to add new official languages as languages o a case after enlargements); consolidated version but without legal force is available at http://curia.europa.eu/en/instit/txtdocfr/ txtsenvigueur/txt5.pdf, last consulted in August 2007. The languages regime of the European Court of Justice should be governed in the *Statute of the Court of Justice* (see Article 290 of the EC Treaty as amended by the Treaty of Nice). However, until the rules governing the language use in the ECJ have been adopted in the Statute, the provisions of the *Rules of Procedure* continue to apply (see Article 64 the Statute of the Court of Justice; the Statute is available at http://curia.europa.eu/en/instit/txtdocfr/txtsenvigueur/statut.pdf; last consulted in August 2007).

[131] See Chapter 5 (Articles 35-37) of the *Rules of Procedure of the Court of First Instance of the European Communities* of 2 May 1991 (OJ L 136 of 30.05.1991, and OJ L 317 of 19.11.1991 (corrigendum)); the *Rules* have been several times amended; consolidated version but without legal force is available at http://curia.europa.eu/en/instit/txtdocfr/txtsenvigueur/txt7.pdf, last consulted in August 2007.

[132] Since the rules of procedure of the Court of First Instance regulating language use are quite similar to those of the ECJ, while describing language regime I will refer directly to the European Court of Justice indicating merely appriopriate rules of procedure of the CFI. The same rules on language regime are applied to the European Union Civil Service Tribunal; see Article 29 of the Rules of Procedure of the European Union Civil Service Tribunal o 25.08.2007, OJ L 225/1.

[133] Article 29(1) of the Rules of Procedure of the ECJ (Article 35(1) of the Rules of Procedure of the CFI) which indicates languages of a case includes all languages listed as official and working languages of EU institutions in Regulation 1/1958, therefore the term 'official language' is used to specify which language can become the language of a case. Since Irish - that could and can be the language of a case – until the 1st of January 2007 was not listed in Regulation 1/1958 as an official language but was merely an authentic language of Treaties (a treaty language), before 1st of January 2007 the term 'treaty languages' was used for indication which language can be a language of a case; for details on status of Irish in the EU, see paragraph 2 of Subsection 1.2.4.

a Member State, the language of the case is the official language of that state (Article 29(2a) of the *Rules o Procedure of the Court of Justice* and Article 35(2a) of the *Rules of Procedure of the Court of First Instance*).[134] It is also possible that at the joint request of the parties or at the request of one party (different than EU institution) and after listening to the opposite party and to the Advocate General, the ECJ can allow to use totally or partially another of official languages as the language of the case (Article 29(2b,c) of the *Rules o Procedure of the Court of Justice* and Article 35(2b,c) of the *Rules of Procedure of the Court of First Instance*; see Tabory 1980: 25). The request for a preliminary ruling is registered at the Registry of the Court of Justice in the language of the national court or tribunal. The request is translated into all the official languages and the language of the national court or tribunal which requested for a preliminary ruling becomes the language of the case.

As far as a level of working languages is concerned, it should be noted that although any official language can be the language of a case, only French is recognised as the internal working language of the both Courts.[135] Since the judges meet in secret sessions, without interpreters, they need a common language. Hence, French is used as a language of deliberation. Moreover, French is drafting language of all of the Court's documents that are translated then into the language of the case and into the other languages (Lenz 1989: 133-134); for instance the Report for the Hearing drawn up by the Judge-Rapporteur in French is translated into the language of the case (Article 23(4) of the *Statute of the Court of Justice*); moreover, the judgment drafted in French is translated into all the languages.[136] Translation of legal texts is made in the Translation Directorate of the Court of Justice of the European Communities by lawyer-linguists.[137] The obligation to deliberate and draft in only one

[134] If a Member State has more than one official language, the applicant chooses the language (Tabory 1980: 25).
[135] Robert Huntington observes that the French influence on the European Court of Justice "goes beyond language to the structure of the Court" (1991: 332, ft. 73), since the ECJ is based on the structure of the French *Conseil d'Etat*; see also Slynn 1984: 409-429. Moreover, the early judgments of the ECJ in 1950s and 1960s were similar to those of the French; on similarities, see: Mancini and Keeling 1995: 397-413, Rivero 1958, Borgsmidt 1988: 106-119.
[136] Translation is also provided into the internal working language; for instance, the opinion drafted by the Advocate General in his or her own language (Article 29(5) of the *Rules o Procedure of the Court of Justice*) has to be translated into the internal working language and the language of the case; the written observations should be also translated into the internal working language and the language of the case; moreover, the application, the defence, the reply and the rejoinder have to be translated into the internal working language. For further details on the role of translation in proceedings before the Court of Justice, see ECJ website at http://curia.europa.eu/en/instit/services/traduction/role.htm, last consulted in August 2007.
[137] See Article 22 of the *Rules of Procedure of the Court of Justice* that obliges the Court to "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 - set up to fulfill the obligation provided in Article 22 - is shared between the Court of Justice, the Court of First Instance and the Civil Service Tribunal. For further details on translation in the ECJ, see McAuliffe 2007. Simultaneous interpretation of spoken interventions at hearing before the ECJ and the CFI is provided by the Directorate for Interpretation.

language puts non-francophones in disadvantage. However, there are some positive effects of that: firstly, the decision-making process provided in one language without translators or interpreters is more efficient; secondly the use of the same language "facilitates the formation of an *esprit de corps*, […] it promotes that sense of togetherness" (Mancini and Keeling 1995: 398). The latter is especially important for the functioning of the institution whose members have diverse cultural and legal roots. Finally, the Court decision is translated and published in all official languages (level of publication). However, in the case of doubts only one version is authentic (level of authentic language), i.e., the version in the language of the procedure (Article 31 of the *Rules o Procedure of the Court of Justice* and Article 37 of the *Rules of Procedure of the Court of First Instance*), even if this version is actually only the translation of the French draft of the judgment (Koch 1991: 156, Lenz 1989: 131).[138, 139] As Mala Tabory (1980: 25) explains that: "in practical terms, the fact that documents are regarded as 'authentic' in the language of the case means that they may not be challenged merely on linguistic grounds".[140]

Since Regulation 1/1958 does not refer to language regime of EU bodies and agencies, the use of languages can be freely decided in the legal act by which they are established (de Witte 2004: 222). As far as EU bodies are concerned, language regime at the Economic and Social Committee and the Committee of the Regions should be taken into consideration, since the two Committees can participate in the legislative process as the consultative bodies, i.e., in prescribed cases they are consulted before the adoption of laws. Both Committees recognise all EU languages as their official and working languages. The rule of the equal status of all EU official languages within the Committees[141] has been accepted because of representative character of the two bodies (*cf*. Gazzola 2002, 2006). The opinions of the Committees are

[138] Tabory (1980: 26-27) notices that since the first draft of a judgment is always prepared in French, but the decision is authentic in the language of the case (that can be any official language), sometimes a judge singes the final judgment in a language he or she does not know.

[139] Sometimes there are more languages of the case than only one. Consequently, the judgment is then authentic in all languages of the case. For instance, Spanish, German, English and French were the languages of case T-109/02 Bollore SA and Others v Commission of the European Communities, hence the judgment passed on 26.04.2007 was authentic in the four languages.

[140] For more details on language regime and language use in the European Court of Justice, see: Stevens 1967: 701-734, and in the ECJ and the Court of First Instance, see: Berteloot 1987, Lenz 1989.

[141] *Cf*., for instance, Article 5.3 of *Members' Statute of the European Economic and Social Committee*, Brussels, 6 January 2004 (available at http://www.eesc.europa.eu/organisation/rules/docs/members_statute/_ces1611-2003_d_en.pdf, last consulted in August 2007) providing that "[t]he Community's official languages shall have equal status within the Committee, respecting the cultural diversity of the peoples of Europe. The choice of languages for the various areas of work shall be based on objective considerations of efficiency, taking into account the national languages of the participants and their proficiency in other official languages, and shall be made openly and under the responsibility of the meeting president, in accordance with the political guidelines drawn up by the Bureau".

published in all official languages in the Official Journal of the European Union as well as on the Committees' websites.[142] Although all official languages are recognised as working languages, it does not mean that during work, meetings or drafting documents all languages are used at the same time. For instance, as far as oral communication in the Economic and Social Committee is concerned, study groups work in four languages chosen among the official languages by the president before the first meeting, according to the composition of the study group. Moreover, another language can be added during the meeting by the rapporteur (Rule 63(a) of the *Implementing Provisions of the Rules of Procedure of the European Economic and Social Committee*, 2006). With regard to drafting documents, for instance, in the Economic and Social Committee, section minutes, which record the decisions taken, must be translated into the languages determined by the bureau of the section (rule 41 of the *Implementing Provisions of the Rules of Procedure of the European Economic and Social Committee*, 2006).[143]

As regards the language regime of agencies, although Regulation 1/1958 refers only to the institutions, it applies, in principle, also to agencies (Galetta and Ziller 2007: 1083). In case of some agencies, the legal act establishing an agency regulates the language regime and sometimes provides that the language arrangement of the institutions of the Community should be applied to an agency (e.g. Article 17 of Council Regulation (EC) No 2062/94 establishing a European Agency for Safety and Health at Work; OJ L 216, 20.08.1994). In other cases, there are no provisions determining language use within them. Moreover, it is also possible to indicate agencies that do not base their language regime on EU institutions' language rules provided in Regulation 1/1958, but create their own regulation. For instance, the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (hereinafter OHIM) designated English, French, German, Italian and Spanish as languages of the Office (Article 115.2. of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark; OJ L 11, 14.01.1994; hereinafter Regulation 49/94).[144] Although the

[142] For instance, see Rule 63(a) of the *Implementing Provisions of the Rules of Procedure of the European Economic and Social Committee*, adopted by the Bureau on 12 September 2006, available at http://www.eesc.europa.eu/organisation/rules/docs/ces1060-2006_d_en.pdf, last consulted in August 2007.

[143] As far as other bodies are concerned, it can be noted that the European Central Bank uses English as the working language; whereas in the European Investment Bank French and English are official languages and English, French and German are working languages. English and French are used as working languages by the European Ombudsman (Gazzola 2002, 2006).

[144] The ECJ (Court of First Instance) in the case *Kik v. OHIM* (case T-120/99, 12 July 2001) considered whether the OHIM had the right to decide that "languages of the Office [OHIM] shall be English, French, German, Italian and Spanish". The applicant pleaded that the principle of non-discrimination in Article 6 of the *EC Treaty* was infringed. The action was dismissed. The Court ruled that there was no infringement of the principle of non-discrimination (§ 59), that the rules governing languages stated in the Regulation 1/1958 cannot be considered as

Office uses only the five languages in its work, the application for a Community trademark can be filled in one of the official languages of the European Community (Article 115.1. of Regulation 40/94). The applicant, however, should indicate one of the languages of the Office, which could be used as a possible language of proceeding for opposition, revocation or invalidity proceedings (Article 115.3. of Regulation 40/94). Consequently, the notice of opposition and an application for revocation or invalidity should be filled in one of the languages of the Office (Article 115.5. of Regulation 40/94). However, parties to opposition, revocation, invalidity or appeal proceedings can agree that the language of the proceeding is to be one of EC official languages different than one of five OHIM languages (Article 115.7. of Regulation 40/94). Moreover, Regulation 40/94 provides that an application for a Community trademark, other information that are to be published and the implementing regulation should be published in all official languages of the European Community. The entries in the Register of Community trademarks are also made in all the official languages. Although written texts are expressed in all the languages, in case of doubts, only one language version is authentic; it is the text in the language of the Office in which the application for the Community trade mark was prepared or in the language of the Office which was indicated by the applicant who filled the application with EC official language different that the language of the OHIM (Article 116.3. of Regulation 40/94). Another example of the agency that provides its own language regime different from that of EU institutions is the European Environment Agency (EEA), whose membership is open to countries that are not Member States of the EU,[145] and therefore official languages of the EEA are not only official languages of the EU but also Norwegian, Icelandic and Turkish, whereas English and French are working languages. Moreover, the European Agency for Reconstruction, which is responsible for implementing the Community assistance to the Republic of Montenegro, the Republic of Serbia and the Former Yugoslav Republic of Macedonia, recognises English as its official languages but status of working languages is granted not only to English but also to Albanian, Macedonian and Serbian.[146]

---

principle of Community law and do not refer to Community bodies like OHIM (§ 51 and 58) and that the right to communicate with the EU institutions in any official (treaty) languages does not apply to the OHIM (§ 64) (see Azoulai, Kramer, Ritleng 2003/2005: 483-485; de Witte 2004: 222-223; Galetta and Ziller 2007: 1087-1088; Phillipson 2003: 157-159).

[145] Nowadays members of the EEA are all EU Member States, Iceland, Liechtenstein, Norway, Switzerland and Turkey.

[146] For details on the language regime in agencies in the first, second and third pillars, see Galetta and Ziller 2007: 1083-1089; on the use of languages in EU bodies and agencies, see: Gazzola 2002 and Gazzola 2006:17-117.

For the purpose of the thesis and the analysis of multilingual legal drafting in the European Union, the distinction between official and working languages is important. EU acts of general application have to be drawn up in all official languages, whereas during preparation of official language versions of legal acts working languages are used by the institutions involved in legal drafting. According to Article 1 of Regulation 1/1958 all official languages are working languages, consequently all of them can be used at works at the EU institutions. It was possible to use all working languages when the European Communities were created and there were only four official and working languages making twelve language combinations. Nowadays twenty-three official and working languages create 506 combinations. Consequently, it is very difficult to communicate within EU institutions at the same time in all the twenty-three languages. Therefore, although equality between languages is *de jure* provided, '*de facto* equality' is questioned. Since the purpose of the thesis is the study whether equality between language versions is assured during the drafting process, hence also whether all languages are applied at every stage of the drafting process, the use of languages throughout that process should be carefully examined.

At the outset, the use of languages in the written and oral communication should be distinguished. As regards oral communication, the equality seems to be, however, the equality only *de jure*, *de facto* there are two (English and French) or three (English, French and German) predominant working languages. The linguistic hierarchy is caused mainly by practical and economical reasons. In the external relations and communication with EU citizens, the principle of the equality of official languages is preserved.

However, when the language regime in EU institutions is examined, languages that are required for oral communication should be distinguished from those that are demanded for written documents. In the case of oral communication, the number of applied languages is often limited, especially during informal meetings of preparatory bodies. Hence, the hierarchy of languages used in the internal operations of the EU can be recognised. Nowadays the higher position in this hierarchy belongs to English; the next dominant language is French, then German[147] and the other official languages. It should be noted, however, that all working and official languages are in use in the institutions that have representative character: the Parliament, the Council, and the Committees (at least as far as formal meetings are concerned).

[147] On the role of German as a working language in the EU institutions, see Truchot 2003: 105 and Coulmas 1990: 171-185.

On the other hand, most of documents (core documents; see Guggeis 2006:113), especially those that are a basis for the drafting of a legal instrument (e.g., proposal, amendments), have to be available in all official and working languages. Hence, the documents are discussed in a limited number of languages but they are produced (often by means of translation) in all the official and working languages. Consequently, a full multilingualism of legal documents is achieved and linguistic equality is preserved as far as drafting process resulting in a multilingual legal instrument is concerned.

C. Diversity paradox – the use of languages in oral and written communication

This short analysis of the language regime in the institutions and bodies of the European Community - demonstrates that although, according to Article 1 of Regulation 1/1958, all the official languages are working languages, often - especially in informal oral communication - only a few of them are used. Therefore, a distinction between working languages *de jure* (listed in Article 1 of the Regulation) and working languages *de facto* or internal working languages (actually used in the institutions) is made. Pujadas (2004) rightly notes that "while the concept of official and working languages is, *de jure*, a unitary concept, in some cases it is *de facto* split into two different concepts: those languages strictly used for external communication […] and those used for internal use (internal working languages)".

This distinction between *de jure* and *de facto* working languages demonstrates that "the equality of all official languages is only formally proclaimed but not implemented in all cases" (Pujadas 2004). The basis for such inequality can already be noted in Article 6 of Regulation 1/1958, which gives the possibility to Community institutions to stipulate "which of the languages are to be used in specific cases" (Ammon 2006: 321). This contradiction between a legal requirement of equality between all EU languages and the practice of unequal language use can be regarded as the source of the diversity paradox, which has been indicated by Anthony Pym (2001b), who noted that during multilingual communication within institutions of international and supranational organizations, two contradictory tendencies can be observed at the same time. The first tendency is the growth of an international *lingua franca*, which should result in a decrease of linguistic diversity. The second is an increase in the use of translation, which should cause greater linguistic diversity. The two tendencies leading to these contradictory effects - i.e., the growth and decrease of linguistic diversity - are also examined in the institutions of the EU, which is regarded by Pym as an extreme case

because of the great number of possible language combinations, which can emerge during communication.[148] Pym examines the paradox not only in the reference to multilingual legal instruments but in a broader perspective. Since the focus of this section is on the language regime of the European Union, the following analysis is limited only to the explanation of the diversity paradox in the context of EU legal multilingualism and language use in Community institutions, especially during legal drafting process.

Pym considers the development of a *lingua franca* as a reason explaining the reduction in language diversity and the increase in translation as a reason for growth of language diversity. In order to explain the diversity paradox in the context of a legal and official multilingualism, it is the linguistic diversity that should be regarded as a reason for the two contradictory tendencies. In other words, the analysis of the diversity paradox starts not from the observation of the development of the *lingua franca* and translation increase but from the statement that linguistic diversity and legal multilingualism in the European Union are inevitable because of political and legal reasons. Even if EU linguistic diversity does not represent a real variety of languages in Europe, there are still twenty-three official languages which have at the same time the status of working languages (Article 1 of Regulation 1/1958). Although there are postulates to reduce EU multilingualism (*cf*. Moratinos Johnston 2000: 55-59),[149] practice demonstrates that the diversity of official and working languages is growing, usually due to the accessions of new Member States.[150]

Hence, EU linguistic diversity and especially the number of languages in which legal instruments are authenticated cannot be reduced. However, on the other hand, it is equally not possible to use all the twenty-three languages at the same time for communicating or drafting a legal instrument. Therefore one or two languages are usually applied, which results in the development of a *lingua franca* or rather several *linguae francae*. Nevertheless, in order to preserve the equality between official languages required by official and legal multilingualism, interpretation and translation into other languages must be provided. Thus, even if some official and working languages are used more often than others (with the consequent development of a *lingua franca*), thanks to translation into all the other languages, the linguistic diversity provided by law is not reduced in practice. Accordingly, it is this great linguistic diversity that brings about the two tendencies which create the diversity paradox.

---

[148] Nowadays in the EU of 23 official languages, according to the formula n(n-1) – proposed by Pym - where 'n' is the number of official languages, there are 506 language combinations.

[149] See *supra note* 116.

[150] The exemption of this rule is the case of Irish explained at length in § 2 of the present subsection (1.2.4.).

Pym explains the diversity paradox by reference to the distinction between communication inside the institutions (within their professional intercultures) and communication beyond the institutions (between institutions and "the relative monocultures whose languages are accorded official status"). In the case of the first type of communication, for practical reasons, one or two languages only are used. These languages are internal *de facto* working languages and those of them used the most often (like English and French) become *linguae francae*. With the second type of communication, the use of all official languages is necessary and therefore translation has to be applied. According to Pym, this explains why the growth of a *lingua franca* is compatible with the increase in translation.

The analysis and explanation of diversity paradox discloses very important observation for further study on multilingual legal drafting. It demonstrates that translation, which is so reluctantly referred to by lawyers in the context of multilingual legal drafting, is inevitable for preservation linguistic diversity and equality between languages during legal drafting process, especially if law is to be drafted in twenty-three languages.

§ 4. Authentic languages

So far the concept of 'authenticity' and term 'authentic' have been used in the reference to the principle of equal authenticity that is the basis of EU legal multilingualism and assumes that EU law drafted in twenty-three official languages is equally authentic in all the languages.[151] Although it could seem that all official languages are authentic languages of EU law, the distinction between the two terms has to be made. Firstly, these terms have different meanings and refer to different situations.[152] Secondly, not always EU legal text is authentic in all official languages, and on the other hand, sometimes a legal text is authentic also in languages that are not official languages of the European Union. The latter can be illustrated with the example of an international agreement signed by the European Union and a state that is not a member of the Union and has an official language different than those of the EU. In that case, usually EU official languages and the official language of the state that signed the agreement with the Union are recognised as authentic languages of this

[151] For general information on the principle of equal authenticity, see subsection 1.1.2.; for details on the principle of equal authenticity in the European Union, see subsection 1.2.3.

[152] The distinction between the term 'official language' and 'authentic language' is discussed in subsection 1.1.3.

agreement.[153] Before 1 January 2007, the example related to Irish language could be indicated. Irish has not been official language of the EU institutions until 2007 but treaty language and as such was the authentic language of Treaties, although not official language of the EU.[154]

Two example of the situation where EU legal text is authentic not in all EU official languages can be indicated. Firstly, a decision in the meaning of Article 249 (ex Article 189) of the *EC Treaty* that is a form of EC secondary legislation and binds those to whom it is addressed and as such is drafted and authenticated in the languages of the addressees, consequently, not necessarily in all official languages.[155] Secondly, a decision of the European Court of Justice or the Court of First Instance, which although translated and published in all official languages, only one version is authentic, that is, the version in the language of the procedure.[156]

To sum up, the term 'authentic language' does not change its meaning depending whether it is authentic language of international agreement, regulation or decision in the meaning of Article 249 of the *EC Treaty*, or a Court decision. It means the language of a version of legal text that has to be considered for interpretation purposes. The number of authentic languages in which versions of a legal text are drafted can vary, but always all versions drawn up in authentic languages have to be taken into account and none can prevail over the other.

---

[153] For instance, the Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member State, of one part, and the Russian Federation, of the other part, was authentic at the time of signature in ten languages: nine official languages of the EC and Russian (see Article 111 of the Agreement; OJ L 327, 28.11.1997, pp. 3-69); another example provides Tabory (1980: 50 endnote 108) who notes that when the Treaty between Israel and EEC was signed in Brussels on 11 May 1975, it was equally authentic in the six working languages of the EEC and in Hebrew.

[154] The recognition of treaty languages has been important until 2007 when Irish became official language; for details on the status of Irish and on treaty languages, see § 2 of the present subsection (1.2.4.).

[155] For instance, *Commission Decision of 24 September 2007 on emergency vaccination of poultry in Italy against low pathogenic avian influenza* (2007/638/EC; OJ L 258/31, 04.10.2007) addressed to the Italian Republic (see Article 15 of the Decision) is authentic only in Italian.

[156] It happens that there is more than one language of the procedure and then the Court decision is authentic in more than one language. For details on a language of procedure, an authentic language of a Court decision and language regime in the ECJ ad CFI, see the present subsection (1.2.4) § 3(B).

§ 5. Distinction of legal language of the EU and national legal languages - one legal language for the EU

EU law is drafted and bound in twenty-three official languages that are official and national languages in Member States. It should be, however, borne in mind that law is expressed not in a natural, national language but in language of law[157] and each legal system has its own legal language including language of law.[158] Consequently, EU languages of law should be distinguished from Member States' languages of law. It should be taken into consideration that in addition to EU legal language use, there is also the national use of the legal language, especially in so far as terminology is concerned. Therefore, the meaning of the term used in EU law can differ significantly from the terminology internally used in national law (Heutger 2003; López-Rodríguez 2004: 1201). Some legal terms used within EU legal system are new in some of Member States' legal terminology or domestic legal terms are used in the EU with a different name or meaning (López-Rodríguez 2004: 1201).

One of the unique features of EU legal multilingualism stems from the fact that some EU Member States share the same official language (e.g. German – official language of EU institutions – is official language in Germany, Austria, Belgium and Luxembourg; French - in France, Belgium and Luxembourg; English – in the United Kingdom, Ireland and Malta; Dutch – in the Netherlands and Belgium (called Frisian in Belgium)). Each national legal system uses its own "terminology that does not necessarily correspond with the legal languages of other countries" (López-Rodríguez 2004: 1200). Therefore, legal language also differs in countries that have the same national, official language (Heutger 2003). Hence, a uniform German, French, English, or Dutch legal terminology does not exist (De Groot 1996: 156).[159] Interesting example of differences within the same natural language but used in different countries can be found in Protocol No 10 added to the *Act concerning the conditions of accession of Austria, Finland, Norway and Sweden*.[160] The Protocol indicates the use of

[157] On the concept language of law and legal language, see section 3.1. in the second part of the thesis.
[158] This fact is also underlined as far as legal translation is concerned. It is often stated that translation of legal text is not only translation from one language into another but it is translation from one legal language to another legal language and from one legal system into another legal system. Legal translation used to be regarded as a mechanical process of transcoding one language into another. Nowadays, as a result of a shift of the main emphasis in translation studies from interlingual to cultural transfer (Vermeer 1986:33; Šarčević 2000a: 2, 5, 209), legal translation is regarded as a cross-cultural event (Snell-Hornby 1988: 46 and Šarčević 2000a: 2). One should keep this fact in mind while taking the issue of legal bi- and multilingual drafting/translating is concerned.
[159] That is, the uniform terminology does not exist for each of the mentioned languages taken separately; see the example of a Dutch language explained by de Groot; subsection 3.1.3., footnote 457.
[160] OJ 1994 C 241/370. See also Berteloot 1999: 360-361; van Calster 1997: 392.

specific Austrian terms of German language in the framework of the European Union. The annex added to the Protocol includes 23 terms widely used in Austria with their equivalents in German spoken in Germany.[161] The specific Austrian terms have the same status and legal effect as the corresponding terms used in Germany. Moreover, in the German version of new legal acts, the Austrian terms listed in the Annex are to be added to the German, in an appropriate form.

All official languages of the European Union share the same system of reference, i.e., the signs in each language refer to the same objects (see Šarčević 2000a: 15, 230-231). This should facilitate a legal drafting process and, despite the number of languages, drafting of multilingual law within a single legal system should be less complicated than, for instance, legal translation from one legal system to another.[162] However, already during drafting process, it should be kept in mind that language versions of a legal act, which are drawn up, are to be equally authentic after the adoption of the legal act. Therefore, full equivalence and coherence between them must be guaranteed. For this reason, it is important to standardise EU terminology in all the official languages. It is the task of professional linguists, especially terminologists,[163] working in the language services of the European Union. In order to facilitate the uniform and coherent use of terms, various drafting guidelines and manuals have been developed by EU institutions,[164] and, translation services of EU institutions and the Translation Centre for the Bodies of the European Union have used terminological databases.[165] However, since 2004 instead of separated databases for various institutions, one EU inter-institutional[166] terminology databank – called Inter-Active Terminology for Europe (IATE) - is applied.[167] IATE incorporated all the existing terminology databases of EU translation services. Moreover, unlike previous terminology databases, IATE is interactive, i.e., not only terminologists but also translators working in EU translation services can add

[161] The terms included in the Protocol are not legal terms, but food-related terms (e.g. English term 'potato' has two German equivalents in the EU, i.e., *Kartoffeln* (German) and *Erdäpfel* (Austrian)); see Creech 2005: 19.
[162] On legal translation within one legal system and from one legal system into another, see subsection 3.4.2.
[163] For instance, in the Commission terminology work is done in Multilingualism and Terminology Coordination Section which is the part of the Unit for Translation Strategy and Multilingualism of the Directorate-General for Translation; in the Council terminologists work in the Terminology and Documentation team.
[164] EU drafting guidelines and manuals are investigated in this thesis, in subsection 5.2.1.
[165] The following terminological databases have been used: Eurodicautom - in the Commission, the Terminological Information System (TIS) – in the Council, Euterpe - in the European Parliament, Euroterms - in the Translation Centre for the Bodies of the European Union and CDCTERM - in the Court of Auditors.
[166] The partners using and contributing to IATE database are following: the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee, the Committee of the Regions the European Investment Bank, the European Central Bank and the Translation Centre for the Bodies of the EU.
[167] Since 2007 IATE is also available for the public at http://iate.europa.eu/iatediff/UserSettings.do; last consulted in October 2007.

and update terms in the databank. Each change is subsequently verified and validated by terminologists.[168] Interactive and inter-institutional character of the new terminological database improves process of terminology standardisation, better ensures uniform use of EU terms and eventually facilitates legal drafting process.

The same system of reference and equal authenticity of all official language versions as well as the requirement of full equivalence bring the question whether a single common language of EU law may exist and how it can be acquired. Is it possible to achieve a single legal language and language of law by means of unification, standardization and harmonisation of European law?[169] Niklaus Urban (2000: 53) notes that if we consider the normative concept of linguistic equality, we have to admit that not one but twenty-three legal languages are utilized within the European Union. After analysis of the application of linguistic equality principle in the EU, he states: "if there is anything like a 'single legal language in Europe', it is the authoritative interpretation of European law through the Court of Justice" (Urban 2000: 57).[170]

[168] The process is called a validation cycle.

[169] See in particular: Marie-Jeanne Campana 2000: 33-50 and Nikolaus Urban 2000, on a common pan-European legal language see, e.g., Heutger 2003.

[170] According to Urban judicial interpretation of EU law "is based primarily on the two languages which the majority of judges understand – English and French" (Urban 2000: 57). This statement is, however, in the contradiction to settled case law of the ECJ and CFI (see *supra note* 52), as well as to opinions of the Advocates General (see *supra note* 51), where the necessity to compare all the official language versions for interpretation purposes is underlined.

Conclusion to section 1.2.

The examination of the language regime in the European Union in the present section has two-fold purpose. Firstly, the section aims at indicating characteristics of the EU legal and official multilingualism which could be compared later on with features of Canadian legal bilingualism that should provide justification for the subsequent comparison of methods applied in Canadian and EU legal drafting. Secondly, the section should provide background information essential for further analysis of EU legal drafting methods with comparison to Canadian techniques.

Since the common features of EU and Canadian language regime are indicated after Canadian legal bilingualism is examined, the conclusion to section 1.2. is confined to summarise the information important for subsequent study of drafting EU law in many languages. First, the section explains in which languages law is drawn up and how those languages are chosen. As mentioned, EU legal multilingualism comprising twenty-three official languages and three additional languages is an extreme case of legal and official multilingualism. Moreover, it should be borne in mind that although official languages of the EU are national and official languages of the Member States, the legal language of the European Union should be distinguished from legal languages of the Member States.

EU legal multilingualism is characterised not only with the great number of official languages, but also with equality between languages. As the analysis of language use in the EU institutions involved in the drafting and legislative process reveals, equality between languages during this process is achieved in practice by means of translation, especially as far as written communication is concerned, full multilingualism is observed. When the drafting process is finished and the legal act is adopted, the equality between language versions of the act is guaranteed by the principle of equal authenticity. This principle is the basis not only for EU legal multilingualism. The next section aiming at the examination of language regime in Canada at federal, provincial and territorial level explains how this principle is understood in Canada.

SECTION 1.3.
Language regime in Canada, its provinces and territories

Introduction

This section gives the overview of Canadian language regime. In this dissertation, the investigation of multilingual law is mainly based on the comparison of the multilingual drafting methods applied by the European Union and by Canada (predominantly in the context of federal legislation). Therefore, in this section, first, official and legal bilingualism at the federal level is described (subsection 1.3.1.). However, without the explanation of the use of language(s) in the Canadian provinces and territories, the depiction of the linguistic situation in Canada will not be comprehensive. Moreover, some interesting findings on drawing up of bilingual law can be reached as a result of the investigation of provincial and territorial drafting and legislative process. Therefore, language regimes in Canadian provinces and territories are also considered (subsection 1.3.2.).

Language question is a very sensitive and complicated matter in Canada. The present situation was reached after a long and difficult process. It is outside the scope of the thesis to explain all issues related to the subject. My main concern is, firstly, on the recognition of official languages at the federal and provincial level; secondly, on the requirement to draft and enact laws in two or more equally authentic languages (legislative bi-, multilingualism); thirdly, on the use of languages in the courts.

Subsection 1.3.1.
Bilingualism at the federal level

§ 1. Legal basis of official and legal bilingualism at the federal level

Nowadays, official bilingualism in Canada has a constitutional basis provided in Section 16(1) of the *Canadian Charter of Rights and Freedoms* - a part of the *Constitution Act, 1982*[171] – which states that "English and French are the official languages of Canada and have equal rights and privileges as to their use in all institutions of the Parliament and government of Canada". The equal use of both languages is regulated in *An Act respecting the status and use of the official languages of Canada, 1988* (hereinafter *Official Languages Act, 1988*)[172] which provides legislative and judicial bilingualism at federal level.[173] The Federal Court of Appeal[174] and the Supreme Court of Canada[175] stated that the *Official Language Act, 1988* is not an ordinary statute. Because of its constitutional roots and its crucial role in relation to bilingualism, especially because it reflects the recognition of the official languages and extends linguistic rights and guarantees provided in the Constitution of Canada, the Federal Court and the Supreme Court recognise a special quasi-constitutional status of the *Official Languages Act, 1988*.[176]

Canada became officially bilingual barely in 1969 pursuant to the previous *Official Languages Act, 1969*.[177] Accordingly, the notion 'official language' is quite recent in Canada (Devine 1977: 115). The *Act, 1969* - enacted in accordance with the recommendation included in the report of the Royal Commission on Bilingualism and Biculturalism - recognised English and French as the official languages of Canada and of all federal institutions.

---

[171] Enacted as Schedule B to the *Canada Act 1982* (U.K.) 1982, c. 11.

[172] *An Act respecting the status and use of the official languages of Canada*; [1985] c. 31 (4th Supp.); [1988] c. 38, assented to 28th July, 1988.

[173] Moreover, pursuant to the *Official Languages Acts, 1988*, the government adopted Official Languages Regulations; for instance, the *Official Languages (Communications with and Services to the Public) Regulations* (SOR/92-48) adopted on 16 December 1991 pursuant to Section 32 of the *Official Languages Act, 1988*; for further details, see *A Description of the Official Languages Regulations on Service to the Public*, available at the website of the Government of Canada at http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/OffLang/dolr_e.asp, last modified on 1 December 1994; last consulted in August 2007.

[174] Canada (Attorney General) v. Viola, [1991] 1 F.C. 373; *Rogers v. Canada (Correctional Service)*, [2001] 2 F.C. 586 (T.D.), paragraph 59.

[175] *Lavigne* v. *Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773; 2002 SCC, June 20, 2002.

[176] See *Lavigne* v. *Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773 at paragraph 23. For more details on quasi-constitutional legislation and on a quasi-constitutional status of the *Official Languages Act, 1988*, see this thesis subsection 4.2.1.; see also Hurtubise-Loranger 2006: 8.

[177] The *Act Respecting the Official Languages of Canada* (Bill C-120); S.C. 1968-1969, c. 54, S.C. 1969, c. O-2; hereinafter the *Official Languages Act, 1969*.

However, legislative and judicial bilingualism was provided already in Section 133 of the first *British North America Act* in 1867 (nowadays and hereinafter the *Constitution Act, 1867*[178]). Section 133 aims at guaranteeing that Anglophones and Francophones have equal access to law in their languages and can equally participate in the debates and proceedings of the Parliament (Hurtubise-Loranger 2006: 2 and Braën 1995: 537 quoted in Hurtubise-Loranger 2006, ft. 2). Therefore Section 133 grants the right to use English and French in parliamentary debates and requires English and French be used in records and journals of the Houses of Parliament and in printing and publishing Acts. This subsection explains how these language rights and especially legal bilingualism is regulated and understood in Canada at federal level pursuant to constitutional and quasi-constitutional law in force and judgments and decisions of Canadian Courts.

Nowadays, bilingualism at federal level in its official, legal and judicial aspects is regulated in two constitutional acts (Section 133 of the *Constitution Act, 1867*[179] and Sections 16-22 of the *Canadian Charter of Rights and Freedoms*; hereinafter *Constitution Act, 1982*[180]) and in one quasi-constitutional act (the *Official Language Acts, 1988*). Moreover, some provisions of the afore-mentioned acts have been interpreted by Canadian Courts. Since the thesis aims at analysing multilingual legal drafting, this subsection focuses mainly on requirement of drafting, enacting, printing and publishing of federal legislation in two official languages. Accordingly, the main concern is on written legal language and written law. As legal acts are discussed, amended and adopted in Parliament,[181] the use of languages during parliamentary debates and proceedings is also analysed. In this context, mainly bilingualism of oral communication and to less extent of written documents is examined.

Currently, all Acts of federal Parliament and regulations, and other instruments referred to in Part II of the *Official Languages Act, 1988* must be simultaneously drafted, enacted and then printed and published in English and French and both language versions are equally authentic. This requirement stated in unambiguous terms in the *Official Languages Act, 1988* is a result of the development of legal bilingualism in Canada. While interpreting

[178] The *Constitution Act, 1867* (30 & 31 Victoria, c. 3, U.K.) is the first Act of the *British North America Acts* passed in 1867-1975 by British Parliament. The *Constitution Act, 1867* unified Canadian provinces into the self-governing Dominium of Canada. For more details on the Constitution of Canada, see this thesis, subsections 4.2.1. and 6.2.1.

[179] Section 133 of the *Constitution Act, 1867* regulates as well legislative and judicial bilingualism in Quebec. For further details, see this thesis, subsection 1.3.2., paragraph 1.

[180] *Constitution Act, 1982* includes also provisions on official, legislative and judicial bilingualism in New Brunswick (see Sections 16(2) and (3), 16.1., 17(2), 18(2), 19(2), 20(2)). For further details, see this thesis subsection 1.3.2., paragraph 2.

[181] The last stage of the enactment process is Royal Assent and an Act usually obtains the force of law upon Royal Assent.

Section 133 of the *Constitution Act, 1867* - the first provisions on legal and legislative bilingualism - two issues were analysed by Canadian Courts. Firstly, must law be just printed and published in English and French or also must it be made and enacted in two languages? Secondly, must only statutes or also other instruments be bilingual?

As far as the first question is concerned, although Section 133 of the *Constitution Act, 1867* required Acts of the Parliament of Canada only be printed and published in both languages, it is interpreted that 'printing and publishing' implies also 'enactment'. The Supreme Court in *Blaikie* v. *Quebec (Attorney General)* (hereinafter *Blaikie case No 1*) stated that "[b]y requiring printing and publication of statutes in both languages, the section in question [Section 133] covers enactment by implication: what is required to be printed and published in French and in English is described as 'Acts' and texts do not become 'Acts' without enactment".[182] Section 133 - which regulates legislative bilingualism in Quebec in the same way as federal bilingualism - was interpreted in the afore-mentioned case in order to examine the constitutionality of *Charter of the French language*, 1977[183] adopted and applied in Quebec. At federal level the Parliament has enacted both English and French versions of statutes since 1867 (de Mestral and Fraiberg 1966-1967: 511, quoted in Rosmarin 1975: 259), hence in accordance with subsequent interpretation of Section 133 by the Supreme Court in *Blaikie No 1*.[184] In the *Official Languages Act, 1988*, Section 6 expressly requires all Acts of Parliament be not only printed and published but also enacted in both official languages. Enactment of acts in English and French means that acts have to be passed and assented in two languages, and, that both languages should be used simultaneously throughout the legislative process (Hurtubise-Loranger 2006: 5). Pursuant to Section 13 of the *Official Language Act, 1988* all acts and documents (i.e., journals, records, Acts of Parliament, instruments, documents, rules, orders, regulations, treaties, conventions, agreements, notices, advertisements or other matters referred to in Part II of the *Official Languages Act, 1988* titled 'Legislative and Other Instruments') must be made, enacted, printed, published or tabled simultaneously in both languages, and both language versions are equally authoritative. Next paragraph (§ 2 of subsection 1.3.2.) of this subsection explains how the principle of equal authenticity is regulated and understood in Canada.

---

[182] *Blaikie* v. *Quebec (Attorney General)*, 1979 2 S.C.R. 1016, p. 1018, see also p. 1023. The requirement of simultaneous enactment of legislation in English and French was confirmed by the Supreme Court of Canada in the decision in *Re Manitoba Language Right*s, 1985 ([1985] 1 S.C.R. 721). In this decision the Court interpreted Section 23 of *Manitoba Act, 1870* which is virtually identical with Section 133 and therefore this decision applies also to federal legislation (Dunsmuir 2002: 4).

[183] *Charter of the French language*, L.Q. 1977, c. 5.

[184] For further details on *Blaikie* v. *Quebec (Attorney General)*, 1979 and drafting law in Quebec, see this thesis, subsection 1.3.2., paragraph 1.

With regard to the second question, due to interpretation given to Section 133 of the Constitution Act, 1867 until 1979 (decision in *Blaikie case No 1*), only statutes have been enacted, printed and published in English and French by the Parliament. Other instruments have been also made, issued and published in two official languages since 1969, when the first *Official Languages Act* required bilingual drafting, enactment and publishing of all rules, orders, regulations, by-laws and proclamation that are required to be published in the official Gazette of Canada (Section 4). The above-mentioned documents were, however, drafted, issued and published pursuant to the *Official Languages Act, 1969*, not due to Section 133 of the *Constitution Act, 1867*. Hence, the interpretation of Section 133 remained unclear, especially as regards the instruments (others than statutes) that were enacted prior to 1969. In 1979, in the afore-mentioned *Blaikie case No 1* and in 1981 in *Blaikie case No 2*,[185] the Supreme Court of Canada stated that the requirement of Section 133 to enact, print and publish in English and French applies also to delegated legislation which mainly cover legislative instruments like regulations and orders in council of legislative nature. Nowadays, as mentioned above the *Official Languages Act, 1988* (see Part II) clearly provides which instruments must be drafted, enacted, printed and published in English and French. Those provisions reflect the decisions of the Supreme Court of Canada. Until 1969, most regulations and orders in council were issued and published only in one language, for that reason in 2002 the Parliament adopted the *Legislative Instruments Re-enactment Act*[186] that re-enacted legislative instruments that had been enacted only in one language, and due to that, resolved uncertainty about their legal validity. Re-enactment of instruments enacted previously in one language (English) is an example of subsequent drafting which is explained in details in chapter 6 of this thesis. Subsequent drafting at federal level is applied not only to unilingual federal legislative instruments but also to Acts that belong to the Constitution of Canada and were enacted by the British Parliament only in English. Up to date, however, some parts of the Canadian Constitution still remain authentic only in English.[187]

Besides requirement of drafting, enacting, printing and publishing acts and other instruments in two official languages, both Constitution Acts – *Constitution Act, 1867* in Section 133 and *Constitution Act, 1982* in Section 18(1) – and the *Official Languages Act, 1988* in Section 5 state that records and journals of the Parliament must be printed and

[185] *Blaikie* v. *Quebec (Attorney General)* (No 2) [1981] 1 S.C.R. 312.
[186] *An Act to re-enact legislative instruments enacted in only one official language*, Bill S-41, Statutes of Canada 2002, c.20; hereinafter short title: the *Legislative Instruments Re-enactment Act* is used.
[187] For more details on the Constitution of Canada and its language, see this thesis, subsection 4.2.1.; and on subsequent drafting of French version of some portions of the Constitution, see this thesis, subsection 6.2.1.

published in English and French. Since 1976 full English and French versions of records (which include Acts and bills of the houses) and journals (i.e., the *Minutes of Proceedings* and *Journals* as such which include the official minutes of the votes and proceedings of the House) are simultaneously printed and published in two columns format (Hurtubise-Loranger 2006: 4).

Regarding oral communication during debates and proceedings in the Parliament, the right to use either English or French in the Parliament is guaranteed in two constitutional acts (i.e., in Section 133 of the *Constitution Act, 1867* and in Section 17(1) of the *Constitution Act, 1982*). However, simultaneous interpretation of debates has been provided barely since 1959.[188] Before, when a parliamentarian spoke French and interpretation was not provided, as a result of the fact that majority of members of the Parliament was English speaking and not all members were bilingual, the House of Commons was emptying (Hurtubise-Loranger 2006: 3). In 1986, the Supreme Court of Canada analysed whether the right to use both official languages in Parliament includes the constitutional right to simultaneous interpretation, in other words, the right to understand and to be understood.[189] Nowadays the right to simultaneous interpretation in debates and other proceedings of Parliament is provided in the *Official Languages Act, 1988* (Section 4(2)) which has quasi-constitutional status. The *Act, 1988* recognises as well English and French as official languages of the Parliament (Section 4(1)). Moreover, the Act in Section 8 requires all documents which are made by or under the authority of a federal institution and tabled by the Canadian Government in the Parliament be prepared in both official languages.

Finally, in order to provide a complete description of Canadian bilingualism, the short overview on federal judicial bilingualism is given. Pursuant to Section 14 of the *Official Languages Act, 1988,* English and French are official languages of the federal courts and any person has the right to use either English or French in any pleading or process issuing from any federal court. This language right is in accordance with Section 133 of the *Constitution Act, 1867*. In the following provisions (Section 15-19), the *Official Languages Act, 1988* regulates in detail how the right to use English and French in courts is guaranteed; e.g., Section 15 provides the right for simultaneous interpretation.

[188] The system of simultaneous interpretation was introduced in the motion of 11 August 1958, *Journals of the House of Commons*, 70 (11 August 1958), p. 402 (Hurtubise-Loranger 2006: 2-3).
[189] *MacDonald* v. *City of Montreal*, 1986, 1 S.C.R. 460. In this case, the Supreme Court followed conservative interpretation of language rights and was reluctant to expand rights provided in Section 133. However, in the subsequent cases (e.g. *Ford* v. *Quebec (Attorney General)*, 1988 2 S.C.R. 712; *R* v. *Beaulac*, 1999 1 S.C.R. 768), the Court adopted more liberal approach to language rights (Hurtubise-Loranger 2006:3).

Moreover, Section 20 requires that any final decision, order or judgment, issued by any federal court, in proceeding conducted in English and French or decision, order or judgment that determines a question of law of general public interest or importance must be available simultaneously in both official languages.[190] If fulfilling this requirement causes delay and in the case of other decisions, orders and judgments, they can be issued in one official language and subsequently in the other official language. Then both versions are effective from the time when the first version became effective. Courts usually indicate which version is a translation and which is an original. Only exceptionally - usually in the judgments related to language rights in Quebec or other controversial matters - courts do not indicate the language of drafting and the language of translation, (Scassa 1994: 170-175). It should be noted that unlike legislative instruments whose unilingual enactment results in their invalidity, judicial decisions, orders or judgments made or issued in only one official language remain valid (Section 20(4)).

To sum up, a requirement of bilingual drafting and the principle of equal authenticity of both language versions – two main elements of legislative and legal bilingualism - are provided in the Constitution of Canada (i.e., in Section 133 of the *Constitution Act, 1867* and in *Constitution Act, 1982*) and in the quasi-constitutional *Official Languages Act, 1988*. Subsequent parts of the thesis examine in detail how English and French languages are used throughout legal drafting and legislative process in Canada at federal and to less extent at provincial level. While bilingual law is drafted, it should be taken into consideration that both language versions of a legal instrument are to be equally authentic. This rule is expressed in the principle of equal authenticity which is the basis of Canadian legal bilingualism and EU legal multilingualism. In order better to examine whether this principle is understood in the same way in the European Union and Canada, the meaning of the 'equal authenticity' in Canada is explained separately in the following paragraph of this subsection.[191]

[190] Until 1970 judicial decisions were reported only in the language, a decision has been drafted in and no translation was provided. In 1969 the first *Official Languages Act* required decisions of "any judicial or quasi-judicial body established by or pursuant to an Act of the Parliament of Canada" be published in both official languages (Section 5). Moreover, judgments of the Supreme Court - as those which "determine a question of law of general public interest or importance" - had to be published in the two languages pursuant to Section 5 of the *Official Language Act*, *1969*. Since 1970 two language versions have been published side by side, but the original and translated version have not been designated.

[191] For more details on the language regime in Canada at the federal level see *int. al.* Domenichelli 1999.

§ 2. The equal authenticity rule in the federal legislation and in the case law of Canadian courts

In Canada, like in the European Union, legal bilingualism at the federal level is based on the principle of equal authenticity known in Canadian literature and jurisdiction as the equal authenticity rule (Côté 2004: 1069, Sullivan 1997: 91) or the rule of equal authority (Hogg 1982: 109). Since the principle has been explained in the first section of the chapter (subsection 1.1.2), this subsection focuses only on Canadian regulation and jurisdiction referring to this rule.

In the previous paragraph of the present subsection, the focus was on the requirement to draft, enact and publish laws at the federal level in English and French. According to Bastarache (2001) "[t]he requirement in Canada that legislation be enacted in both English and French has important implications. It means that both language versions of a bilingual statute are original, official and authoritative expressions of the law." This implication forms the equal authenticity rule.

This rule is directly expressed in Section 18 of the *Canadian Charter of Rights and Freedoms* (*Constitution Act, 1982*) which provides that "[t]he statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative" (emphasis added). The rule has been confirmed in the *Official Languages Act, 1988*, in Section 13, which states that "[a]ny journal, record, Act of Parliament, instrument, document, rule, order, regulation, treaty, convention, agreement, notice, advertisement or other matter referred to in this Part that is made, enacted, printed, published or tabled in both official languages shall be made, enacted, printed, published or tabled simultaneously in both languages, and both language versions are equally authoritative" (emphasis added).[192]

For the first time, however, the equal authenticity rule has been formulated in 1891 by the Supreme Court of Canada in case *C.P.R. v Robinson*[193] and then consistently confirmed by the Canadian courts. In *C.P.R. v Robinson* case, the Court stated that in the case of ambiguity of official language versions "one must be interpreted by the other". According to the Court, it is immaterial whether the article was first written in French or in English because

[192] The first *Official Languages Act* of 1969 (RSC 1970, c 0-2) also provided the principle of equal authenticity, since in Section 8(1) states that in construing an enactment, both its versions in the official languages, i.e., in English and French, are equally authentic.
[193] *C.P.R. v Robinson* (1891), 19 S.C.R. 292.

both versions are equally authoritative and therefore both have to be read to determine the intent of the legislation. Hence, due to the equal authenticity rule even, if one version is known to be just a translation of the other, the two versions have to be given the same concern during interpretation (Côté 2004: 1067). It results from the theory of original texts[194] which provides that regardless how both versions of the legal act were prepared, none of them should be considered as a translation or copy (Sullivan 2002: 74-75).[195]
The Supreme Court of Canada *C.P.R. v Robinson* noted also that:

> The English version cannot be read out of the law. It was submitted to the legislature, enacted and sanctioned simultaneously with the French one, and is law just as much as the French one is.[196]

According to Côté (2004: 1067-1068) both language versions of the legislation form together one bilingual and authoritative text of the law, since they both constitute authentic expressions of the law. Consequently, in case of discrepancies between language versions of the interpreted legal act, none of them should be preferred and prevailed.[197] If the two versions are in conflict, the court should find the meaning of the provision that is shared by both versions of the legal act. This rule is called the shared or common meaning rule[198] and is constantly affirmed in the case law (Côté 2004: 1070-1071, Sullivan 2002: 80).[199] The shared meaning principle is the basic rule and the first step in the interpretation of bilingual law in Canada. However, it is just a guide for interpretation, not the absolute rule.[200] The Federal Court of Appeal in case *Flota Cubana de Pesca v. Canada*, 1988[201] stated that the shared meaning rule is applied because "the law is presumed to say the same thing in both languages,

---

[194] On the theory of original texts, see subsection 1.1.2. and Šarčević 2000a: 20, 64.
[195] *Cf. Medovarski v. Canada (Minister of Citizenship & Immigration;* [2004] FCA 85) where the Federal Court of Appeal, in Section 79 refers to the statement of Sullivan.
[196] *Cf.* Section 79 of the judgment of the Federal Court of Appeal in *Medovarski v. Canada (Minister of Citizenship & Immigration*; [2004] FCA 85) where it has been stated that "[…] since both versions of the legislation are equally authoritative, we are faced with two versions of the same law […]".
[197] See paragraph 18 of the judgment in case *Flota Cubana de Pesca (Cuban Fishing Fleet)* v. *Canada (Minister of Citizenship & Immigration)* ([1998] 2 F.C. 303, 2 F.C. 303, [1997] F.C.J. No. 1713), where the Federal Court of Appeal stated that: "[t]his principle [principle of equal authenticity] implies that neither version of a bilingual statute is paramount, and one language is not to be given priority over the other". See also paragraph 79 of *Medovarski* v. *Canada* [2004] FCA 85. The Court in the both judgments referred to Sullivan (respectively 1994: 218 and 2002: 74-75).
[198] Côté (1999: 412) refers to that rule as *la recherche du sens commun*. The expression 'shared meaning' can refer to a literal shared meaning or to a notional shared meaning.
[199] For instance, see *Slaight Communications Inc.* v. *Davidson*, [1989] 1 S.C.R. 1038 (S.C.C.), p. 1071; *Dean* v. *Beothuk Data Systems Ltd.* [1998] 1 F.C. 433, par. 29; *Medovarski* v. *Canada* [2004] FCA 85, par. 77.
[200] *Cf. R.* v. *Cie immobilière BCN* [1979] 1 S.C.R. 865; *Doré c. Verdun (Municipalité)* [1997] 2 S.C.R. 862 (S.C.C.).
[201] *Flota Cubana de Pesca* v. *Canada* ([1998] 2 F.C. 303, 2 F.C. 303, [1997] F.C.J. No. 1713).

if a common meaning can be found which reconciles both versions, this meaning must prevail, unless it leads to absurd or unacceptable results" (see Sullivan 2002: 80). When the rule is applied, it should be, especially, taken into account whether the shared meaning is compatible with the intention of the legislature (Côté 2000: 328).

The examination of the equal authenticity rule and interpretation of bilingual law in Canada can be summarised by the statement of the Supreme Court of Canada in the judgment in *Schreiber v. Canada* (2002) case:

> Where the meaning of the words in the two official versions differs, the task is to find a meaning common to both versions that is consistent with the context of the legislation and the intent of Parliament[202]

As the above short analysis demonstrates the equal authenticity rule is understood in Canadian case law and by Canadian legal scholars likewise the principle of the equal authenticity in EU context. The comparative explanation of this issue is provided in the conclusion to the first chapter.

[202] *Schreiber v. Canada (Attorney General)* [2002] SCC 62. *Cf*. also *R. c. Lamy* [2002] SCC 25; *R. v. Mac* [2002] SCC 24; *R. v. Proulx* [2000] 4 W.W.R. 21, 2000 SCC 5.

Subsection 1.3.2.
Diversity of language regimes at provincial and territorial level

§ 1. Quebec – French as the only official language of the province with legislative and judicial bilingualism

The language rights and language regime in Quebec is a very complex issue demanding thorough analysis. Since it has been already investigated from different perspectives by many authors,[203] this paragraph – after a short historical overview - focuses mainly on the currently applicable legal regulations on an official language, on languages of legislation and, to less extent, on a language regime in provincial courts.[204]

At the time when Quebec became the province of the Canadian Confederation in 1867, pursuant to the *Quebec Act, 1774*[205] the preservation of the French language and French culture in the region was guaranteed. Moreover, federal constitutional legislation, i.e., Section 133 of *British North America Act, 1867* - renamed as *the Constitution Act, 1867* (hereinafter the latter is used) - regulated language issues in Quebec in the same way as a language use at federal level is regulated.[206] Accordingly, legislative and judicial bilingualism was provided in Quebec. To be precise, "[e]ither the English or the French Language may be used by any Person" not only in the debates of the Parliament of Canada, but also in debates of the Houses of the Legislature of Quebec. Moreover, Section 133 required both languages be used in the

[203] *Cf*. Bélanger 1998, Bélanger 1999, Bourhis 1984, Chevrier 1997 and McWhinney 1981: 413-427.

[204] For further information on language regime in Quebec, see Bélanger 1998 and Bélanger 1999; as well as the following websites: website of Office québécois de la langue française, *Repères et jalons historiques* http://www.olf.gouv.qc.ca/charte/reperes/reperes.html,; *Languages in Quebec* http://www.cric.ca/en_html/guide/language/quebec.html; *Language and Language Laws in Quebec*, http://www.thecanadianencyclopedia.com; all websites were last visited in August 2007.

[205] 14 Geo. III c. 83 (UK).

[206] Section 133 of the Constitution Act, 1867 provides that "[e]ither the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec. The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages"; emphasis added.

Records and Journals of the Houses.[207] In the same Section, the *Constitution Act, 1867* provided that the Acts of the Legislature of Quebec shall be printed and published in English and French. Finally, the right to use either English or French language by any person "in any Pleading or Process […] in or from all or any of the Courts of Quebec" was guaranteed.[208]

Besides constitutional regulation, there are also provincial provisions on language regime in Quebec. Two acts adopted by the National Assembly of Quebec should be mentioned at this point: the *Official Language Act*, *1974* (*Loi sur la langue officielle*; hereinafter Bill 22)[209] and the *Charter of the French Language*, *1977* (*La charte de la langue française*; hereinafter Bill 101)[210]. The objective of Bill 22 was the promotion of the French language in Quebec and the protection of minority rights. It declared that French is the official language of Quebec (Section 1). This statement of Bill 22 providing for official unilingualism was confirmed and emphasised in Bill 101 which also stated that the French language is the sole official language of the province. Exceptionally other languages could be authorised upon permission or due to particular circumstances (Vaz 2004: 631).

Both - Bill 22 and Bill 101 - regulated also the issue of language(s) of legislation. The former gave the priority to French official texts. Section 7 required "official texts and documents emanating from the public administration" be drafted in French. Although those French official texts and documents might be accompanied with an English version, only French one was authentic (section 8). When Bill 101 was enacted, sections 7 to 13 provided that the laws of the province should be enacted in French. However, at the end of legislative process, it also was possible to translate bills into English and this English translation was made in practice after enactment of Bill 101 (Bélanger 1998). English translations of bills were not authenticated and only French versions of laws were official according to Bill 101. The statement of Bill 101 that legislative acts of Quebec had to be prepared only in French made French a predominant language of legislature and was in contradiction with afore-mentioned Section 133 of *Constitution Act, 1867* that required the Acts of the Legislature of Quebec be printed and published not only in French but also in English (see Webber

[207] On the explanation what Journals and Records of the National Assembly of Quebec include, see Leckey and Braën 2004: 53-56.
[208] On the development of language law in Quebec since 1867 until 1974, see *inter alia* Riley 1976: 93-96.
[209] L.Q. 1974, chap. 6. Bill 22 was to solve the problems resulted from Bill 63 passed in 1969 (*Loi pour promouvoir la langue française au Québec*; *An Act to promote the French Language in Quebec*; R.S.Q.) that was the first law promoting the French language in Quebec; for more details, see *inter alia* Bélanger 1998. Bill 22 repealed (see Section 112) and replaced Bill 63. Just after the enactment of Bill 22, many analysis of this Act were published, especially because of doubtful constitutionality of Bill 22; see *inter alia* Devine 1977: 114-125, McWhinney 1975: 493-498 and Rosmarin 1975: 255-269; for instance Devine (1977: 116-118) analysed whether Section 133 is a part of Constitution of Quebec and can be amended by provincial legislature.
[210] L.R.Q. chap. C-11 (1977, chap. 5); S.Q. 1977, c. 5; R.S.Q., c. C-11.

1994:100). In 1979, this contradiction was stated by the Supreme Court of Canada in *Blaikie Case*[211] (hereinafter *Blaikie Case* No 1, 1979). The Court ruled that the enactment and passing of laws in the parliament of Quebec had to be done in both French and English. Consequently, Sections 7 to 13 of Bill 101 contravened Section 133 of *Constitution Act, 1867*. Due to *Blaikie Case* No 1, 1979, the government of Quebec re-enacted in French and English those acts that had been enacted only in French after Bill 101 had come into force.[212] However, Sections 7 to 13 of Bill 101 have not been changed or repealed at that time. The Supreme Court of Canada in *Blaikie Case*[213] issued in 1981 (hereinafter *Blaikie Case* No 2, 1981) decided that Section 133 should be also applied to regulations of the government. Again in 1992, the Supreme Court of Canada in *Sinclair* v. *Quebec*[214] interpreted Section 133 and stated that the requirement to print and publish in English and French should be also applied to other instruments of a legislative nature (*textes de nature législative*) which are the part of a legislative process.

Bill 101 was amended in accordance with above-mentioned rulings of the Supreme Court of Canada in 1993 when the *Act to amend the Charter of the French language*[215] (Bill 86) was adopted. Nowadays, Bill 101 still recognises only French as the language of the legislature and the courts in Quebec (section 7). However, at the same time the Bill also provides legislative bilingualism, since it requires legislative bills "be printed, published, passed and assented to in French and in English", and the statutes " be printed and published in both languages" (Section 7(1)). Moreover, pursuant to Section 7(2) " the regulations and other similar acts to which section 133 of the *Constitution Act, 1867* applies shall be made, passed or issued, and printed and published in French and in English". Both language versions of the afore-mentioned texts are equally authoritative (Section 7(3); the principle of equal authenticity). However, if "a regulation or other similar act to which section 133 of the *Constitution Act, 1867* **does not** apply" (emphasis added) has French and English versions and there is discrepancy between them, then the French version prevails (Section 8).

In Quebec, legislation is usually drafted in French and then translated into English (International Cooperation Group 2002: 60). Bills and regulations for which the Minister of

[211] Blaikie v. Quebec (Attorney General) (No 1), [1979] 2 S.C.R. 1016.
[212] See *An Act respecting a judgment rendered in the Supreme Court of Canada on 13 December 1979 on the language of the legislature and the courts in Québec*, 1979 (Que.), c. 61. For more details on subsequent drafting of English versions and on re-enactment of English and French versions of afore-mentioned acts, see this thesis, subsection 6.2.2.
[213] Blaikie v. Quebec (Attorney General) (No 2), [1981] 1 S.C.R. 312
[214] Sinclair v. Quebec (Attorney General) [1992] 1 S.C.R. 579; for further details on Sinclair case, see Leckey and Braën 2004: 68-71.
[215] L.Q. 1993, chap. 40.

Justice is responsible are drafted by the Ministerial Research and Legislation Directorate (*Direction de la recherche et de la législation ministérielle*) (*ibidem* 1). Bills and regulations that are prepared by other than the Department of Justice branches of the government are revised by the Government Legislation Directorate of the Department of Justice (*Direction de la législation gouvernementale (Ministère de la Justice)*) (*ibidem* 1-2). Finally, the Legislation Committee of the Department of Executive Council (*Comité de législation du Ministère du Conseil executive*) conducts control of quality of bilingual legislation (*ibidem* 50).

As far as judicial bilingualism is concerned, Section 133 of the *Constitution Act, 1867* states that English or French can be used by any person in any pleading or process in any court of Quebec. This provision is also repeated in Bill 101 in Subsection 7(4). However, supremacy is given to French pursuant to Section 7 of Bill 101 which states that French is the language of the courts in Quebec. As regards a language of a judgment, at the request of one of a party, every judgment passed by a court and every decision passed by quasi-judicial body should be translated into French or English (section 9).[216]

To sum up, since 1974 pursuant to Bill 22 and nowadays due to Bill 101, French is the official language of the province. Consequently, Quebec is officially unilingual. However, if the afore-mentioned federal constitutional statements on language legislation and justice in Quebec (Section 133 of the *Constitution Act, 1867*), the decisions of the Supreme Court of Canada and laws enacted in Quebec as a response to these decisions are taken into consideration, legislative and judicial bilingualism in Quebec has to be admitted. Quebec is institutionally bilingual at the constitutional and federal levels but at the level of provincial institutions, official recognition is given only to French.

[216] For further details on the judicial bilingualism of Quebec, see Gruben 2004: 219-224.

§ 2. New Brunswick – the only officially bilingual province

Nowadays, New Brunswick - a Canadian province since 1867 – is the only officially bilingual province in Canada (Gruben 2004: 212). Official bilingualism of New Brunswick has been established in the first *Official Languages of New Brunswick Act*, *1969*[217] and then confirmed and regulated at federal and constitutional level in the *Canadian Charter of Rights and Freedoms*,[218] which is a part of the *Constitution Act, 1982* (hereinafter the *Constitution Act, 1982*). Currently, language rights and regime in New Brunswick is regulated - at federal and constitutional level - in the *Constitution Act, 1982* and – at provincial level – mainly in the *Official Languages Act, 2002* (hereinafter *OLA*)[219] adopted by the New Brunswick Legislature in 2002. This new *Official Languages Act* was enacted in order to reflect the decision of the New Brunswick Court of Appeal in the case *Moncton (City)* v. *Charlebois* (hereinafter the *Charlebois* decision).[220] The *OLA, 2002* respects, implements and supplements the rights conferred by the *Constitution Act, 1982* (Leckey and Braën 2004: 94, see also the preamble of the *OLA*).

As mentioned, official bilingualism of New Brunswick is provided in the constitutional document (Section 16(2) of the *Constitution Act, 1982*), to which the *Official Languages Act, 2002* refers as well (see preamble and the definition of the term 'official languages' in Section 1). English and French – two official languages of New Brunswick - are also recognised as official languages of province's legislation (Section 9 of the OLA), legislature (Section 6 of the OLA) and the courts (Section 16 of the OLA). Both, the *Constitution Act, 1982* and the *Official Languages Act, 2002*, provide legislative and judicial bilingualism in the province. English and French – as official languages of legislature – can be used in debates and proceedings of the Legislative Assembly (Section 17(2) of the *Constitution Act, 1982* and Section 6 of the OLA). Therefore, the *Official Languages Act, 2002* requires simultaneous interpretation be available during debates and proceedings

---

[217] S.N.B. 1969, c.14, R.S.N.B. 1973, c.O-1.

[218] For more details on how language issues are regulated in the *Charter*, see subsection 1.3.1, paragraph 1.

[219] S.N.B. 2002, c. O-0.5.

[220] In 2001 the New Brunswick Court of Appeal in the *Charlbois* decision (2001, 242 N.B.R. (2d) 259, 2001 NBCA 117) stated that, in New Brunswick, cities and municipalities, which have French or English language minorities, should adopt, print and publish their municipal by-laws in both official languages where percentages warrant it. The percentage of the population used as a benchmark has been determined by the *Official Languages Act, 2002*. Subsection 35(1) of the *OLA* states that a municipality whose official language minority population represents at least 20% of its total population is required to adopt and publish its by-laws in both official languages. A city is required to adopt and publish its by-laws in both official languages irrespective of this percentage (Subsection 35(2)); for further details, see Leckey and Braën 2004: 87-88, 95-96.

(Section 7 of the OLA). Legislative bilingualism is provided in Section 18(2) of the *Constitution Act, 1982* and in the *Official languages Act, 2002*. The latter precisely describes that bills have to be bilingual at all stages of drafting and legislative process. First, bills should be "simultaneously introduced in both official languages before the Legislative Assembly" and then "should be simultaneously adopted and assented to in both official languages" (Section 11 of the OLA). Moreover, the *Official Languages Act* requires the Acts of the Legislature (Section 12 of the OLA), rules, orders, Orders-in-Council and proclamations that should be published in *The Royal Gazette* (Section 13), as well as notices, advertisements and other announcements of an official nature (Sections 14 and 15) be printed and published in English and French. The *Constitution Act, 1982* (in Section 18(2)) and the *Official Languages Act, 2002* (Section 8) requires also records, journals and reports of the Legislative Assembly of New Brunswick be printed and published in English and French. In statute books, the two language versions are published in parallel columns (Leckey and Braën 2004: 59). Last but not least, the principle of equal authenticity of English and French versions of legislation is provided at constitutional level (Section 18(2) of the *Constitution Act, 1982*) and at provincial one (Sections 8 and 10 of the OLA).

Judicial bilingualism - in particular, the right to use either English or French in pleadings or proceedings before the courts of New Brunswick - is also provided by the provincial *Official Languages Act, 2002* (Section 17) and in the federal *Constitution Act, 1982* (Section 19(2)). The requirement to publish final decision, order or judgment of any court in English and French is provided in two circumstances: firstly, when it deals with a question of law of interest or importance to the public, and secondly, when the proceedings were conducted in whole or part in both official languages (section 24(1)). Exceptionally, a final decision, order or judgment may be issued in one official language when publishing in both official languages can result in a delay, injustice or hardship to a party. Subsequently, the decision, order or judgment should be published in the other language version as soon as possible (Section 24(2)). In any case, issuance of judgment in only one language does not invalidate the judgment (Section 26).[221]

Besides official bilingualism, the characteristic and unique feature of New Brunswick's language regime is the official recognition of the English linguistic community and the French linguistic community and the affirmation of the equality of status and the equal rights and privileges of these two communities (article 1 of). Both communities are

[221] For further details on the judicial bilingualism in New Brunswick, see Gruben 2004: 213-219.

recognised at provincial level in an *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick, 1981*[222] and at federal and constitutional level in Section 16(1) of the *Constitution Act, 1982* added pursuant to the amendment in 1993.[223] [224]

It is not, however, either official bilingualism of New Brunswick or official recognition of language minorities, what makes New Brunswick of special interest for this thesis, but the way how bilingual legislation is drafted. To be precise, in New Brunswick, before bills or drafts of other legislative instruments (e.g., regulations) are introduced before the Legislative Assembly, their English and French versions are simultaneously prepared by Anglophone and Francophone legislative drafters who work in pairs (International Cooperation Group 2002: 55). Drafters draft bills and other instruments from very detailed instructions which are received in the form of a Memorandum to Cabinet (*ibidem* 42). They follow a *French Drafting Manual* and a *Co-drafting Manual* (*ibidem* 87). The way of multilingual legal drafting where two language versions are drafted by two cooperating legislative drafters is called 'co-drafting' and is of main concern for this thesis (see chapter 3 and 5).

§ 3. Ontario – from monolingualism to legislative bilingualism

Ontario has been a Canadian province since the Dominion of Canada was established by the *British North America Act* in 1867 (renamed as the *Constitution Act, 1867*). At this time, the provincial law of Ontario was enacted only in English. The requirement to legislate bilingually in Ontario has been provided in the *French Language Service Act*, *1986*[225] and came into force on the 1 January 1991. The forerunner of this requirement was a pilot project to translate the most important Ontario statutes into French. The project was announced by the Lieutenant Governor of Ontario during the Throne Speech in 1978 (Revell 2004: 1091).[226] One year later, due to the amendment of the *Evidence Act, 1970*,[227] these translations could be

[222] S.N.B. 1981, c. O-1.1
[223] The *Constitution Amendment, 1993 (New Brunswick)*, SI/93-54, *Can. Gaz. Part II*, April 7, 1993, effective March 12, 1993.
[224] For further details on official and legal bilingualism and language rights in New Brunswick, see Bastarache 2004; consult as well the website of the Office of the Commissioner of Official Languages for New Brunswick at http://www.languesofficielles.nb.ca/, last visited in August 2007.
[225] S.O., ch. 45, par. 4 (1986) (Ont.); the consolidated version in R.S.O. 1990, c. F.32.
[226] The decision to translate the most important acts was influenced by the events that happened in Quebec where in late 60s and through 70s separatist movement was very strong. The translation of law was seen by the Legislative Assembly of Ontario "in a wider context of securing *a harmonious and unified nation*" (Revell 2004: 1092). For more details on the reasons of this decision see *inter alia* Revell 1998: 32-3, Le Bouthillier 1992, Wood 1990: 139-141.
[227] R.S.O., ch. 151, § 26(2) (1970) (Ont.), as amended by S.O. 1979, ch. 48, § 1 (Ont.).

used in courts. However, in the case of discrepancy between the English original version and the French translated version of a legal act, the English version prevailed. This translation project resulted in French translations of many statutes.[228] The statutes, which have been chosen for translation into French, were considered as sufficiently important to French-speaking minorities in Ontario (Revell 2004: 1091-1092). In the framework of this project, because of the pre-existence of English versions of statutes, a model of traditional translation was used, i.e., firstly, an act was drafted in English and the English version was enacted into law, then the act was translated into French. As far as legal multilingual legal drafting methods are concerned, this model can be described as subsequent drafting of the French version of a statute, which has been already enacted and authenticated in English. Subsequent drafting is analysed in the following parts of this thesis (see subsections 3.2.3 and 6.2.).

As mentioned, legislative bilingualism in Ontario was provided in the *French Language Service Act, 1986* (hereinafter FLSA) which in Subsection 3(2) required all public bills, that had been introduced after the 1 January 1991, be introduced and enacted in English and French. Moreover, before the end of 1991, the public general statutes consolidated and re-enacted in the *Revised Statutes of Ontario, 1980* and those enacted in English - after the *Revised Statutes of Ontario, 1980* came into force - were to be translated into French and the French translations were to be enacted (Section 4). According to Revell (2004: 1093), around 12,000 pages were translated into French between 1986 and 1991, and then revised and consolidated together with English version. As a result of the enactment, the French version of the above-mentioned statutes became official law. If a legislative instrument (statute, regulation) is enacted in two languages, then both language versions are considered equally authentic. It means that neither English version of a bill (or of a regulation) nor French one prevails for interpretation purposes (see Revell 2004: 1093; Wood 1996: 67-68; Leckey and Braën 2004: 96-98).

Afore-mentioned Subsection 3(2) requires only bills – not acts – be introduced and enacted in English and French. Accordingly, this provision does not apply to regulations.[229] Regulations selected by the Attorney General are, however, translated into French and then recommended for adoption (Subsection 4(3)). Hence, although, French version of some

[228] For instance, the Highway Traffic Act (*Code de la Route* published in French in December 1990), R.S.O., ch. 198 (1980) (Ont.), the Education Act (*Loi sur l'education* published in French in December 1991) R.S.O., ch. 129 (1980) (Ont.), the Workers Compensation Act (*Lois sur les accidents du travail* published in French in March 1987),, R.S.O., ch. 539 (1980); French translations of mentioned acts were published by the Ministry of the Attorney General for Ontario (Revell 2004: 1092).

[229] See decision in case *Attorney General of Quebec* v. *Blaikie*, No. 1, 1979 (2 SCR 1016, at 1027) where the Supreme Court of Canada stated that the term 'acts' includes regulations.

regulations - due to its adoption - can become as authentic as English one, drafting and enactment of bilingual form of bills differ from drafting and adoption of two language versions of regulations. English and French versions of a bill have to be prepared before a bill is introduced to the Legislative Assembly, whereas French translation of English version of a regulation can be prepared even after the adoption of this regulation. In Ontario, French version of bills is also prepared by means of translation. However, both English and French versions of a bill have to be ready before the bill is introduced to the Legislative Assembly. Therefore, throughout a drafting process, translators, who draft the French version, are able to communicate, discuss and consult their work with drafters of the English version. As a result, errors and unintended vagueness of English version noticed by translators can be corrected and ambiguities of original English version can be explained and avoided in French translation. This cross-fertilisation (Revell 2004: 1096) or crosspollination (Wood 1996: 69) between the two language versions improves the quality of both versions.

Moreover, it should be taken into consideration that the requirement to draft in English and French covers not all but only public bills, which are enacted by the legislature on its own initiative and may regulate any issue within the constitutional competence of the legislature. Private bills, which are enacted upon the application of an interested party who has to comply with Standing Orders of the Legislature, do not have to be enacted in English and French.[230] Consequently, legislative bilingualism in Ontario is limited only to public bill and to selected regulations.

The judicial bilingualism in Ontario is provided by the *Courts of Justice Act*, *1984*,[231] which states that English and French are official languages of the courts of Ontario (section 125). However, the use of English in the courts is described as ordinary, whereas the use of French has exceptional character (see subsection 125 (2ab)). As regards language of judgment, subsection 126(1) barely lays down that the reasons for decision may be written in English and French. There is no requirement to translate decisions, judgments or orders.[232]

Although English and French are recognised as official languages of the courts of Ontario and legislative bilingualism is provided in the province, Ontario is not officially

[230] For more details on the two types of bills in legislation of Ontario, see Leckey and Braën 2004: 97, Revell 1985 and Wood 1996: 68.
[231] S.O. 1984, c.11. The Act was significantly amended in 1990 (R.S.O. 1990, c. C.43).
[232] For further details on the judicial bilingualism in Ontario, see Gruben 2004: 224-231.

bilingual, since there is no statement in any act of Ontario's law that recognises English and French as official languages of the province.[233]

Despite of the limitation of legislative bilingualism in Ontario, some interesting research can be conducted within the province, especially as regards subsequent drafting (see chapter 6, especially, subsection 6.2.3.).

§ 4. Manitoba – from legally declared legislative bilingualism to bilingualism applied in practice

When Manitoba entered the Confederation in 1870, the French speaking community was slightly bigger (approximately 55 percent of the Manitoba's population) than English one (45 percent of the population) (Banks 1986: 467). In order to protect rights of both language communities, Section 23 of the *Manitoba Act, 1870*[234] - which is a part of the Constitution of Canada - guaranteed parliamentary, legislative and judicial bilingualism.[235] Provisions of Section 23 are almost identical to those provided in Section 133 of the *Constitution Act, 1867*.[236] Therefore, judicial interpretation of Section 133 is a model for interpreting provisions of Section 23 of the *Manitoba Act, 1870* (Leckey and Braën 2004: 50).[237] In a nutshell, as regards Manitoban legislative bilingualism, Section 23 of the *Manitoba Act, 1870* requires the Acts of Legislature be printed and published in English and French and both those languages be used in the respective records and journals of the Houses of the Legislature

In the 1880s, the proportion of language communities changed in favour of Anglophone community since immigrants who arrived to Manitoba in the 1870s and 1880s were mainly English speaking (Banks 1986: 468). Consequently, in mid-1880s, Francophone community become minority (*ibidem*). As a result, in 1890, an *Act to Provide that the English Language shall be the Official Language of the Province of Manitoba*[238] (hereinafter *The Official Language Act, 1890*; the singular number of the term 'language' should be noted)

---

[233] It should be, however, noted that the bilingual character of Ottawa – the capital of Canada – is officially recognised by *the City of Ottawa Act, 1999* (S.O. 1999, c. 14, Sch. E) as amended on 9 March 2005 (2005, c. 3).
[234] 33 Victoria, chap. 3, 1870 (Canada); reprinted in R.S.C. 1970, App. II, 247.
[235] Section 23 of the *Manitoba Act, 1870* provides that: "Either the English or the French language may be used by any person in the debates of the Houses of the Legislature, and both those languages shall be used in the respective Records and Journals of those Houses; and either of those languages may be used by any person, or in any Pleading or Process, in or issuing from any Court of Canada established under the Constitution Act, 1867, or in or from all or any of the Courts of the Province. The Acts of the Legislature shall be printed and published in both those languages."
[236] For details on this similarity and its reasons, see Sellers 1986: 257.
[237] For details on Section 133 of the *Constitution Act*, see subsection 1.3.1 (especially paragraph 1) of this chapter.
[238] S.M. 1890, c. 14.

was enacted by the Manitoba Legislative Assembly.[239] The *Official Language Act, 1890* required the Acts of the Legislature of the province of Manitoba be printed and published only in English and provided that only the English language should "be used in the records and journals of the House of Assembly for the Province of Manitoba, and in any pleadings or process in or issuing from any court in the Province of Manitoba" (Article 1). Pursuant to the *Official Language Act, 1890*, Manitoba ceased to print and publish in French provincial legal acts, records and journals of the Manitoba Legislature.

Legal unilingualism provided in *the Official Language Act, 1890* is contrary to Section 23 of the *Manitoba Act, 1870* which is a portion of the Constitution of Canada.[240] Therefore, the constitutionality of the *Official Language Act, 1890* was questioned a few times by the Courts of Manitoba.[241] The Manitoba Court already in 1892 in the case *Pellant v. Hebert*[242] ruled that the *Official Language Act, 1890* is unconstitutional and then confirmed this ruling in 1909 in the case *Bertrand v. Dussault*[243] and in 1976 in the case *R. v. Forest* [244]. However, this judicial ruling was not followed by either Legislature or Government of Manitoba. The *Official Language Act, 1890* remained in force and provincial legislation was printed and published only in English. In 1979 the Supreme Court of Canada in the case Attorney General of Manitoba *v.* Forest (hereinafter Forest case)[245] stated unconstitutionality of the *Official Language Act, 1890*. Once the decision in Forest case was rendered, the Legislature of Manitoba enacted an *Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes*, *1980*[246] that repealed the *Official Language Act, 1890*.[247] Although the Supreme Court in the Forest case confirmed that Manitoban legislation should be printed and published in English and French, in 1980 majority of the Acts of Manitoba Legislature were enacted, printed and published only in English,[248] and in 1982 none of them was printed and

[239] For more details on the circumstances of preparing and enacting the *Official Language Act, 1890*, see Banks 1986: 466-479.
[240] *Manitoba Act, 1870* is referred to as a portion of the Constitution of Canada in Schedule to the *Constitution Act, 1982*.
[241] On the constitutional validity of the *Official Language Act, 1890*, see *inter alia* Banks 1986: 471-474.
[242] *Pellant v. Hebert*, 9 March 1892; reported in 1981, 12 *R.G.D.* 242.
[243] See *Bertrand v. Dussault*, 30 January 1909; reported in 1977, 77 D.L.R. (3d) 458-62.
[244] See *R. v. Forest*, 1976; reported in 1976, 74 D.L.R. (3d) 704 Man. Co. Ct. In *R v. Forest*, Judge Dureault stated that the provincial Legislature cannot amend Section 23 of *Manitoba Act*; for further details on *R v. Forest* case see *inter alia* Sellers 1986: 258-261.
[245] *Attorney General of Manitoba v. Forest*, 1979 (2 S.C.R. 1032).
[246] S.M. 1980, c.3.
[247] Since an *Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes*, *1980* provides the possibility of subsequent drafting of the second official language version of a legal act (after the enactment of the first official language version), the provisions of this Act on bilingual legislative drafting are explained in the chapter on subsequent drafting; see this thesis, subsection 6.2.3.
[248] In 1980, only 9 of 115 statutes enacted by the Legislature of Manitoba were printed and published in French.

published in French. It was only in 1982 when the Legislature of Manitoba started to enact, print and publish legislative acts in English and French.

However, the vast majority of Manitoba legal acts remained unilingual. In 1985, the Supreme Court of Canada in the case *Reference Re Manitoba Language Rights*[249] declared "the invalidity of 90 years' worth of unilingual statutes enacted by the Manitoba Legislative Assembly" (Jourdain 2002: 250, see also Jourdain, Guy 1995 and Newman 2004: 374). In the case *Reference Re Manitoba Language Rights*, the Court stated, firstly, that the requirement of Section 23 of the *Manitoba Act, 1870* to use both the English and French languages in the Acts, the Records and Journals of the Houses of the Legislature of Manitoba is mandatory. Therefore, the Court declared, secondly, that those statutes and regulations of the province of Manitoba that were not printed and published in both English and French languages are invalid, and consequently, have no legal force and effect. However, the Supreme Court decided that the invalid unilingual Acts are deemed temporarily valid for the minimum time needed to translate them, and then re-enact, print and publish in two languages.[250] The first legal act that re-enacted statutes of Manitoba in English and French was adopted in 1987.[251]

It should be underlined that the Court in the case *Reference Re Manitoba Language Rights*, 1985 required the simultaneous use of English and French throughout the process of enacting bills.[252] Nowadays, all statutes of the Legislative Assembly of Manitoba are simultaneously enacted, printed and published in English and in French. A statute enacted, printed and published only in one language is invalid. The two language versions are published in two parallel columns (Jourdain 1995, Leckey and Braën 2004: 59, 84). Moreover, regulations, orders-in-council[253] and rules of judicial Tribunals of Manitoba are enacted published and printed in English and French (see Jourdain 1995 and for more details see Jourdain 2002: 250-251).

As far as the use of languages in the provincial courts of Manitoba is concerned, pursuant to Section 23 of *Manitoba Act*, English and French can be used by any person in pleading and process and in issuing of the Manitoba courts. Rulings of the provincial courts

---

[249] *Reference Re Manitoba Language Rights*, 1985, 1 S.C.R. 721.

[250] After rendering the decision in the case *Reference Re Manitoba Language Rights*, 1985, *Manitoba Law Journal* published several papers which have analysed this decision; see, for instance, Gibson and Lercher 1986: 305-331, and Whitley 1986: 295-304; see also Banks 1986: 466-479 and Beaupré 1987.

[251] The *Re-enacted Statutes of Manitoba*, 1987 S.M. 1987-88, c. 9. For more details on subsequent drafting of French version of Manitoba laws, see this thesis, subsection 6.2.2

[252] On requirement to establish a system of simultaneous translation by Legislative Assembly, see Leckey and Braën 2004: 51, on question on validity of an act in the case of production of the act in one language only and then translation into another language, see *ibidem* 58-59.

[253] See the decision in the case *Reference Re Manitoba Language Rights, 1992*, 1 S.C.R. 212.

are usually drafted in English, then translated into French by the legal translation service of the Department of Justice or the general translation service of the Department of Culture, Heritage and Citizenship, and then simultaneously rendered in the two languages (Jourdain 1995).

To sum up, nowadays Manitoba applies legislative bilingualism in practice according to the rules provided when the province was created. For 90 years, those rules have not been respected and laws have been unconstitutionally enacted only in English. Thus, then legislation had to be translated into French and re-enacted. Accordingly, Manitoba presents an interesting example of subsequent drafting that is analysed in the further part of this thesis (see chapter 6).

§ 5. The Northwest Territories – hierarchy amongst official languages - legislative and judicial bilingualism and official multilingualism

The *North-West Territories Act* (*NTA), 1875*,[254] which created the territory, has not regulated its language regime. However, due to the amendment of 1877,[255] Section 110 - similar to Section 23 of the Manitoba Act and to Section 133 of the *Constitution Act, 1867*[256] - was included in the *NTA* and provided legal basis for the legislative and judicial bilingualism in the Territories.[257] However, Section 110 was repealed by Section 4 of the *Act respecting the Revised Statutes*, *1906*[258]. Nevertheless, provisions of this Section should be kept in mind, since they were applied to language regime of provinces and territories that have been curved out from the Northwest Territories, i.e., in Yukon where Section 110 were applied in 1898-1988 (see paragraph 6), in Alberta and Saskatchewan created in 1905, where Section 110 although formally applicable has never been applied in practice (see paragraph 7).

Legislative bilingualism and official multilingualism was established in the Northwest Territories in the *Official Languages Ordinance of the Northwest Territories, 1984*,[259] which was renamed as the *Official Languages Act* in 1988,[260] and then amended in 2003[261].

---

[254] S.C. 1875, c. 49.
[255] *Act to amend the North-West Territories Act, 1875*, S.C. 1877, c. 7; see Section 11 which provides that "Either the English or the French language may be used by any person in the debates of the said Council, and in the proceedings before the Courts, and both those languages shall be used in the records and journals of the said Council, and the ordinances of the said Council shall be printed in both those languages".
[256] On Section 23 of the *Manitoba Act*, see subsection 1.3.2 of this chapter, paragraph 4, and on Section 133 of the *Constitution Act*, see subsection 1.3.1 of this chapter.
[257] For further details, see *inter alia* Gruben 2004: 234 and Smyth 1996: 156.
[258] 1907 (Can.), c. 43.
[259] S.N.W.T. 1984 (2), c.2.
[260] See the *Revised Statutes of the Northwest Territories, 1988*; R.S.N.W.T. 1988, c. O-1.

The amended *Official Languages Act, 1988* gives the status of official language not only to English and French but also to several aboriginal languages (official multilingualism).[262] The official languages have equal status and equal rights as to their use in all institutions of the Legislative Assembly and Government of the Territories. However, in other respects, the status of aboriginal languages and English and French - though all of them are official languages - is not the same. Leckey and Braën (2004: 103) speak about "a hierarchy amongst the official languages". This hierarchy can be mainly observed as regards drafting and publishing of legal acts as well as issuing of judgment and judicial decisions. According to Section 10, Acts of the Legislature, records and journals of the Legislative Assembly shall be printed and published only in English and French and both language versions shall be equally authoritative (legislative bilingualism based on the principle of equal authenticity). Nevertheless, due to Section 7(2), the Commissioner in Executive Council can decide that after enactment of an act, it will be translated into and then printed and published in one or more official languages (other than English and French). However, aboriginal language versions of a legal act are not authentic versions; in other words, they have merely the status of translation. Aboriginal versions are prepared for information purposes and they do not become law.

In the Northwest Territories bills and regulations are prepared by drafters in the Legislative Counsel Office pursuant to a drafting style manual (International Cooperation Group 2002: 12, 87). Usually bills and regulations are firstly drafted in English and then translated into French (*ibidem* 60). Finally, drafts are revised by an editor (*ibidem* 12).

As far as language of judgments and court decisions is concerned, Subsection 10(1) of the *Official Languages Act, 1988* requires that final decisions, orders and judgments, which determine a question of law of general public interest or importance, shall be issued in both English and French. In addition, the same requirement is provided if the proceedings leading to the issue of the decision, order or judgment were conducted in whole or in part in both English and French (judicial bilingualism).[263]

---

[261] Amendments were introduced by an *Act to Amend the Official Languages Act*, No.3 (S.N.W.T. 2003, c. 23). For further details on the process of reviewing the *Official Languages Act*, see Leckey and Braën 2004: 103 and Gruben 2004: 233, footnote 408.

[262] Section 4 of the *Act* stated in 1988 "Chipewyan, Cree, Dogrib, English, French, Gwich'in, Inuktitut and Slavey are the Official Languages of the Territories". After amendments of 2003 (Section 5 of Act No.3, 2003) the status of official languages have been granted also to Inuinnaqtun, Inuvialuktun, North Slavey, South Slavey and Tlichô. Dogrib is no longer official language. For further details on official languages of Northwest Territories (before amendment), see Harnum (1995: 241-246) who mainly concentrates on importance of official recognition of aboriginal languages for cultural development.

[263] On the use of languages in courts of Northwest Territories, see Section 9 of the Northwest Territories' *Official Languages Act*. In brief, it can be stated that not only English and French but also other official

The provisions of Northwest Territories' *Official Languages Act, 1988* are similar to the statements of the Canada's *Official Languages Act* and the *Charter* (included in the *Constitution Act, 1982*). Therefore, they should have the same meaning and effect, with the necessary adaptations to the situation in the Territories, particularly, to the language regime applicable to the official aboriginal languages (Mathieu 1999).

§ 6. The Yukon Territory – legislative bilingualism recognised by law and applied in practice

In 1898, when Yukon was curved out from the Northwest Territories, laws applicable at that time in the Northwest Territories - due to Section 9 of the *Yukon Territory Act*, 1898[264] - were to be applied to the Yukon Territory until they were amended or repealed by competent legislative authority. Accordingly, Section 110 of the *Northwest Territories Act* – scrutinised in the previous paragraph (paragraph 5) - has been applicable in the Yukon until 1988 when the *Languages Act of the Yukon, 1988*[265] was enacted. The *Act* regulates the use of English and French in the Yukon. It aims also at extending the recognition of French in the territory, at recognising the significance of aboriginal languages, and at providing appropriate measures to preserve, develop, and enhance aboriginal languages in the Yukon (Subsections 1.2 and 1.3). Status of official territorial language has not been formally granted to any language, however "[t]he Yukon accepts that English and French are the official languages of Canada […]" and also accepts implementation of the equal status of English and French in the territory (Subsection 1.1 of the *Languages Act*).

Although official bilingualism is not established in the Yukon, the *Languages Act* provides both legislative and judicial bilingualism. The latter is guaranteed in Section 5 of the *Act*,[266] whereas Section 4 - which requires Acts of the Legislative Assembly and regulations be published in English and French and both language versions be equally authoritative – establishes legislative bilingualism based on principle of equal authenticity. The *Languages Act* requires also all acts and regulations made after December 31, 1990 to be published in English and French at the time of their coming into force, in order to be of force or effect

languages can be used in courts of the Northwest Territories. Detailed analysis of judicial bilingualism can be found in Gruben 2004: 234-237.

[264] The *Yukon Territory Act*, 1898, 61 Victoria, c. 6 (Canada).

[265] S.Y. 1988, c.13; Revised Statutes of The Yukon 2002, c. 133.

[266] Section 5 states: "Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by the Legislative Assembly" (S.Y. 1988, c.13, s.5).

(Subsection 13.1.). Moreover, English, French, or a Yukon aboriginal language[267] may be used in any debates and other proceedings of the Legislative Assembly (Subsection 3.1.).

Although Section 110 of NWTA should have been applied in the Yukon, not all laws were enacted and published in English and French. The *Languages Act* stated, however, that those acts and regulations, which had been published before December 31, 1990 only in one language, had to be published in English and French before January 1, 1994, in order to be of force or effect (Subsection 13.2.). As a result, the Legislative Assembly in the *Enactments Republication Act, 1993*[268] authorised the republication of the English text and the first-time publication of the French text of the Revised Statutes Act and other instruments (see Subsection 1(a) and 1(b)), and stated that the English and French texts to are equally authoritative (Subsection 1(c)).[269]

Nowadays, statutes and regulation of the Yukon are published in English and French. Usually, first the English version is prepared by the Anglophone drafters of the Yukon drafting office, which is headed by the Chief Legislative Counsel. Then the French text is prepared, often before the English text is completed, by the bilingual drafters who must be able to translate English into French (International Cooperation Group 2002: 20, 60).[270] [271]

[267] The *Languages Act* does not specify Yukon aboriginal languages. The following languages are indicated as Yukon native languages by the Yukon Native Language Centre (YNLC): Gwich'in, Hän, Inuit, Kaska, Northern Tutchone, Tagish, Tahltan, Tlingit, Southern Tutchone, Upper Tanana; for further details on Yukon native languages see YNLC website at http://www.yukoncollege.yk.ca/ynlc/languages/index.html, last consulted in August 2007.

[268] S.Y. 1993, c.20. Due to general statute revision in 2002 (Yukon O.I.C. 2003/233), all statutes of Yukon enacted before January 1, 2003 – hence also the *Enactments Republication Act*, 1993 – are deemed to have been repealed.

[269] For more details on subsequent drafting of French version of the afore-mentioned acts and regulations, see this thesis subsection 6.2.2.

[270] In 2002 there were three Anglophone and two bilingual drafters in the Yukon drafting office (*National Survey of Legislative Drafting Services* 2002: 15).

[271] For further details on language system and language rights in Yukon, see int. al.: Smyth 1996: 155-161, Leckey and Braën 2004: 104, Gruben 2004: 237-239, Vaz 2004: 648.

§ 7. Saskatchewan and Alberta – from formal legislative bilingualism to limited bilingualism and monolingualism

Since a language regime and its development in Saskatchewan and Alberta - the two provinces carved out of the Northwest Territories in 1905 - are very similar, they are portrayed together in the present paragraph. The common feature of language issue in the two provinces until 1988 is "a significant divergence between language law and language practice" (Aunger 1989: 203). Formally, both provinces were bilingual until 1988. Although the provisions on legislative and judicial bilingualism provided in Section 110[272] of the *Northwest Territories Act* (NWTA), 1875 has been applicable in the both provinces – since either the provincial legislature or the federal parliament has not repealed or amended them[273] - they have been never applied either in Saskatchewan or in Alberta.[274]

Although Section 110 of NWTA required provincial statutes, legislative records, assembly proceedings and provincial courts' decisions be printed and published in English and French, only English was used. As far as legislation of Saskatchewan is concerned, on 25th February, 1988, the Supreme Court of Canada stated in *Mercure* v. *Attorney General of Saskatchewan* decision[275] that since provisions of Section 110 of NWTA had not been changed or repealed, the Section continued to apply in Saskatchewan by virtue of Sections 14 and 16 of *Saskatchewan Act*. The Court explained also that the applicability of Section 110 in the province meant that laws of Saskatchewan had to be printed in English and French, and, that a party pleading in a court of Saskatchewan had the right to use either English or French. However, since provisions of Section 110 were not constitutionally entrenched - as Section 23 of the *Manitoba Act* was – Saskatchewan could unilaterally modify these provisions but - due to valid and applicable Section 110 - only by legislation in English and French. Since provisions of *Saskatchewan Act* and *Alberta Act* providing application of laws of Northwest Territories are identical, the application of Section 110 of NTWA in Saskatchewan declared in *Mercure* case can be referred by implication also to Alberta (Aunger 2001: 463, ft. 37). In

[272] The provisions of Section 110 of NTA have been analysed in § 5 of this subsection.

[273] See Section 16 of Saskatchewan Act (R.S.C. 1985, App. II, No.21) and Section 16 of the Alberta Act (R.S.C. 1985, App. II, No. 20) which provides that Acts and ordinances applicable at that time in the Northwest Territory are to be applied to the new provinces until they were amended or repealed. Thus, Section 110 of NTA was applicable in the both provinces. Although this Section was repealed in 1906, the Parliament in 1907 adopted a new Act that renewed the provision of Section 110 and made it applicable in Saskatchewan and Alberta (Leckey and Braën 2004: 107). For further details on the application of Section 110 of NTWA in Alberta, see Aunger 2004: 468-473.

[274] For further details, see Aunger 2001: 463.

[275] *Mercure* v. *Attorney General of Saskatchewan*, 1988 1 S.C.R. 234; hereinafter *Mercure* case. For further details on *Mercure* case, see Gruben 2004: 240-242, Henkel 1988-1989: 302-303, Leckey and Braën 2004: 108-110, McConnell 1989: 143-146.

Alberta the court analysed whether Section 110 of NWTA became a part of law of Alberta and was in force in the province in *R*. v. *Lefebvre* case (1982)[276] where the right to have a trial conducted in French language in a provincial court was examined. Then the Supreme Court in Canada in *Paquette* v. *R*. case (1985)[277] while analysing whether Section 110 of *North-West Territories Act* remained in force in Alberta with respect to procedure in criminal courts, stated that the Section is applicable in the province.

In spite of the decisions of the Supreme Court, the provinces did not establish in practice legislative bilingualism. On the contrary, Legislative Assemblies of both provinces repealed the provisions of Section 110, and in 1988 enacted new regulations on language regime and rights, i.e., Saskatchewan enacted Bill 2 - *An Act respecting the Use of the English and French Languages in Saskatchewan* (hereinafter Bill 2)[278] and Alberta - Bill 60 - the *Languages Act* (hereinafter Bill 60)[279]. First, both Bill 2 and Bill 60 validated all Acts, Ordinances and regulations enacted before the Bills came into force, notwithstanding that Acts, Ordinances and regulations had been enacted, printed and published only in English (Section 3 of Bill 2 and Section 2 of Bill 60). However, in accordance with *Mercure* case, in order to make Bill 2 and Bill 60 valid in Saskatchewan and Alberta respectively, both Bills had to be enacted, printed and published in English and French and both language versions were equally authoritative (Leckey and Braën 2004: 110).[280] Bill 60 of Alberta states that acts and regulations may be enacted, printed and published in English (Section 3), whereas due to Bill 2 of Saskatchewan, acts and regulations may be enacted, printed and published in English or in English and French (Section 4). Those of them, which are enacted, printed and published in English and French, are equally authoritative in the two languages (Section 10 of Bill 2). It is the Lieutenant Governor in Council who decides by regulation which bills should be introduced to the Assembly for enactment, printing and publishing in English and French (Sections 6 and 9). Moreover, Bill 2 provides that the Lieutenant Governor in Council can decide which acts (Section 5) and regulations (Section 8) - existing only in English when Bill 2 entered into force – should be re-enacted in English and French.[281] According to *National*

[276] *R*. v. *Lefebvre* [1982] 21 Alta. L.R. (2d) 65; 69 C.C.C. (2d) 448. For further details on *Lefebvre* case, see Aunger 2004: 470.
[277] *Paquette* v. *R*., [1985] Alta. L.R. (2d) 38, [1990] 2 S.C.R. 1103. For further details on *Paquette* case, see *int. al.* Aunger 2004: 470-471, Gruben 2004: 240-242 and Leckey and Braën 2004: 108-110.
[278] Language Act, S.S. 1988, c. L-6.1.
[279] Languages Act, S.A. 1988, c. L-7.5.
[280] The Court of Appeal confirmed constitutional validity of Bill 2 in Saskatchewan (*R. v. Rottiers* (1995), 134 Sask. R. 152 (C.A.)) and Bill 60 in Alberta (*Lefebvre v. Alberta* 2nd (1993), 135 A.R. 338 (C.A.)); for further details, see Leckey and Braën 2004: 111-112, Gruben 2004: 242.
[281] Decision which acts and regulations should be bilingual is based on the consultations of Saskatchewan government with Francophone community (Ministerial Conference on Canadian Francophonie 2007).

Survey of Legislative Drafting Services (International Cooperation Group 2002: 59) in 2002, approximately 10% of the Saskatchewan Acts were bilingual and the rest was available in English only.[282] The right to use English and French in the legislative assembly (Subsection 5(1) of Bill 60 and Section 12 of Bill 2)[283] and in the provincial courts[284] was maintained in both provinces (Aunger 1998: 89-92 and Leckey and Braën 2004: 111).[285]

Since legislation in Alberta is - with the exception of Bill 60 - unilingual, available only in English, legislative drafting in this province is not analysed in the thesis. In Saskatchewan legislation can be unilingual (only English) or bilingual (English and French). As regards bilingual legislation of Saskatchewan, two drafting methods can be indicated. Firstly, subsequent drafting which, in case of Saskatchewan, means translation into French and re-enactment in English and French selected acts and regulations that had been enacted only in English before *An Act respecting the Use of the English and French Languages in Saskatchewan* (Bill 2) came into force. Secondly, bilingual drafting which refers to selected bills introduced to the Assembly for enactment, printing and publishing in English and French. In that case, all stages of the enactment should be recorded in English and French to make the bill validly enacted (Section 7 of Bill 2). Bilingual drafting in Saskatchewan involves, however, translation, since usually a bill and its amendments are prepared first in English and then translated into French. Translation into French (even in case of subsequent drafting) can, however, influence an English version of an act or regulation.[286]

[282] French versions of statutes and regulations are available online from the Queen's Printer of Saskatchewan at http://www.publications.gov.sk.ca/deplist.cfm?d=1&c=92, last consulted in August 2007. For bills being prepared in English and French, see the website of the Legislative Assembly of Saskatchewan at http://www.legassembly.sk.ca/bills/default.htm, last consulted in August 2007.

[283] For further details on French language use in departments of Saskatchewan government and Legislative Assembly, see Government of Saskatchewan French-Language Services Policy (2007) *2006-2007 Annual Report*, available at http://www.gr.gov.sk.ca/ocaf/ar_2006-07_e.pdf, last consulted in August 2007; report for 2004-2005 and 2005-2006 available at http://www.gr.gov.sk.ca/ocaf/ar_e.pdf, last consulted in August 2007.

[284] Courts before which any person can use English or French is listed in Subsection 4(1) of Bill 60 for Alberta and in Subsection 11(1) of Bill 2 for Saskatchewan. However, the use of French is limited, see Gruben 2004: 243-244.

[285] For more details on language regime and provisions of Bill 2 in Saskatchewan and Bill 60 in Alberta, see, for instance, Munro 1987: 37-44, Aunger 1989: 203-210, Leckey and Braën 2004: 111, Gruben 2004: 243-244.

[286] For more details, see this thesis, subsection 6.2.3.

§ 8. Nunavut – multilingual and multicultural territory

On 1 April 1999, the new territory of Nunavut - separated from the Northwest Territories - was officially established mainly in order to create a homeland for the Inuit and to preserve their culture and language. In the field of a legal language and culture, the creation of Nunavut means that its legislation will be provided in Inuit language and based on Inuit knowledge and culture.[287]

According to Sections 29 and 38 of the *Nunavut Act* of 1999,[288] which establishes the new territory, the language regime of the territory is regulated by the *Official Languages Act of the Northwest Territories*[289] and applied in Nunavut *mutatis mutandis* as long as the Legislative Assembly of Nunavut replaces it with its own statute (Mathieu 1999). First steps to develop a language policy for Nunavut were undertaken in 2000 when the Special Committee to Review Official Languages Act was established by Legislative Assembly of Nunavut.[290] At the time of writing the thesis, the process of enacting a new Nunavut language legislation has already started; to be precise on 5 and 6 June, 2007 two bills concerning language policy – the Bill 6 *Official Languages Act*[291] and the Bill 7 *Inuit Language Protection Act*[292] - received first and second reading at the House of the Legislative Assembly of Nunavut.[293] While analysing the language regime in Nunavut, it has to be taken into consideration that neither English nor French (two official languages at federal level) have the dominant position within the territory. It is Inuit language[294] that is widely spoken in Nunavut,

---

[287] *Cf.* the speech of Nunavut's first premier Paul Okalik 2003 (quoted in Sullivan 2004: 992, ft.35). For further details on characteristics and history of Nunavut from legal and political standpoint, see Marecic 1999-2000: 275-295 and White 2006: 8-31.

[288] S.C. 1993, c.28.

[289] R.S.N.W.T. 1988, c.O-1.

[290] For further information on the preparation of language legislation in Nunavut, see the Department of Culture, Language, Elders and Youth on behalf of the Government of Nunavut (2004) *Next Steps Toward Made-In-Nunavut Language Legislation*. Response to Special Committee to Review the Official Languages Act. Final Report, December 2003, 6th Session, 1st Legislative Assembly, May 2004, available at http://www.gov.nu.ca/cley/home/english/pdf/nextsteps_english.pdf, last consulted in August 2007.

[291] The draft of Bill 6 is available at http://www.assembly.nu.ca/english/bills/4th_bill6.pdf; last consulted in August 2007.

[292] The draft of Bill 7 is available at http://www.assembly.nu.ca/english/bills/4th_bill7.pdf; last consulted in August 2007. The aim of Bill 7 is to protect and promote the Inuit language rights and the use of the Inuit language especially by public bodies, municipal corporations and private sector bodies. The analysis of Bill 7 goes beyond the purpose of the thesis.

[293] For more information on the introduction of language legislation, see the website of the Department of Culture, Language, Elders and Youth at http://www.gov.nu.ca/cley/home/english/news/2007/inuitlangact.pdf, last consulted in August 2007.

[294] The term 'Inuit language' refers to a family of dialects. In Nunavut the most widely spoken is Inuktitut, which is written in syllabics. Inuinnaqtun - another form of Inuit language — written in Latin alphabet, is spoken mainly in the communities of Cambridge Bay, Kugluktuk, Bathurst Inlet and Umingmaktok. For further details on Inuit language, see the website of the Department of Culture, Language, Elders and Youth on official

since Inuit (mainly Inuktitut) is the mother tongue of more than 70 per cent of Nunavut's population.[295] Therefore, according to the proposed *Official Languages Act*, not only English and French, but also the Inuit languages of Inuktitut and Inuinnaqtun are to be official languages of the territory.[296] Bill 6 establishes the Inuit Language, English and French as the Official Languages of Nunavut and grants them equal status, rights and privileges as official languages but not as legislative languages.[297] Although everybody may use any official language in the debates and proceedings of the Legislative Assembly (Section 4(1)), the Acts of the Assembly have to be made, printed and published only in English and French and only the two versions are equally authoritative (Section 5(1)). As far as Inuit language is concerned, the Commissioner in Executive Council may require that an Inuit language version of one or more Acts be published and declare that the Inuit language version of an Act is authoritative (Section 5(2)).

The proposed draft of the *Official Languages Act* has been already criticised for not giving enough protection to Inuit language.[298] Revell notes "[c]onsidering that Nunavut was created in response to the land claims of the Inuit population who have a desire to strengthen and preserve their cultural inheritance, it must seem ironic to the Inuit that their laws must be authored in the languages of the *Qallunaat*"[299] (2001/2004: 36).

After being reviewed by the Standing Committee *Ajauqtiit*,[300] the *Official Language Act* was set for a third reading during the session scheduled to start on 23 October 2007. However, in February 2008 when the research for the purpose of this thesis was completed,

---

languages at http://www.gov.nu.ca/cley/english/introlang.html, last consulted in August 2007; see as well Dorais 1990a, Dorais 1990b: 185-290; Dorais 1993; Dorais 1996 and Sammons 1993: 11-17.

[295] According to 2001 Census Language Composition of Canada (Canada, Provinces and Territories), English is the mother tongue for 27,6 per cent of Nunavut's population and French is the mother tongue for only 1,5 per cent of Nunavut's population – it is mainly French-speaking community of the territorial capital - Iqaluit. Statistics data are available at the website of Statistics Canada, at http://www12.statcan.ca/english/census01/products/highlight/LanguageComposition, last consulted in August 2007.

[296] The draft of Bill 7 (Section 1(2)) defines "Inuit Language" as follows: "Inuit Language means, (a) in or near Kugluktuk, Cambridge Bay, Bathurst Inlet and Umingmaktuuq, Inuinnaqtun; (b) in or near other municipalities, Inuktitut; and (c) both Inuinnaqtun and Inuktitut as the Commissioner in Executive Council may, by regulation, require or authorize." Hereinafter the term 'Inuit language' is used in the meaning defined in Section 1(2) of draft Bill 7.

[297] Section 3(1) explains that equal status, rights and privileges refer to the use of official languages in territorial institutions.

[298] Criticism of the draft of the *Official Languages Act* was made by, for instance, the Qikiqtani Inuit Association, the Association des francophones du Nunavut, the Nunavut Tunngavik Incorporation (Bell 2007). For further details, see Alikatuktuk 2007.

[299] *Qallunaat* means 'white people' in Inuit language.

[300] For more information on Standing Committee *Ajauqtiit*, see http://www.assembly.nu.ca/english/committees/ajauqtiit.html, last consulted in August 2007.

neither Bill 6 nor Bill 7 reached the third reading, both were still before the House.[301] If Bill 6 receives an assent, it will repeal and replace the *Official Languages Act of the Northwest Territories* applied in Nunavut. Until the new *Official Languages Act* comes into force, Nunavut legislation is drafted in English, French, Inuktitut and Inuinnaqtun. However, only English and French versions are authoritative, whereas Inuktitut and Inuinnaqtun enjoy only the status of translation (Sullivan 2004: 1061-1063).[302]

As mentioned not only should legislation be available in Inuit language, but also Inuit culture, tradition and customs should be reflected in Nunavut legal system. Traditional Inuit values and principles of behaviour are not written but orally transferred from elder to younger generation. The principles and codes are commonly recognised within Inuit communities.[303] In order to guarantee consistency of Nunavut legislation with traditional Inuit values, Inuit Qaujimajatuqangit (IQ) - defined as "the knowledge and norms of the Inuit tradition" (Sullivan 2004: 1062) - is taken into consideration while legal acts are drafted.[304] The Legislative Assembly consults Elders in order to preserve and enhance better IQ in Nunavut legislation.[305] In 2003, the Government of Nunavut established Inuit Qaujimajatuqangit Katimajiit – an external council of eleven community representatives – whose task is to advice the government on IQ values and principles.[306] An interesting example of a legal act reflecting IQ is the *Nunavut Wildlife Act*, Bill 35, 2003[307] which defines Inuit Qaujimajatuqangit as "traditional Inuit values, knowledge, behaviour, perceptions and expectations" (Section 2) and directly refers to thirteen IQ principles (see Section 8). Moreover, although the Act is authentic only in English and French, in order to interpret the meaning of IQ concepts or principles, Inuktitut or other dialect of Inuktitut may be used (see

[301] On 5 and 6 December 2007 Standing Committee Ajauqtiit's public hearings on both Bills took place, hearings are available at http://www.assembly.nu.ca/english/committees/ajauqtiit/Ajauqtiit-071205.pdf and http://www.assembly.nu.ca/english/committees/ajauqtiit/Ajauqtiit-071206.pdf, last consulted in February 2008.

[302] For more information on legislative process and bills enacted by the Assembly of Nunavut, see the Assembly's website at http://www.assembly.nu.ca/english/bills/about.html, last consulted in August 2007, and Sullivan 2004: 1061-1065.

[303] For details on Inuit traditional law and rules of behaviour, see *The Inuit Way. A Guide to Inuit Culture*, Ottawa: Pauktuutit Inuit Women of Canada, 2006 http://www.pauktuutit.ca/pdf/publications/pauktuutit/InuitWay_e.pdf, last consulted in August 2007, pp. 9-14.

[304] For details on the nature of Inuit Qaujimajatuqangit, see Government of Nunavut (2002) *The First Annual Report of the Inuit Qaujimajatuqanginnut (IQ) Task Force*, August 12, 2002, available at http://www.inukshukmanagement.ca/IQ%20Task%20Force%20Report1.pdf, last consulted in August 2007; and Stanbury 2000. For details on Inuit Qaujimajatuqangit in the Legislative Assembly of Nunavut (especially on *de facto* limited influence of traditional Inuit values on the Assembly), see White 2006: 17-18, 25-28.

[305] For further details on the role of Elders in legislative process, see Sullivan 2004: 1064.

[306] See Department of Culture, Language, Elders and Youth (2003) *Inuit Qaujimajatuqangit Katimajiit Established*, available at http://www.gov.nu.ca/Nunavut/English/news/2003/sept/sept8a.shtml, last consulted in August 2007.

[307] S. Nu.2003, c.26; the *Nunavut Wildlife Act* was passed on December 5, 2003 and came into force on July 9, 2005.

Section 3(3)).[308] Furthermore, the *Wildlife Act* illustrates the role of Elders in drafting and applying law, since Section 160(1) provides the possibility of establishment of an Elders advisory committee "to review current, traditional and historical types, methods and technologies of harvesting wildlife in the context of the guiding principles and concepts of Inuit Qaujimajatuqangit and to advise the Minister on those it considers humane and safe."[309]

§ 9. Prince Edward Island – on the verge of legislative bilingualism

In Prince Edward Island, no language has been granted the status of official language of the province. Only in the preamble of the *French Language Services Act*[310] enacted in 1999, it is stated that in accordance with the Canadian Constitution, especially with the *Canadian Charter of Rights and Freedoms*, the Government of Prince Edward Island recognises French as one of the two official languages of Canada. The afore-mentioned *Act* aims at supporting the development of the Acadian and Francophone community, at specifying the scope of French language services provided by government institutions as defined in Section 1(g), and at specifying the extent and parameters of the use of French within the Legislative Assembly and in the administration of justice (Section 2). However, to date (August 2007) only two first purposes of the *Act* has been proclaimed.

If respective provisions of the *French Language Services Act* are proclaimed, the legislative (see Section 5 on proceedings of the Legislative Assembly) and judicial bilingualism (see Sections 11 to 13 on the administration of justice) will be provided in Prince Edward Island. Section 5 - not yet proclaimed – requires the enactments of the Legislative Assembly and Executive Council be tabled, amended, enacted, and published in English and French (Section 5(1)) and the both language versions be equally authoritative (Section 5(2)). Furthermore, if a unilingual statute or regulation - enacted before the *French Language Services Act* comes into force - is amended in bilingual process, the whole amended act should be published in English and French (Section 5(3)). However, at the moment of writing

[308] The *Wildlife Act* while referring to the principles and concepts of Inuit Qaujimajatuqangit uses Inuktitut terms in both English and French versions; see Section 8 of the Act and the following terms: *Papattiniq*, *Pijitsirniq*, *Aajiiqatigiingniq*, *Pilimmaksarniq*, *Piliriqatigiingniq*, *Avatimik Kamattiarniq*, *Qanuqtuurunnarniq*, *Qaujimanilik*, *Surattittailimaniq* (*Iksinnaittailimaniq*), *Iliijaaqaqtailiniq*, *Sirliqsaaqtittittailiniq*, *Akiraqtuutijariaqanginniq Nirjutiit Pijjutigillugit* and *Ikpigusuttiarniq Nirjutilimaanik*.

[309] For further details on the history and development of Nunavut's legal system, language and cultural disconnections and differences between Nunavut and the rest of Canada, see IER and Dennis Glen Patterson (2002); Cohen, Kelly, Solan 2004, *The Inuit Way. A Guide to Inuit Culture* 2006: 9-14.

[310] S.P.E.I. 1999, c. 13. At the moment of writing this thesis (2008), the preamble is yet to be proclaimed.

this thesis (2008), the provisions of Section 5 have not yet come into force (Hudon 2007; Leckey and Braën 2004: 112). Accordingly, so far the laws of the Prince Edward Island have been published and authentic only in English. Merely the abovementioned *French Language Services Act* has been published in English and French.

When the provisions of the *Act* providing legislative bilingualism are proclaimed, three categories of laws, according to drafting methods, can be distinguished in Prince Edward Island: two types of bilingual legislation – (1) laws enacted after proclamation of the *French Language Services Act* in English and French (bilingual drafting) and (2) laws enacted only in English before the proclamation and then subsequently translated and authenticated also in French due to amendments (subsequent drafting) - and a type of unilingual legislation, i.e., (3) not amended laws enacted and authentic only in English (unilingual drafting).

None of provisions regulating the administration of justice and providing judicial bilingualism has been proclaimed either. When the *French Language Services Act* comes into force, then French may be used in any proceeding in the Provincial Court and Supreme Court of Prince Edward Island (Section 11) and everyone will have the right to be heard in French or English during the proceeding in the afore-mentioned Courts (Section 13). Moreover, in cases in which French was used in the proceedings, the decisions of the Provincial Court and Supreme Court must be rendered simultaneously in French and English (Section 12). Since the afore-mentioned provisions have not yet been proclaimed - likewise those relating to legislative bilingualism - at that moment it is the English that is actually a language of the courts in the province.[311]

When provisions of the *French Language Services Act* on legislative bilingualism come into force, bilingual and subsequent drafting of legal acts will be a very interesting subject of research. However, for the reason that legislation of Prince Edward Province is still drafted, enacted and authentic only in English, the provincial unilingual law and its drafting methods are not analysed in the thesis.

[311] For further details on judicial bilingualism of Prince Edward Island, see Chapter 5 of *Environmental Scan: Access to Justice in Both Official Languages Final Report Submitted to Justice Canada by GTA Research*, available at http://www.justice.gc.ca/en/ps/franc/enviro/chapter5.html, last updated: 2005-12-05.

§ 10. Nova Scotia, British Columbia, Newfoundland and Labrador – monolingual provinces

The focus of the last paragraph is on the three linguistically homogenous provinces - Nova Scotia, British Columbia, Newfoundland and Labrador - where the majority of the population is English speaking. For this reason, legal bilingualism does not characterise the provinces. Accordingly, law is drafted and authentic only in English, and legal and judicial services are also provided merely in that language. Moreover, since linguistic situation in the three provinces is not as complex as in others, British Columbia, Newfoundland and Labrador to date have not enacted any legislation on language policy, whereas Nova Scotia has not regulated language issues until 2004.

Nova Scotia - the first monolingual province described in this paragraph - where English is the mother tongue for the majority of population,[312] provided language legislation in 2004. The *French-language Services Act* (Bill 111),[313] which was enacted in December 9, 2004, aims at preserving and enhancing the Acadian and francophone community and at providing services in French language by designated bodies (see Section 2).[314] While guaranteeing institutional bilingualism, the Act does not provide any regulation on legislative or judicial bilingualism.[315] In general, the laws in Nova Scotia are enacted, published and authoritative only in English. However, the cases of bilingual legislation can also be indicated. For instance, the English and French versions of the *Université Sainte-Anne - Collège de l'Acadie Act* (*Loi sur l'Université Sainte-Anne - Collège de l'Acadie*)[316] are both equally authoritative (Section 16). The above-mentioned *French-language Services Act* has

[312] According to Census 2001, English is the mother tongue of 93.0 per cent of Nova Scotia's population and French is the mother tongue of 3.8 per cent of inhabitants, 0.3 per cent is bilingual (source: Statistics Canada, Language Composition of Canada: Highlight Tables, 2001 Census available at http://www12.statcan.ca/english/census01/products/highlight/_Language Composition/Index.cfm?Lang=E, last consulted in August 2007).

[313] S.N.S., 2004, c. 26.

[314] In order to fulfil the aims of the *French-language Services Act*, the strategic plan for French-language services – 2005-06 to 2008-09 has been established and included in the *Government Business Plans* for the fiscal years 2005-2006 and 2008-09; for further details see http://www.canadianheritage.gc.ca/progs/lo-ol/entente-agreement/services/ne-ns/annexe2_e.cfm, last consulted in August 2007.

[315] On access to judicial and legal services in French in Nova Scotia, see Department of Justice Canada (2005a) *Environmental Scan: Access to Justice in Both Official Languages. Final Report Submitted to Justice Canada by GTA Research*, Chapter 8 on Nova Scotia available at http://www.justicecanada.ca/en/ps/franc/enviro/chapter8.html, last updated 2005-12-05, last consulted in August 2007.

[316] S.N.S., 2002, c. 31 (amended 2005, c. 29).

been published in English and French. Moreover, French official translations of some statutes are also prepared.[317]

In British Columbia, the laws of the province are enacted only in English and, to my best knowledge, there is no language legislation on the use of language(s) in drafting, enacting and publishing the laws (*cf*. Hudon 2007). As far as the use of language(s) in courts in British Columbia is concerned, except from the courts of criminal jurisdiction,[318] all proceedings and documents are provided in English only.[319]

According to my best knowledge, there are no provisions that refer to language in the linguistically homogenous province of Newfoundland and Labrador (*cf*. Hudon 2007).[320] The only exception is section 530 of the Criminal Code, which is applied at federal and provincial levels.[321]

Since the law in the afore-mentioned provinces is enacted and authentic in one language, no attempt will be made to describe the legislative drafting process or the language of legal acts passed by legislative body of any of these provinces.

---

[317] See bilingual statutes and French translations of statutes at the website of the Office of the Legislative Counsel, available at http://www.gov.ns.ca/legislature/legc/index.htm, last consulted in August 2007.

[318] Due to Section 530 of the Criminal Code, on the request of an accused, a trial can be held in either official language; for further details on Section 530, see Department of Justice Canada (2005a) *Environmental Scan: Access to Justice in Both Official Languages. Final Report Submitted to Justice Canada by GTA Research*, Chapter 1. History of Language Rights available at http://www.justicecanada.ca/en/ps/franc/enviro/chapter1.html, last updated 2005-12-05, last consulted in August 2007; for further details on access to justice in criminal proceedings in French in British Columbia, see Association des juristes d'expression française de la Colombie-Britannique 2006: 12-13.

[319] It stems from Section 53 of the Court of Appeal Rules – Court Rules Act, 2001, (B.C. Reg. 297/2001), Section 4(2) of the Supreme Court Rules of Practice (B.C. Reg. 101/2001, s. 1), and from *An Act that All Proceedings in Courts of Justice within that Part of Great Britain called England, and in the Court of Exchequer in Scotland, shall be in the English Language*, 1730-31, 4 Geo. 2, c. 26, incorporated into British Columbia's law under *English Law Act*, R.S.B.C. 1960, c. 129 (*cf*. […] [A]ll Writs, Process and returns thereof, and Proceedings thereon, and all Pleadings, […] shall be in the English tongue and Language only, and not in Latin or French, or any other tongue or language whatsoever, […]); for further details, see Association des juristes d'expression française de la Colombie-Britannique 2006: 9-10; Department of Justice Canada (2005a) Environmental Scan: Access to Justice in Both Official Languages. *Final Report Submitted to Justice Canada by GTA Research*, Chapter 4 on British Columbia available at http://www.justicecanada.ca/en/ps/franc/enviro/chapter4.html, last updated 2005-12-05, last consulted in August 2007; and Department of Justice of Canada and Department of Heritage Canada (2000) Annotated Language Laws of Canada. Constitutional, Federal, Provincial and Territorial Laws, Second edition – revised, corrected and augmented; available at http://www.pch.gc.ca/progs/lo-ol/perspectives/english/law/law_e.pdf, last consulted in August 2007.

[320] According to Census 2001, 98.4 per cent of inhabitants have English as their mother tongue and only 0.4 per cent – French (source: Statistics Canada, Language Composition of Canada: Highlight Tables, 2001 Census available at http://www12.statcan.ca/english/census01/products/highlight/ Language Composition/Index.cfm? Lang=E, last consulted in August 2007).

[321] R.S., 1985, c. C-46, s. 530; R.S., 1985, c. 27 (1st Supp.), ss. 94, 203; 1999, c. 3, s. 34. For details, see Department of Justice Canada (2005a) *Environmental Scan: Access to Justice in Both Official Languages. Final Report Submitted to Justice Canada by GTA Research*, Chapter 13 on Newfoundland and Labrador available at http://www.justicecanada.ca/en/ps/franc/enviro/chapter13.html, last updated 2005-12-05, last consulted in August 2007.

Table 2. Comparison of language regime in Canada at federal, provincial and territorial level

	Act regulating language status and policy	Official languages	Legislative languages[322]	Judicial languages[323]	Institutional languages
FEDERAL LEVEL					
Canada	The *Constitution Act, 1867* (Section 133); *Canadian Charter of Rights and Freedoms*, 1982 (*Constitution Act, 1982*) (Sections 16 to 23); the *Official Languages Act*, 1988; *Official Languages Regulations*, 1991	English and French; official bilingualism	English and French; legislative bilingualism	English and French; judicial bilingualism	English and French; institutional bilingualism
PROVINCIAL LEVEL					
Alberta	*Languages Act*, *1988*	-	English	English and French	English; no legislation or provincial policy on services in French
British Columbia	-	-	English	English	English
Manitoba	Section 23 of *Manitoba Act*,*1870*; *French Language Services Policy*, *1989* (revised in 1990)	-	English and French	English and French	Mainly English; services in French are provided in designated areas
Newfoundland and Labrador	-	-	English	English	English

[322] Column 4 (legislative languages) indicates in what languages federal, provincial and territorial law is drafted, enacted and authentic.

[323] The term 'judicial language' refers to languages that can be used in court proceedings. As mentioned in subsection 1.1.1., judicial multilingualism (bilingualism) can refer to various issues; i.e., firstly, what languages are used to draft judicial decisions and in which languages the decision is authentic (this issue is not considered in the table); secondly, what language versions of legal acts have to be taken into consideration for interpretation purposes (answer to this question is given in the table in column 4 indicating legislative and authentic languages); and finally, what languages can be used in process and pleadings in courts. Column 5 (judicial languages) refers to the latter.

PROVINCIAL LEVEL					
New Brunswick	*Canadian Charter of Rights and Freedoms* (*Constitution Act, 1982*) (Subsection 16(2), 16.1, 17(2), 18(2), 19(2), and 20(2)) as amended in 1993; *Official Languages Act*, *2002*	English and French	English and French	English and French	English and French
Nova Scotia	*French-language Services Act* (Bill 111), *2004*	-	English (most of statutes are authentic in English; very few statutes are bilingual)	Mainly English	English and French
Ontario	*French Language Service Act*, *1986*; *Court of Justice Act*, *1990*	-	Limited legislative bilingualism – only public bills are required to be introduced and enacted in English and French; regulations recommended by the Attorney General are translated into French	English and French are official languages of the courts of Ontario; proceedings are in English, but a French speaking party has the right to bilingual proceeding	Services of Ontario government agency or institution of the Legislature are provided to the public in English and French
Prince Edward Island	*French Language Services Act*, *1999*	-	To date (2007), only English; legislative bilingualism (English and French) provided in the *French Language Services Act*, but not yet proclaimed	To date (2007), only English; judicial bilingualism (English and French) provided in the *French Language Services Act*, but not yet proclaimed	Partial institutional bilingualism; English and French used by government institutions to the extent specified in the *French Language Services Act*

PROVINCIAL LEVEL					
Quebec	The *Constitution Act, 1867* (Section 133); *Loi sur la langue officielle* (Bill 22); *La charte de la langue française*, 1977 (Bill 101); Bill 34, 1992; Bill 86; 1993	French	English and French; legislative bilingualism	French and English are used with supremacy of French as the language of the courts in Quebec; judicial bilingualism	French
Saskatchewan	*Language Act*, *1988*; *Government of Saskatchewan French-Language Services Policy*, *2003*	-	Acts and regulations can be enacted in English only or in English and French	English and French	Mainly English, but since 2003 the government of Saskatchewan enhances French language services

TERRITORIAL LEVEL					
The Northwest Territories	*Official Languages Act* of *1984*, amended in 2003	Chipewyan, Cree, English, French, Gwich'in, Inuinnaqtun, Inuktitut, Inuvialuktun, North Slavey, South Slavey and Tlichô	English and French	English and French	English and French
Nunavut	*Official Languages Act* (Bill 6) – not yet enacted; *Inuit Language Protection Act* (Bill 7) - not yet enacted	English, French, and the Inuit languages of Inuktitut and Inuinnaqtun	English and French	English, French, and the Inuit languages	English, French, and the Inuit languages
The Yukon Territory	*Languages Act of the Yukon*, *1988*	It is accepted that English and French are official languages of Canada	English and French	English and French	English and French

Conclusion to section 1.3.

The analysis conducted in this section and summarised in table 2 demonstrates that not only at federal level but also in most of Canadian provinces and in all territories legislative bilingualism is observed. Accordingly, legislative instruments are drafted, enacted and equally authentic in two languages, i.e., in English and French. In the next part of the thesis, bilingual legal drafting process applied in Canada is analysed (see chapter 5). This analysis aims at investigating how equality between languages is guaranteed at drafting process. The equality of languages and language versions of a legal act ensured already during drafting actually reinforces equal authenticity of these versions after enactment of the act. In this thesis, drafting of Canadian federal law is of the main concern because of particular drafting method, called 'co-drafting', which is applied during preparation of two language versions of federal legislative instruments. Co-drafting, which is assumed an ideal model for preparation of multilingual legislation, is compared with methods used when EU multilingual law is drawn up. Finally, preparation of a new language version (French or in case of Quebec – English) of legislative instruments that were enacted only in one language is examined in order to illustrate subsequent drafting process which is compared with subsequent drafting of new language versions of EU law (see chapter 6).

In the process of multilingual legal drafting, requirement to draft in more than one language and the principle of equal authenticity is taken into consideration. However, drafters of unilingual or multilingual law take into account legal culture and tradition of the setting where law is drafted. Next chapter (chapter 2) examines legal traditions of the European Union and Canada. However, in conclusion to this section the reference to Canadian legal traditions is necessary in order to characterise better legislative languages of Canada at federal and provincial or territorial level. In this section, while discussing Canadian legislative bilingualism that stems from requirement to draft law in English and French, the term 'language' has been used mainly in linguistic sense (in the meaning of general or national language, see subsection 3.1.1. and conclusion to section 3.1.). However, if the term 'language' is applied in a legal sense, it should be underlined that more than two legal

languages can be distinguished within Canada. It results from recognition of common law and civil law in Canada. Accordingly, Canadian legal system is not only bilingual but also bijural. In the *Policy on Legislative Bijuralism* adopted in 1995 by the Department of Justice Canada, it is observed that federal legislation must simultaneously address four different groups of persons: the Anglophone common law lawyers, Francophone common law lawyers, Anglophone Quebec civilian lawyers, and Francophone Quebec civilian lawyers (see Bastarache 2001; Wellington 2001: 23 where the Policy is reproduced). In order to satisfy the four groups of addressees of federal law and make federal law applicable within common law and civil law traditions, Canadian federal law is drafted in two legal languages, i.e., in bijural legal English (which reflects both civil law and common law) and in bijural legal French (which reflects both civil law and common law). The two legal languages used at the federal level should be distinguished from legal language(s) applied in provinces and territories. In order to describe provincial and territorial languages, it should be taken into consideration that civil law is applied only in Quebec whereas in other provinces and territories legal system is based on common law tradition. In common law provinces, law is drafted in English language of common law, and in territories and bilingual provinces[324] law is drafted and enacted in English of common law and in French language of common law. On the other hand, in Quebec, French language of civil law and English language of civil law is used to draw up and enact legal instruments. Hence, if requirement to draft law in two languages at federal, territorial level and in some provinces, and requirement to take into consideration the existence of common law and civil law traditions in Canada while federal law is drafted, the following legal languages can be observed in Canadian legal system: bijural English and bijural French at federal level, English language of common law in territories and provinces other than Quebec, English language of civil law in Quebec, French language of common law in territories and bilingual provinces other than Quebec, and French language of civil law in Quebec.

The following chapter (chapter 2) examines a bijural character of Canadian legal system and explains how bijuralism influences drafting of federal bilingual law.

[324] The term 'bilingual' is used in the meaning which refers to 'legislative bilingualism'.

CONCLUSION to CHAPTER 1

The first chapter, where official and legal multilingualism in the European Union (section 1.2.) and bilingualism in Canada (section 1.3.) are examined, aims at providing the background and context for the main analysis, i.e., the analysis of multilingual legislative drafting in Canada and in the European Union. Before this study is conducted, some attempt should, eventually, be made to draw a comparison between EU multilingualism and Canadian bilingualism in order to find out whether comparison between methods of drafting of multilingual and bilingual law in both settings is viable and promising. René de Chantal in his article "L'expérience linguistique du Canada peut-elle être utile à la nouvelle Europe?" states that Canadian experience revealed that different linguistic communities not only can be protected but also their development can be guaranteed. According to the author "sur le plan linguistique, l'Europe [...] devra surmonter un défi analogue de à celui que le Canada a dû relever, à savoir amener des groupes linguistiques profondément différants à entretenir des rapports harmonieux au sein d'une vast entité politique" (1991: 203). At legal level, protection and development of various linguistic communities is guaranteed by equal acces to law in languages of linguistic communities.[325] In order to provide equal access to multilingual law, it is not enough to publish language versions of legal instruments but also to make those versions equally authentic. Legal authenticity is granted to language versions of legal instruments pursuant to legal provisions. Language versions of a legal act become authentic once the act is enacted. However, already during drafting of multilingual text of the legal act, it is possible to reinforce equality between language versions beforehand enactment of the legal act. A drafting method that fulfills this objective is applied in Canada at federal level and in New Brunswick. The comparison of this method with drafting techniques used in the European Union demonstrates whether it is possible to guarantee equality of languages and linguistic versions of legal instruments already during drafting of multilingual law.

[325] Law provides also language rights for linguistic communities. This issue is, however, out of scope of this thesis.

Before this analysis is carried out, in the conclusion to the first chapter, it is investigated whether there are similarities between language regimes in the European Union and Canada that make comparison of drafting methods in the European Union and Canada possible. While the comparison is drawn the following factors are taken into account: reasons for and the role of multilingualism, number and the role of official languages, equality of official languages, and especially the principle of equal authenticity as the main characteristic of language regime and legal multilingualism in the European Union and Canada. At the outset it is indicated where language regime in the European Union and Canada is regulated.

In Canada official and legal (legislative) bilingualism at federal level and in New Brunswick as well as legislative bilingualism in Quebec province is provided in the Constitution of Canada.[326] Apart from constitutional provisions on language-matters, there are detailed language acts that regulate language regime at the federal, provincial as well as territorial level. The use of English and/or French has been as well the subject of the decisions rendered by the Supreme Court of Canada, federal and provincial courts. In the European Union, the legal basis for EU multilingual regime is set out in Articles 290 of the *EC Treaty* based on which the Council enacted on 15 April 1958 *Regulation 1/1958* which regulates EU language regime. Article 6 of the Regulation permits the institutions to stipulate in their rules of procedure which languages are to be used in specific cases, whereas pursuant to Article 7 the languages used in the proceedings of the European Court of Justice must be indicated in the Rules of Procedure of the Court.[327] Hence, the legal basis for language regime is established in the constitutional provisions in Canada and in the primary legislation (the *EC Treaty*) in the European Union. Accordingly, in the two settings the legal bases are included in the provisions that are supreme in the hierarchy of legal acts whereas more detailed rules of language regime are foreseen in the lower acts. Moreover, in case of the European Union, detailed linguistic regulation provided in the secondary legislation (*Council Regulation 1/1958*) has to be determined by the Council which acts unanimously. The high position of linguistic regulation within the legal acts (constitutional or primary legislation) and demanding procedure of enacting such regulation (unanimity requirement in the EU) demonstrates the significance of language regime in both settings. The role of EU and Canadian language regimes is explained and compared in the next paragraph.

[326] At constitutional level, official, legislative and judicial bilingualism of Canada is regulated in Section 133 of the *Constitution Act, 1867 and the Constitution Act, 1982.* The basis of official and legislative bilingualism of New Brunswick is included in *the Constitution Act, 1982*, whereas legislative bilingualism of Quebec is provided in Section 133 of the *Constitution Act, 1867*; see subsection 1.3.1 and 1.3.2. (§ 1 and 2).

[327] For further details on legal basis of EU multilingualism, see subsection 1.2.2. On the rank of EU provisions on linguistic regime, see Guggeis 2006: 111.

Although Canada is a state and the EU is supranational organization which Member States transferred some powers to, the role of official and legal multilingualism seems to be quite similar in both settings. If official multilingualism is considered as a democratic right of citizens to have an access to law and to institutions in language(s) they know, it can be admitted that the meaning of bi- and multilingualism is similar in Canada and the European Union. Official multilingualism in both settings allows maintaining personal monolingualism (Phillipson 2003: 129-131).[328] [329] On the other hand, the multilingualism of EU institutions reflects the policies of monolingualism exercised in Member States (Coulmas 1991b: 14; Moratinos Johnston 2000: 26). Member States give great importance to their national languages. Multilingualism, that guarantees equality between Member States' national languages within the EU, "is a visible and audible manifestation of the Union's respect for the equality and autonomy of the member nations" (de Swaan 2001: 173). In Canada, language has also a political aspect because of its relation to the two major cultural and linguistic groups. Hence, in case of the European Union, official multilingualism reflects equality between Member States, whereas in Canada bilingualism is identified with the equality between Anglophones and Francophones. However, the equality between Member States or between linguistic groups can be actually reflected in language regime, only if equality between official languages is assured.

In the aspect of legal drafting and judicial interpretation, the linguistic equality is guaranteed in the principle of equal authenticity that is the basis of EU legal multilingualism and Canadian legal bilingualism. In Canada and in the European Union, all official language versions are equally authentic and therefore they all have to be taken into consideration for interpretation purposes. None of them can be regarded as a translation or a copy, because they all are originals regardless the way of their drafting (theory of originals texts accepted in the EU and Canada). Although it is presumed that all language versions of the legal act convey the same meaning, some differences between them can appear in practice. In case of divergence between language versions, none of them can prevail for interpretation purpose. The common meaning for all language versions should be determined. In Canada, this

[328] See also *supra note* 7.

[329] Nevertheless, the EU promotes linguistic diversity also by encouraging to language learning. See *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*, 22.11.2005, COM(2005) 596, providing that one of the aims of the Commission's multilingualism policy is "to encourage language learning and promoting linguistic diversity in society"; see also *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*, 24.07.2003, COM (2003) 449.

requirement is referred as shared meaning rule which assumes that the meaning of language versions of a legal act is compatible with the intention and the context of the legislation. Although the European Court of Justice does not refer expressly to shared meaning rule, it proposes similar interpretation rule in case of divergence between authentic language versions of a legal instrument. The ECJ underlined in case 30/77 *Regina v Bouchereau* in 1977 and then constantly confirmed[330] that "[t]he different language versions of a Community text must be given a uniform interpretation and hence in the case of divergence between the versions the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part."[331] Although the principle of equal authenticity is the rule of interpretation, this principle should be borne in mind during the drafting process. In particular, drafters of multilingual law attempt to fulfil the presumption of the same meaning of all language versions which are to become equally authentic after enactment of a legal instrument. In order to achieve the same meaning of language versions, it is important that all legislative languages are used for drafting purposes at all stages of drafting and legislative process and all languages are equally treated. Since principle of equal authenticity defines how multilingual law should be drafted, it is essential for the subsequent comparative analysis of the multilingual legal drafting process in the European Union and Canada, to state that the meaning of that principle is the same. Consequently, in the European Union and Canada the purpose of the drafting is to drawn up language versions of legislation which are to become equally authentic once legislative instrument is enacted.

If language regime is defined as "a set of official languages and a set of rules governing their use", obviously neither only official languages nor only rules on their use considered separately will define language regime (Pool 1996: 164). Consequently, two settings, which recognise different languages as official, have different language regime. However, even if two settings have the same official language(s), it does not mean that their language regime is the same (*ibidem*). Naturally, EU and Canadian language regimes differ as regards the number of official languages; there are only two official and legislative languages in Canada at the federal level and twenty-three in the EU. It should, however, be taken into account that the two Canadian official languages, English and French, are recognised as

[330] See, inter alia, Case 100/84 Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland [1985] ECR 1169, paragraph 17; Case C-372/88 Milk Marketing Board of England and Wales v Cricket St Thomas Estate [1990] ECR I-1345, paragraph 19; Case C-437/97 EKW and Wein & Co. [2000] ECR I-0000, paragraph 42; Case C-384/98 D. v W [2000] ECR I-6795, paragraph 16; Case C-449/93 Rockfon A/S v Specialarbejderforbundet i Danmark [1995] ECR I-4291, paragraph 28.
[331] Case 30/77 Regina v Bouchereau [1977] ECR 1999, paragraph 14.

official languages also in the European Union.[332] Each of them, moreover, is related to different legal family: English language is linked with common law and French with civil law.[333] This generates problems in drafting law for Canada, which attempts to preserve both legal families within its federal system (bijuralism) and in the EU that has created its own autonomic legal system. Moreover, in the domain of legal drafting, in the European Commission the proposal for legal act is usually prepared or in English or in French – hence in two languages that are two official and legislative languages of Canada – and then translated into the other languages.[334]

An important comparison can be drawn between rules regulating the use of official languages. The equality of official languages made Huntington (1991: 340) to state that Canada and the EU have the same model of multilingualism. The author refers to models of multilingualism indicated by Alexander Ostrower, who recognises six solutions applied in multilingual countries: "I. Legal equality of national languages for all practical and official purposes (e.g., Canada); II. Legal equality of all national languages some of which are designated as official (e.g., Switzerland, Belgium); III. Formal equality of national languages conditioned upon doctrinal considerations and changing official policies (e.g., U.S.S.R.); IV. Supremacy of the language of the dominant national grouping, considered as the official language, within a system of constitutional protection of linguistic minorities (e.g., Yugoslavia); V. Recognition of a foreign idiom as an auxiliary official state language (e.g., Philippines); VI. Designation of one or more native tongues as the official form of state expression (e.g., India)" (1965: 596-664).[335] Although in his book published in 1965, Ostrower does not make any direct reference to the European Communities, it can be admitted that the European Union actually chose the first model which is also typical for Canada (Huntington 1991: 340). In Canada and the EU, all languages that are granted official status, obtain as well legal equality. However, it should be born in mind that in both settings, there are languages of special status that enjoy some privileges, although they are not official languages of the setting in question (e.g., additional languages and Irish as a treaty

[332] The term 'language' is used here in the meaning of 'natural' or 'general language' (see section 3.1.). Accordingly, the term 'language' is understood as a linguistic phenomenon not as a legal one. It should be taken into consideration that English legal language of the European Union should be distinguished from English legal language of Canada (moreover, in Canada English language of common law is distinguished from English language of civil law and from bijural English); the same remark refers to French.

[333] See, however, Glenn (2007: 124-126) who investigates to what extent a common law is linked to any particular language, and questions "the idea of necessary and exclusive connection between a common law and a particular language". Glenn notes that in the thirteenth and fourteenth centuries French and Latin were languages of the common law.

[334] The term 'language' is used in the sense of a linguistic phenomenon; see section 3.1. and *supra note* 333.

[335] As described in Huntington 1991: 340-341.

language[336] in the European Union and aboriginal (Inuit) languages that are considered to be official languages of some territories)

Although EU and Canadian language regimes are not identical, pursuant to the requirement - common for both settings – to draft two or more language versions of a legal instrument which are to be equally authentic after enactment of the legal instrument, and which are to convey the same meaning, it is viable to draw some interesting comparison between multilingual legal drafting methods in the European Union and Canada. Since it is not possible to separate language from culture, the next chapter provides short overview on legal cultures and traditions in the European Union and Canada in the context of challenges of legal drafting in many languages.

[336] Irish became official language of EU institutions in 2007; for more details on status of Irish as a treaty language and official language, see this thesis subsection 1.2.4., paragraph 2. The same paragraph investigates the concept of additional languages in the European Union.

CHAPTER 2

Legal traditions, cultures and families within legal systems of the European Union and Canada and their influence on legislative drafting

Introduction

Reciprocal influence between culture and language is generally admitted also in the domain of law. Law and language are usually products of the same social and cultural influences (López-Rodríguez 2004: 110). If law is expressed and authentic in more than one language, relation between legal tradition and language is more complex. Moreover, if a legal system is influenced by not only one tradition and culture, the role of a language (languages) in reflecting those legal traditions (like in Canada) and in creating autonomous legal system (like in the EU and Canada) is of great importance. Although legal culture and tradition of the EU and Canada is not the focus of the thesis, however, in order to depict comprehensively process of legal drafting in the two legal systems, the explanation of some aspects of EU and Canadian legal culture and tradition cannot be omitted. This chapter, therefore, analyses the elements of legal cultures and traditions that influence process of legal drafting in the European Union and Canada. This analysis should bring out some similarities between challenges and requirements of legal drafting in the two legal systems and, consequently, provide another reason for comparison of multilingual drafting of EU and Canadian law.

At the outset, terms and concepts (like 'legal culture', 'legal tradition', 'legal families', 'mixed legal system' and 'bijuralism') used in this chapter are explained (section 2.1). The aim of section 2.1. is not a comprehensive analysis of different meanings and various uses of the afore-mentioned terms. Rather it is the explanation of the terminology used in this dissertation for the purpose of research on multilingual legal drafting in the European Union and Canada. The main concerns of the two subsequent sections are the legal culture(s) and tradition(s) of EU legal system (section 2.2.), and those of Canada (section 2.3.), and their influence on legal drafting. The conclusion to the chapter provides some comparison of how legal culture influences the drafting process in the European Union and Canada.

SECTION 2.1.

Clarification of the concepts 'legal culture' and 'legal tradition' and the terms related to them

Introduction

This chapter examines legal cultures and traditions which have an impact on Canadian and EU legal systems, how they interact with each other and especially how they influence drafting of EU and Canadian law. Before this analysis is conducted, it is necessary to explain how terms 'legal culture', 'legal tradition' and other terms related to them (i.e., 'legal family', 'mixed legal system', 'bijuralism' or 'plurijuridalism') are understood in this thesis. The above mentioned terms are used in different meanings by various authors who propose also different classifications of legal cultures, traditions families and mixed legal systems. In this section, dissenting opinions on those terms hold by some authors are discussed. However, the aim of this analysis is not evaluation of various approaches to the afore-mentioned terms but rather the choice – on the basis of discussed definitions and classifications - the meaning of the terms that best helps to explain the relation between legal culture or tradition and legal language, and particularly to describe the influence of legal culture and tradition on legal drafting. The method of clarification of the terms used in this chapter follows the opinion of David and Brierley who note in the reference to the concept of 'legal families that "[t]he whole idea is used purely for explanatory purposes" (1985: 22) and in the reference to classification of legal cultures that "[e]ach approach can undoubtedly be justified from the point of view of the person proposing it and none can, in the end, be recognised as exclusive" (1985: 21). Consequently, when the terms are clarified, it is important to keep in mind the objectives of this chapter (i.e., explanation how legal traditions influence drafting of Canadian and EU law) and of the whole thesis (i.e., analysis how multilingual law of Canada and the European Union is drafted and whether equality of language versions can be guaranteed at the drafting process).

Subsection 2.1.1.
Clarification of the meaning of the terms legal culture, tradition and family

Law and language are usually products of the same cultural influences (López-Rodríguez 2004: 1211). Therefore, when the drafting of multilingual law is analysed, legal culture should be also taken into consideration. 'Legal culture' is a vague and ambiguous term. The variety of meanings of legal culture results from "the variety of meanings of the term 'culture' itself (...)" (Cotterrell 1997: 16)[337] and from the use of this term in various domains of legal research (e.g., in comparative law, sociology of law, theory of law). As observed by Nelken, "[d]isagreements in approaches to legal culture may simply reflect the different purposes which these definitions are intended to serve" (1995: 437).

Even if the concept of 'legal culture' is used in the same domain (even by the same author), its meaning can still vary. For instance, Friedman – conducting research within sociology of law - distinguishes external (in other words 'popular' or 'lay') legal culture and internal legal culture (duality of legal culture).[338] External legal culture refers to attitudes, perceptions and expectations of people towards law (Örücü 2004: 44).[339] Lay legal culture can be recognised and analysed at different levels (a whole country or nation, a social class, a regional group of people). In contemporary states there are usually more than one social class or local group, as a result several legal cultures (cultural pluralism) can be observed (Banakas 2002: 182-183). External legal culture is a culture of lay people, whereas internal legal culture is a culture of legal professionals. Banakas explains that internal legal cultures encompasses "the process of law-making and law-finding, the methods of legal reasoning of judges, the structure of the legal system and the administration of justice in a given jurisdiction, and the training and organization of the legal profession" (2002: 183). Watson, on the other hand, indicates beside legal cultures of lay people and of lawyers, legal culture of lawmakers (1983: 1152). Those three (according to Watson's classification) or two (according to Friedman's classification) legal cultures influence each other and cannot be examined separately (*cf.*, *inter alia* Cotterrell 1997: 19). However, in this chapter and the thesis, the focus is on internal legal culture and, especially, on legal culture of lawmakers.

[337] *Cf.* 164 definitions of the term 'culture' collected by two anthropologists Kroeber and Kluckhohn (1952).
[338] See the explanation in Cotterrell 1997: 17-18 and Nelken 2006: 372-373; see also on the varieties of legal culture in Friedman's approach analysed in Cotterrell 1997: 16
[339] *Cf.* Ehrmann 1976: 8; Friedman 1975: chaps. 8 and 9 and Friedman 1977: 76.

The concept of 'internal legal culture' is criticised because it is difficult to distinguish this concept from the concept of 'legal family' or 'legal tradition' (the 'style' of a legal system) (Cotterrell 1997: 18). Culture is usually linked to tradition during which the culture has been created and developed (Van Hoecke 2007: 82). Therefore, tradition is recognised as an important part of culture (Bell 2001: 6). However, according to some authors there is no need to distinguish the concept of legal culture from the concept of legal tradition. Banakas (2002: 183) observes that in the domain of comparative law the term 'legal tradition' is used in much the same way as the term 'legal culture' is used by sociologists. The similarities between meanings of 'legal culture' and 'legal tradition' is also noted by Örücü (2004: 42-43) who compares the definition of 'legal culture' proposed by Henry Ehrmann and of 'legal tradition' proposed by John Merryman and demonstrates that these two terms are used by the both authors in the same meaning. After analysing various definitions of and approaches towards 'legal culture' and 'legal tradition', Örücü concludes; "there is no clear cut definition of legal culture and legal tradition or any obvious reason for preferring one concept to the other" (2004: 45).[340] In some circumstances – especially, when a legal culture is based on a long-lasting legal tradition - it is possible to use the terms 'legal tradition' and 'legal culture' interchangeably; (e.g., common law or civil law tradition/culture).[341] However, as regards recently developed or developing legal cultures, which have not build up 'legal tradition' yet, the term 'legal culture' is more appropriate (Van Hoecke 2007: 83) and in such a context the term 'legal culture' will be used in this thesis (e.g., while referring to EU law).

Another distinction between approaches to the concept of 'legal culture' is proposed by Paasiletho who distinguishes sociological approach to legal culture from functionalist approach. The former perceives legal culture "as an expression of a certain identity" (Paasiletho 1999: 102) and concentrates on "social effects in the cultural field" (1999: 103). The formalist approach, which is closer to the meaning of legal culture applied in this chapter, describes legal culture as a certain understanding of law on which a legal system or sub-system is based (Paasiletho 1999: 100).

Legal culture and legal tradition should be distinguished from legal system that can be defined as a set of legal principles, concepts, rules, procedures and institutions (*ibidem* and *cf.*

[340] See, however, Glenn (2004: 7-20; 2000: xxi; commented in Örücü 2004: 45) who rejects the term 'legal culture' and instead he applies the term 'legal tradition'.
[341] See, e.g., the interchangeable use of the term 'tradition' and 'culture' with reference to common law and civil law in 'Introduction' to *International Encyclopaedia of Comparative Law* by Zweigert and Drobnig (1981: 8).

Merryman 1985: 1). Each state develops its own legal system[342] by creating vocabulary to express its concepts, arranging its rules into categories and establishing techniques to interpret these rules (David and Brierley 1985: 19, Tetley 2000: 682). On the other hand, legal systems of some countries can be based on the similar legal tradition. The formalist approach examines whether various legal systems share the similar legal tradition and whether convergence between different legal traditions is possible (Paasiletho 1999: 101-102). Legal systems which share the same or similar legal tradition are usually classified into the same group denoted as a legal family (Merryman 1985: 1).[343]

The concept of 'legal family' – alike 'legal culture' and 'legal tradition' – is defined in various ways (see *int. al.* Husa 2006: 382-392), it is criticised[344] and sometimes even rejected.[345] In this thesis, the notion of legal family is accepted and understood as a conceptual and methodological device used in macro-comparative law[346] in order to group legal systems that share similar legal tradition and culture (Husa 2006: 382). Various classifications of legal families are proposed.[347] For present purposes, two main legal families or traditions are recognised, i.e., common law and civil law.[348] It is, however, borne in mind that – especially, in the context of legislative drafting - there is more than one common law or civil law. All legal systems, even if they belong to the same legal family and even if they apply the same natural language to draft law, create their own terminology to express their concepts (David and Brierley 1985: 19, Tetley 2000: 682). The differences between legal systems that belong to the same legal tradition are reflected, for instance, in further classification of civil law

[342] Although hereinafter one refers to a legal system of a state, it should be kept in mind that not only states but also supranational organizations, like the European Union, can create their own autonomous legal systems.
[343] On one hand, there is an attempt to find out legal systems that share the same legal culture (tradition) and classify them into legal families, but on the other hand, (sub-)cultures of a single legal system are also recognised; see Bell (2001) who indicates - according to legal branches - various sub-cultures of French law.
[344] For instance, the division into legal families is criticised because, on one hand, it overemphasises differences between legal systems and. on the other, it classifies into the same category legal systems that do not have much in common (Weigend 2006: 219). Moreover, it is stated that legal families approach is western and therefore biased (Husa 2006: 384). Furthermore, it is suggested that instead of 'legal family', the term 'cultural family' should be used because the term 'legal family' isolates law from the culture (Husa 2006: 384, Örücü 2004: 44). See also Örücü 2004: 135-137 who explains the opinions of authors who criticise the concept of 'legal family; e.g., Harding 2002: 35-53.
[345] *Cf. inter alia* Örücü who draws attention to "indications that the current classification of legal systems into legal families is no longer satisfactory" and he suggests "it must be abandoned in its present shape" (2004: 137).
[346] At the macro-comparative level, legal systems are examined (Örücü 2004: 41).
[347] Legal systems are classified into legal families according to different criteria; the most frequently used criteria are following: sources of law, conceptual structure of law, the place of law in the social order. See Rot 1995; Örücü (2004: 135-137) or Husa (2006: 385-387) who describe different classifications of legal families proposed by various authors.
[348] The differences between common law and civil law are mainly in the area of source and methodology of the law (Van Hoecke and Dhont 2000: 141). For details on distinguishing features of common law and civil law and differences between the two families, see *inter alia* Smits 2002: 74-105; from a Canadian perspective, see Bastarache 2001: 19-20, Gall 2004: 30-33 Gervais and Séguin 2001: 4-6.

tradition. Within civil law tradition, some authors indicate Romanistic, Germanic and Nordic legal families (Zweigert and Kötz 1998). It should be also taken into account that, sometimes, different legal traditions co-exist or even combine within the same legal system. This phenomenon is described by the terms 'mixed legal system'[349] and bijuralism which are analysed and clarified in the next subsection.

Subsection 2.1.2.
Characteristics of a mixed legal system and bijuralism (plurijuridalism)

Legal systems influence each other and there is no legal system that is purely indigenous (Palmer 2001: 11, Tetley 2003: 185). As noted by Reid (2003: 19) the fact of mixture is "a commonplace of all legal systems". Accordingly, it can be stated that all or almost all legal systems are mixed to certain extent (*cf*. Smits 2002: 107, Visser 2003: 46). On the other hand, only some legal systems are denoted as mixed. It has been even proposed to indicate – beside families of common law and civil law - the third legal family to which mixed legal systems belong (Palmer 2001). Therefore, it is important to specify characteristics of a mixed legal system[350] which distinguish this system from the others. Although several definitions of 'mixed legal system' have been proposed, none of them has been commonly accepted (Palmer 2001: 7, Smits 2002: 108). The indication of features of a mixed legal system and search for the definition of this concept is difficult because there are different types and various classifications of mixed legal systems,[351] and, mixed legal systems can be at different stages of development (Reid 2003 28), consequently, legal systems can be mixed to various extents (Smits 2002: 110).

This subsection specifies characteristics of a mixed legal system and explains how the term 'mixed legal system' is understood in this thesis. Moreover, the meaning of the term 'bijuralism' and the difference between this term and 'mixed legal system' is clarified. With

[349] It is proposed to indicate a new third legal family where mixed legal systems can be classified (Palmer 2001). See criticism of this idea in Örücü 2004: 137.

[350] In this thesis, the term 'mixed legal system' is used. However, it should be noted that a terminology denoting the phenomenon of mixed legal systems is not uniform (Smits 2002: 108). Beside the term 'mixed legal system' (Kötz 2003, Reid 2003, Smits 2002), the following terms are also used: 'mixed jurisdiction' (Palmer 2001, Tetley 2000), 'mixed law' (Rosenberg 2003: 34), 'hybrid legal system' (Smits 2002: 108), or 'third legal family' (Palmer 2001). The most often used terms – 'mixed legal system' and 'mixed jurisdiction' – are applied by some authors interchangeably for literary variation (e.g., Sir Thomas Smith, see Palmer 2008: 7, Reid and Miller 2005) and others use these two terms in different meaning (*cf*. definitions of 'mixed legal system' and 'mixed jurisdiction' proposed by Tetley 2003: 182-184). On the development of the idea of mixed legal systems and different approaches to this phenomenon, see Palmer 2008: 1-28 and Reid 2003: 5-40.

[351] See, for instance, classifications indicated by Smits 2002: 109-110 or classification proposed by Örücü (1996: 335-44, 2008: 1-18).

this explanation in place, in the following sections of this chapter, the impact of legal traditions of Canada and of the European Union on legal language and legislative drafting is examined.

Instead of a definition of a mixed legal system, Vernon Palmer indicates three characteristics which help to classify a legal system as a mixed one (2001: 7-10). Firstly, the author observes that civil law and common law are the main mixing components of the system which is denoted as a mixed one. Mixed legal systems may also include elements deriving from other sources (e.g., from customary or religious law) but the two basic components of mixed legal system are common law and civil law traditions.[352] This feature is in line with definitions of 'mixed legal systems' proposed by various authors.[353] It should be, however, borne in mind that in some definitions this criterion is disregarded.[354] Reid – one of the authors who confirm this feature - agrees that mixed systems "contain significant elements of both common law and civil law" but at the same time, he notes that:

> There is more than one common law and one civil law. English law is not the same as American law, or French law the same as Dutch or Spanish law. Further, some systems received civil law of more than one type [...]. Chronology is also important. With the exception of Quebec, [...], the mixed systems lost touch with contemporary civil law at more or less the same time as common law first rose to prominence. (2003: 22).

This observation should be kept in mind when Canadian and EU legal traditions and systems are compared. In Canada the co-existence of common law and civil law is observed (for more details, see this thesis section 2.3.). Legal systems of some Member States of the European Union are based on civil law traditions, whereas others are based on common law traditions, and as well a few Member States are recognised as mixed legal systems (for more details, see this thesis section 2.2.). However, Canadian common law tradition should be

[352] This feature (i.e., common law and civil law as the two main components of a legal system) distinguishes the term 'mixed legal system' from 'legal pluralism'.

[353] *Cf.*, for instance, Smits (2003: 552) who explains that 'mixed legal systems' is "a term identifying systems mixing civil law and common law". *Cf.* also definitions proposed by Walton 1907/1980: 1 ("mixed jurisdictions are legal systems in which the Romano-Germanic tradition has become suffused to some degree by Anglo-American law") or by Evans-Jones 1998: 228 (mixed system is "a legal system which, to an extensive degree, exhibits characteristics of both the civilian and the English common law traditions"; with the reference to Scotland); both quoted in Tetley 2003: 182.

[354] For instance, see the definition (quoted below in this subsection) proposed by Örücü (2001) or definition proposed by Tetley who defines 'mixed legal system' as "one in which the law in force is derived from more than one legal tradition or legal family" (Tetley 2000: 683, *cf.* Tetley 2003: 182). In both definitions legal traditions or families that are mixed within a single legal system are not specified.

distinguished from British and Irish common law, as well as British legal tradition should be distinguished from Irish one and *vice versa*. The differences are also observable between civil law traditions of the countries which are members of the European Union and between them and civil law in Quebec.

The second feature of a mixed legal system is described by Palmer as quantitative and psychological. According to the author, in mixed legal systems, common law and civil law elements are obvious for an ordinary observers and actors within this system (Palmer 2001: 8). Palmer gives an example of Texan and Californian legal systems which have civil law elements but are recognised as common law systems and of Louisiana which is considered a mixed legal system. This characteristic noted by Palmer can be compared with the statement of Tetley who observes that there are jurisdictions which are derived from more than one legal tradition but the issue of mixed legal system is not recognised and discussed there. Consequently, he proposes that, "a mixed jurisdiction could be defined as a place where debate over mixed jurisdiction occurs" (2003: 184).

Finally, Palmer observes that in mixed legal systems, private law is predominantly derived from the civil law tradition, whereas public law (especially in the sense of constitutional and administrative law; Reid 2003: 21) is mainly based on the common law tradition (structural characteristic; Palmer 2001: 8-10). This structural characteristic is also confirmed by Reid (2003: 22) who, however, underlines that this distinction cannot be treated as absolute one, since distinction between private and public law is not absolute.[355] Visser (2003: 48, 50) admits as well that this third feature of mixed legal systems is empirically observable in most mixed legal systems but, according to him, it is not *conditio sine qua non* for denoting a system as a mixed one.

Palmer indicated the above-mentioned features of mixed legal systems in order to define a new legal family which encompasses legal systems where these three characteristics can be observed. Palmer's approach to the concept of mixed legal system is not the only one. Quite different understanding of this term is proposed, for instance, by Örücü according to whom "[m]ixed legal systems in the classical sense are systems in which elements from more than one legal traditional source co-exist or intermingle. Such legal systems are mixed only as to their private laws" (2001). Accordingly, none of features proposed by Palmer is taken into consideration in this definition of mixed legal systems. Firstly, the definition does not require common law and civil law to be the main components of a legal system. Secondly, observers'

[355] See Palmer (2001: 9, ft. 14) and Van Hoecke and Dhont (2000: 115) who note that in common law tradition, the distinction between private and public law is not as clear-cut as in civil law tradition.

opinion on the character of the elements of a legal system is not taken into account. Finally, structural feature – as described by Palmer - cannot be observed, since only private law is considered as mixed in Örücü's definition.

In his recent paper, Palmer (2008: 1-28) describes two rival theories of mixed legal systems. He distinguishes the traditional approach to a mixed legal system and the pluralist conception of a mixed legal system. According to the former, mixed legal systems can be described as "systems whose private law was a western hybrid, characterized by a core of common law and civil law elements" (2008: 7). On the other hand, pluralist approach to mixed legal systems is much broader and in order to denote a system as a mixed one it requires "the presence or interaction of two or more kinds of laws or legal traditions within the same system or 'social field'" (2008: 13). The pluralist approach usually tackles post-colonial countries where western law is mixed with customary law, tribal law or religious law. In this thesis, traditional approach to mixed legal system is followed. Pluralist conception is too close to legal pluralism and sometimes takes into consideration unofficial law (Palmer 2008: 14). In this dissertation, however, the focus is on official written law produced by the authorised lawmaking body. Moreover, since legislative drafting is analysed in Canada and the European Union, thus in the two legal systems where common law and civil law co-exist, the traditional approach – as defined by Palmer – can be accepted for the thesis' purposes. Consequently, in the following sections the term 'mixed legal system' is applied to describe a system whose main and basic components are derived from common law and civil law traditions. Accordingly, the first feature indicated by Palmer is accepted. However, it is kept in mind that "[t]here is more than one common law and one civil law" (Reid 2003: 22) and that sometimes it is possible that more than one type of civil law (or common law) are mixed within a single legal system.

Structural characteristic (Palmer's third feature) is admitted in this thesis but in the sense that – as observed by Reid (2003: 24-25) – in different mixed legal systems common law and civil law components are arranged in the similar way.[356] However, if within a single legal system common law and civil law components are not arranged in the usual way, it does not exclude this system from the type of mixed legal systems (*cf*. Visser 2003: 48, 50).

As regards the psychological and quantitative feature proposed by Palmer, in this dissertation ordinary observers' opinion is not taken into consideration in order to determine whether the system in question is a mixed one. Instead, it is investigated whether common law and civil law are recognised by a drafter (legislator) and especially whether a legislative

[356] For example, Reid notes that property law is usually based on civil law tradition and commercial law on common law, whereas contract law is influenced by both traditions

drafter takes into account both legal traditions or whether drafting guidelines require common law and civil law traditions be reflected in drafted legislation (the second feature of a mixed legal system). This feature relates to another characteristic which is taken into account in this thesis in order to find out whether a system is a mixed one. Namely, it is required that common law and civil law components not only co-exist within this system but that they influence and interact with each other. Gervais and Séguin (2001: 7) recognize two main ways, in which co-existence of two legal traditions is reflected. Firstly, it is possible that rules derived from two various traditions are cumulatively applied to a single institution (e.g., substantive rules are derived from one tradition and formal rules from the other). Secondly, rules deriving from various legal traditions can interact. This interaction consists of "the harmonization or necessary coordination of relations between two legal systems" (*ibidem*) proceeded by the legislator or the interpreter of the legislation. In other words, it is important that during drafting, interpretation and application of law both civil and common law traditions are taken into consideration (Gervais and Séguin 2001: 7, Rosenberg 2001: 34). In this thesis, it is examined whether common law and civil law traditions are recognised and taken into account at legislative drafting process in the European Union and Canada.

The last feature distinguishes a mixed legal system from bijuralism (plurijuridalism). The latter is defined as the coexistence of two (or more) legal traditions within a single state (a political unit). This definition is similar to the definition of the term 'mixed legal system'. However, the term 'bijuralism' and 'mixed legal system' ('mixed law') do not describe the same thing (Gervais and Séguin 2001: 7 and Rosenberg 2001: 34). Bijuralism concentrates merely on coexistence of two legal traditions which, however, do not necessarily interact, whereas within a mixed legal system two or more legal traditions interact with each other (*ibidem*). It is the third feature typical for mixed legal systems which is taken into consideration in the following sections.

Conclusion to section 2.1.

This section aims at clarifying how the terms 'legal culture', 'legal tradition', 'legal family' and other terms related to them are understood in this thesis. There are no commonly accepted definitions of the above-mentioned terms. Therefore, after the analysis of various definitions and diverse approaches towards these terms, the understanding of those concepts that best serves the objectives of the research conducted for the purposes of this thesis has been established. The conclusion to this section summarises how these terms are understood in this dissertation.

First, the concepts of legal culture and legal tradition are distinguished from the concept of legal system which is defined as a set of legal principles, concepts, rules, procedures and institutions. It is assumed that each country as well as a supranational organization, like the European Union, develops its own autonomous legal system which is based on legal culture and tradition(s). The term 'legal culture' is used in the meaning of internal legal culture (as understood by Friedman). It is accepted that terms 'legal culture' and 'legal tradition' can be used interchangeably. However, with regard to new recently developed or developing legal systems that have not built up yet their own tradition, the term 'legal culture' is applied. Legal systems, which are based on the similar legal traditions, are classified into the same legal family. Two main legal families are distinguished for the purposes of this thesis: common law family and civil law family.

It is also observed that some legal systems are based on two or more than one legal tradition. The term 'mixed legal system' is used to denote this kind of legal system. Some authors propose that mixed legal systems should be classified as a new third legal family. Taking into consideration features of mixed legal systems indicated by adherents of the idea of the third legal family, three criteria of classification of a legal system to category of mixed legal systems have been specified for the purpose of this thesis. They are following: firstly, common law and civil law are the main components of a mixed legal system; secondly, the both traditions interact; thirdly, a drafter/legislator recognises the common law and civil law traditions within a legal system and considers both when law is drafted.

The above analysis of the afore-mentioned concepts (especially of the concept 'mixed legal system') not only has determined how these concepts are understood in the thesis but also has demonstrated and précised how legal traditions and families can coexist and interact within a legal system or within a political unit. This analysis should facilitate the following comparison of Canadian and EU legal traditions. The objective of this comparison is to describe relation between legal traditions and legislative languages in Canada and the European Union, and especially, how legal traditions influence legislative drafting. Therefore, it is important to find out which legal traditions have an impact on Canadian and EU legal systems and whether and how legal traditions influence each other and interact within Canada and the European Union. These issues are examined in the two following sections.

SECTION 2.2.

EU legal culture(s) and its influence on EU law drafting

Introduction

The focus of the research demonstrated in this thesis is on challenges posed by a number of authentic languages in which EU and Canadian law is drafted. However, legal cultures and traditions, which also have an important impact on legal language and make processes of legislative drafting even more complex, should be taken into consideration when drafting of multilingual law is examined. Therefore, this section explains which legal traditions influence drafting of EU law.

At the outset, the impact of Member States' legal systems derived either from civil law or common law or from the both traditions (as in case of mixed legal systems) on the EU legislation is demonstrated, and then it is explained how EU law influences legal systems of Member States (subsection 2.2.1.). It is underlined that although EU law is uniformly applied in all Member States, the diversity of their legal systems is respected by the European Union. The first subsection considers also whether the European Union can be described as a mixed legal system.

The second subsection (2.2.2.) investigates challenges to multilingual drafting in the European Union that develops its own autonomous legal system which is influenced by diverse legal traditions of its Member States. The focus is on the necessity on developing autonomous legal language of the European Union based on natural languages which are also used in domestic legislation of EU Member States. In particular, the process of deculturalisation and hybridisation of the language is considered.

Subsection 2.2.1.
Reciprocal influences between legal traditions of Member States and EU law

It is not only legal multilingualism that makes drafting of EU law difficult and challenging. As rightly noted by Piris – Director-General of Legal Service of the Council of the European Union – even if EU legislation could be drafted only in one language, the drafting of EU law would, nevertheless, cause problems because the European Union is a union (not only between different languages but also) between different cultures (2004a: 4). Multilingualism is usually a part of cultural diversity and it is a case of the European Union. It should be taken into consideration that the European Community was not built in a vacuum but it was created by its Member States and then successively enlarged through accession. EU Member States share "a common legal tradition (Roman law) and important common legal principles" (Van Hoecke and Dhont 2000: 121)[357] but at the same time each Member State of the EU developed its own legal system based on its particular tradition, culture and history.

Within the European Union, two great legal families - common law and civil continental law – are distinguished. Although, nowadays the common elements rather than differences of the two legal families are sought,[358] it cannot be denied that common and continental legal systems differ but it is also worth recalling that systems belonging to the same legal family are divergent. Irish and British common law, although very closely related, do not fully share identical legal concepts or institutions. More differences can be observed between continental legal systems. Some authors proposed even more detailed classification of legal families and instead of solely civil law, they distinguish Romanistic, Germanic and Nordic[359] legal families (Zweigert and Kötz 1998). Moreover, David and Brierley (1985) distinguished the family of socialist law to which the majority of Member States that joined the EU in 2004 and the two that joined in 2007 used to belong. Apart from the countries which were a part of the former socialist block, a few former republics of the Soviet Union (Estonia, Latvia, and Lithuania) became Members of the European Union in 2004. Those post-communist countries went through the transformation process and in order to develop

[357] According to Van Hoecke and Dhont, "[a]mongst European legal systems, there are no structural differences as regards the (mainstream) concept of law, argumentation theory, or the view on (possible legitimation) of the law." (2000: 141).
[358] *Cf.* Örücü 2002: 9.
[359] For the analysis of the possibility of creation of Nordic legal family and its characteristics, see Husa 2001 and Lando 2001.

their own legal systems they had to refer to their different legal traditions and cultures before the communist era.[360] Besides post-communist countries, in 2004, the two former British colonies – Malta and the Republic of Cyprus - joined the European Union. The legal order of both states – also due to their colonial past - is an example of a mixed legal system which illustrates very well that even within a single Member State the diversity of legal traditions can be observed. In case of Malta, a legal system is mainly based on civilian tradition. The Civil Code is modelled on the Code Napoleon. Moreover, some influences from Italian civil law can be also identified. However, the Maltese legal system is classified as a mixed one because of the elements of British common law especially visible in public law, commercial law and private international law (Ganado 2004: 85).[361] More foreign influences are noted in case of the Cypriot legal system which is even called a 'paradise of comparative law' because of the coexistence of the English common law, Greek and French administrative law, European and American constitutional principles, Roman-Byzantine law and Ottoman law (Symeonides 2003: 453). Such a merger of common and civil law traditions appear as well within the United Kingdom. The UK is made up of four countries. The law of three of them – England, Wales and Northern Ireland - belongs to common law tradition, whereas legal system of the fourth one – Scotland - is classified to the category of mixed legal systems. In Scotland, the Scottish law based on Roman and Dutch origin remained in the sphere of private law, while public law belongs to common law tradition.[362]

Leaving aside the details on differences between various legal systems of EU Member States and its legal cultures and traditions, it should be underlined that the European Union respects the diversity and identity of all the Member States (see Article 151.1 of the *Treaty establishing the European Community*). The motto of the European Union provided in *Treaty establishing a Constitution for Europe* (Article I-8) - 'United in diversity' - demonstrates that the diversity is a basis of the European unity.[363] Therefore, in striving for 'ever closer union', the EU applies harmonisation of law that takes into account ideas, traditions and practices characteristic for Member States.[364] A directive is an example of EU instrument that aims at

[360] For further details on diversity of legal cultures in post-communist countries which became Member States of the European Union in 2004 and on their transformation, see *int. al*. Blankenburg 2000, Kühn 2004: 531-567, Reich 1995: 587-623.
[361] For further details on Maltese law, see *int. al.* Ganado 1947: 32-39, Busuttil 1974, Charles 1988.
[362] On Scottish legal system as a mixed system, see *int. al.* Gretton 2003: 307-332, Lord Rodger of Earlsferry 2003: 419-434 and Zimmermann 2001: 151-155.
[363] See also *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*, 22.11.2005, COM (2005) 596, where the expression "unity in diversity" is used.
[364] On differences between 'harmonisation' and 'unification', see Van Hoecke and Dhon: 2000: 108. According to the authors unification aims at adapting uniform law in different legal communities without taking into

harmonisation of law but at the same time respects identity of Member States (Van Hoecke and Dhon: 2000: 108).[365] Directives are binding only 'as to the results to be achieved' (Article 249 [ex Article 189] of the *EC Treaty*). Hence, Member States can implement directives through methods and in forms of their choice.[366] Consequently, a Member State can implement a policy in a way that best suits the legal culture and system of that state. Such implementation not only respects national identity but also assures that implementation will be successful.[367]

Moreover, legal systems of Member States also influence each other through the membership in the European Community. For instance, while implementing EC legislation, approach taken by one Member State can be regarded as a guideline for implementation in another State. A Member State sometimes follows the method of implementation applied in other Member States, especially when the instrument or concept, which is to be implemented, is alien to its legal system. Jane D. N. Bates, with reference to the conversion of EEC legislation into UK legislation, says even about "slowing down the implementation timetable in order to take a lead from another Member State" and gives an example of the implementation of EC legislation on Value Added Tax for the first time in the United Kingdom, which was preceded by the study of the French and German legislation by British draftsmen in order to find out the best method for implementation of the legislation in question (1989: 122-123).

It is not only the European Union that influences drafting of national legislation,[368] but also legal cultures of Member States influence the system and structure of EU law. When the European Community has been established, the main impact came from the French law.[369] Then after the accession of the United Kingdom and Ireland, the influences of the common law tradition became observable. Piris (2004a: 6-7) presents an interesting example of the standard according to which a first article of a legal act provides definitions of all the concepts mentioned in a legal act in question. This standard had been transplanted into the EC legal drafting from the common law, and then has been applied in national French legal drafting.

---

account "the traditions and practices that are typical to those communities", whereas law which is harmonised fits with "national legal traditions, legal techniques, doctrinal theories of law and ideological divergence".

[365] For more details, see this thesis, subsection 4.1.3., paragraph 3

[366] See Article 249 [ex Article 189] of the EC Treaty stating that '[a] directive (…) shall leave to national authorities the choice of form and methods'.

[367] *Cf*. Bates 1989: 123, Schur 2003: 51-55, Van Hoecke and Dhont 2000: 108.

[368] *Cf*. Smits 2004: 229-245 on 'Europeanization' of national legal systems.

[369] See Goffin (1990: 13-19) who, in his article, presents not only examples of influences of French legal culture but especially of French legal language on EU legal terminology expressed - at the moment of writing his article - in nine official languages.

One of the sources of these reciprocal influences between Community and national legal systems is jurisprudence of the European Court of Justice and Court of First Instance. While applying directly or indirectly Community law, Member States take into consideration the principles developed by the European Court of Justice. On the other hand, when such principles are being established, the Court sometimes refers to the principles and rules originated in national legal systems of Member States.[370] Renaud Dehousse while analysing the levels of comparison of national and EC law noticed as well interrelation of national and EC legal tradition and stated that:

> The national and Community legal systems are now so closely intertwined that one notices many instances of institutional osmosis: principles and institutions borrowed from national traditions are incorporated in Community rules and at times travel back, be it in a modified form, to the national level, as part of the Court's jurisprudence (1994: 762-763).

To sum up, the impact of EU law on legal systems of its Member States is evident, but there are also many influences of national legal cultures on the EU law. The majority of authors deny, at present, the existence of a common European legal culture (see Legrand 1996: 52-81, López-Rodríguez 2004: 1195-1220). However, as it can be observed in countries (like, e.g., bijural Canada) where different legal traditions co-exist, legal uniformity can be achieved.[371] Van Hoecke, for instance, observes that European legal cultures are affected in two ways. Firstly, domestic legal cultures of Member States are being changed due to adoption of new principles of EU law.

> Secondly, it bridges some traditional differences among European legal cultures, and most notably those between Common Law and Civil Law. Even if in a first stage it may take some time to understand, to accept and to integrate the new concepts and principles in the domestic legal traditions, eventually it will lead to some new common legal culture for the whole of the European Union. (2007: 88-89).

The influence of Member States' national law, which can be derived from civil law tradition or common law tradition, on legal solutions and institutions adopted in the European Union raises the question whether the legal system of the European Union can be described as

[370] *Cf.* Koopmans (1991: 496-497) who analyses common principles originating from the legal traditions of Member States as a source of general principles of Community law; and Lenaerts (2004: 100) who mentions judgments referring "to the 'legal traditions', 'constitutional traditions', 'legal orders', 'legal notions', or 'legal principles' common to 'all' Member States, or, at least, to several Member States". See also other analyses of comparative law as a method of interpretation of EU law by the ECJ and CFI, referred to in Koopmans 1991: 493-507 and Lenaerts 2004: 99-134.

[371] On the legal unity of the European Union and the single legal system of the EU, see Von Bogdandy 1999.

a mixed legal system. There are different approaches to this issue. According to some authors, influence and inspiration from common law and civil law of Member States in drafting of EU law does not make the European Union a mixed legal system because all legal systems are to some extent mixed (*cf*. Smits 2002: 107). On the other hand, there is also the opinion that the European Union is or is becoming mixed legal system because of the convergence between common and civil law (*cf*. Palmer 2008: 16, 22; Tetley 2000: 678-679 and 2003: 206-207).[372] However, the possibility of convergence between legal cultures in the European Union is still debated.[373]

For the purpose of this thesis, three characteristics of a mixed legal system have been indicated in subsection 2.1.2. The first and third features – namely, common law and civil law traditions as two main components of a legal system (1) and their interaction (3) - can be observed to some extent in the European Union. However, the second characteristics, i.e., requirement to take into consideration both common law and civil law traditions during drafting of legal acts is not identified in the European Union. It should be borne in mind that EU law is influenced by common law and civil law of Member States but the main drafting guideline is not to reflect common law and civil law in EU legislation but to create autonomous law which the best harmonises law in Member States.

According to some authors, some features of mixed legal systems can be observed within EU Member States. For instance, Milo and Smits (2000: 423) describe legal systems of Member States as mixed one because of mixing legal sources (i.e., national law and EU law) within these systems. Others note that because of adoption and application of EU law in Member States, common law states have to adopt principles or reasoning based on civil law and *vice versa* (*cf*. Palmer 2008: 21 on harmonisation of English common law with continental law due to adoption and application of EU law).

Leaving aside the discussion on the EU and its Member States as a mixed legal system and on the possibility of convergence between civil and common law, the last paragraphs

[372] See also Smits (1998: 328-340, 2001, 2002) who examines whether a European private law becomes eventually mixed legal system and how mixed legal systems can contribute to the emergence of a European private law

[373] Especially in the context of the discussion on European private law, it has been analysed whether a convergence of common law and civil law is possible. Adherents of the 'convergence thesis' believe that the convergence of the two legal traditions is possible and even already takes place and therefore the unification of law is desirable (Smits 2002: 103); see also de Groot 1992, Glenn 1993, and Markesinis 1994 (quoted in Smits 2002: 103-104). Authors who do not agree with the 'convergence thesis' state that the convergence is only superficial but not real because states' cultural structures in which law is embedded are not converging (Smits 2001: 104); see Legrand 1996 (quoted in Smits 2001: 7 and 2002: 104).

focus on the question how the diversity of legal cultures within the European Union and reciprocal influences between legal traditions affect drafting of EU law.

Subsection 2.2.2.
Terminological challenges to legislative drafting for the purpose of autonomous legal system of the European Union (deculturalisation and hybridization of legal language)

Notwithstanding influences and legal transplants in EU law which originate from national legal cultures, EU legal system is autonomous and as such creates its own autonomous concepts and applies own terminology. In this context, it should be noted that the drafting process operates on two planes: the conceptual and the verbal which are often confused (Dickerson 1986: 5). When within EU legal system a new legal concept is created – even if a legal solution takes inspiration from a national legal culture – it has to be an autonomous concept of EU law.[374] Then a term should be found to denote a new concept. A term has to be expressed in twenty-three EU official languages which are at the same time national and official languages in Member States. This situation when legal concepts are denoted in more than one language is also observed in case of international law or domestic law of bilingual or multilingual countries. Moreover, it also happens that legal concepts belonging to different legal systems are expressed in the same natural language (e.g., French language which is applied to denote concepts of, for instance, French law, Belgian law, or Canadian law). The situation in the European Union is, however, particular because EU law expressed in twenty-three languages and national law expressed in one or more of those twenty-three languages are applied in the same territory of a Member State (cf. Piris 2004a: 5; Piris 2004b: 4). Therefore, for instance, in France, national law expressed in French language of French legal system is applied and EU law expressed in French and in other twenty-two languages of EU legal system is as well applied in the French territory.–This particular situation has an impact on drafting of EU legislation and makes legal drafting very challenging. It is easier to apprehend the differences between meanings of legal terms (sometimes the same legal term) expressed in the same language and belonging to different legal systems but implemented on different territories and for different populations (as it is,

[374] It has been confirmed in ECJ case law, see int. al. paragraph 45 of the judgment in Case C-373/00 *Adolf Truly GmbH* v *Bestattung Wien GmbH* [2003] ECR I-1931, paragraph 25 of the judgment in Case C-449/93 *Rockfon A/S* v *Specialarbejderforbundet i Danmark* [1995] ECR I-4291 and paragraph 27 of the judgment in Case C-498/03 *Kingscrest Associates Ltd and Montecello Ltd* v *Commissioners of Customs & Excise* [2005] ECR I-4427; for more details see this thesis, section 5.2.

e.g., in case of French language and law of France and of Belgium) than in the situation when legal terminology belonging to two different legal systems is applied within the same territory and for the same population – as it is in the case of EU law and legal systems of Member States (Piris 2004a: 5, Piris 2004b: 4). Therefore, it is not only important to create new concepts within EU law but also to find proper terms designating them. First, terms particular to any national legal system should be avoided, instead neutral terms ought to be used.[375] It can be said that in order to create language and terminology of EU law, 'deculturalisation' – understood as the reduction of the cultural embedding - of national legal languages is necessary.[376] Different methods are applied to find the terminology for new concepts of EU law. These methods are described in subsection 5.4.1. of this thesis.

However, as noted by Smits (2004: 235) even if EU draftsmen do their best in founding the neutral terms, then those terms are anyway translated into the national terminology. This situation can, especially, appear in case of directives which – as explained above – are binding only as to the results that are to be achieved and leave Member States room for flexibility in implementation of a directive. Smits (2004: 235, ft. 31) gives an example of the EU term 'right of withdrawal' used in article 6 of *Directive 97/7 on the Protection of consumers in respect of distance contracts*[377]. This term has been rendered into a 'right to cancel' in Regulation 10 of the Consumer Protection (Distance Selling) Regulations 2000 that implemented Directive 97/7. The Dutch equivalent of 'right of withdrawal' - 'herroepingsrecht' (in authentic Dutch version of Directive 97/7) has been changed in Dutch implementation into 'ontbinding' (art. 7:46d BW (Civil Code)).[378]

In the context of multiculturalism and multilingualism of the European Union, two phenomena can be observed in legislative drafting process: hybridisation and deculturalisation. First, EU law is created and drafted in the multicultural and multilingual environment. Due to reciprocal influences between national and EU legal systems, a hybrid legislative text is produced.[379] Such a text, especially at the beginning, is unfamiliar and weird to citizens of Member States. The strangeness of a text is strengthened by the process of

[375] It is directly indicated in EU drafting guidelines; see the Council *Manual of Precedents* 2002: 98 and Principle 5 of the *Joint Practical Guide of the European Parliament, the Council and the Commission* (2003: 17).
[376] On the phenomenon of deculturalisation see Biel 2005 and van Els 2001:329.
[377] OJ 1997 L 144/19.
[378] For other examples, see Wagner 2002: 58 and this thesis, subsection 4.1.3., paragraph 3 which explains how terms of directives are changed during their transposition into legal system of Member States; this explanation is illustrated with examples of directives transposed into Polish law.
[379] On the concept of 'hybrid text', see the thesis, subsection 3.4.4.

deculturalisation – which is a second phenomenon in EU drafting. This process aims at creation of autonomous terminology and a neutral language which are not specific to a legal culture of any Member States. Moreover, because of the need of drafting law in 23 languages, the style has to be simplified and any idiolects are avoided. Because of those processes a Eurolect is created which is also called 'Eurospeak'.[380, 381] Other terms used in the meaning of 'Eurospeak" - as Eurojargon, Eurobabble, or Eurofog - denote pejorative characteristics of language that EU legislation is drafted in.[382] 'Eurospeak' is especially criticised as comprehensible only to Eurocrats but not comprehensible - because of deculturalisation of a language - to EU citizens.[383]

[380] The term 'Eurospeak' comprises not only a language, EU legislation is drafted in, but also a language used in spoken communication.

[381] Another term created before 1981 when there were six official languages of EU institutions is an acronym *Dadefinspeaking Community* made from the first letters of those official languages (da – dansk (Danish), d – deutsch (German), e – English, f – français (French), i – italiano (Italian), n – Nederlands (Dutch)) (Goffin 1994: 636). The term – that has not been generally accepted and used – illustrates that a new neutral language has been created which is at the same time based on all EU official languages.

[382] The same negative implication can be found in French terms: l'*eurobabillage*, le *brouillard linquistique européen* or in German terms: *Eurowelsch* and *Eurokauderwelsch* (see Goffin 1994: 636).

[383] For further details on 'Eurospeak' and its disadvantages, see *int. al*. Goffin 1994: 636-642 and Wagner 2001a.

Conclusion to section 2.2.

This section demonstrates that when drafting of EU law in many languages is examined, issues related to legal traditions and reciprocal influences between EU law and legal systems of Member States should be taken into consideration. To be precise, the following observations should be borne in mind. Firstly, the European Union is an organization of Member States that created their own legal systems based on different legal traditions; i.e., either on common law or on civil law or on both (as in case of mixed legal systems of Cyprus and Malta). Secondly, the European Union, which develops an autonomous legal system, aims at applying its law uniformly in all Member States and at the same time at respecting their diversity. Hence, on one hand, when law is drafted, the EU should take into consideration diverse legal systems and traditions of Member States, and on the other hand, it should develop its own autonomous legal concepts and terms denoting them. Since natural languages applied to create legal language of the European Union are the same as languages which are the basis of legal languages of domestic legislation in EU Member States, the main challenge of EU legislative drafting is development of autonomous terminology for legal concepts of EU law. The process of creating terminology which is neutral for legal systems of Member States requires deculturalisation of a legal language. This process will be analysed in the subsequent part of the thesis (see chapter 5). The following section (2.3.), however, examines legal traditions observed in Canada and investigates challenges which are posed by the interaction of common law and civil law to Canadian drafting of bilingual legislation. When analysis of legal traditions within the European Union and Canada and their impact on legislative drafting is conducted, in the Conclusion to this chapter, the influences of legal traditions on drafting of EU and Canadian law are compared. The results of this comparison are important for the further comparative analysis of drafting of multilingual and bilingual law in the European Union and Canada.

SECTION 2.3.
Canadian legal traditions – bijuralism

Introduction

Interaction between various legal cultures and traditions which influences legal drafting is observed not only within a supranational organization, like the European Union, but also in Canada. This section examines legal traditions of Canada and their impact on legislative drafting.

As regards legal traditions and cultures, Canada is described as a bijural country because of the co-existence of two legal traditions, i.e., common law and civil law, within its legal system. The first subsection investigates the concept of 'Canadian bijuralism' and its sources. One of the reasons for bijural character of Canada is the perpetuation of civil law in Quebec, whereas legal systems of other provinces are based on common law tradition. In order better to explain the interaction of legal traditions within Canada, the second subsection concentrates on the legal system of Quebec which, on one hand, preserves civil law tradition in private law but on the other hand, it encompasses elements of common law, and therefore is described as a mixed legal system. The last subsection explains how federal law and private law interact in the area of property and civil rights, over which provinces have exclusive power, and what are consequences of this interaction for legislative drafting at federal level.

Subsection 2.3.1.
Canadian bijuralism

Pursuant to the *Constitution Act, 1867*,[384] Canada is a federal country. Subsection 92(13) of the *Constitution Act, 1867* provides the division of legislative powers and gives the provinces the right to legislate issues regarding two main areas of private law, i.e., property and civil rights.[385] Nowadays, there are ten Canadian provinces and three territories whose language regime has been investigated above (subsection 1.3.2.). Legal systems of all of them, except Quebec, are based on common law tradition. In Quebec, due to its colonial history, private law is derived from civil law, whereas criminal, administrative, constitutional law as well as institutional structures are based on common law tradition (Brierley 1992: 24-25 and Gall 2004: 265). As a result, Canada is described as a bijural country because two legal traditions – common law and civil law – co-exist within Canadian federal system of law.[386] The subsequent part of this thesis focuses on one aspect of Canadian bijuralism, i.e., legislative bijuralism which is defined as follows:

> The co-existence of the terminology of two legal systems in legislative documents. In the Canadian context, the object of legislative bijuralism is to ensure that each of the versions of a statute, regulation, provision or part of a provision takes both common law and civil law into account when the enactment contains a point of contact[387] with provincial private law (Wellington 2001: 14, TERMIUM®).

This definition demonstrates that common law and civil law not only co-exist but also interact with each other, since the two legal traditions are taken into consideration and harmonised when law is drafted. Common law and civil law are taken into account also when

[384] 30 & 31 Victoria, c. 3, U.K..
[385] The term 'civil rights' in the context of division of powers in Canada does not refer to civil liberties but to rights related to civil law, i.e., to contractual and tortious rights.
[386] Hereinafter the term 'bijural' or 'bijuralism' is used in the meaning of 'Canadian bijuralism' which denotes co-existence of common law and civil law traditions within Canadian legal system (Wellington 2001: 14). In general, bijuralism is defined as the coexistence of two contemporaneous legal systems within a state or international community (Gervais 1999: 10 and Wellington 2000: 14). Other terms, like 'bilegal system' or 'dual legal system' and 'bi-systemic country' (the latter in Brierley 1992: 24), are also used to denote the above-desrcibed situation; however, they are rarely applied with regard to Canadian legal system. Other official terms related to Canadian bijuralism are indicated and defined in Wellington 2001: 14-15; the definitions are provided in TERMIUM® (The Government of Canada's terminology and linguistic databank, available at http://www.termiumplus.gc.ca/).
[387] A point of contact is defined as "a concept or term found in a federal enactment that refers to specific private law rules contained in provincial legislation, or in case law on property or civil law matters" (Wellington 2001: 14).

private law is interpreted and applied. Therefore, the Canadian federal legal system can be described not only as bijural but also as a mixed one.[388]

Hereinafter, the term 'bijuralism' is used with reference to Canada, however, it should be noted that some authors suggest that the term 'plurijuridalism' or 'plurijuralism' can be applied to describe the Canadian legal system, firstly because of differences between common law provinces,[389] and secondly, because of aboriginal legal tradition taken into consideration in Canadian territories[390] (Duff 2003, ft. 8 and Brierley 1990: 25, ft. 9). Since aboriginal legal tradition is not taken into account to large extent when federal law is drafted, the thesis concentrates only on co-existence and harmonisation of common law and civil law traditions. In order to understand better the character of bijural legal system of Canada, the nature of Quebec's legal system, which is recognised as a typical mixed legal system,[391] should be explained.

Subsection 2.3.2.
Mixed legal system of Quebec

Gerald Gall describes Quebec's legal system as unique in Canada, but he also notes, "in many respects it is also uniquely Canadian" (2004: 263). The distinctive nature of legal system of Quebec results from its history. Before Quebec was ceded to Great Britain, it used to be a French colony (then called New France) and then pursuant to the Royal measures of King Louis XIV in 1663-1664, laws and ordinances (*loix et ordonnances*) of France, in particular, the *Coûtume de Paris*, were applied in New France. After cession of New France to Great Britain under the *Treaty of Paris, 1763*, the King of England – George III - created, by a Royal Proclamation, civil and criminal courts which heard cases according to the laws of England. However, French population boycotted the new justice system and organized their private relation according to the French law (*ancien droit*) outside English courts. In response to this situation, the British Parliament decided in *Quebec Act* enacted in 1774 that the French civil law (*ancien droit*), which had bound before the cession of New France to Great Britain (1763), should regulate the property and civil rights in Quebec, whereas criminal and penal

[388] For criteria of classification of a legal system as a mixed one, see this thesis, subsection 2.1.2.
[389] On the nature of the common law in Canada, see Glenn (1995: 261-292) who considers whether one should examine common law of Canada or rather common laws of each Canadian province (1995: 261).
[390] See, for instance, Morin 2003: 159-185 on the co-existence of aboriginal law, civil law and common law in Canada; Sullivan 2004: 1061-1066 on information about aboriginal law in Nunavut.
[391] On Quebec as a mixed legal system, see Palmer 2001: 22-24; Smits 2002: 114-119; Tetley 2003: 196-200.

cases should be regulated by English law (Section 8). This provision of the *Quebec Act*, which is the origin of the co-existence of French civil law and British common law in Canada and of mixed legal system in Quebec, has never been repealed. In 1791, the *Constitution Act, 1791*[392] divided the province of Quebec into Lower Canada (the present province of Quebec; southern part) and Upper Canada (the present province of Ontario, southern part) and established common law in Upper Canada, and preserved the primacy of civil law in Lower Canada (Tetley 2000: 694).[393]

When Canada became a federal country, jurisdiction over matters related to property and civil rights was granted to provincial legislatures under subsection 92(13) of the *Constitution Act, 1867*. At that time, in Quebec, the *Civil Code of Lower Canada, 1866* and the *Code of Civil Procedure, 1867* were in force. The *Civil Code* of 1866 had similar style and structure to the French Civil Code of 1804. However, not only French legal solutions were transplanted into the *Civil Code* of Quebec, but also customary law and law derived from English sources were included in that *Code* (Gall 2004: 271). Moreover, the *Civil Code, 1866* was drafted,[394] enacted and equally authentic in English and French. The 1866 *Code* (Article 2615 renumbered as Article 2714 in 1974) provided interpretative rule according to which in case of discrepancies between two language versions, this version which is the most consistent with the existing law should prevail (Gall 2004: 271, Tetley 2000: 696).[395] The *Civil Code of Lower Canada, 1866* was replaced by the *Civil Code of Quebec* enacted in 1991, which came into force in 1994 (hereinafter the *Civil Code of Quebec, 1994* or the *1994 Code*). The 1994 Code is also equally authentic in English and French. However, according to Gall (2004: 271), the quality of the present *Code*'s English version is worse than the quality of English version of the *Code, 1866*. In its preliminary provisions the *Code, 1994* explains that it "governs persons, relations between persons, and property".[396] Consequently, in the mentioned areas, civil law is applied in Quebec, whereas public law (in particular, criminal law, administrative and constitutional law) is based on common law tradition. Therefore, Quebec is described as a mixed legal system. Since criminal law system and administrative institutions derive from common law, court structure in Quebec is also based on common law tradition (Gall 2004: 265). As noted by Gall "While it is true that Québec is Canada's only

[392] 1791, 31 Geo. 3, c. 31.
[393] In 1840, the *Act of Union* (1840, 3 & 4 Vict. c. 35) reunited Lower Canada and Upper Canada as the Province of Canada.
[394] For details on bilingual drafting of the Civil Code, 1866, see Gall 2004: 271.
[395] For more details on the *Civil Code of Lower Canada*, *1866*, see, *inter alia*, Gall 2004: 269-271 and Tetley 2000: 695-670.
[396] For more details on development of legal system in Quebec, see *inter alia* Dion 2003: 193-194, Gall 2004: 263-278, Palmer 2001: 22-24, Smits: 2002: 114-119.

civil law jurisdiction, it is also true that in many respects the practice of law in Québec today might be more familiar to a Bay Street litigator than to a French *avocat*" (2004: 263).

The next subsection describes the relations between federal and provincial law, especially, in area of property and civil rights and explains how the co-existence of common law and civil law within Canada influences legal drafting at federal level.

Subsection 2.3.3.
Complementarity of federal law and provincial law - the need for harmonization and bijural drafting

The division of powers provided in the *Constitution Act, 1867* (subsection 92(13)), which vested exclusive jurisdiction over property and civil rights in the provinces, resulted in complementary relation between federal law and provincial private law (Brisson and Morel 1996: 299). This relation is denoted as the principle (or rule) of complementarity of federal law and provincial law, or as suppletive application of provincial legislation.[397] This principle means that unless otherwise provided by the federal legislation, provincial law complements federal laws in property and civil rights matters where federal laws are incomplete or silent.[398] Exceptions to the principle of complementarity are described as 'disassociations' (Brisson and Morel 1996: 330).

Provincial law supplements federal legislation when federal statute or regulation relies on or refers to concepts set out in private provincial law.[399] The reference of federal acts to provincial law can be explicit[400] or implicit[401]. When federal law is applied in a common law province, it is supplemented by provincial private law based on common law, but when it is applied in Quebec, it is civil law that complements federal law. Therefore, it is required that each language versions of federal laws should reflect both common law and civil law. Consequently, federal law should be not only bilingual but also bijural. Since Canadian

[397] Nowadays the principle is recognised by Section 8.1. of the *Interpretation Act, 1985* (R.S., 1985, c. I-21) as amended by the *Federal Law-Civil Law Harmonization Act, No. 1, 2001* (S.C. 2001, c. 4).
[398] For more details on the principle of complementarity, see *inter alia* Bastarache 2001: 23-24, Dion 2000a: 20, Dion 2000b: 41, Gervais 1999: 12-13, Rosenberg 2001: 35, Wellington 2001: 4-5.
[399] Federal statutes and regulations that have to be supplemented by provincial law regulate private law matters which do not fall under property and civil rights (i.e., for instance, marriage and divorce, bankruptcy and insolvency, bills of exchange and promissory notes, interest on money, patents of invention, and copyright) or regulate public law matters but some of their provisions rely upon private law concepts (Bastarache 2001: 2, Dion 2000).
[400] See, e.g., the *Bankruptcy and Insolvency Act* (R.S., 1985, c. B-3) which in Article 13.3 (1) (b) refers to a hypothec within the meaning of the *Civil Code of Quebec* – hence, to private law of the province of Quebec.
[401] See, e.g., Bastarache (2001: 23) who gives examples of laws relating to bankruptcy or bank security whose legal effect depends on the existence of various contracts (e.g., loans or sales) regulated by private provincial law.

federal law is mainly based on common law, the application of federal laws supplemented by provincial private law in common law provinces is less challenging than the application in Quebec which "has a private law system of its own" (Morel 1999b).[402] The following paragraphs of this subsection concentrate on harmonisation of existing federal legislation with Quebec civil law. The subsequent explanation of harmonization should bring a background for the study of reasons for legislative bijuralism and methodology of drafting of new federal laws in a way which reflects common law and civil law in both language versions.

The techniques of bijural drafting, which are investigated in chapter concerning legal drafting in Canada and the European Union (chapter 5, section 5.3.), have been applied in Canada recently. Before the 1970s federal law was usually drafted in English and then translated into French. An English version was mainly based on common law tradition (Gervais and Séguin 2001: 19) and a French version was a poor translation, which was very close to its original, and therefore reflecting only common law.[403] Since both language versions of federal laws were based only on common law concepts and terminology, federal law was unijural.[404] Consequently, the application of federal law in the area of private law in Quebec encountered difficulties resulting from discrepancies between the legislative language of federal provisions related to private law and the legislative language of Quebecois civil law provisions. In 1985, during the revision of federal statutes, the attempt was made to improve quality of French and English versions of federal legislation. However, the revision based on the semi-bijuralism[405] policy did not result in harmonization of federal law with civil law of Quebec because English versions were revised in terms of the common law, whereas French versions reflected the civil law (Morel 1999c, ft. 13).

The discussion on the harmonization of federal legislation with civil law has been brought about due to the enactment of the new *Civil Code of Quebec*, *1994* which laid down the new *jus commune*,[406] modernised language and introduced terminological changes that influenced almost all areas regulated by the *Code* (Morel 1999b). As a result, the Law and Policy Committee of the Department of Justice Canada adopted in 1993 a *Policy for Applying the Civil Code of Quebec to Federal Government Activities* which required federal provisions, which should be supplemented by provincial private law, to be terminologically updated in order to become compatible with the *Civil Code of Quebec*, *1994*. However, it should be

[402] On influence of the *Civil Code of Quebec* on federal law, see *int. al.* Brisson 1992: 345-360.
[403] For details on drafting of bilingual Canadian law before co-drafting method and bijural drafting techniques were applied, see this thesis, subsection 5.3.1., paragraph 1, and .
[404] For details on the concept of 'unijuralism' in the Canadian context, see Wellington 2001: 10-11.
[405] For details on the concept of 'semi-bijuralism' in the Canadian context, see Wellington 2001: 11.
[406] See preliminary provisions to the *Civil Code of Quebec.*

underlined, that discrepancies between language of federal statutes modeled on concepts of common law and language of legislation of Quebec derived from civil law were observed before the *Civil Code of Quebec*, *1994* came into force.[407]

It should be emphasized that the requisite harmonization of federal law with civil law resulted in the recognition of the need to draft both language versions of federal legislation bijurally (Morel 1999c). The requirement of bijural drafting of federal law has been directly expressed in the *Policy on Legislative Bijuralism* adopted in 1995,[408] which encompasses observations on legislative drafting and recommendations for bijural drafting that should be taken into consideration not only when the existing federal statutes are revised and harmonised with civil law but also when new federal legal acts are drafted. First, the *Policy* recognized the four Canadian legal audiences (Francophone civil law lawyers, Francophone common law lawyers, Anglophone civil law lawyers and Anglophone common law lawyers) and stated that each of them has a right to have access to federal legislation in the official language of their choice, but also to find in each language version terminology and wording that respects and reflects concepts and institutions of the legal system (common law and civil law) of their province or territory.[409] In order to fulfil requirements of the *Policy of Legislative Bijuralism* pertaining to the existing federal legislation which was unijural or semi-bijural, the *Program for the Harmonization of Federal Legislation with the Civil Law of the Province of Quebec* was established in 1997 by the Department of Justice Canada. The main objective of this Program was to harmonize federal laws that interact with provincial private law. Consequently, at the outset, around three hundred statutes in force (among seven hundred examined statutes), which contain one or more provisions referring or relying on concepts of provincial private law, were indicated (Morel 1999c). Then, concepts and terms in federal provisions which refer to provincial private law - called 'points of contact'[410] - were identified and examined (Wellington 2001).[411]

Up to date two acts harmonizing federal law with civil law of Quebec, i.e., *Federal Law-Civil Law Harmonization Act, No. 1, 2001*[412] and *Federal Law-Civil Law Harmonization*

---

[407] See the above-mentioned (in this subsection) revision of federal statutes based on semi-bijuralism policy conducted in 1985 which demonstrates that incompatibility of federal law with civil law of Quebec had been recognised before. For details on "a problem that existed prior to the new Code [of Quebec]", see Morel 1999b.
[408] Canada, Department of Justice, *Policy on Legislative Bijuralism*, Ottawa, June 1995.
[409] See *Policy on Legislative Bijuralism* reprinted in Wellington 2001: 23; see also Morel 1999a. On four Canadian legal audiences, see also this thesis, Conclusion to section 1.3.
[410] For the definition of the term 'point of contact', see *supra note* 387, or Wellington 2001: 14, or TERMIUM®.
[411] For details on the process, stages and methodology of harmonization, see Wellington 2001: 1-25.
[412] *A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law* (Bill S-4, S.C. 2001, c. 4) repealed the provisions of the *Civil Code of Lower Canada, 1886*, amended the *Interpretation*

Act, No. 2, 2004[413] came into force and the third series of proposals to harmonize the federal law with the civil law of the province of Quebec[414] was launched by the Department of Justice for public consultation in February 2008. Moreover, federal tax has been also harmonised with civil law of Quebec.[415] The Harmonization Acts respect the intent of the Parliament of Canada and introduce only terminological changes in federal statutes.[416] Although the scope of federal legislation should not be modified, harmonization might have some impact on substantive law, since the *Civil Code of Quebec* provided not only new terminology but also new concepts, rules and principles **(**Gaudreault 2003). After enactment of a harmonization act or any other amendment act that harmonizes federal law according to bijural rules, the terminological changes are published and explained on the website of Department of Justice Canada as *Bijural Terminology Records*[417] which is also the reference for Canadian Courts[418] for interpretation purposes.

The detailed analysis of harmonization process is above the scope of this thesis. However, the studies and observations pertaining to the harmonization of federal law with the civil law of Quebec, and especially, the terminological work, whose results are demonstrated in *Bijural Terminology Records*, should be taken into consideration when bijural drafting of Canadian bilingual law is examined in the next part of the thesis (see chapter 5).

Act (R.S.C. 1985, c. I-21.), harmonized - with the civil law of the Province of Quebec - the provisions of the *Federal Real Property Act* (renamed by Bill S-4 as *Federal Real Property and Federal Immovables Act* (S.C. 1991, c. 50)), the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3), the *Crown Liability and Proceedings Act* (R.S.C., 1985, c. C-50) and numerous other federal statutes. See the studies on the harmonization of the above-mentioned statutes conducted by Auger, Bohémier and Macdonald 1999: 887-965, Auger 1999: 967-986 and Bohémier 1999: 841-886 on the *Bankruptcy and Insolvency Act*; by Brierley and Kasirer 1999a: 773-830 and 1999b: 831-840 on the *Federal Real Property Act*, and by Jutras 1999: 987-1036 on the *Crown Liability and Proceedings Act*. For details on preparation of *Federal Law-Civil Law Harmonization Act, No. 1* and its content, see Pourbaix 2001.

[413] *A second Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law* (S.C. 2004, c. 25) amended 26 statutes; it mainly completed harmonization of the acts which had been already partly harmonised by the *Federal Law-Civil Law Harmonization Act, No. 1, 2001*.

[414] The *Third series of Federal Law–Civil Law Harmonization Proposals* aim at harmonizing the *Canada Business Corporations Act* (R.S., c. C-44) and the *Expropriation Act* (R.S., c. E-21) with civil law of Quebec.

[415] For more details see two Collections of Studies in Tax Law. The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism (Department of Justice Canada 2002, 2005b), see also Duff 2003: 1-63.

[416] For instance, the following terminological changes were introduced to the *Federal Real Property Act* (*FRP A*ct): the French term *sujets de droit privé* was replaced by *personnes physiques* (in subsection 5.2 of the *FRP Act* amended by clause 15(3) of the *Harmonization Act, No 1*); the English term 'private person' was replaced by 'natural person' (in subsection 5.2 of the *FRP Act* amended by clause 15(3) of the *Harmonization Act, No 1*); accordingly, the term 'natural person' is the equivalent of *personnes physiques*. When Brierley and Kasirer were analysing the equivalence 'a private person - *sujets de droit privé*' and then proposed the equivalence 'natural person - *personnes physiques*', they took into consideration both the terminology of *Civil Code of Quebec* and the intent of the federal Parliament (1999a: 805-806 and 1999b: 857). For details on harmonization of the concepts and terminology of federal law and provincial law, see also Macdonald and Scott 1997: 29-69.

[417] http://canada.justice.gc.ca/eng/pi/bj/harm/index.html.

[418] See *Schreiber* v.*Canada (Attorney General)*, [2002] 3 S.C.R. 269.

Conclusion to section 2.3.

The theoretical recognition of bijural character of Canadian legal system, which means the co-existence of common law and civil law traditions (subsection 2.3.1.), and of mixed nature of legal system of Quebec (subsection 2.3.2) is not enough to properly regard and satisfy four audiences of Canadian law. In order to assure the equal access to federal law to a Francophone civil law lawyer, a Francophone common law lawyer, an Anglophone civil law lawyer and an Anglophone common law lawyer, it is not enough to draft law in English and French but also to draft both language versions in a way that each of them reflects common law and civil law. As a result, the legislative bijuralism is achieved.

Canadian federal law used to be unijural (i.e., the both language versions were based on common law concepts) or semi-bijural (English version was derived from common law, whereas French one from civil law tradition). The enactment of the new Civil *Code of Quebec, 1994* made the harmonization of federal law with civil law necessary, especially in the areas where provincial private law supplements federal law in accordance with the principle of complementarity and with the division of powers provided in Subsection 92(13) of the *Constitution Act, 1867* (subsection 2.3.3). Nowadays federal law, particularly when it relies on provincial private law concepts, is bijural, i.e., it is drafted in a way which makes federal provisions harmonised and compatible with private law of provinces, i.e., with common law and civil law.

In the subsequent part of the thesis, bijural drafting techniques are explained thoroughly, but the aim of this chapter is to find out whether relation between legal traditions and legal languages in Canada and the European Union has some common points which would enable the comparison of drafting law of the two systems. The conclusion to the present chapter shall give the answer to this question.

CONCLUSION to CHAPTER 2

Interaction between law of supranational organization and law of its member states and between law of federal country and law of its states or provinces is not the same.[419] It is above the scope of this thesis to conduct the comparison of these interrelations. However, the reference towards them is inevitable in order to compare drafting of federal and supranational law. This chapter focused on legal traditions and their interactions observed in the European Union and Canada; consequently, as well in EU Member States and in Canadian provinces and territories. In particular, the chapter examines how legal traditions influence legislative drafting in the European Union and Canada.

Among EU Members States, civil law systems, common law systems and mixed legal systems can be indicated. In Canada, the province of Quebec is denoted as a mixed legal system where private law is derived from civil law, whereas legal systems of the other provinces and territories are based on common law tradition. Since EU law is applied, in some cases even directly, in Member States and Canadian federal law is applied in the provinces and territories, common law and civil law traditions should be taken into account to some extent when supranational and federal law is drafted. However, the two legal traditions are not necessarily taken into consideration in the same way in the European Union and Canada.

The harmonisation of federal law with the civil law of Quebec - demonstrated in this chapter (subsection 2.3.3.) - illustrates how common law and civil law should be reflected in federal law.[420] In a nutshell, English and French versions of federal laws, especially, when federal legislation is based on private law concepts, must reflect both common law tradition and civil law of Quebec. Accordingly, federal law is bijural. On the other hand, when supranational law of the European Union is drafted, the main concern is to drawn up all language versions in a way that none of them reflects legal systems or traditions of any Member State. As a result, the autonomous legal system of the European Union is developed.

---

[419] *Cf.*, for instance, as regards the EU, the division of powers between the Community and Member States (Douglas-Scott 2002: 155-198) and especially, the principle of subsidiarity (Article 5 of the EC Treaty), and, as regards Canada, the division of powers (Subsection 92(13) of the *Constitution Act, 1867*) and the principle of complementarity in the area of property and civil rights (Section 8.1. of the *Interpretation Act, 1985*).

[420] As regards harmonisation, it should be noted that this process is understood and conducted differently in the EU and Canada. In Canada, it is federal law which is harmonised with the provincial law, mainly in the area of private law. In the European Union, law of Members States is harmonised with law of the EU, mainly in the area of standards pertaining to the free movement of goods, services, people and capital (Gervais and Séguin 2001: 18).

Consequently, in Canada bijural federal law reflects two traditions observed in Canadian provinces and territories and make them co-exist (cohabitation of legal traditions), whereas in the European Union, autonomous legal system based on new autonomous concepts and terminology is developed (neutrality towards legal traditions of Members States).[421] Although objectives of legislative drafting in the EU and Canada are different, often in order to achieve them (i.e., to draft with respect to the autonomous character of the EU legal system, and to draft with respect to bijural nature of Canadian legal system) similar techniques are applied. In particular, one can indicate the use of neutral terms, i.e., terms neutral towards two Canadian legal traditions and terms neutral towards legal systems of EU Member States, respectively. The examination of these drafting techniques is conducted in the next part of the thesis (chapter 5).

Before legislative drafting methods are explained in detail, another difference, which relates to the uniform application of law, should be noted. The supranational law of the European Union should be uniformly applied in all Member States (section 2.2.). On the contrary, in Canada the uniform application of federal law in provinces and territories is not always required in the area of private law (Brisson and Morel 1999, Bastarache 1999: 24, Gaudreault 2003). It results from the provision of the *Interpretation Act, 1985*[422] which in Subsection 8.2. states that:

> Unless otherwise provided by law, when an enactment contains both civil law and common law terminology, or terminology that has a different meaning in the civil law and the common law, the civil law terminology or meaning is to be adopted in the Province of Quebec and the common law terminology or meaning is to be adopted in the other provinces.

This interpretation rule expresses respect for the concepts and principles unique for each legal system of Canadian provinces (Bastarache 1999: 24).[423] As regards the European Union, although a uniform application of supranational law is required, at the same time the diversity of Member States' legal systems is respected also in the European Union. The differences between requirements pertaining to the uniform application of law in the European Union and Canada result from the fact that, unlike federal Canadian law, EU law, although sometimes inspired by the legal solutions applied in Member States, does not rely on concepts of national law of Member States but always creates its own autonomous concepts.

[421] *Cf.*, Gervais and Séguin 2001: 17, ft. 57.
[422] The *Interpetation Act, 1985* (R.S., 1985, c. I-21) as amended by the *Federal Law-Civil Law Harmonization Act, No. 1, 2001* (S.C. 2001, c. 4).
[423] It should be taken into consideration that the differences in private law exist not only between civil legal system of Quebec and legal systems of the common law provinces, but also private law of common law provinces varies, although they share the same legal tradition (Brisson and Morel 1999, Gaudreault 2003).

These differences are reflected in dissimilarity of some drafting techniques applied in the two legal systems.

To sum up, although there are evident differences in drafting policy and the impact of legal traditions on legislative drafting in the European Union and Canada, there are some common characteristics which make the comparative analysis of drafting of multilingual law in the two legal systems possible. Especially, two features should be indicated. Firstly, Canada and the European Union develop autonomous legal systems and therefore sometimes apply similar drafting techniques. Secondly, the European Union respects the diversity of Member States' legal system and Canada respects legal traditions of its provinces and territories. This respect in Canada is reflected in the application of the bijural drafting policy, whereas in the European Union, it is in the application of special legal instruments, like directives, whose language and drafting is investigated in the next part of the thesis (paragraph 3 of subsection 4.1.3.).

CONCLUSION to PART I

Two epigraphs to this part have already demonstrated a significant element common for Canada and the European Union, i.e., respect to diversity based on which a single system is created. The mottos refer to language diversity which, in a legal context, is reflected in legislative multilingualism based on the principle of equal authenticity. This principle is not only the basis for both Canadian and EU legislative bilingualism and multilingualism, respectively, but also - as demonstrated in the conclusion to the first chapter has the same meaning and significance - in the both legal systems.

The equal authenticity of language versions of multilingual legislation is also the reason for conducting the doctoral research demonstrated in this thesis and its key concept. The equal authenticity of language versions of a legal act and other presumptions resulted from the principle are often described as a fiction. The language versions of a legal act become equally authentic once they are enacted or adopted. Although they are not considered as authentic when they are drafted, the drafting methods influence in practice equal authenticity. On one hand, an applied drafting method has an impact on the quality of all authentic versions and, on the other, it can challenge authenticity and equality of language versions when not all of them have been drafted simultaneously and an original can be distinguished from a translation. The thesis aims at investigating whether there is a method or are methods able to satisfy this principle and make equal authenticity not just a legal presumption or fiction but reality. The theoretical consideration of this issue, which is provided in the next part of the thesis (chapter 3), is completed with the comparative analysis of multilingual legislative drafting methods applied in practice in the European Union and Canada (chapters 4, 5 and 6).

Therefore, it was necessary in the first part of the thesis to provide, at the outset, background information about language regimes of Canadian and EU legal systems (chapter 1). Moreover, since a legal culture and tradition are strongly linked with a legal language, the second chapter of this part investigated the impact of legal traditions on the legal language and legislative drafting in Canada and the European Union.

In order to sum up the analyses conducted above, the conclusion focuses on similarities between legal language regimes and between the influences of legal traditions on legislative drafting in Canada and the European Union. The conclusion to the first chapter

indicates the similarities between language regimes of Canada and the EU as regards reasons for and the role of multilingualism, the role of official languages, equality of official languages, and especially the principle of equal authenticity (for details, see conclusion to chapter 1). The apparent difference is a number of official languages in the two legal systems. However, it should be noted that French and English – two official languages of Canada – are also among the official languages of the European Union. Moreover, the proposal of EU legal instrument is usually drafted in English or French. It should be, however, borne in mind that when the term 'language' is used in the meaning of 'legal language' (see subsection 3.1.3.), French language of Canadian law must be distinguished from EU French legal language and English language of Canadian law must be distinguished from EU English legal language.

As mentioned above, the most important common features of Canadian and EU legislative multilingualism is the principle of equal authenticity which is understood in the same way in Canada and in the European Union, i.e., as the requirement to take into account all authentic language versions of a legal instrument for interpretation purposes. This requirement is based on the presumption that all authentic language versions are original and render the same meaning. Consequently, in case of discrepancies between language versions of a legal instrument, none of them can be disregarded or prevail for interpretation purposes. The Supreme Court of Canada and the European Court of Justice developed also similar interpretative rules which aim at finding the common meaning of language versions when their meaning diverges. Hence, Canadian and EU law should be drafted in a way that all their authentic language versions are coherent and all can be considered originals. The next part of the thesis (especially, chapter 5) investigates whether there are methods that can satisfy this requirement.

The second chapter investigated how legal traditions in Canada and the European Union influence legislative drafting and legal language. As demonstrated, EU supranational law and Canadian federal law are applied in legal systems based on common law tradition or civil law tradition or in mixed legal systems. Consequently, the two legal traditions should influence drafting of Canadian and EU law. However, this impact is not the same and the approaches towards the legal traditions are different in the context of drafting law in Canada and in the European Union. In Canada "neither language is the exclusive linguistic vehicle for the expression of Canadian Common law or Canadian Civil law" (Brierley 1990: 25), because each language versions has to reflect both common law and civil law tradition. On the other hand, in the European Union, none language version can reflect any of national legal systems of Member States, because EU law is autonomous and should be uniformly applied in all

Member States. Accordingly, Canadian legislative drafting supports the co-existence of common law and civil law, whereas EU legal drafting sustains the development of autonomous legal system.

It should be underlined that in Canada and in the European Union, the diversity of legal systems and traditions of provinces and Member States, correspondingly, is respected, although by different means. The common challenge of Canadian and EU legal drafting is the fact that federal and supranational law expressed in more than one language is applied in Member States or provinces which have their own legal systems (traditions) and use their own legal languages which are based on the same natural languages from which legal languages of EU supranational law and of Canadian federal law derive. Accordingly, a drafter of EU and Canadian law should take into consideration diversity of legal traditions and systems where supranational law and federal law are applied.

The common features of legislative multilingualism in the European Union and legislative bilingualism of Canada make the comparison of drafting techniques applied for drawing up EU supranational law and Canadian federal law plausible. However, when this comparative analysis is conducted the differences between EU and Canadian legal systems and language regimes - indicated in this part of the thesis - must be also borne in mind. Moreover, the purpose of this analysis - i.e., investigation whether equal authenticity can be strengthened and guaranteed already during drafting process - should be also taken into account.

PART II

Drafting of equally authentic language versions of multilingual law in the European Union and Canada

INTRODUCTION

The previous part has disclosed the common features of Canadian legislative bilingualism and EU legislative multilingualism. The most important characteristic – shared by both multilingual legal systems - is expressed in the principle of equal authenticity, which is the basis for the following comparison of legislative drafting. The objective of this part is twofold. Firstly, the general aim is to investigate how multilingual law is drafted. Secondly, the specific objective is to examine whether it is possible to guarantee the equality of authentic language versions of a legal act when these versions are drafted, accordingly before their adoption and authentication. The both investigations are based on the study of legislative drafting of multilingual law in the European Union and Canada.

At the outset, a theoretical framework for this study is provided in chapter 3. This chapter examines several methods of multilingual legislative drafting (from translation to co-drafting) and indicates which of them are able to ensure equality between language versions which are to become authentic. The next chapter (chapter 4) provides a brief overview on legislative instruments of Canada and of the European Union. The focus is on the indication of these instruments which must be drafted in more than one language. Drafting of these instruments is the subject of chapter 5. Moreover, chapter 4 concentrates on a method and process of drafting of these forms of legislation which are not analysed in chapter 5, especially on drafting of EU primary legislation (treaties), international agreements concluded by the European Union and Canada, and on Canadian Constitutional Acts. After this analysis is completed, chapter 5 investigates the practice of drafting of multilingual laws in the European Union and Canada. In particular, it is examined whether drafting methods analysed in chapter 3 can be applied in practice for drafting multilingual legislative instruments described in chapter 4 and to ensure equality between their language versions. The subject of the last chapter (chapter 6) is subsequent legislative drafting which is an exception to co-drafting methods analysed theoretically in chapter 3 and to drafting process in the European Union and Canada investigated in chapter 5.

CHAPTER 3
Translating or co-drafting – methods of drafting multilingual law

Introduction

The thesis aims at examining whether it is possible to guarantee equality between language versions of a legal act during the drafting process. This issue is analysed on the basis of a comparative study of legal drafting in the European Union and Canada. This chapter provides theoretical framework for this analysis. Keeping in mind the principle of equal authenticity and the theory of original texts, the chapter scrutinises whether there is a drafting method which could assure equality between language versions.

In order to find out whether equality between language versions of multilingual legal act can be achieved during a drafting process, first, multilingual drafting methods have to be analysed. At the beginning, translation, - a traditional method, used the most frequently for drafting multilingual law - is investigated (section 3.2.). Then, various co-drafting techniques, which are alternative to translation, are described (section 3.3.). In the thesis, all methods that can be applied to draft multilingual law, including legal translation and co-drafting, are jointly called 'multilingual legal drafting'.

The thesis statement is based on the presumption that if it is not possible to indicate during multilingual legal drafting, which language version of a legal act is original (a source text) and translation (a target text); the equality between authentic language versions is assured throughout the drafting process. The theoretical analysis conducted in this chapter attempts to find out whether a drafting method, which can make the distinction between original and translation impossible - in other words, to produce only original language versions – exists. In order to carry out this analysis, co-drafting and legal translation applied in multilingual legal drafting are compared with classical translation (section 3.4.). Results of this comparison should display what conditions and criteria have to be fulfilled, in order to

guarantee equality between language versions of multilingual legal act already through a drafting process. In the following chapter (chapter 5), where multilingual legal drafting process in the European Union and Canada are examined, it shall be investigated whether those 'equality' conditions are achieved.

The comparison conducted in section 3.4. demonstrates as well whether translations studies' methodology can be applied and to what extent (in case of a positive answer) to multilingual legal drafting methods which include legal translation and co-drafting techniques.

The analysis of various multilingual drafting methods is preceded with clarification of the concept 'legal language' (section 3.1.). The thesis examines how law is drafted in many languages and the term 'language' and 'legal language' is used throughout this dissertation in both theoretical analyses and in examination of legal drafting in Canada and in the EU. The concept of 'legal language' is used in the sense of linguistic phenomenon, as well as, in the meaning of legal phenomenon. Therefore, the approach of linguistics (subsection 3.1.1.) and of theory of law (subsection 3.1.3.) to legal language is explained. Moreover, since translation theories are applied in this chapter to analyse multilingual drafting methods, it is also clarified how legal language and legal text is understood in translation studies (subsection 3.1.2.).

SECTION 3.1.
Legal language and language of law in the aspect of multilingual legal drafting

Introduction

The focus of the thesis is on a process of drafting of multilingual law, not on a product of that process. However, without the consideration of this product, the analysis of drafting process would not be comprehensive. First, hence, the product of multilingual legal drafting should be specified. This product is a legislative act expressed in two or more languages, or in other words two or more authentic language versions of a single legal act. Language is the element which is always present at the drafting process. It is a substance and subject of the process.

Since the following chapter deals with the methods of drafting law in many languages, at the outset, some explanatory remarks should be made on the legal language. This vast area is outside the scope of this dissertation and the aim of this section is not a comprehensive overview of the subject. Nevertheless, some issues should be clarified and explained. First, the notion of 'legal language' is specified. In this section, it is explained how the term 'legal language' is to be understood and applied throughout the thesis. Such explanation is necessary because of ambiguity of this notion and a great number of proposed terms denoting the concept.[424] Moreover, there are various different approaches to the issue of legal language not only within the theory of law but also in linguistics and translation studies.[425] In my opinion, analysis of legal drafting demands interdisciplinary approach. Therefore, it is useful to have in mind various approaches of above-mentioned domains. The references made in this dissertation to these approaches have to be selective and incomplete but the aim of the section is not a comprehensive presentation of different understandings of 'legal language' or of the

[424] For instance, 'legal language' is also called 'language of law' or 'legalese'. On the multiplicity and ambiguity of this notion see *int. al.* Mazzarese 1996: 339–412; see also Kurzon (1997), who calls the multiplicity of terms denoting or describing legal language 'a sea of terms'. Until the explanation how terms 'legal language' and 'language of law' are used in the thesis is provided (see subsection 3.1.3), the two terms are used interchangeable.

[425] A growing interest in the language of law can be noticed in many disciplines outside the area of legal studies, not only in linguistics or translation studies, but also in e.g., sociolinguistics, sociology, philosophy, anthropology or discourse analysis. However, theory of law, linguistics and translation studies are mainly referred to, because these disciplines are used in my research.

characteristics of this language but a choice of the optimal term and its meaning for my research. Moreover, the analysis of approaches to legal language in theory of law, translation studies and linguistics aims as well at demonstrating how the three disciplines can offer any observations or methodological tools useful for research on multilingual legal drafting.

The separate identity of legal language or language of law, although questioned, but generally is recognised by theory of law, linguistics and translation studies. Nonetheless, these domains use different criteria and characterise legal language in different way. Each discipline has its own focus, distinct goals and assumptions. On the other hand, they influence each other and sometimes it is difficult to refer to them independently. However, the approaches to legal language characteristic for the three domains are demonstrated separately (subsections 3.1.1., 3.1.2. and 3.1.3.). Firstly, I concentrate on the distinctness of legal language from the point of view of linguistics (subsection 3.1.1.). Secondly, I explain translation studies' approach to legal language as a language (text) for special purposes (subsections 3.1.2.). Finally, I focus on the ambiguity of the term 'legal language' and clarify how this term is used throughout the thesis. This ambiguity is described by referring to theory of law (subsections 3.1.3.), although in order to explain the ambiguity of the term 'language', one should refer to linguistics.

Each subsection takes into consideration the following issues: firstly, the recognition of legal language as a distinct phenomenon or at least as a category of standard or natural language and terms used to denote or describe legal language in respective disciplines; secondly, classifications of types of legal language analysed together with terms denoting various types of legal language; thirdly, features of legal language noted by linguistics, translation studies and theory of law; and finally applicability of the three disciplines in the research of multilingual legal drafting.

Subsection 3.1.1.
Legal language in linguistics – legal language as a sublanguage of general language

Since the term 'language' is used in the thesis not only in the sense of a legal phenomenon but also as a linguistic one, this subsection provides short overview on linguistic approaches to a legal language.

While considering language, law and linguistics, two domains within discipline of linguistics should be distinguished; firstly, linguistics that examines and describes legal language and secondly, linguistics that is applied in the domain of law. The latter is called forensic linguistics and defined as "the interface between language, crime and law, where *law* includes law enforcement, judicial matters, legislation, disputes or proceedings in law, and even disputes which only potentially involve some infraction of the law or some necessity to seek a legal remedy" (Olsson 2007: 2).[426] Forensic linguistics covers mainly the following areas of study: analysis of courtroom discourse, courtroom translating and interpreting, legal language comprehensibility, the use of linguistic evidence in court (e.g. speaker authentication, authorship attribution for written texts, identifying cases of plagiarism etc.)[427] (*cf*. Brennan 2001).[428] Although Olsson's definition of forensic linguistics mentions legislation, if the areas of interest of forensic linguistics are taken into consideration, it is apparent that language of legislation is not the focus of this discipline. All the more, very often a language, which is the subject of the analysis of forensic linguist, is not a language that is used in legal documents or in legal oral communication (as it is in case of linguistic evidence which can refer to all kinds of texts, e.g. examination whether a suicide note is genuine or simulated; see Olsson 2005). Since forensic linguistics does not focus on language of legislation, it does not provide methods that could be applicable for research of multilingual legal drafting. Therefore, the concern of this subsection is mainly on these fields of linguistics which directly refer to legal language, especially to language in which law is

[426] Different definitions of forensic linguistics are proposed; broad like Olsson's definition or narrow as, e.g., Crystal's (1997) definition of forensic linguistics as "the use of linguistic techniques to investigate crimes in which language data constitute part of the evidence" (*cf*. Brennan 2001).

[427] For the details on the use of linguists as expert witnesses in court, see *int. al*. Levi 1994: 1-16, Tiersma and Solan 2002: 221-239, Shuy 2005, 2006.

[428] For further details on forensic linguistics, see *int. al.* Coulthard and Cotterill 2005, Gibbons 2003, Goddard 1996: 250-272, Kniffka 1990, Levi and Walker 1990, Olsson 2004, Rieber and Stewart 1990, Solan 1993, Tiersma 1999; see also *The International Journal of Speech, Language, and the Law* (formerly *Forensic Linguistics*) available at http://www.equinoxjournals.com/ojs/index.php/IJSLL, last consulted in August 2007; as well as consult the following websites: website of the Forensic Linguistics Institute (the FLI) at http://www.thetext.co.uk/, and website of the International Association of Forensic Linguists (IAFL) http://www.iafl.org/. For details on how law can benefits from linguistic research, see Ainsworth 2006: 651-668.

drafted (to language of law). It should be noted that within linguistics (especially in French and Canadian literature) separated study on legal language developed, called 'jurilinguistics' or 'legal linguistics'.[429]

In linguistics there are many, often conflicting, approaches to the issue of 'legal language'; starting from the discussion whether legal language can be considered as independent and autonomous phenomenon[430] and ending at different classifications of legal language as a linguistic phenomenon[431]. It goes beyond the purpose of the thesis to analyse different approaches of linguistics to legal language. Therefore, I confine myself to displaying my choice of the category applied to describe legal language as a linguistics phenomenon and then I concentrate on features of legal language, which are significant in case of multilingual legal drafting.

I follow the widely accepted opinion that legal language can be regarded as a sublanguage or special (or specialised) language (Tiersma 1999: 143). The distinction between general and special language[432] is generally acknowledged in linguistics (see *inter alia* Sager Dungworth and McDonald 1980).[433] General language is the language which everyone within the language community is able to use and understand based on shared amount of linguistic and factual knowledge (*cf*. Cabre 1992: 59). On the contrary, since a

[429] The French term 'linguistique juridique' was used by Cornu (2005, first edition in 1990) in the title of his book. The term 'jurilinguistics' was used for the first time in *Langage du droit et traduction. Essais de jurilinguistique/The Language of the Law and Translation. Essays on Jurilinguistics* edited by Gémar (1982a) and now is commonly used in Canada (see *int. al.* Gémar 1995, Gémar and Kasirer 2005). Gémar (2005: 5) notes that although jurilinguistics became distinct discipline in the last quarter of the twentieth century, in practice it is much older, especially in Canada. "According to Cornu, the term 'jurilinguistique' refers only to the linguistic study of legal language, whereas 'linguistique juridique' includes not only jurilinguistics but also legal linguistics, i.e., the operation of language in the service of law" (Šarčević 2000a: 114, footnote 18). There is also the opinion that the terms 'linguistique juridique' used in France and 'jurilinguistique' preferred in Canada are synonymous and mean "the study of the language of the law" (Chodkiewicz 2004: 155). On the subject matter of jurilinguistics, see Gémar 1982b:135.

[430] See, for instance, Mounin (1974) who states that since the language of law needs to draw upon the whole resources of the natural language for its intelligibility, there is no distinct 'language of law' but rather the use of the ordinary resources of language for particular purposes; see also *int. al*. Klinck 1992. For arguments refuting Mounin's opinion, see Jackson 1988: 47-50.

[431] Linguists classify legal language as an argot, a dialect, a register, a style, a sublanguage or a separate language (Tiersma 1999); see also Kurzon (1997: 119-139) who analyses the use of terms such as 'variety', 'genre', 'register', and 'discourse' for description of legal language. Other authors searching for the proper classificatory terms to describe legal are following, see e. g.: Crystal and Davy 1969 on languages variety; Halliday 2003 on dialect; Danet 1980 on dialect, register, diglossia and sociolect; Danet 1985 on genres of legal dicourse; Havranek 1964 on 'intellectualization' of the standard language.

[432] The concept of 'special language' exists under different labels; for instance, *Fachsprache*, *langue de specialité*, 'language for special purposes'; on the latter see subsection 3.1.2. On various names of the concept of 'special language', see Hoffman 1985: 83.

[433] There are different opinions about the relationship between special and general language in the reference to national language. Firstly, a general language is the same as a national language and all special languages are its subdivisions (as it is admitted in this subsection). Secondly, a national language can be divided into two types: general language and special language. Thirdly, a national language is all special language; in the sense that it consists of all the different language varieties.

special language is to convey "special subject information among specialists in the same subject" (Sager, Dungworth and McDonald 1980: 210), it can only be understood by those who share a certain amount of factual or field specific knowledge in addition to the generally shared linguistic knowledge. Usually a special language is developed for purposes of scientific domains or by professional communities (Beaugrande 1989: 3, 6).[434, 435] In the domain of law, a special language called 'legal language' or 'language of law' has been created. General and special languages overlap and sometimes it is difficult to draw the line between them. However, a special language cannot be composed merely of its own resources. It is based on and derived from general language.[436] Therefore, a special language can be regarded as a sublanguage[437] of a general language, and thereby, of national language (e.g. legal English or legal French).

Linguistics describes legal language in terms of linguistic categories, like lexicon (semantics), syntax, pragmatics and style.[438] Although it is possible to indicate linguistic characteristics which are common for legal language, on the other hand, it is noted that legal languages, which derive from various national (general) languages, differ from each other. It results not only from differences between various national languages, but also largely from differences between legal cultures and legal systems (national (e.g. British, French etc.), international, or supranational (e.g. EU) systems). Therefore, differences can be also observed between legal languages deriving from the same natural language (e.g. English) but applied in different legal systems (e.g. differences between English legal language of British legal system and English legal language of the United States or English legal language of Canada). The analysis of differences and interactions between various legal languages is a task of comparative legal linguistics.[439] The results of comparative linguistic analysis of legal languages are important for research on drafting law in many languages.[440]

---

[434] For instance, Beaugrande (1989: 6) indicates scientific English, engineering English or legal English as examples of special language.
[435] Therefore it is also called a technical language or 'technolect'. On the technical nature of legal language, see Cao 2007a: 15-18, 20, see also Mattila 2006: 3, Mazzarese 1996: 406-407.
[436] It refers only to a special language which is not an artificial language and therefore independent of national language (see Sager's (1990) classification of special languages).
[437] For definition of 'sublanguage', see the glossary.
[438] For the analysis of the linguistic features of legal language, see *int. al*. Cao 2007a: 20-23, Cornu 2005, Danet 1985: 278-286, and Powell 1993.
[439] See especially the recent and comprehensive *Comparative Legal Linguistics* by Mattila (2006) where the major legal languages: legal Latin, French, German and English are analysed.
[440] *Cf*. remarks on differences between 'languages of law' serving different legal systems; subsection 3.1.3. of this thesis, *cf*. also examples in ft. 378.

Subsection 3.1.2.
Legal language and language of law in the translation studies -
- a text for special (legal) purposes

Translation studies[441] - a new field of research, acknowledged as a distinct academic discipline just in the second half of the twentieth century[442] - has not recognised study of legal translation as an independent domain. Although legal translation has a very long history,[443] only recently some authors have commenced to refer in their research directly to legal translation.[444]

Although translation certainly involves rendering the meaning from one language into another, translation studies focuses mainly on 'text'[445] rather than on 'language'. Legal translation involves rendering of legal texts from the source language to target language (Cao 2007a: 10). Legal texts can be included in a group of special purpose texts, which are formulated in a special language or language for special purposes (LSP), i.e., for legal purposes (LLP) (Cao 2007a: 8),[446] or in other words, in a sublanguage characterised by

[441] Since translation studies is a new and developing discipline, it has been known by various names at different times (Baker 1997: 277); for instance Nida, one of the first authors who recognised the study of translation as a distinct academic discipline, used a term 'science' with regard to translation study in the title of his book *Toward a Science of Translating* (1964); in another book he uses a term 'science of translation' (1969); other examples of terms denoting the discipline are following: 'translatology' (Harris 1977), 'traductology' (Vásquez - Ayora 1977) in English, 'traductologie' (Goffin 1971) in French or 'traductologia' in Spanish. Since the term 'translation studies' (TS) is the most widely used today in the English speaking world and the discipline is commonly known as 'translation studies', this term is used throughout the thesis.

[442] As far as the establishment of a new discipline of translation studies is concerned, it is the article of James Holmes (1972/1988: 67-80) titled *The Name and Nature of Translation Studies* that is seminal for the discipline. Holmes' article is "generally accepted as the founding statement for the field" (Gentzler 1993: 92). In the article Holmes proposed the adoption of 'translation studies' "as the standard term for the discipline as a whole" (1972/1988:175).

[443] The first known legal translation dates from 1271 B.C. and concerns the peace treaty between the Egyptians and the Hittites; as another example – translation of *Corpus juris civilis* into Greek and then into other languages – can be indicated; for further details see Šarčević 2000a: 23-25 and Mattila 2006: 7.

[444] *Translating Law* by Deborah Cao (2007a) can be indicated as the recent comprehensive book on legal translation; see also *New Approach to Legal Translation* by Susan Šarčević (2000a).

[445] In text linguistics, text is understood as self-contained unit of communication expressed in spoken or written language. In this subsection and in the thesis only written form of texts is taken into consideration; see the definition of the term 'text' in the glossary. The meaning of the term 'text' and 'version' in international, EU and Canadian law is discussed in subsection 1.1.3.

[446] Some authors treat terms 'special language' and 'language for special purposes' as synonymous (e.g. Šarčević 2000a), some insist that these two terms should not be confused (Delisle, Lee-Jahnke, Cormier 1999: 181). According to the latter the term 'language for special purposes' (LSP) should be limited to the language which functions at the level of teaching special language as foreign language (*ibidem* 181). However, the term 'LSP' as well as the term 'LSP text' is very often used in translation studies, not only when translation teaching is considered. I leave this terminological controversy aside and decide to use the term 'special language' while referring to language of law or legal language considered by linguistics and to use the term 'language for special purposes' while referring to language of law considered by translation studies.

special syntactic, semantic and pragmatic rules (Šarčević 2000a: 9).[447] Legal texts are formulated in a special language called 'language of law' or 'legal language'.[448]

In order to find out how legal texts are distinguished from other types of texts and classified as texts for special purposes, one should refer to typology of texts in translation studies. Further subdivision between legal texts should facilitate indication of the type of legal texts which is the focus of the thesis.

It was Schleiermacher who first distinguished two types of texts: literary and scientific texts, on one hand, and commercial texts, on the other. He also distinguished two types of translation corresponding to the two types of text: *Dolmetschen* (translation of the first type of texts) and *Übersetzen* (translation of the second type of texts).[449] Schleiermacher suggested that different techniques should be used as regards *Übersetzen* and different regarding *Dolmetschen*. The latter was treated by Schleiermacher as an inferior type of translation. Later distinction between literary texts (philosophical texts and texts of the humanities) and technical and scientific texts was commonly accepted. The latter two types of texts became well-known as 'special purpose texts' or '*Fachtexte*' or '*textes en langue de spécialité*' (Šarčević 2000a: 6). At the beginning, legal texts were not subject of interest, but nowadays it is generally acknowledged that they belong to a group of special purpose texts.[450] Deborah Cao (2007a: 9) describes legal texts as "the texts produced or used for legal purposes in legal settings". If this broad definition of a legal text is accepted, various types of legal text can be distinguished. Cao (2007a: 9-10) indicates the following four types of legal texts: legislative texts produced by lawmaking authorities (e.g. statutes, international treaties), judicial texts produced in the judicial process by judicial authorities (e.g. judgments), legal scholarly texts produced by legal scholars, and private legal texts produced by lawyers (e.g. contracts) and non-lawyers (e.g. private agreements) (Cao 2007a: 9-10). The concern of the thesis is mainly on the drafting of the first type of legal text, i.e., legislative texts which are legally binding (e.g., Canadian public statutes, EC regulations or directives). Legislative texts are produced for normative purpose and as such, they have prescriptive character. Legal text can also be

---

[447] On the concept of 'special language', see previous subsection 3.1.1. on legal language and linguistics. For further details on language for special purposes, see *int. al*. Hullen *et al*. 1998, Mayer 2001.

[448] On legal language as a special language or as a language for special purposes, see *int. al.* Eriksen 2001: 586-593, Gémar 1990: 717-738, Santos 2001: 728-733.

[449] It should be noted that nowadays in general translation theory these two German terms have different meanings, that is, *Übersetzen* means written translation, whereas *Dolmetschen* – oral translation. In German there is, moreover, the term *Translation* which encompasses *Übersetzen* and *Dolmetschen* (Šarčević 2000a: 6).

[450] On various classifications of special purpose texts and approaches to legal texts as texts for special purposes, see Šarčević (2000a: 6-7). The author considers the study of Federov (1954) who included official documents in the group of special purpose texts, but did not explain whether 'official texts' are also legal texts; or Jumpelt (1961) who first mentioned 'law' in his classification of special purpose texts.

drafted for informative purpose and then they can be described as descriptive. The purpose for which the legal text has been prepared influences methods of its translation. Furthermore, translation also can be made for different purposes. In case of legal translation, at least two types can be distinguished: firstly, translation for informative purposes; secondly, translation for normative purpose.[451] If the legally binding legislative text is translated for informative purposes, the purpose of the source text, which is to establish legal facts or rights and duties for source addressees (*cf*. Cao 2007a:10), differs from the purpose of the target text, which is to provide information for the target addressees.[452] From legal standpoint, in the case of translating a legislative text for informative purpose, the most important difference between source and target texts is that the source text is legally binding, whereas the target text has no legal effect. On the contrary, when a legislative source text is translated for normative purposes, both source and target texts have equal legal force and the same legal effect. This kind of legal translation for normative purpose is examined, in the thesis, as a method of drafting multilingual law. The European Union and Canada – which are case studies for research on multilingual legal drafting – applies not only translation but also other techniques of drawing up law in many languages. Translation studies can, however, provide Canadian and EU legal drafters with techniques, which can be useful, for instance, in searching for equivalents of legal concepts in several languages, while either translation or other methods (e.g. co-drafting) are applied.[453]

In order to apply properly techniques provided by translation studies to drafting multilingual law, the difference between legal translation and legal multilingual drafting should be indicated. Those differences and similarities between the two drafting methods are explained and analysed in detail in this chapter in section 3.4. In this subsection, only three main differences are taken into account. The first one, already mentioned, is the purpose of drafting and translation; while drafting process always aims at producing language versions of a legal act that all are legally binding and equally authentic, translation process can be made for normative purpose, but also for informative purpose. The next differences that should be

[451] Cao (2007a: 11-12) apart from translation for normative and informative purpose indicates the third type, i.e., legal translation for general legal and judicial purpose.

[452] For instance, the Constitution of the United States of America (the source text) translated from English into Polish, when Polish translation of the Constitution (the target text) is to be used at schools for informative, educational purposes.

[453] See, for instance, Terral (2002: 33-57) who explains the use of translation techniques in legal translation and illustrates it with examples of various language versions of *Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark* (OJ L 11, 14.01.1994, pp. 1-36). The following techniques of search for equivalents have been demonstrated: word to word equivalence (e.g., *marque communautaire* (FR) – *marca comunitaria* (ES), but 'Community trade mark' (EN; not 'communitary mark'); functional equivalence (e.g., *usage sérieux* (FR) – 'genuine use' (EN)); borrowing; neologism.

taken into account refer to the legal system where drafted texts are to be used and to addressees by and to whom legal texts are to be applied. In case of translation, a legal text is not only translated from one language into another but also from one legal system into another; whereas drafting usually aims at producing language versions of a legal text within one legal system. As a result, source and target legal texts drafted by means of translation are produced for two different groups of addressees, while in case of multilingual legal drafting different language versions of a legal text are produced for one group of addressees (e.g., citizens of the EU).

If the meaning of the term 'legal text' and especially 'legislative text' in translation studies and differences between legal translation and multilingual legal drafting are taken into consideration, the methodology and terminology of translation studies can be properly applied in the study of drafting equally authentic language versions of a legal act in multilingual legal settings like Canada and the European Union.

Subsection 3.1.3.
Legal language in theory of law – terminological clarification and features of legal language

The concept of legal language is also analysed in theory of law.[454] Legal language is not a unitary or homogenous phenomenon. Therefore, the term 'legal language' is ambiguous, [455] and, various terms are used to denote the concept of legal language in its different aspects. Those terms are not, however, used constantly in the same meaning. In order to achieve a greater uniformity in understanding the concept of legal language and in terminology describing it, various authors have put forward a range of explanations of this concept and classifications of types of legal language. This subsection does not aim at proposing a new terminology or classification, but in clarification which terms referring to legal language are to be used throughout the thesis and what their meaning is. Finally, the subsection draws

[454] In the field of theory of law, like in the area of linguistics, there is a debate whether legal language exists (see, *inter alia*, Cao 2007a: 15, Gizbert-Studnicki 1986: 49-60). The analysis of this issue is beyond the scope of this thesis. Suffice to say, that in this dissertation the recognition of the phenomenon and concept of legal language is accepted.

[455] There are also opinions opposite to the statement that 'legal language' is an ambiguous term. For instance, according to Andrea Belvedere, the impression that legal language (*linguaggio giuridico*) is lacking unity stems from the fact that legal language is used differently by various legal discourses (*discorsi giuridici*), i.e., discourses of law (*discorsi del diritto*) and discourses on law (*discorsi sul diritto*). The two types of a legal discourse differ from each other but they both use the same language (i.e., legal language). Consequently, it is the expression 'legal discourse', which is ambiguous, not the term 'legal language'. See Belvedere 1994: 21, and Mazzaresse (1996: 404, ft. 17) who explains Belvedere's views.

attention to features of language of law - indicated in theory of law - which are of great importance to legal drafting.

Mazzarese (1996: 404) observes that the ambiguity of the notion 'legal language' is caused by the ambiguity of the term 'legal' as well as by the ambiguity of the term 'language'. The latter stems from the vagueness "to what form of language, legal language can be taken to amount" (Mazzarese 1996: 404). In other words, it is not apparent whether legal language is just a form of ordinary language or rather technical or specialised language used only by experts. As explained and accepted in previous subsection 3.1.1., legal language is a special language based on and derived from general language. [456] In words of Schauer, legal language is parasitic on ordinary language (1987: 571, quoted in Cao 2007a: 16).

The term 'language' can also be used in the sense of 'national language'. Then the term 'language of law' refers to a particular legal system. Since each legal system has its own language of law, the term 'languages of law' instead of 'language of law' should be used (Gémar 1995: 105). Even if the same general (national) language serves a few legal systems, languages of those systems should be distinguished. For instance, regarding English, one should make a distinction between legal English applied in the legal system of the United Kingdom and legal English applied in the United States.[457] Legal language is a system-bound language. Consequently, a uniform Dutch, English, French or Spanish legal terminology does not exist for each of the mentioned languages taken separately (De Groot and Rayar 1995: 205). Languages applied for drafting law in multilingual legal system are also often used for drafting law in another legal system.[458] Therefore, the observation made in this paragraph should be taken into account, when drafting of multilingual law is examined.

---

[456] Such opinion can be found for instance in J. Wróblewski 1963 or Gizbert–Studnicki 1972. The opposition between 'language of law as an ordinary language' and 'language of law as technical language' is examined by Morrison 1989/1993: 3-68.

[457] De Groot gives an example of Dutch language which is used as a language of law in the Kingdom of the Netherlands, Belgium and Surinam. Furthermore, within the Kingdom of the Netherlands there are three different legal systems: the legal system of the European part of the Kingdom of the Netherlands, the system of the Netherlands Antilles, and that of the island of Aruba. Therefore, de Groot concludes that there are a Dutch–Dutch, a Belgian-Dutch, a Surinamese-Dutch, an Antillian-Dutch and an Aruban–Dutch legal languages. Moreover, it can be said that there is also a special EU–Dutch legal terminology (De Groot and Rayar 1995: 205 and De Groot 1996: 156). As regards French legal language, a good illustration of de Groot's and Gémar's observation is a glossary titled *Lexique des termes parlementaires en usage en Belgique, en France et au Québec* (Bloch, Remy and Deschênes 1984) which aims at comparison of French terms used in Parliaments of Quebec, France and Belgium. Glossary has been prepared by Jean-Pierre Bloch (Paris), Claude Remy (Bruxelles), and Gaston Deschênes (Québec) - members of legislative staff in the respective Parliament. The glossary includes terms of the same meaning in all three systems, those whose meaning differs as well as terms unique to each system. See also review of *Lexique* by Lessard (1986).

[458] For instance, English and French are languages of the Canadian legal system, but at the same time English is used for drafting law, e.g., in the UK, and French is used, e.g., in the legal system of France. As explained, French of the Canadian legal system should be distinguished from French used in the legal system of France, and English of Canadian law should be distinguish from English applied in the British legal system

The second reason of ambiguity of the notion 'legal language', i.e., the ambiguity of the term 'legal', results in the proliferation of terms denoting the concept of legal language as well as of classifications and divisions of legal language. For instance, the term 'legal' can refer to different branches of law (Mattila 2006: 5). Consequently, e.g., language of private law and of public law can be distinguished. Moreover, legal language can be used by different groups of lawyers or legal professionals (Mattila 2006: 4). Accordingly, for instance, the language of legislators, of judges, or of legal authors (of doctrine) can be indicated.[459]

However, a more general classification of languages used within scope of law, which has been proposed by a Polish philosopher of law - Bronisław Wróblewski – will be a starting point for the analysis of different terms denoting the concept of legal language. Bronisław Wróblewski (1948: 54) distinguishes, firstly, language in which legal instruments are drafted (*język prawny*), and secondly, language used by legal professionals (e.g., academic writers, judges, advocates) in order to discuss, describe and analyse the laws (*język prawniczy*). The former (*język prawny*) is denoted as the 'language of the law' (Kielar 1977: 9) or as the 'language of the legislator' (Roszkowski 1999: 10). The equivalents proposed for the latter (*język prawniczy*) are the following terms: the 'lawyers' language' (Kielar 1977: 9) or the 'juristic language' (Roszkowski 1999: 10). Another terminology has been proposed by Gizbert-Studnicki. The two types of legal language distinguished by B. Wróblewski are jointly denoted by Gizbert-Studnicki as 'legal language *sensu largo*'. Language of legal instruments (*język prawny*) is named by Gizbert-Studnicki as 'legal language *sensu stricto'*, and language used to analyse and discuss law (*język prawniczy*) - as 'juristic language' (Gizbert-Studnicki 1972: 223, 233; *cf*. Roszkowski 1999: 10). This binary classification is not the only one. For instance, Jerzy Wróblewski (1986: 37) distinguishes three types of languages applied within scope of law; firstly, the language of law (*la langue juridique*), which is the language of law-maker in which laws are drafted; secondly, the language of adjudication (*la langue de application du droit*); thirdly, language of legal dogmatics or the juristic language (*la langue de la science juridique*).[460] According to Gizbert-Studnicki, texts of dogmatics and adjudications are expressed in juristic language (*język prawniczy*).

[459] *Cf*. various types of the legal language distinguished by Jean-Claude Gémar (1995: 120).

[460] The English equivalents of French terms put forward by J. Wróblewski follow terminology proposed by Mazzarese (1996: 404). For further details, see J. Wróblewski 1986: 35-43 and 1988: 13-27; *cf.* Sistach (2000: 32-33) who recognises four types of legal language (*le langage légal*, *le langage juridique jurisprudential*, *le langage juridique scientifique*, *le langage juridique commun*) and bases her classification on J. Wróblewski (1988: 13-27).

The above short overview is selective.[461] Nevertheless, it facilitates the explanation how the concept of legal language is understood and used in this thesis. In all above-mentioned classifications, language in which law is drafted (denoted as 'language of law' or as 'language of the legislator' or as 'language of legal instruments') is recognised. This type of language is of main concern when legal drafting is analysed. In this thesis, it is denoted as 'language of law' and is distinguished from 'juristic language'. The latter is used in adjudications or in legal doctrine to describe and analyse law expressed in language of law. In this dissertation, language of law and juristic language are denoted as 'legal language'.[462]

The language of law and juristic language are distinguished based on different criteria. Firstly, distinction is made according to a subject (a person) who uses a legal language (see B. Wróblewski 1948: 54). Then the term 'legislator's language' can be used to denote language of law and juristic language can be denoted as 'lawyer's language'. Secondly, the criterion of distinction between language of law and juristic language is terminology and semantic rules typical for each of them. Thirdly, the criterion of degree of language is used to differentiate two kinds of legal language. In this case, juristic language, which is used to describe, analyse and discuss statements expressed in the language of the law - therefore called also 'language about law' (*cf*. Cao 2007: 9) - is described as a meta-language with respect to language of law. Those criteria are not very compelling, and, do not take into consideration features of language of law which are significant for legal drafting process. As far as the first criterion is considered, the thesis does not concentrate on who drafts the laws but how law is drafted. As regards terminology and semantic rules, differences between language of law and juristic language are observed, but to the extent that does not justify the distinction based on this criterion. On the contrary, the scope, to which language of law and juristic language share terminology and common semantic rules, enables the distinction of legal language, which covers the two types. Concerning meta-linguistic character of juristic language, it should be noted that not all utterances of this language (especially of language of adjudication) are meta-linguistic towards language of law, and furthermore, the latter sometimes uses utterances which are meta-linguistic towards other utterances expressed in language of law.[463]

In this thesis, the distinction between juristic language and language of law is accepted. However, it is based on the different criterion, i.e., the distinction is made on the

[461] For further examples of various distinctions and classifications of legal language, see *inter alia* Kurzon 1997: 119-123.

[462] Accordingly, this thesis applies terminology and classification of legal language applied in the study *Translating Law* by Cao 2007a.

[463] The critical analysis of criteria of distinction between language of law and juristic language is conducted in Gizbert-Studnicki 1972: 219-233.

basis of the use of legal language. It is assumed that in juristic language the state of affairs is reported, whereas in language of law some qualifications upon the state of affairs are conferred (Gizbert-Studnicki 1972: 231-233). This observation draws the attention to important features of language of law. First, language of law is normative, i.e., it has capability to create norms which govern behaviour of addressees of norms. Consequently, language of law does not describe facts. On the contrary, it is mainly prescriptive and imperative. Moreover, legal language has illocutionary force and consequently, can produce performative utterances. In other words, legal language (language of law but also language of adjudication) can perform actions, e.g., can create rights or obligations.[464] The use of language of law and its performative and normative character explains why real equality between authentic language versions of a legal act (which is expressed in language of law) is of great importance. This equality is achieved, when a multilingual legal act confer the same qualification upon the state of affairs in each of its authentic language version.

Moreover, especially in the context of multilingual legal drafting, it should be taken into consideration that language of law – as any language – is indeterminate. Hart (1962/1994) describes this feature as 'open-texturedness''.[465] Guidelines and rules of legal drafting underline the need to draft in precise and clear way. The clarity and precision of legal texts can be achieved, however, the vagueness of legal language has to be accepted and taken into account during drafting process. Sometimes vagueness and flexibility of legal language facilitate to achieve comprise when adoption of a legal act is discussed (*cf*. Hartley 1996: 273-274). Cao (2007a: 19) observes that linguistic ambiguity or uncertainty can be intralingual (within one language) but also interlingual (between two languages). The latter appears not only because of the indeterminacy of legal language but also when terms or phrases are compared across languages. One of difficulty of multilingual legal drafting is rendering vagueness in the same way in several languages.

[464] The concepts of performative utterances (statements) and illocutionary acts originate from the theory of speech act put forward and developed by John Langshaw Austin 1962. On the performative nature of legal language, see *inter alia* Cao 2007a: 14-15; Witczak 1996: 413-418; Witczak-Plisiecka 2007, especially chapter 3 on the legal performative.

[465] According to Hart, a term in a natural language has a central 'core' of determinate meaning which is surrounded by 'prenumbra' of indeterminate meaning. For further details on Hart's theory of open texture of language, see Bix 1991: 51-72.

Conclusion to section 3.1.

Leaving aside all debates on possibility of identification of legal language, for the purpose of this dissertation, it is accepted that legal language is recognised as a distinct phenomenon which can be described in terms of linguistics as a sublanguage of natural language, or in terms of translation studies as a language for special purposes (LSP). It is also admitted that legal language is not a uniform concept. Therefore, after taking into consideration different terms used to denote the phenomenon of legal language, it is accepted for the purpose of the thesis that 'legal language' is the broadest notion covering all other terms (in other words, all types of legal language), whereas the term 'language of law' denotes a written legal language whose category called legislative language (legislative text in terminology of translation studies) is the main subject of the research. Since during the process of legal drafting oral communication is also present, spoken legal language is also taken into consideration although to less extent.

The term 'language' is used in two meanings. Firstly, it can refer to linguistic phenomenon, however, not in the sense of human capacity of speech, but in the sense of national language(s) (e.g., standard English; *cf*. Kurzon 1997: 123) or in the sense of sublanguage of national language (e.g., standard legal English, *cf*. subsection 3.1.1. of this thesis). Secondly, the notion 'language' can refer to legal phenomenon. Then, it is denoted as legal language or language of law. Classification of a language as a legal phenomenon is based on extralinguistic criteria. In order to identify language of law the criteria like the use of the language, its normative character, and the belonging of the texts expressed in this language to the system of sources of law accepted in the legal system in question are taken into consideration (*cf*. Gizbert-Studnicki 1986: 49).

SECTION 3.2.
Legal translation and translation as a method of drafting of multilingual law

Introduction

This chapter aims at analysing of methods of multilingual legal drafting. Since drafting of law in many languages is often based or at least involves some elements of translation, at the outset, issues related to legal translation are discussed. The term 'translation' can be understood as the process of preparing a text in a target language (a new language version), or as a product of a translation process, i.e., as a text that has been translated (see the glossary to the thesis). As regards translation used for purpose of multilingual legal system, it can be stated that the production of multilingual law (a process) should be distinguished from the existence of multilingual law (a product). In this section, the main concern is on the process of translation. However, the first subsection (3.2.1) focuses on a translation in the meaning of a legal text and explains the status of legal documents prepared by means of translation. Other subsections discuss legal translation as a process. Firstly, translation is described as a traditional method of drafting multilingual law (subsection 3.2.2.). Secondly, the preliminary information on subsequent drafting is provided (subsection 3.2.3.).

It should be underlined that this section concentrates on legal translation that aims at producing authentic language version(s) of a legal act. Taking this purpose of translation into consideration, the last subsection (3.2.4.) indicates some legal and linguistic drawbacks of translation as a legal drafting method.

This section provides a theoretical and general overview on legal translation as a drafting method. The further analysis takes place in this chapter when translation and co-drafting methods are compared (section 3.4).[466] Legal translation analysed from a perspective of translation studies is discussed in subsection 3.4.1., which supplements subsection 3.1.2. on legal language in translation studies.

[466] For the recent comprehensive analysis of legal translation, see Cao 2007a.

Subsection 3.2.1.
Legal translation and its status

Legal translation, likewise legal language (see previous section 3.1.), can be the subject of interest for such domains as theory of law, linguistic and translation studies. In some theories of law, translation is considered as a model for legal interpretation or even for justice itself (Rotman 1995: 187).[467] Moreover, since some authors states that all communication is translation, legal translation and translation in general can be investigated by linguistics (*ibidem*).[468] Alas, legal translation usually is not recognised as an independent discipline by translation studies. It is – as Susan Šarčević (2000a: 1) states – "regarded by translation theorists merely as one of many subject areas of special purpose translation, a branch of translation studies often snubbed for its alleged inferiority". Recently, some authors, like for instance Šarčević, began to refer in their research directly to legal translation.[469]

This thesis, however, tackles the particular kind of legal translation, i.e., translation that is used for drafting law in multilingual legal system. It differs from classical legal translation and if characteristics of translation as a method of drafting authentic language versions are taken into consideration, some doubts can arrive whether translation studies can be applied for research of this kind of translation. At the very beginning, while examining translation as a method of drafting authentic language versions of laws, it has to be stated that, paradoxically, the term 'translation' should not be used. This statement results from the principle of equal authenticity analysed in subsection 1.1.2.

When issues related to an authentic language version are discussed, the term 'translation' should not be used either when referring to this version (even if authentic version has been prepared by means of translation), or to the process of drafting of that version. It is the consequence of official multilingualism that consists not only in the coexistence of two or more languages but also in the equality of these languages (Wagner, Bech and Martínez 2002: 1). In case of legal multilingualism, this equality is expressed in the principle of equal authenticity that regards all authentic language versions of a legal instrument as having equal power and authority. Consequently, one version cannot be regarded as a translation of the

[467] See *int. al.* Cunningham 1989 and 1991-1992 who considers the law as a language and the lawyer as a translator; Lessig (1993: 1165-1269) for whom translation is a general model for judicial interpretation; White 1990 and 1992 who speaks about translation as a standard for justice.
[468] See *int. al.* MacDonald who claims that: "All communication is translation, even where the 'same' language is being deployed" (1997: 121, footnote 1).
[469] See, especially Šarčević 2000a and also *int. al.* Cao 2007a.

other one. In other words, all authentic language versions are originals regardless of the way of production (the theory of original texts, see Šarčević 2000a: 20, 64 and this thesis, subsection 1.1.2.).

Nevertheless, the term 'translation' is used sometimes in reference to multilingual law, especially, to international treaties. In international law, various forms of status of legal translation are recognised. While examining a status of translation, the term 'translation' is used in the meaning of a text (version). First, 'non-authoritative translation' is distinguished from 'authoritative translation'. The former is non-binding and usually is made for information purposes. An authoritative translation is vested with the force of law. Accordingly, an authoritative translation is a binding and authentic legal text. Therefore, it should be used by a court for the purpose of interpretation as a language version that contributes to the common meaning of a legal act. A translated text is authoritative only if it is adopted or enacted in the way required by the law. As a result of adoption or enactment, a version prepared by means of translation is not mere translation of the law, it is the law itself (Šarčević 2000a: 20). Therefore, in the European Union and in Canada the term 'translation' is not used. All authentic language versions of a legal act are considered originals regardless the way of their drafting. For that reason, in the thesis, the term 'translation' is rarely used in in the context of a legislative drafting process (especially, not in the sense of a product of translation – a translated text).

Besides authoritative and non-authoritative translation, other forms of status of legal translation are recognised.[470] Primarily, official translation should be taken into consideration. Official translation of international agreement or of a legal act can be prepared by the institutions of international or supranational organizations, by the parties of an agreement, or by a government. Although the translation is recognised as an official one by the organization or by the government, it is not authentic; hence, it is non-authoritative translation. Consequently, official translation does not participate in the meaning of legal text and is not taken into consideration for interpretative purposes.[471]

When the issue of a status of legal translation is described in terminology of translation studies, the term 'function' of legal translation should be used instead of 'status'. Primarily, the function of source (original) and target text (translation) should be examined.

[470] See, for instance, van Calster (1997: 364) and Tabory (1980: 37) on 'official translation'; van Calster 1997 and authors cited by van Calster (p. 364 footnote 5) on 'private' and 'internal' translations.

[471] See examples of official translation recognised within the European Union (i.e., official translation of EU legislation in additional languages and official translation of the Treaty establishing a Constitution for Europe) discussed in this thesis in subsections 1.1.3. and 4.1.1.

Newmark (1981) distinguishes translation of legal texts for information purposes (non-authoritative translation in afore-mentioned terminology) from translation of texts that are to be valid in the target language community (authoritative translation). In the case of authoritative translation, the function of the source and the target texts is the same, whereas as far as non-authoritative translation is concerned a shift of function can be observed. According to *skopos* theory, the purpose of translation determines the translation methods and strategies.[472] The purpose of producing authoritative translation and non-authoritative translation is different, and hence the translation methods and strategies should be different.

In the following subsections, translation as a process will be analysed. The subsections focus on translation (translating) that aims at producing authentic language versions of a legal text. Accordingly, no shift of the function from source text to target one can be identified. Both texts are equally authentic and are consulted for interpretative purpose.

Subsection 3.2.2.
Translation as a traditional method of drafting multilingual law

The phenomenon of multilingual law stems from official multilingualism, which usually requires not only that the law should be enacted in all official languages, but also that texts of a legal instrument expressed in official languages be treated as equally authentic. Owing to equal authenticity of official language versions of a legal act, these versions are called authentic texts of this act. Such texts can be simultaneously drafted in all official languages ('co-drafting model'). But much more often one authentic text is drafted in one official language and then translated into the remaining official languages ('translation model'). When translation is chosen as a method of drafting multilingual law, the transfer from one language into another is observed but there is only one legal system involved.[473] Consequently, all official languages share the same system of reference, i.e., the signs in each language refer to the same objects (see Šarčević 2000a: 15, 230-231). As a result, legal translation in multilingual settings should be less complicated than legal translation from one legal system to another. However, since all texts in official languages are equally authentic, full equivalence and coherence is demanded. And this is the main challenge for translation as

[472] For further details on *skopos* theory, especially when it is applied for research of legal multilingualism, see this thesis subsection 4.4.5.
[473] On the differences between translation within one legal system and translation from one legal system into another, see this thesis, subsection 3.4.2.

a multilingual legal drafting method. K.K. Sin makes - in the reference to bilingual law in Hong Kong - a comment, which, however, has more general application; the author states, that:

> "[I]t is necessary for the translated version to convey the same legal meaning as the original if it is to be accepted as an authentic text. This can be achieved only by making the selected semantic components of the target language function in the same way and in the same system as their counterparts in the source language. However, since no two languages cover exactly the same semantic area, translation essentially involves mapping one language onto another and the end result is usually closeness but not identity in meaning." (1989: 511)[474]

Due to the lack of exact semantic correspondence between languages, a very important and at the same time, challenging task in drafting multilingual law is the standardisation of terminology in official languages. Moreover, the standard format prescribed for a legal instrument in question, a uniform citation of provisions of authentic versions of a legal instrument, consequently, a uniform pagination facilitate application of multilingual law and should be guaranteed and followed in multilingual drafting, not only by means of translation (Šarčević 2000a: 15). High-quality drafting provides full equivalence and congruence between authentic language versions. As a result, a coherent legal act drafted in the spirit of all official languages is produced.

The question arises whether the drafting quality can be achieved by means of translation. In the following part of this section, pitfalls of translation as multilingual legal drafting method are indicated (subsection 3.2.4.) and the subsequent section (3.3.) describes drafting methods proposed as an alternative to translation. The next subsection (3.2.3) focuses, however, on the situation where only translation can be used as a drafting method, that is, it discusses the particular drafting method called 'subsequent drafting', i.e., drafting of new language version(s) of a legal instrument after this instrument has been adopted or enacted and its other language versions have been already authenticated.

[474] Quoted in Scassa 1994: 169.

Subsection 3.2.3.
Subsequent drafting as an irregular method of drafting multilingual law

Subsequent drafting is a particular method of a legal drafting that takes place when two cumulative criteria are present: firstly, not all language versions of a multilingual legal act are drafted at the same time and; secondly, a language version (or versions) is prepared and authenticated once the drafting and authentication process for the particular legal act has been completed (*cf*. Šarčević 2000a: 93, Šarčević 2002: 256). Šarčević uses the term 'subsequent translation' in order to denote this process.[475] Although subsequent drafting certainly involves translation, and therefore this issue is analysed in the section on legal translation, nevertheless, in this thesis the term 'subsequent drafting' is used. As explained in subsection 1.1.2 (see also subsections 1.1.3. and 3.2.1), the use of term 'translation' is improper from a legal standpoint while referring to authentic language version(s) of a legal act. The term 'subsequent translation (or drafting)' refers to the process of preparing a language version, not to this version directly. However, in area of law, the term 'translation' is reluctantly used also while referring to the preparation process. Moreover, in some cases analysed in this dissertation, subsequent drafting goes beyond the classic definition of the term 'translation', since subsequent drafting of a new language version requires linguistic changes in existing language version. Therefore, the term 'subsequent drafting' is chosen as a term that better reflects the meaning of the analysed process.

Subsequent drafting is justified in case of a requirement to draft law (existing and new legal instruments) in new language(s) that usually results from the expanding of the number of official languages. It takes place, for instance, within the European Union (EU) after each enlargement as well as in the multilingual countries or international organizations when a new language is raised to an official one.[476] In such situation, a new language version is authenticated pursuant to a special procedure.[477] Once a text in a new language is approved

[475] Tabory uses the term 'retroactive translation' (1980: 191-192, 280).

[476] Enactment of new language version of already adopted legal acts could be observed, e.g., in Hong Kong where until 1989 statute law was enacted only in English. However, after the *Joint Declaration on the Question of Hong Kong* had been signed by the UK and China in 1984, the *Royal Instructions* (in 1986) and the *Official Languages Ordinance* (in 1987) were amended to enable laws to be enacted also in Chinese (Law Drafting Division Department of Justice 2001: 27). Another example can be found in Switzerland where Italian became a new official language in 1902.

[477] For instance, in the European Union, a new language version of EU law is reviewed and approved by the lawyer-linguists and then authenticated in the Commission (Šarčević 2002: 258), afterwards a new language version of the *acquis* is published as an official and authentic version in the Special Edition of the Official Journal of the European Union; in case of Canada, a new French version of the Canadian Constitution has to be enacted pursuant to the procedure applicable to constitutional amendment, although preparation of a French language version did not provide any changes in substance; in Saskatchewan, new French version is enacted

and authenticated by the authorised lawmaking body, a new language version becomes legally binding and authentic as already existing authentic language version(s). To sum up, both processes: drafting and authentication of a new language version of the legal act have taken place after that act had been already enacted and authenticated in other languages. Therefore, subsequent drafting is described as an irregular drafting method (Tabory 1980: 193, Rosenne 1983: 783, Šarčević 2000a: 93).

This irregular method is understandable and justified when a requirement to draft and authenticate existing and future laws in a new official language is introduced. However, sometimes, without this requirement, when no new language has been granted the status of an official language – hence, the number of official languages is unchanged - a text in one of official languages cannot be submitted before the adoption. It is usually due to practical or technical difficulties (e.g., lack of time, lack of qualified drafters and translators). In this case, text is approved and authenticated *in absentia*. To be precise, after enactment or adoption of a legal instrument in all languages including a language version that has not been submitted, this lacking language version is prepared. As mentioned once legal instrument is approved, it becomes law and all its language versions become equally authentic. Therefore, it is important to submit all authentic texts for revision and correction before adoption. For that reason, practice described in this paragraph should be avoided. Nevertheless, the examples of this kind of subsequent drafting can be indicated as far as legal drafting at national (in some multilingual countries),[478] international (in international organizations)[479] and supranational level (in the European Community)[480] is concerned.

Regardless from which of these two situations, subsequent translation results, the question on value of subsequent translation is of great significance. In the last chapter (chapter 6) of this thesis, I will analyse this issue by attempting to find an answer to the two main questions as regards the European Union and Canada. Firstly, how subsequent translation is

---

together with re-enactment of the existing English version of acts and regulation chosen by the Lieutenant Governor in Council. For further details see, this thesis chapter 6.

[478] An example of such situation within multilingual country can be found in Switzerland where Italian version of legal act usually was not ready at the time of adoption. Such practice was forbidden in 1974 when the requirement for Italian version to be present prior to adoption was introduced into *the Federal Act of 1962 on the Procedure of the Federal Assembly and the Promulgation and Entry into Force of Legislation* (see: F. Dessemont and T. Asnay 1995: 11, Šarčević 2000a: 94).

[479] Examples in international law are given, e.g., by Tabory 1980, see: on authentication after time of signature p. 193 and on authentication of non-existent texts pp. 191-92, 194.

[480] For instance, although the *Treaty establishing the European Economic Community* states that it was "drawn up in a single original in the German, French, Italian and Netherlands languages" (Article 248), when it was signed on 25 March 1957, only the German and French versions were ready and compared by lawyer-linguists. There were only rough drafts of Italian and Dutch versions at that moment. The work on them was finished at the end of April (see Maas 1968-1969: 205).

and should be produced, and secondly whether subsequent translation should and does contribute to the common meaning of a single instrument as far as interpretation of multilingual law by courts is concerned. The next subsection discusses the drawbacks of translation as a legal drafting method.

Subsection 3.2.4.
Drawbacks of translation as a method of multilingual legal drafting

Like the entire section, this subsection draws attention to translation regarded as a method applied in drafting authentic language versions of legal acts in the same legal system (even if the system is bijural like in Canada). This kind of legal translation shares some difficulties and drawbacks with classical legal translation, which is performed for a legal system other than the source system or/and for purposes different than drafting an authentic language version. However, the focus is on linguistic and legal drawbacks typical for translation which is a legal drafting method applied in a multilingual legal system. Especially the issue of (im)possibility of legal translation is left aside. The analysis of weak points of translation as a legal drafting method pinpoints the reason for the search for new different drafting methods which are analysed in the next section (3.3.).

The most difficult challenge for all kinds of legal translation is to achieve perfect semantic equivalence between source and target languages. However, in multilingual legal system, it is also important that all authentic language versions are comprehensible and intelligible for a citizen who understands any official language. Therefore, authentic language versions should not only render the same meaning but also each version ought to be draft in the most natural language. Although some influences in syntax and style between languages are unavoidable, none language versions should imitate others. Quality of language versions can be difficult to preserve when one of language versions is produced by means of translation. When a text is first drafted in one language (a source language), which is usually the dominant one, and then translated into other official language(s), the translation is not always produced in accordance with the nature and character of a target language, especially when rigorously literal translation is required. A good example illustrating this problem is the 'Cesana–Rossel debate' on the translation of the Swiss Civil Code from German into French.[481] Without going into detail, according to Cesana, a French text should follow a

[481] In 1902, Italian became the third official language of Switzerland and the Swiss Civil Code was translated into Italian. However, debate considers French language, because it was French translator (Prof. Rossel) who

German text as closely as possible, whereas Rossel argued that the French-speaking population of Switzerland had a right to have their *Code civil suisse* written in the spirit of the French language (Cesana 1910). At the heart of this debate lies the question as to whether legal translation should be literal[482] (Cesana) or idiomatic[483] (or free,[484] if Rossel's terminology is applied); and if idiomatic, how closely it must follow the source text. Nevertheless, drafting in the nature of all official languages which upholds the principle of language equality and language rights is not always achieved when translation is used as a drafting technique. The poor quality of translation is one of the reasons a new drafting method has been sought. Low quality of an authentic language version, especially use of imprecise or illegible language, can also influence the interpretative value of a language version that has been drafted by means of translation. This is a legal pitfall of the use of legal translation as a drafting method.

Within the scope of law, the main weakness of drafting by means of translation pertains to the problem of the reliability of an authentic version that has been translated. When translation is used as a method of legal drafting, the court sometimes gives the priority in interpretation to the original text. Lawyers and judges often doubt the interpretative value of translation (i.e., whether the intent of a legal instrument was preserved), especially in cases of subsequent translation authenticated in irregular circumstances (see previous subsection 3.2.3.). Tabory (1980: 190) notes that the interpretative value of an authenticated translation (version that has been translated and authenticated) depends on the situational factors of its production, such as time and place. Therefore, an attempt has been made to find a new multilingual legal drafting method that would coordinate the time and place of the production of parallel, authentic texts. Diverse techniques, that have been proposed to avoid the pitfalls of translation as a drafting method, are described in the next section.

---

proposed translation in the spirit of French language. A detailed discussion of the debate can be found in Šarčević (2000a: 36–41) and in *Schweizerische Juristen Zeitung* 10 (1910: 149–156) quoted in Šarčević.

[482] For the definition of 'literal translation', see the glossary.

[483] For the definition of 'idiomatic translation', see the glossary.

[484] For the definition of 'free translation', see the glossary.

Conclusion to section 3.2.

It is stated that translation enables law to function in more than one language (Šarčević 2000a: 20). However, the above-indicated pitfalls of legal translation as a drafting method are the reason for the search for better multilingual drafting techniques which are described in the next section (3.3). Weak points of translation are reflected already in reluctance of the use of the term translation to denote authentic versions of a legal act and the method of their production. Hence, traditional and the most often used multilingual legal drafting method, that is in fact translation, cannot be denote in legal language as translation.

The next section (3.3) provides theoretical overview of new multilingual legal drafting methods aiming at eliminating the drawbacks of translation. However, since translation is still use to draft multilingual law, and in some situation the use of translation is even inevitable (*cf*. subsequent drafting explained in subsection 3.2.3), after the description of new drafting methods (section 3.3.), translation applied for the purpose of legal multilingualism is also analysed in the further section (3.4). Section 3.4. indicates particular features of translation used for drafting multilingual law, which distinguish it from classical legal translation and compares translation with new drafting methods.

SECTION 3.3.
Co-drafting methods – alternative to translation

Introduction

Since translation is often regarded as flawed and inferior, in order to achieve semantic equality and true authenticity, new methods of drafting of multilingual law (called co-drafting methods) have been put forward and applied. Co-drafting methods coordinate place and time of the production of parallel, authentic texts and combine translating and drafting in various ways and degrees. Even when they are employed in multilingual legal systems (e.g., in Switzerland), they are used usually solely for the purpose of bilingual - and not multilingual - drafting.[485] Nevertheless, in international law the activity of the Drafting Committee of the Third United Nations Conference on the Law of the Sea (UNCLOS III) can be pointed out as the unique example of multilingual co-drafting.[486] Although new drafting methods involve usually only two languages, the term 'multilingual (co-)drafting method' is going to be used throughout the thesis. This term will render, however, the meaning of drafting law in more than one language, hence including also bilingual drafting.

New drafting methods are expected to avoid drawbacks of translation. In particular, a greater equality of official languages and authentic language versions of laws should be achieved with the aid of co-drafting methods. Therefore, first, the use of co-drafting should

[485] In Switzerland, where French, German and Italian are official languages, law is simultaneously drafted only in French and German, whereas Italian version is added by translation. However, despite of way of production, all three language versions are equally authentic. This hybrid way of drafting law in more than one language, which combines co-drafting and translation, is applied as regards important legislation and only in certain departments (Wagner 2005: 19). For further details see *ibidem* 18-20.

[486] According to Rule 53 of the *Rules of Procedure of the UNCLOS III*, the Drafting Committee was competent to "formulate drafts and advice on drafting", however, it could not alter the substance of text. The Drafting Committee was responsible for ensuring that there is the same content in all authentic versions, i.e., in Arabic, Chinese, English, French, Russian and Spanish. In order to fulfil this task, six language groups – one for each authentic text – were established. As a result text of the UN Convention on the Law of the Sea was drafted at the same time in all official languages. All interested delegations were able to participate in the work of language groups. Furthermore, each language group appointed a coordinator. Coordinators met regularly together and with the chairman of the Drafting Committee. For further details on the work of the UNCLOS III Drafting Committee, see Nelson 1986: 169-199.

guarantee that it is not possible to distinguish between source text and target one, or, in other words, between original text and translation. Consequently, the priority in interpretation would not be given to a language version because this version has been drafted first, and accordingly it is an original which better expresses the will of the legislator. It is also expected that co-drafting will assure that each authentic version of a multilingual act is linguistically pure and written in the way that preserves the nature and character of its language. Moreover, application of co-drafting methods should also guarantee inter- and intratextual coherence.

Terminology for denoting co-drafting methods has not been yet established. For instance, terms describing the bilingual drafting methods are not used in a uniform way by Swiss authors. Furthermore, different terminologies are used in Switzerland and Canada. Thus, there is no authoritative catalogue of multilingual drafting methods. However, Alexandre Covacs (jurilinguist in services linguistiques français, Section de la legislation, ministère de la Justice du Canada) proposed such a catalogue for Canadian use (1982: 92-94). These terms are also used by Šarčević (1998, 2000a). I too have decided to follow this terminology. Doing so, I describe underneath various co-drafting methods. Description is preceded by the table (Table 3) which illustrate different co-drafting methods. It is the theoretical classification of co-drafting methods, since not all them have been used in practice. For the sake of simplicity, I analyse co-drafting methods as techniques of bilingual drafting. In other words, I consider drafting in only two languages. This is plausible because in practice - as mentioned above - multilingual drafting methods are usually bilingual, i.e., they are used to produce two language versions, even when they are applied in multilingual settings.

Type of co-drafting method	Number of drafters	Separate or joint work of drafters	Drafting elements	Translation elements	Practical use of drafting method
Parallel drafting	2	Separate	Drafting of the whole act in 2 languages	No translation elements	In canton Berne (Switzerland) cantonal bill on Official Publications drafted in German and French
Alternate drafting	2	Separate	Some parts of the act are drafted in language A, some in language B	Parts drafted in one language are translated into another language	At the federal level in Switzerland drafting in German and French; in canton Berne (Switzerland) a revision of the Constitution of Canton Berne; Canada at the federal level and in New Brunswick
Shared drafting	2	Separate	A half of the act is drafted in language A and a half in language B	Drafted halves are translated into another language	Theoretical solution
Double entry drafting	1	Criterion does not apply	Drafting of the whole act in 2 languages	Translation elements should not occur	Canada
Joint drafting	2	joint	Drafting of the whole act in 2 languages	No translation elements	Canada Hong Kong

Table 3. Comparison of co-drafting methods

Subsection 3.3.1.
Parallel drafting

The first indicated co-drafting method is parallel drafting. As it is demonstrated in table 3, there are two drafters, or put in a better way 'co-drafters', involved in the drafting process. First, a detailed bilingual outline of the act to be drafted is prepared. Then the co-drafters draw up a large part or the entire act in their mother tongue and then they meet in order to compare and coordinate texts. After that, they leave again in order to modify their versions. Co-drafters work simultaneously yet independently and separately (Covacs 1982: 93; Šarčević 1998: 283 and 2000a: 102).

Both language versions of a legal act should be parallel, i.e., not only consistent but also congruent. Accordingly, avoiding a discrepancy between two authentic language versions of the same legal act is the main challenge to all drafters but especially when parallel drafting is used. Although two language versions are regularly compared during parallel drafting process, separate and independent preparation of language versions just on the basis of the outline hinders the attainment of congruency between two versions. Due to this difficulty a strict cooperation, coordination and consultation between co-drafters throughout entire process of parallel drafting is required.

Unlike translators, co-drafters do not reconstruct the meaning that is rendered in a source text. On the contrary, each of them produces, on the basis of the detailed outline of the act, a text that expresses what a legislator meant to say, thus they preserve the original intent (Šarčević 2000a: 102).

Parallel drafting was used in the German and French bilingual canton of Berne (Switzerland) when the cantonal bill on Official Publications was prepared (see Caussignac and Kettinger 1991: 79-81 and Šarčević 2000a: 102).[487]

[487] For comparison between (co-)drafting methods applied in Canada and in Switzerland, see Šarčević 2005: 277-292.

Subsection 3.3.2
Alternate drafting

The second method indicated in table 1 is alternate drafting, which is a combination of drafting and translating. Two persons participate in the preparation of a bilingual legal act, each fulfilling the role of co-drafter as well as the role of legal translator. First, the co-drafters - translators decide which parts of an act are to be prepared in language A and which in language B. Second, they leave and draw up the designated parts. Third, the co-drafters - translators exchange drafted parts and translate them into one another's language. Finally, the translated parts are revised by the co-drafters (Covacs 1982: 93).

According to Šarčević (1998: 283 and 2000a: 101), the term 'alternate' refers to the fact that the source text is not always the same (i.e., it refers to the fact that the source text alternates), not to the way it is drafted (i.e., not to the alternate use of drafting and translating).

This method of bilingual legal drafting used to be applied in Canada at the federal level when new drafting methods were sought and tested (Covacs 1982: 93). It was also used in the Canadian province of New Brunswick (Keating 1995: 203-217), and in Switzerland at the federal level as well as in the canton of Berne (Šarčević 2000a: 102, Šarčević 2005: 286). For instance, in the Swiss bilingual (German and French) canton of Berne, a revision of the *Constitution of Canton of Berne* was prepared using the alternate drafting method.[488] Moreover, in Switzerland the most important federal laws are drafted in accordance with alternate drafting (in Switzerland called 'Koredaktion'), or at least such an attempt is made., The Delamuraz Postulate submitted on April 20, 1978 by the National Council (Upper House of Parliament) to the Federal Council (executive body) observed that the growth of the dominant role of German could even make German in fact a sole official language, and therefore postulated the guarantee for the equal rights for the lesser used languages. According to the Federal Council, the dominance of German and poor quality of French and Italian versions resulted not from the use of translation but was caused by the fact that texts were always drafted only in German and never in French or Italian. Hence, French and Italian versions were always translations. Some attempts were made to draft law also in French and

[488] Swiss authors use the term 'parallel drafting' when they refer to the process of revision of the Constitution. However, from the analysis of the drafting process one can conclude that it is an alternate drafting (as it has been described by Covacs and understood in this thesis).

then translate into German and Italian. However, it was not possible to increase the number acts that are originally drafted in French. Therefore, the Federal Council proposed that, instead of drafting whole texts in one language and translating to another, some parts of more important legal acts should be drafted in French and then translated into German (alternate drafting). Italian versions are still excluded from the co-drafting method and they are always translations (translated texts). Furthermore, since the early nineties the German and French teams of the In-House Administrative Drafting Committee[489] have scrutinised, revised, and coordinated German and French texts simultaneously (Šarčević 2000a: 98-99, Šarčević 2005: 285-286).[490]

Subsection 3.3.3.
Shared drafting

The next method, denoted as shared drafting, is very similar to alternate drafting. Two co-drafters, who are also the translators in the process of drafting, prepare the outline of an act, divide the act into halves and decide which part is to be drafted in language A and then translated into language B, and which one will be drafted in language B and then translated into language A. Thus, the only difference between alternate drafting and shared drafting is that according to the former, parts of an act are alternately drafted and translated, whereas according to the latter, half of an act is drawn up in one language and the other part is drafted in another language and then both halves are translated (Covacs 1982: 93; Šarčević 2000a: 101). To my best knowledge, shared drafting is so far only a theoretical solution. It is not used in practice probably because it would create too great a risk of discrepancy (Covacs 1982: 93).

[489] In the beginning, the In-House Administrative Drafting Committee was responsible only for German texts, at present it is also responsible for revision of German and French texts (Šarčević 2000a: 99).
[490] For further details on bilingual drafting in Switzerland, see Šarčević 2000a: 98-100, Šarčević 2005: 284-290 and Wagner 2005: 18-20.

Subsection 3.3.4.
Double entry drafting

As far as double entry drafting is concerned, only one person participates in the process of drafting of a bilingual legal act. The same person draws up both language versions (both texts), preferably part by part in correlation.

This method was proposed for drafting bilingual legislation in Canada and theoretically it seems to be ideal (Covacs 1982: 93). The advantage of this method is that drafting of an act by the same person guarantees the unity and coherence of both language versions and makes the source and target texts - or in other words the original and translated versions - indistinguishable.[491] However, in practice it is very difficult to find a bilingual person whose linguistic abilities in both languages are perfect. Moreover, bilingual persons usually favour one language. As a result, a version written in the second language is not linguistically pure and consequently a target text can be distinguished. Furthermore, in the case of bilegal countries like Canada it is also difficult to find a person who is educated in both legal systems (i.e., in civil law and common law, as in the example of Canada) (*ibidem*). Hence, although this method theoretically is perfect, it can be used in practice only in exceptional circumstances.

Subsection 3.3.5.
Joint drafting

The solution provided by joint drafting differs from the above-presented bilingual drafting methods. In all the drafting methods described so far, when co-drafters – translators draw up legal texts of a single instrument, they work separately. Co-drafters only come together when they draft the outline of a legal act, and later on when they compare and revise both language versions jointly. In joint drafting, on the contrary, the co-drafters work together at all stages of the drafting process. This process of drafting is similar to or even the same as the one applied in the parallel drafting. Both language versions are drafted; none of them is translated. The co-drafters prepare an outline jointly and then jointly draft (usually part by part), compare, revise and correct both (or all) language versions.

[491] If the double entry drafting is applied, both language versions of an act should be drafted. Therefore terms as 'source text', 'target text', 'original version' or 'translation' should not be even used.

On the other hand, joint drafting avoids the pitfalls and disadvantages of parallel and of double entry drafting (Šarčević 2000a: 102). In parallel drafting, the main difficulty concerns the unity and consistency of the two language versions. Due to the constant cooperation of the co-drafters during the drafting process, this demand can be achieved when joint drafting is employed. Double entry drafting ensures the unity of thoughts but involves the difficulty of finding a bilingual person who writes in the spirit of both languages and – regarding bilegal countries – is trained in both legal systems. When the joint drafting method is applied, the drafting is made by two drafters who are able to write linguistically pure texts in their mother tongues. In order to make the communication and cooperation between drafters possible, at least one of them should be bilingual but his/her knowledge of the second language does not have to be perfect.

Although the joint drafting is time consuming, this method seems to be ideal. The constant cooperation of co-drafters throughout the whole drafting process guarantees the unity and coherence of an entire legal act, and congruence of both language versions. Moreover, the high linguistic quality of a text in all language versions is achieved, since each version is drafted by a native speaker. Furthermore, no text serves as the source text for the other(s).

Conclusion to section 3.3.

Co-drafting methods described in this section are theoretical models of multilingual drafting which have been put forward when in bilingual Canada better drafting techniques have been sought in late 60s. Some of them were applied in practice for drafting Canadian bilingual law. Canadian methods are also followed and used in bilingual Hong Kong. Moreover, independently from Canadian experience, co-drafting is also applied in Switzerland.

On the basis of the above description of co-drafting models, co-drafting process can be defined as follows; co-drafting is a legal drafting process where all language versions - that are to become equally authentic after adoption or enactment of a legal act - are drawn up simultaneously, and as a result it is not possible to determine in what language a multilingual legal act was originally drafted. There are various variants of co-drafting. Some co-drafting methods are based solely on drafting, hence all language versions are drafted as originals from the beginning until the end of a process, whereas some of them combine drafting and translating in various ways and degrees. However, even in the latter it is not possible to identify the sole original language of the entire multilingual legal act.

In Canada, theoretically elaborated co-drafting methods have been tested in practice and improved, and finally one method – joint drafting - has been chosen and developed. How bilingual law is drawn up in Canada by means of co-drafting is explained in the subsequent part of the thesis (chapter 5, section 5.3.). The practice of co-drafting in Canada demonstrates that it is possible to draft law originally in two languages. The question arises how multilingual law – as in case of the European Union where law is drafted in twenty-three languages – can be drafted in a way that overcomes pitfalls of translation. However, the investigation of practice of legal drafting process in the EU (provided in chapter 5, section 5.3.) reveals in this process some elements of co-drafting which can make it impossible to indicate which language a single EU legal provision was originally drafted in. The above theoretical overview on co-drafting methods is necessary to facilitate the recognition of co-drafting elements in drafting of EU law, as well as better to explain legal drafting process in Canada. The more detailed analysis of multilingual drafting methods comprising legal translation and co-drafting is conducted in the next section (3.4.)

SECTION 3.4.
Multilingual legal drafting and translation – comparison

Introduction

The thesis statement presumes that the equality of authentic language versions does not have to stem only from legal provisions and presumptions but also can be guaranteed in practice throughout the drafting process. As explained, translation does not fulfil this guarantee, first, owing to the belief that an original expresses the will of a legislator better than a translation (a translated version). Moreover, quality of versions produced by means of translation is often worse than quality of an original. Sometimes, due to strict literal translation, translated versions imitate syntax of language of an original and as a result awkward, even intelligible, sentences are produced. This also undermines interpretative value of translations. The multilingual drafting methods described in the previous section (3.3.) aimed at overcoming the pitfalls of translation as a drafting method. In order to achieve this objective, multilingual law should be drafted in the way that makes source and target texts (original and translation(s)) undistinguishable. Accordingly, all versions, which are to become authentic after adoption of the act, can be recognised as originals. Then, theory of original texts - assuming that all authentic versions are originals regardless the way of their production – is not just a theory but becomes a practice.

This section examines whether and to what extent co-drafting methods described above fulfil this aim, in other words, produce indistinguishable source and target texts. In order to answer this question, it is scrutinised whether elements of translation can be recognised throughout co-drafting. Therefore classical translation - as it is understood in translation studies (see definition provided in subsection 3.4.1.) - is compared with co-drafting methods (subsection 3.4.3.). In order to make the entire enquiry on multilingual drafting methods complete and comprehensive, the analysis of co-drafting methods is preceded with examination of legal translation applied in one legal system and its comparison with translation involving two legal systems (subsection 3.4.2.). This analysis is supplemented with investigation of a lack of a proper source text in multilingual drafting process (subsection 3.4.4.). The general context for the analyses and comparisons conducted

in this section is explained in first subsection (3.4.1.) where concepts of 'translation' and of 'multilingualism' and relation between them are considered.

This study prepares a theoretical framework for the analysis whether drafting applied in Canada and the European Union can assure in practice the equality of language versions already during drafting process (see chapter 5).

Moreover, the investigation of the afore-mentioned issues should give the answer whether translation studies can be applied to research on multilingual legal drafting including translation and co-drafting methods.

Subsection 3.4.1.
Translation *versus* multilingualism

Since in this section translation is to be characterised as a drafting method applied for the purpose of legal multilingualism and then compared with another multilingual drafting methods, i.e., with the above defined co-drafting (see conclusion to section 3.3.), at the outset the meaning of translation and legal multilingualism should be clarified and especially the semantic relation between the two concepts should be discussed.

The definition of translation is necessary to explain the function and role of translation in legal multilingualism. Moreover, it enables the subsequent comparison of translation and co-drafting. Instead of constructing my own definition of translation, I decided to refer to one of well-established and commonly accepted classical definition put forward in translation studies. This definition will facilitate indication of criteria of classical translation. Although translation studies are a quite new academic discipline, various definitions of translation have been already proposed. The term 'translation' is very broad and sometimes an ambiguous notion. One of such ambiguities results from the confusing meaning of the term translation that can be regarded as a product (a text that has been translated) or as a process (translating). Throughout this thesis, the term 'translation' is mainly used in the meaning of a process.[492] Needless to say, translation involves a written text, as opposed to 'interpretation' or 'interpreting'. The meaning of the term 'translation' depends on the theory and the approach being considered. I will leave aside the description of different definitions of translation. For the purpose of this dissertation, it will suffice to quote the definition of translation process (translating) proposed by Nida and Taber:

[492] In this thesis, the terms 'target text' or 'translated version' are used to denote 'a text that has been translated', while the term 'translation' is usually used in reference to the process, unless the contrary intention appears

> translating consists in reproducing in the [target language][493] the closest natural equivalent of the source-language message, first in terms of meaning and the second in terms of style (1969/1982: 2).

In translation we always deal with "texts-in-situation and in culture" (Schäffner 1998: 83). In typical circumstances, the source text is produced in the primary communicative situation in the source culture in order to fulfil intended purpose or function. The primary communicative situation comprises a particular place, space and addressees for whom the source text has been produced. The addressees have specific knowledge, experience and expectations. The target text should fulfil the same function but in the secondary communicative situation and for addressees in the target language and culture (*ibidem*). This model of translation is depicted in figure 1

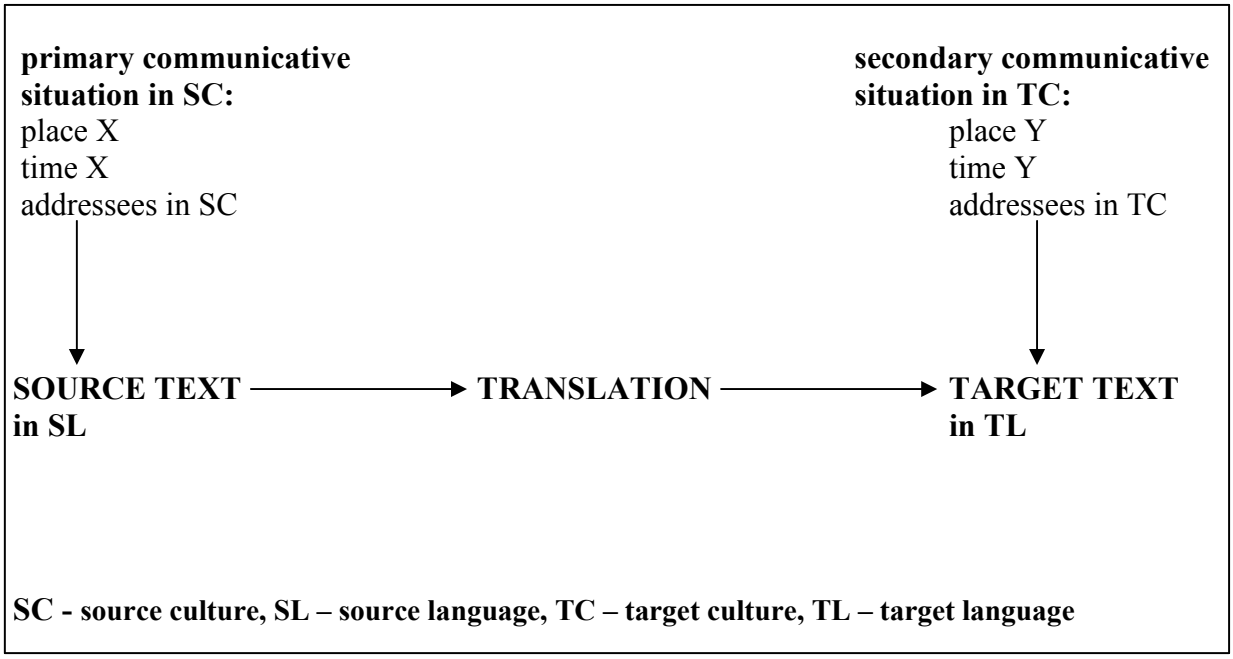

Figure 1. Schema of translation. Based on Schäffner 1998: 84.

Although there are many various understandings and definitions of translation, it is possible to indicate a set of criteria that have to be fulfilled in order to regard a text production as translation. In the thesis, a process of a text production that fulfils the following criteria is denoted as 'classical translation'. Taking into account the definition of Nida and Taber (1969/1982: 2), first, it should be stated that this process consists in transfer of meaning and style from one language (source language) into another (target language) (1). Moreover, the

[493] Nida and Taber use the term 'receptor language' in their definition. I replaced this term with the term 'target language', since the latter is generally accepted and more often used in translation studies. The term 'target language' is consequently used throughout the thesis.

target text is produced in the target language in the secondary communicative situation based on the source text that has been produced in the primary communicative situation (Schäffner 1998: 83) (2). A production of the target text starts once a production of the source text is finished (3a). Accordingly, both texts are drawn up at different time and usually in different place (3b). Finally, a source text is unchangeable and cannot be influenced by a target text; even obvious mistakes in a source text cannot be corrected. For that reason, a revision – the last stage of this process - results in changes and corrections only in a target text (4).

Hence, according to the traditional translation studies approaches, when we deal with translation, source and target texts are produced in different languages, in different places and at a different time, in different cultures and for different addressees who have specific knowledge and experience.

In the case of legal multilingualism, we face a different situation. The phenomenon of multilingual law stems from official multilingualism, which usually requires not only that the law should be enacted in all official languages, but also that texts of a legal act expressed in official languages be treated as equally authentic. It means that legally all language versions have equal power and authority. Consequently, official multilingualism consists in the coexistence of two or more languages and in the equality of these languages (Wagner, Bech and Martínez 2002: 1). MacDonald (1997: 119) contrasts legal bilingualism with legal dualism and warns against a risk for legal bilingualism of being transformed into a legal dualism that, in this context, means that bilingual law is supposed to be completely understood by referring to only one of the official texts (*ibidem* 129).

Accordingly, multilingualism evokes the co-presence of two or more languages, whereas translation is rather a substitution of one language for another (Grutman 1997: 157). In multilingual legal systems, different language versions of a single legal act co-exist, they do not substitute for each other. They are at the same time independent and mutually dependent on each other because they contribute to the meaning of the single instrument (Šarčević 2000a: 64).

The next section explains how translation is applied within a multilingual legal system and how it differs from translation that involves different legal systems.

Subsection 3.4.2.
Translation from one legal system into another *versus* translation within one legal system

This dissertation tackles multilingual legal drafting methods which also include translation. Therefore, the distinction between legal translation from one legal system into another and translation within one legal system should be discussed. The latter can be applied as a drafting method in multilingual legal systems. The comparison of these two models of translation should help to find out whether translation as a drafting method can be regarded as a translation from a translation studies' standpoint.

Different names have been proposed to denote these two types of legal translation. This terminological controversy is demonstrated by Susan Šarčević (2000a: 14-15 ft.7), who notes that, for instance, Didier distinguishes *transposition juridique* that involves different legal systems from *traduction juridique*, i.e., a transfer of legal message within one legal system, but from one language to another (1991: 9). However, Šarčević notes that the terms used by Didier are unfortunate, because a narrow definition of *traduction juridique* implies that *transposition juridique* is not a translation. On the other hand, Crépeau (1995: 207) proposes the term *transposition linguistique 'simple'* to denote legal translation within the same legal system and *transposition linguistique 'complex'* or *transposition juridicolinguistique* to denote legal translation from one legal system into another. Due to this terminological controversy, in the thesis descriptive compounds are used, i.e., 'legal translation from one legal system into another' (or 'legal translation that involves various legal systems') and 'legal translation within the same legal system'.

A translation from one language into another that involves different legal systems is traditionally understood as legal translation. The model for this type of translation is illustrated in figure 2. The main problems of this kind of legal translation are related to the fact that it is not only translation from one language into another but also from one language of law to another language of law and from one legal system into another legal system. Legal translation used to be regarded as a mechanical process of transcoding one language into another. Nowadays, as a result of a shift in the main emphasis in translation studies from interlingual to cultural transfer (Vermeer 1986:33; Šarčević 2000a: 2, 5, 209), legal translation is regarded as a cross-cultural event (Snell-Hornby 1988 and Šarčević 2000a). Legal terms have meaning only in the context of a legal system. The elements of one legal system cannot be simply transposed into another legal system, because each legal system has its own

conceptual system. Consequently, the legal terminologies of different legal systems are for the most part conceptually incongruent. Furthermore, all legal systems contain a number of terms, which are called system-bound terms, with no counterparts in other legal systems. System-bound terms "designate concepts and institutions peculiar to the legal reality of a specific system" (Šarčević 2000a: 233).[494]

The scheme of this type of legal translation (figure 2) overlaps the translation scheme proposed by Schäffner (figure 1).

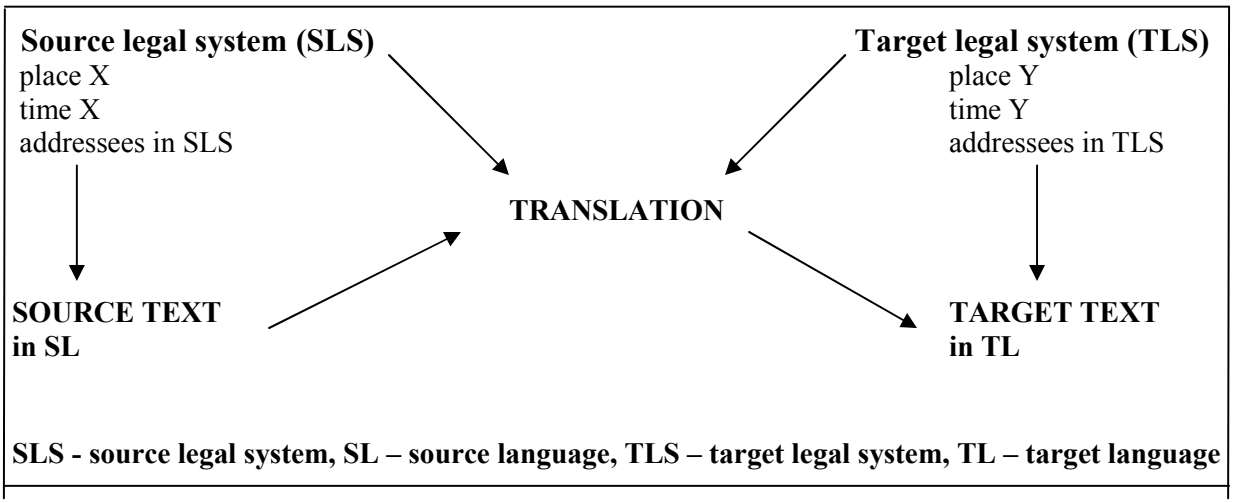

Figure **2.** Schema of legal translation from one legal system into another

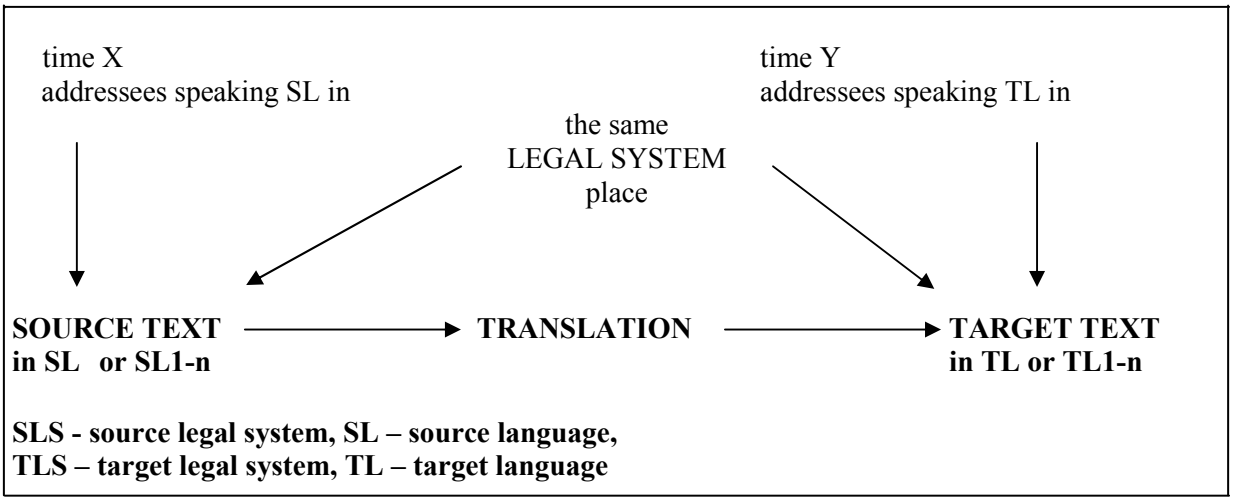

Figure 3. Schema of legal translation within one legal system

On the other hand the scheme of translation within one legal system has much less overlapping elements (see figure 3). This stems from the fact that the source and target legal

[494] *Cf.* the definition of 'system-bound term' provided by Šarčević (1985: 127); see also subsection 3.1.2. on language of law in theory of law.

systems are one and the same. Consequently, all official languages share the same system of reference, i.e., the signs in each language refer to the same objects (Šarčević 2000a: 15, 230-231). Therefore, full equivalence and coherence between equally authentic language versions of a legal act is required. The situation can be more complicated in multilingual legal systems that are characterised as mixed (e.g., Israel, South Africa) or bijural (Canada).[495] Force of law in such a system is derived from more than one legal tradition or family (Tetley 2003: 182). Consequently, drafting multilingual law in a mixed or bijural system, where usually each language corresponds to a particular legal tradition (as in the case of bilingual and bijural Canada where English corresponds to common law, whereas French to civil law) and all language versions should reflect the specificity of each legal tradition is much more challenging and difficult than in legal systems based on one legal tradition.

The comparison between classical translation and translation applied for drafting equally authentic language versions of a legal act reveal the features of the latter that can question whether translation used to draft multilingual law can be still considered as translation. This question (whether translation from one language into another but within one legal system can be regarded as translation) can be examined by using two different approaches: a legal approach and a translation studies' approach. If the latter gives a negative answer, then translation studies' methodology and terminology cannot be used for research and analysis of translation applied as a legal drafting method.

From a legal standpoint, as it was explained in subsection 1.1.2. and 3.2.1. of this thesis, it is presumed that all authenticated language versions are originals regardless of the way of their drafting. Therefore in legal language, authentic language versions and the way of their drafting cannot be denoted as 'translation'.

On the other hand, in translation studies, the answer to the above question is not as forthcoming as when the legal perspective is used. Therefore more detailed analysis of the possibility to apply translation studies to conducting the research on translation which is a multilingual drafting method is carried out in the following subsection. Moreover, it should be taken into consideration that - as explained at length in section 3.3. - translation is not the only method of drafting law in many languages. In some multilingual legal systems, co-drafting methods are used instead of or in addition to translation. As explained above co-drafting methods aim at eliminating the distinction between original (source text) and translated text (target text). Accordingly, these methods coordinate time and place of production of a legal

[495] For more details and the definition of 'mixed legal system' or 'mixed jurisdiction', see also: Örücü 2004: 149, Palmer 2001: 7, and this thesis, section 2.1.2.).

text in all official languages, whereas source and target text produced by means of classical translation are drafted at different times and places. The next subsection also discusses whether translation studies can be applied to research on co-drafting methods.

Subsection 3.4.3.
Translation *versus* co-drafting methods

§ 1. Objectives and method of the analysis

The objective of this subsection is twofold. First, it should be examined whether co-drafting fulfils its aim which is the production of language versions of a legal act in the way that all of them are originals. In other words, no two language versions drawn up by means of co-drafting should be in relation to each other as a source text and a target text. Secondly, subsection aims at answering the question whether it is possible to use translation studies to conduct research on multilingual legal drafting. In order to reply the second question, it should be analysed whether multilingual legal drafting comprises any translation elements; including the possibility to distinguish a source text from a target text among language versions produced by means of multilingual drafting.

Two comparisons, which are conducted in this subsection, should facilitate the search for the answer to the questions. Firstly, classical translation is compared with translation which is applied for drafting multilingual law, and then, secondly, classical translation is compared with co-drafting methods. Results of the comparison will enable to answer whether translation studies can be applied for research of drafting methods including co-drafting and translation. Moreover, comparison should reveal whether it is possible to distinguish source and target texts among language versions of a legal act drawn up by means of multilingual drafting methods. According to the thesis statement, if such distinction is not possible, equality between language versions is guaranteed already during drafting process.

Classical translation has been defined in this thesis as a process (subsection 3.4.1.). This definition is also applied in this subsection. Although the main concern of the analysis is on the process, the relation between products of this process (between language versions) is also discussed. The issues related to translation and to relation between source and target texts are analysed in translation studies, therefore methodology of this discipline will be applied.

There are many approaches to and definitions of translation. However, it is traditionally accepted that the source and target texts are always produced at a different time

and place. Usually the process of producing the target text starts only after the source text is completed. As Steiner (1977: 334, quoted in Šarčević 2000a: 106) has noted, "every act of translation (…) is a transfer from past to a present". This statement is in contradiction to the main objective of the co-drafting methods, i.e., a coordination of the time and place of production of language versions of a legal act. For that reason, it should be verified whether two texts relate to each other as source and target texts. The analysis is conducted at two levels. First, the production of the texts is analysed at the micro-level, i.e., the production of text segments (atomistic analysis)[496]; and, second, the production is analysed at the macro-level, i.e., the production of the whole text (holistic analysis)[497].

Moreover, the analysis of multilingual drafting process will refer to the stages of translation process (paragraph 7 of this subsection). Leaving behind different approaches to and classifications of translation stages, for the purpose of this dissertation, three essential stages specific to the process of translating can be pointed out: analysis, synthesis and revision. During analysis, the source text is read and analysed by the translator. During synthesis, the target text is produced. During the final stage of revision, a draft translation (a target text) is evaluated, edited and adjusted to meet the standards of translation (Bell 1997: 187). The analysis of stages of multilingual drafting process aims at finding out whether at least one stage of translation process can be indicated during the production of language versions of a legal act.

In the following paragraphs, multilingual legal drafting is analysed and compared with classical translation in the way explained above. Multilingual legal drafting comprises various co-drafting methods which are to be analysed separately. As explained, translation also is a technique of drafting multilingual law. Since translation as multilingual legal drafting method is a particular type of translation, the questions posed above are also legitimate as regards drafting by means of translation.

---

[496] The term 'atomistic analysis' is borrowed from linguistics and translation studies where it is used to denote a process of textual analysis which is concentrated on isolated elements (e.g., words or sentences) taken from the (source) text (Delisle, Lee-Jahnke, Cormier 1999: 119). In the analysis conducted for this thesis' purposes, the focus is on entities which are smaller than an entire text; usually they are sentences or group of sentences, sometimes even a half of a text. However, this analysis aims not at pure linguistic examination of elements of a text but at investigation of relation between two texts in order to find out whether it is possible to distinguish original and translated text on the basis of the way of their production. See also glossary to the thesis.

[497] The term 'holistic analysis' is borrowed from translation studies where it is used to denote a process of textual analysis that provides a framework for the global interpretation of all linguistic, stylistic, terminological, and cultural elements of a source text in order to facilitate their reformulation in another language, while taking to the account the function of the text to be translated (Delisle, Lee-Jahnke, Cormier 1999: 143). In the thesis, the term is used when the two texts are compared in order to establish whether it is possible to indicate which of them the translation is and which the original. See also glossary to the thesis.

§ 2. Translation

If process of drafting of authentic language versions of a legal act, which are prepared by means of translation, is analysed, it can be admitted that, according to criteria of translation studies, the process is translation. First, the transfer from one language into another is observed. Source and target texts are produced at a different time and place. Moreover, when language versions of a legal act are prepared, all stages of translation process can be indicated.

However, when more detailed analysis is conducted, especially when relation between source and target texts is examined, according to some translation studies' approaches, this drafting process cannot be regarded as translation anymore, since no source language neither source text can be indicated. The relation between language versions of legal act produced by means of translation and co-drafting, in particular, the possibility of distinction between source and target texts, is discussed in the next subsection (3.4.4.).

§ 3. Parallel drafting

In the case of parallel drafting, it is impossible to identify the source text and the target one either at the micro-level or at the macro-level of production. Both language versions are prepared independently. Hence, as far as the relation between the two texts is concerned, neither an original text nor a translation can be indicated, either at the level of text segment, or at the level of the whole text. Consequently, both texts, drafted in parallel, are originals. Thus the theory of original texts, which presumes that all authentic texts are originals, regardless of drafting method, is not a fiction in this case.

In traditional translation, a process of producing a target text starts only after a source text is completed. As mentioned, translation involves "a transfer from past to a present" (Steiner 1977: 334, quoted in Šarčević 2000a: 106). According to Šarčević, the only exception to this chronological principle is simultaneous interpretation (2000a: 102, 106). However, parallel drafting cannot be regarded as a simultaneous interpretation, first, because of the drafting, written texts are produced, whereas interpretation refers to oral translation. Moreover, although language versions are prepared simultaneously, they are drawn up independently. Finally, simultaneous interpretation does not include revision, which is the last stage of translation, and is required during and at the end of co-drafting process.

§ 4. Alternate drafting and shared drafting

Since shared and alternate drafting are very similar - the process differs only in the way how a text is divided for drafting purposes (respectively into halves or smaller parts) - the two methods are analysed together.

The application of the micro- and macro- level analysis to the alternate drafting and shared drafting methods proves to be very useful. When the drafting process at the micro-level of a text segment (a half or a smaller part of a text) is examined, it is possible to point out which part is drafted in which language. As a result, a source text can be identified, and consequently a translated part can be recognised. Most importantly, the source text is not always the same, i.e., it is partly (or a half) in language A and partly (or a half) in language B. In other words, source text alternates (see Šarčević 1998: 283 and 2000a: 101). Therefore, when the drafting process and the product of this process are analysed at the macro-level, one is not able to identify the source language of the entire text. However, as far as these two methods are concerned, it is possible to apply translation studies at all stages of translation. It should be pointed out, however, that the idea of alternating the source text and target text is new in translation studies (Šarčević 2000a: 102).

§ 5. Double entry drafting

In the case of double entry drafting, the same person drafts both language versions. Translation studies (especially of literary translation) recognise 'autotranslation' or 'self translation', which is defined as "the translation of an original work into another language by the author himself" (Popovič 1976: 19)[498]. In some translation theories, autotranslation is not a variant of the original text but a true translation (*ibidem)*. Thus, from the translation studies point of view, double entry drafting can be regarded as a translation process as long as parts of one text are used as the source text for the others. In order to find out whether this requirement is fulfilled, the process of drafting should be investigated from a psycholinguistic perspective. As a result of the application of the psycholinguistic approach, it should be learnt what strategies a drafter adopts, especially whether he or she drafts both texts independently, or uses alternate or shared drafting, or firstly drafts the entire text in one language and then

[498] This definition is cited from Shuttleworth and Cowie (1997: 13).

translates it into another. Psycholinguistic research on bilingual persons demonstrates that a bilingual speaker very often uses one language as a dominant one. Therefore, it might be expected that a bilingual drafter prepares the whole text in one language and then translates it into another.

However, it should be born in mind that according to the double entry drafting technique, the drafter ought to draft both language versions separately, not to draft one version and then translate it into another language. Accordingly, if this drafting method is applied correctly, both texts can be regarded as originals like in the case of parallel drafting. Even if a drafter prepares some parts in language A and some in language B and then translates them respectively into language B and A (likewise drafters applying alternate and share drafting), when the entire texts are analysed, a source text and a target text are indistinguishable, similarly to alternate and shared drafting. Even if an entire text is drafted in one language and then used as a source text by the drafter who has a perfect knowledge of the both languages, as long as he or she does not point out which text has been drafted and which one has been translated, it is not possible for others to identify the original and the translated text. It has to be underlined that a drafter who produces parts of or an entire text by means of translation does not follow proper double entry drafting methodology. But still, both a drafter who applies a 'pure' double entry drafting method and one who uses translation elements in drafting have to produce coherent and equivalent texts in two languages. Hence, the problem-solving strategies recommended by translation studies may be helpful to them whatever drafting method they use (involving translation elements or not).

§ 6. Joint drafting

The case of joint drafting is similar to the parallel drafting method (see paragraph 3 of subsection 3.4.3). The main difference between the two drafting methods is in the organization of co-drafters' work. To be precise, when parallel drafting is applied, co-drafters work separately and meet only to compare and revise prepared versions, whereas co-drafters who employ joint drafting, work together at all drafting stages. Although co-drafters work jointly, each of them is responsible for his or her language version.

Accordingly, when the joint drafting is used, both language versions are drafted at the same time and even in the same place. Therefore, while applying this method, one text does not serve as the source text for the other. Consequently, it is a text production rather than a translation process.

Table 4 demonstrates and brings together the results of the analysis carried out for translation and all co-drafting techniques.

Translation and co-drafting techniques	Holistic analysis of entire texts	Atomistic analysis of text segments
Translation	P	P
Parallel drafting	NP	NP
Alternate drafting	NP	P
Shared drafting	NP	P
Double entry drafting	NP	-
Joint drafting	NP	NP
NP distinction between source and target texts is not possible P distinction between source and target texts is possible		

Table 4. Possibility of distinction between source and target text in co-drafting methods

§ 7. Revision stage in translation and co-drafting

All multilingual legal drafting methods described and discussed above include comparison and revision of drafted language versions. As a result, each of prepared versions can be corrected or changed in order to preserve full coherence and equivalence between all language versions of a legal act. Drafted language versions or their parts can be revised and modified throughout a drafting process. However, the main comparison and modification of all language versions takes place at the end of the process. This last stage of multilingual legal drafting resembles revision, which is recognised by many translation theories as the last stage of translation.[499] The problem-solving technique, especially those related to search for equivalence, proposed and developed in translation studies, can be *mutatis mutandis* applied to revision of language versions of a legal act prepared by means of multilingual drafting methods.

However, it should be taken into account that during revision, as defined in translation studies, only the target text can be modified and adjusted to the source text, whereas as a result of revision applied in multilingual legal drafting, each of drafted language versions can be modified and changed. Consequently, even if it is possible to distinguish source text from a target text – as it happens in the case of translation – during revision this distinction is not

[499] The stages of translation are indicated and explained in this subsection (3.4.3.), in paragraph 7.

applied. Table 4 states that as regards translation, distinction between source and target text is possible. However, if during revision, a version – recognised as a source text – is being changed in order to be adjusted to version which is recognised as a target text, then in case of holistic analysis (when entire text is analysed), none of versions can be regarded as drafted originally in one language. When revision can result in changes in all language versions – those drafted originally in one language and those translated – co-drafting elements can be recognised during a revision process, even if translation has been used as a drafting method.[500] Co-drafting methods aim at combining time and place of drawing up language versions of a legal act. Such coordination takes place during revision described above. In case of this kind of revision, none language version cannot be regarded as a dominant one, since they all influence each other.

Legal drafting in multilingual legal system by means of translation and by means of co-drafting, due to above explained specific features of these drafting methods, can pose some challenges to translation theories. In the next subsection (3.4.4.) two of them are to be analysed; firstly, the new type of relation between the source and target texts (paragraph 1 of subsection 3.4.4.); and secondly, a new hybrid character of original (source text) (paragraph 2 of subsection 3.4.4.).

[500] *Cf.* Tito Gallas (2001: 90) and Manuela Guggeis (2005: 499) who use the term 'co-drafting' in order to describe revision of language versions of EU laws, which is applied in the Council by jurist-linguists. During this revision, all prepared language versions are changeable.

Subsection 3.4.4.
Source and target texts *versus* hybrid text

Previous subsections deal mainly with the process of drafting law in many languages. Although it is the focus of the thesis, the product of this process also should be taken into account. Therefore, the last subsection considers this issue from the perspective of translation studies. First, the distinction between source and target text is explained and source text- and target text-oriented approaches are described. However, the main concern of this subsection is on the phenomenon of a hybrid text and translation studies' attitude to it.

§ 1. Relation between source text and target text in translation studies *versus* relation between language versions of multilingual law in drafting process

In terminology of translation studies, a product of translation is called a 'target text'. A target text is derived from a source text (ST) in accordance with a particular translation strategy which varies widely between various schools or approaches recognised within translation studies (Shuttleworth and Cowie 1997: 164). In general, two approaches to translation can be distinguished, i.e., source text-oriented translation and target text-oriented translation (Toury 1995).

The former is a traditional approach which requires the features of a source text, like its structure and form, be reproduced in a target text as closely as possible. Accordingly, a role of target text is only to reconstruct source text (Toury 1995). If the process of translation is taken into consideration, source text-oriented approach can be described as a retrospective translation.[501] Translation is regarded as a bottom-up process, i.e., process of "working from source language elements and transferring the text sentence by sentence, or phrase by phrase" (Schäffner 1998: 86). The strategy usually used in source text-oriented translation is called 'foreignizing translation' and aims at guaranteeing close adherence to a foreign (source) text and at including foreign culture elements in the target text so they can be imported to the target culture. Different to foreignizing strategy, 'domesticating translation' aims at removing foreign culture elements from a target text, and it is typical for target text-oriented translation.[502]

[501] The term 'retrospective translation' has been introduced by Postgate (1922: 18) to denote translation "which primarily regards the Author"; quoted in Shuttleworth and Cowie 1997: 146.
[502] For details on foreignizing and domesticating strategies, see *inter alia* Munday 2001: 146-148; Shuttleworth and Cowie 1997: 59; Venuti 1997: 240-244.

Target text-oriented translation focuses on a target text and its position in the target culture. The target text is assumed to exist independently from the source text (Shuttleworth and Cowie 1997: 164-165). The source text is only one factor among others, which influences how the target text is produced (Schäffner 1998: 86). This type of translation is regarded as a top-down process, and described as a prospective translation.[503] As explained by Schäffner (1998: 86), prospective translation "starts on the pragmatic level by deciding on the intended function of the translation and asking for specific text-typological conventions, and for addressees' background knowledge and their communicative needs".

As explained in subsection 3.4.2., all language versions of a legal act after its adoption are applied in the same legal system (hence in the same culture) and are equally authentic. Therefore, neither source text-oriented nor target text-oriented translation strategy can be applied to translation used for drafting multilingual law. This short overview of translation strategies and approaches to source and target texts demonstrates that relation between source and target texts is different from relation between language versions of a legal act even if some of these versions have been prepared by means of translation.

An interesting attitude to the relationship between source text and target text, which might be pertinent to the description of translation applied for drafting multilingual law, has been proposed in *skopos* theory introduced into translation studies by Hans J. Vermeer.[504] According to this theory, the role of a source text and relation between source and target texts in translation process, as well as, the choice of translation strategy depends on *skopos*[505] that a target text is to fulfil in the target context. *Skopos* of the source text and of the target text can be the same (*Funktionskonstanz* – functional constancy) but also can differ between the two texts (*Funktionsänderung* – change of function). Moreover, the translation of the source text can have various *skopos*. Therefore one source text can be translated by means of different translation strategies and have more than one correct translation. Accordingly, the outcome of translation can be a variety of target text called 'translatum' (Vermeer 1978: 174) or 'translat' (Reiss and Vermeer 1984/1991: 2).[506] In *skopos* theory, it is admitted that correct translation is one that fulfils the *skopos* of translation (target text). The purpose of translation, which is applied for drafting multilingual law, is a production of equally authentic language versions. In this case, *skopos* of the source text and of the target text is the same, i.e., both are to

[503] The term 'prospective translation' has been introduced by Postgate (1922: 18) to denote translation "which primarily regards the Reader"; quoted in Shuttleworth and Cowie 1997: 146.
[504] See Vermeer 1978, and especially Reiss and Vermeer 1984/1991.
[505] The word *skopos* in Greek means 'purpose' or 'aim'.
[506] Quoted in Schäffner 1997b: 235.

become equally authentic versions of a legal act, in particular, both should participate in the meaning of a legal act, and none of them should prevail for interpretation purpose. Therefore, *skopos* of translation is the fidelity to the source text which is reflected in intertextual coherence between source text and target text (see Schäffner 1997b: 236).

Although the purpose of translation, which is used for drafting multilingual law, based on *skopos* theory is legitimate, some aspects of this theory seem to be inappropriate for description of this kind of translation. Firstly, the relation between the source text and the target text defined in *skopos* theory differs from relation between language versions of a multilingual legal act. As maintained by *skopos* theory, a text is an offer of information (*Informationsangebot*). Accordingly, a target text is a secondary offer of information to members of a target culture in their language (the target language) about primary information originally offered in a source language and in a source culture (Schäffner 1997b: 236). As regards language versions of a multilingual legal act, it is not possible to distinguish primary and secondary offer of information. It is only one offer of information expressed actually in one text (a legal act) which has two or more language versions. It should be underlined that all authentic language versions create together and to the same extent the meaning of the offer of information. Therefore, the approach to a source text proposed by *skopos* theory is unacceptable while referring to language versions of a legal act. According to this theory, intratextual coherence of a target text (coherence rule) is more important than intertextual coherence between source text and target text (fidelity rule). This hierarchy of translation rules minimises ('dethrones' in terminology proposed by Vermeer) the status of a source text (Munday 2001: 79-80). The diminution of the status of a source text is inconsistent with the relation between authentic language versions of a multilingual legal act which have the same status (i.e., are equally authentic) regardless the way of their production.

Moreover, *skopos* theory assumes that translation is interlingual and intercultural (Schäffner 1997b: 236). Since the *skopos* of all language versions of a legal act is not only the same but it is to be fulfilled in the same culture (i.e., the same legal system), translation involves linguistic but not cultural transfer. The challenge of drafting multilingual law is not cultural transfer but search for terms in two or more languages that are able to denote precisely the concepts which belong to the same legal system and culture.

The above analysis demonstrates that relation between source text and target text and their status differs from relation between language versions of a legal act and their status. First of all, authentic language versions of a legal act have the same status and they are drafted and considered equal. According to translation studies, or source text (source text-oriented

translation) or target text (target text-oriented translation and *skopos* theory) is a dominant one.

§ 2. A hybrid text and a lack of a proper source text during multilingual legal drafting

In the previous paragraph, the relation between source and target texts has been compared with relationship between language versions of a legal act. Accordingly, so far it has been assumed that it is possible to recognise in translation process - aiming at drafting language versions of a legal act - language versions which can be in relation of source and target texts. However, more detailed analysis reveals that in multilingual legal systems target texts (some of language versions of a legal act) are often produced by means of translation without the existence of a proper source language or a proper source text (Schäffner 1998: 87). This situation takes place, especially in international organizations and in the European Union, when a text is produced by means of multilingual negotiation (i.e., more than one working language is used) and then translated into other official languages. If two or more working languages have played a role in setting up the final version, or, in other words, there is not "one particular version of the copies in the working languages that served as a source text for the other language texts" (Schäffner 1998: 88), then none of the working languages can legitimately be called a source language (*ibidem* 87-88). In that case, the production of a text is influenced by several languages or a text is even produced in multiple languages.[507] Then the final text is translated into other languages. Legal texts produced within international organizations or the European Union are multilingual and multicultural by nature. A source text - as it is understood in traditional translation studies, i.e., a text produced exclusively in one language and culture - does not exist in this situation. Thus, neither a source language nor a source text can be indicated.

A text produced in this way sometimes is called a 'hybrid text'. A hybrid text results from the contact of two or more cultures and languages, which takes place because of an increasing internationalisation process (Trosborg 1997: 147). A hybrid 'source' text is a compromise between several languages and cultures (Schäffner and Adab 1997: 325). Some authors, like Trosborg, consider EU documents as hybrid texts since they are "a product of a multicultural discourse community arrived through a process of negotiations and compromise" (1997: 156).

[507] See the example and analysis of the production of multilingually negotiated legal and political texts in Schäffner (1998: 87- 89).

In translation studies, the concept of a hybrid text is known. However, a hybrid text is analysed in the context of a translation process.[508] Consequently, it is a target text, not a source one, which is recognized by translation studies as a hybrid text. As explained above, in multilingual legal systems, a source text is often described as a hybrid text. Translation can result in the production of a hybrid text but more often translation can cause 'dehybridization'. According to Pym, in the European Union, source texts are hybrid texts because of the intercultural and multilingual nature of the drafting process, whereas the role of translation is 'dehybridization'. In the words of Pym "[c]ontemporary professional non-literary translation in Europe is an agent of dehybridization for the simple reason that source-text generation processes are increasingly multilingual, whereas translational outputs are normally monolingual" (2001: 205).

As far as co-drafting methods are concerned, a lack of a proper source text can also be identified when multilingual legislation is drawn up. This fulfils the objective of multilingual drafting methods which avoid the use of translation and aim to produce legal texts in all official languages to preclude the possibility of distinction between the source and target text.

In classical translation - as explained in subsection 3.4.1. - the source text fulfils its communicative function for its source-language addressees in the primary communicative situation, whereas the target text fulfils its communicative function for its target language addressees in the secondary communicative situation. In the secondary communication, addressees are not the addressees for whom the text was originally created (Trosborg 1997: 155). As far as the drafting of law in multilingual settings is concerned, there is neither a primary communicative situation in which the source text fulfils its communicative function, nor a secondary one in which the target text fulfils its communicative function. On the contrary, both texts share the same communicative situation. Moreover, there is no proper source text that has specific features or is characterised by specific conventions of the source language text type, and there is no parallel text[509] in the target culture that can be a model for the target text (see Schäffner 1998 and Trosborg 1997). According to traditional translation studies, co-drafting cannot be regarded as a translation process, since there is no proper source text (see e.g. Gutt 1990). Because of the same reason, texts that are product of co-drafting cannot be considered as translations. A text produced in a target language and for a target culture, and recognised as a translation in the target culture, although no source text exists for this text, is called pseudotranslation (Toury 1980: 31, quoted in Shuttleworth and Cowie

[508] *Cf.* definition of 'hybrid text' proposed by Schäffner and Adab 2001: 167.
[509] The term 'parallel text' is used here in the meaning given to it by translation studies, see glossary.

1997: 134). This term, however, cannot be referred to products of co-drafting, since none of texts produced by means of co-drafting is recognised as translation.

The above analysis conducted from translation studies standpoint reveals that the traditional designation of a source text and a target text cannot be applied in the context of language versions produced by means of multilingual legal drafting (co-drafting or translation). This observation is significant because the thesis statement[510] is based on the assertion that the equality between authentic language versions is assured throughout multilingual legal drafting process, if it is not possible to distinguish a source (original) and target (translated) language versions during this process.

However, translation studies tries to respond to a challenge posed by a production of texts in multilingual and multicultural settings, and, in particular, try to resolve the problem of the lack of a proper source text. In the opinion of some authors, the meaning and status of a source language, as well as of a source text and a relation between a source text and a target text should be reconsidered in translation studies (Trosborg 1997: 155, Schäffner 1998: 87-90). As a result, recognition of a source text in multilingual legal drafting might be possible.

Some work toward this end has been done. For instance, Trosborg (1997: 155) proposes the term 'pseudo-text' to refer to "a text which in itself does not fulfil a communicative function, but serves as a draft for translation". Translations of pseudo-texts are close to the primary texts "addressing a primary target group" (*ibidem*). [511]

Another approach is proposed by Šarčević (2000a: 107). In order to identify a source text in parallel and joint drafting,[512] Šarčević applies Holz-Mänttäri's theory of 'translatorial action' that 'dethrones' the source text.[513] Holz-Mänttäri (1984) reduces the role of source text to the 'carrier of message'. As a result, traditional source text can be replaced by new forms (e.g., briefings and agreements specifying the features of a new product), which can be

[510] The thesis statement asserts that the equality between authentic language versions results not only from legal presumptions and provisions but can also be assured in practice throughout a drafting process.

[511] Trosborg suggests also that instead of search for the new understanding of translation process and of relation between source and target texts, a hybrid text should be established as a new text type with its own norms and conventions (1997: 156).

[512] Issues related to parallel and joint drafting have been explained in this thesis; see subsections 3.3.1. and 3.3.5., as well as paragraphs 3 and 6 of subsection 3.4.3.

[513] Theory of 'translatorial action' proposed by Holz-Mänttäri (1984) is similar to *skopos* theory. However, it is more radical. The term 'translatorial action' is used instead of 'translation'. The 'translatorial action' should produce a target text which will overcome all cultural barriers in order to fulfil its function in target situation. According to this theory, a source text is regarded only as a tool for realisation of communicative function ('dethroning' of source text; Schäffner 1997a: 3, Shuttleworth and Cowie 1997: 188-189). Likewise, *skopos* theory, theory of translatorial action assumes that one source text can have more than one correct or preferable translation, because translation is determined by the function which should be fulfilled in the target communicative situation. For further details, see Holz-Mänttäri 1984, Schäffner 1997a: 3-5, Munday 2001: 77-78.

treated as a source text. Although Holz-Mänttäri does not refer to legal texts, Šarčević suggests that in parallel and joint drafting, the outlines, which form the basis for the production of parallel legal texts (language versions of a legal act), can be treated as source text for those texts.

The attempts to redefine the concept of a source text and to reconsider relation between a source text and a target text confirm the conclusion of the previous analysis that language versions of a legal act, which have been drafted by means of multilingual legal drafting (including co-drafting and translation), are not in the relation of a source text and a target text. If the approach of Trosborg is applied to multilingual legal drafting or the proposition of Šarčević is taken into consideration, a source text can be recognised in multilingual legal drafting process but not as one of language versions of a legal act, but as a draft or a carrier of message that is the basis for drafting all language versions of a multilingual legal act.

This theoretical analysis of relations between language versions that are created by means of multilingual legal drafting demonstrates that not only co-drafting but also translation used in multilingual legal system, makes difficult and sometimes even impossible to indicate in what language multilingual legal act has been originally drafted. Production of language versions of a legal act in the way that all of them are originals is the aim of co-drafting methods (see definition of co-drafting in conclusion to section 3.3). The following chapter of the thesis (chapter 5) describes how in practice co-drafting applied in Canada fulfils this aim. Moreover, the comparison of Canadian co-drafting and multilingual drafting in the European Union should demonstrate co-drafting elements in the latter. Those elements should make recognition of a single source language, in which a multilingual legal act has been originally drawn up, impossible. If the analysis of the drafting practice in Canada and in the European Union confirms the conclusions of the theoretical analysis conducted in this chapter, the thesis statement, which maintain that the equality between authentic language versions can be guaranteed in practice throughout a drafting process, will be proved.

Conclusion to section 3.4.

In the titles of above subsections, the preposition *versus* has been used in order to contrast elements, which are compared, and underline differences between them. The analysis started at the general level and was based on the comparison of phenomena of translation and of multilingualism. Then, the differences between legal translation involving two legal systems and translation within one legal system have been explained. Afterwards, the latter and co-drafting techniques have been compared with classical translation (translation as it is understood in translation studies; see subsection 3.4.1.). Finally, the distinction between a target text and a source one has been contrasted with the phenomenon of hybrid 'source' text and lack of a proper traditional source text has been discussed.

These analyses and comparisons enabled to fulfil the two objectives of this section. Section aimed, firstly, to examine whether co-drafting methods (explained in the previous section (3.3.)) are able to preserve equality of language versions during drafting and satisfy the principle of equal authenticity and the theory of original texts; and secondly, whether translation studies' methodology can be applied for purposes of co-drafting and for research of these methods.

Results of the analyses prove that co-drafting methods are able to produce language versions in a way that all of them are originals. Generally, there are two techniques to achieve this result. Firstly, each language version of a legal act is drafted by a co-drafter on the basis of detailed outline of that act and then all versions are compared and revised in order to guarantee coherence and equivalence between all of them. This technique is applied in joint and parallel drafting and double entry drafting. None of language versions drafted by means of one of the three afore-mentioned methods can be described as a source or target text, since all are originals. Secondly, the same aim is achieved also by alternating the source text, i.e., some parts of a text are drafted in one language and then translated and other parts are drafted in another language and then translated into the former language. Due to alternation of the source text, when the entire text is considered, it is not possible to indicate one source or target language. Consequently, none language version can be regarded as source or target text.

Moreover, the analysis and comparison of translation and co-drafting revealed that translation applied to draft language versions of multilingual law differs from classical translation and sometimes, even the former can encompass co-drafting elements that make

source and target texts indistinguishable. These co-drafting elements are observed mainly during the revision when all language versions are compared and can influence each other. In particular, revision can result in changes in the source text which are affected by the target text. Accordingly, the source text can alternate – as in case of alternate or shared drafting – and none of entire language versions can be considered as a sole source or a sole target text.

As far as the second objective of this section is concerned, the comparison and analyses demonstrate that in some co-drafting techniques elements of translation can be identified whereas in others, especially, in parallel and joint drafting, it is difficult to recognise translation aspects. The main difference between translation and co-drafting is the relation between the two language versions. Translators reconstruct what is said in a source text whereas each of the co-drafters produces, on the basis of the detailed outline of an act, a text that expresses what the legislator meant to say, thus preserving the original intent (Šarčević 2000a: 102). However, while preparing texts, both translators and co-drafters share the same difficulty, i.e., how to find equivalence and avoid a discrepancy between two language versions of the same legal act. Consequently, since equivalent and coherent texts in two languages are to be prepared and no two languages are identical, some translation problem-solving strategies (for instance, finding terminological equivalences, achieving intra- and intertextual coherence) can be of aid. Furthermore, translation studies can be profitably applied in the examination of the drafting process, as well as in the analysis and comparison of the products of this process, i.e., authentic versions or - in terminology of translation studies - parallel texts.

CONCLUSION to CHAPTER 3

The main objective of this chapter was description and analysis of methods applied to draft multilingual law. The examination of translation, which is traditional and frequently used method of drafting multilingual law, revealed some drawbacks of this technique. The contradiction between the use of translation for drafting multilingual law and the principle of equal authenticity has been especially underlined. In order to overcome pitfalls of translation, the attempt was made to find a method that could be used to produce language versions of a legal act which are originals; in other words, neither source text, nor target text can be distinguished. As a result, several techniques called co-drafting methods have been proposed and some of them have been developed in practice.

The analysis conducted in this chapter aimed at examining whether co-drafting fulfils its objective and produces language versions of a legal act in the way that all versions can be in fact regarded as originals. The investigation of co-drafting methods demonstrates that in parallel, joint and double entry drafting, all language versions of a legal act are drafted on the basis of the detailed outline of an act, and no version serves as a source text for another. Accordingly, all language versions are produced as originals. In case of shared and alternate drafting, if text segments are examined, it is possible to find out in which language a part of the text was drafted and then translated. Nevertheless, even if such observation can be made, when entire texts are analysed, it is not possible to distinguish which text was source and which a target one, because parts drafted in language A alternate with parts drafted in language B. Consequently, it can be admitted that all language versions produced by means of co-drafting can be regarded as originals. Accordingly, the purpose of co-drafting is fulfilled and the principle of equal authenticity is satisfied, because during drafting process the equality between languages and language versions is guaranteed.

On the other hand, detailed analysis of translation applied for drafting multilingual law revealed that sometimes co-drafting elements can be observed also in translation. It happens

when both versions – a version originally drafted in one language and a translated version – can be modified owing to revision.

The results of this theoretical analysis is in accordance with the thesis statement that assumes that it is possible to guarantee equality between authentic language versions already in the process when they are drafted, hence even before they become authentic, in other words, before a legal act is adopted and its language versions are authenticated.

The secondary objective of the comparisons and analyses conducted in this chapter was the examination whether the differences between classical translation and methods of drafting of multilingual law (comprising legal translation within one legal system and co-drafting) do not preclude the use of translations studies' methodology. Taking into account all differences between classical translation and multilingual drafting methods revealed by the analysis conducted in this section, one may indicate that in both situations there is the transfer between two languages, although the transfer observed during classical translation can differ from transfer during co-drafting. In case of classical translation, transfer has only one direction from source to target language. In case of multilingual legal drafting, where source and target languages should not be distinguishable and language versions influence each other, the transfer of meaning should go between two languages in both directions (i.e., from language A to language B and from language B to language A). Moreover, while comparing classical translation and multilingual drafting methods, another significant similarity can be drawn, i.e., the aim of both methods, which should ensure that all language versions of a legal act convey the same legal meaning (Sinn 1989: 511).

Due to the two similarities (the transfer (1) and the same meaning rendered in all language versions (2)), in my opinion, 'drafting or translating' should not be treated as a disjunctive alternative. Although the result of multilingual legal drafting should not be recognised as a translation, the process of drafting sometimes involves elements of translation. Nonetheless, even though the process of production of multilingual law or its product (i.e., legal texts) cannot be regarded as a translation, we still deal with transfer from one language to another. As said by Eugene Nida (1964/2000: 126), "(s)ince no two languages are identical, either in the meaning given to corresponding symbols or in the ways in which such symbols are arranged in phrases and sentences, it stands to reason that there can be no absolute correspondence between languages". Hence, no two languages are identical, even if they share common system of reference. The problems of multilingual legal drafting resulting from a lack of absolute correspondence between languages can be analysed and solved by the means of translation studies, since translation studies' "main concern is to

determine appropriate translation methods for the widest possible range of texts or text-categories" (Newmark 1981: 19).

The subsequent part of the thesis (chapter 5) examines how multilingual legal drafting is applied in practice. This analysis is based on the comparative study of legal drafting in Canada where co-drafting is applied and in the European Union where translation with co-drafting elements is followed. This study should demonstrate that not only theoretically but also in practice the equality between language versions can be assured already during drafting process. As a result, the assumptions of the principle of equal authenticity and theory of original texts are not legal fiction but reality.

CHAPTER 4.
Sources of EU and Canadian law in the aspect of legal multilingualism

Introduction

In the first part of the thesis, the language regimes in the European Union and in Canada have been explained. The analysis of language regulations focused mainly on requirement of drafting legislation in official languages and on the equal authentic status of language versions. This part aims at examining whether the equality of official languages is guaranteed during the legal drafting process in Canada and the European Union. However, before the process is analysed, some information on forms of EU and Canadian legislation – in other words, on products of the drafting process - should be provided. It is the objective of this chapter which concentrates mainly on language and terminological challenges which arise while various forms of legislation are drafted. Firstly, forms of EU legislation and their languages are explained (section 4.1.), and then overview of Canadian legislation follows (section 4.2.).

The thesis does not aim at comparing of various forms of EU and Canadian legislation, but at analysing and comparing the process of their drafting in the two legal systems. Therefore, the present chapter indicates types of legislative acts that are taken into consideration while multilingual drafting process is analysed and explains this choice (conclusion to the chapter 4). This explanation requires, nevertheless, some references to comparative study of EU and Canadian forms of multilingual legislation.

SECTION 4.1.
Forms of EU legislation in the aspect of multilingualism

Introduction

This section provides the overview of forms of EU legislation and their language. Although, as explained in detail in the first part of the thesis, EU legal multilingualism requires legal acts be drafted in all official languages, this requirement does not refer to all forms of legislation. The section explains reasons determining languages in which various forms of EU legislation are drawn up and authenticated. The section follows traditional distinction between primary (subsection 4.1.1.) and secondary legislation (subsection 4.1.3.). Some information is also provided on languages of international agreements concluded by the European Union (subsection 4.1.2.). In the first subsection (on primary legislation), linguistic and terminological characteristics of founding, amending and accession treaties are indicated. Moreover, linguistic difficulties which appear when a treaty is drafted and methods applied during preparation of language versions of various treaties are illustrated with a few examples (subsection 4.1.1.). The last subsection explains in which languages various forms of EU legal instruments are drawn up and discusses their characteristics which influence drafting process in linguistic and terminological terms (subsection 4.1.3.). The focus of this subsection is on forms of secondary legislation (paragraph 2). Moreover, besides legal instruments, preparatory materials and other documents prepared by EU institutions are also considered (paragraph 1 of subsection 4.1.3.). Finally, the last paragraph of subsection 4.1.3. focuses on terminological issues arising at drafting (at EU level) and transposing (at national level) of a directive which is a specific form of EU legislation (paragraph 3). The conclusion explains which forms of legislation are of concern to the subsequent chapters which analyse their drafting.

Subsection 4.1.1.
Primary legislation – language and multilingual drafting of treaties

The primary legislation is constituted of the treaties, which form the base of the European Union, provide its essential features and principles, establish institutions and lay down legislative procedures and types of legal instruments. Hence, terms denoting new EU legal concepts are often used for the first time in the treaties and have to be followed in secondary legislation. Since the subsequent parts of the thesis focus mainly on drafting of secondary legislation, in this subsection the overview of primary legislation is followed by examples of how language versions of treaties have been drafted. As mentioned above, the language regime of the European Union is regulated in the treaties. EU language regime has been already analysed in detail in chapter 1 (section 1.2.) of the thesis, therefore in this subsection only some references are made to language regulations provided in the treaties.

Although it is possible to indicate some common features of drafting of the treaties, however, there is no rule requiring in what languages treaties should be drafted,[514] neither any single prescribed way of their drafting. The following examples will illustrate differences in drafting of treaties and the last paragraph will summarise common characteristics of this process. At the outset, various difficulties and challenges should be observed in drafting founding, amending and accession treaties.

[514] Each treaty in its final provisions indicates in what languages the treaty was drawn up and that the texts in each of these languages are equally authentic. For further details, see this thesis, subsection 1.2.3. on the principle of equal authenticity within the European Union.

Founding Treaties

The main terminological task in drafting the founding treaties is the search for and the choice of the proper terms to denote new legal concepts, regarding that these concepts belong to the autonomous legal system of the European Union and, consequently, the use of national legal terminology of any Member State should be avoided.[515]

As already mentioned, the first Treaty – Treaty of Paris (*Treaty establishing the European Coal and Steel Community*), 1951 – has been drawn up and authentic only in French (Article 100 of the Treaty of Paris).[516] The next two treaties - Rome Treaties (T*reaty establishing the European Economic Community* (EEC Treaty), 1957 and *Treaty establishing the European Atomic Energy Community* (Euroatom Treaty), 1957) – were drawn up and authentic in four languages (Dutch, French, German and Italian). In practice, however, EEC Treaty was drafted in French and German. However, it is not possible to specify which provisions were drafted in which of the two languages. The Dutch and Italian versions of the Treaty were just rough drafts on the day (25 March 1957) when the Treaty was signed. Consequently, Dutch and Italian texts were signed 'in blank' (Akehurst 1972: 30, ft. 8). According to Akehurst,[517] divergences are observed mainly between versions in languages in which the Treaty was originally drafted, hence, between German and French versions. There are very little divergences between Italian and French versions, whereas Dutch (the least reliable – in Akehurst's opinion) sometimes follows the German text and sometimes the French (Akehurst 1972: 22).[518] In order to create new legal terms for Community purposes, the existing national legal terminology had to be taken into consideration. The difficulties in preparation of the Dutch text of the Treaty stemmed from the inconsistency in Dutch legal terminology used in Dutch and Belgian legal systems (Tabory 1980: 114).[519]

---

[515] There are three founding treaties: *Treaty establishing the European Coal and Steel Community* (ECSC Treaty), 1951, *Treaty establishing the European Economic Community* (EEC Treaty), 1957 and *Treaty establishing the European Atomic Energy Community* (Euroatom Treaty), 1957. EUR-Lex – the EU database providing online access to European Union law – lists the *Treaty on European Union* (EU Treaty), 1992 as a founding treaty together with the three afore-mentioned founding treaties (see http://eur-lex.europa.eu/en/treaties/index.htm, last consulted in October 2007). On one hand, EU Treaty can be regarded as a founding treaty, since it created the three-pillar structured European Union. On the other hand, while establishing the first pillar, i.e., the European Community (EC), the EU Treaty changed the EEC to the European Community and merged the ECSC and Euroatom with the EC. Consequently, the EU Treaty has also amended the founding treaties; see Titles II-IV. The change is already observable in the title of the EEC Treaty that became 'Treaty establishing European Community' (EC Treaty) due to amendments introduced by EU Treaty (Article 8 (ex Article G) of the EU Treaty).

[516] See also subsection 1.2.2. of the thesis.

[517] A member of a joint Working Party on the Authentic English Texts which worked, before the accession of the United Kingdom to the EC, on the English versions of Treaties and of secondary legislation.

[518] On divergences between English, Dutch, French, German and Italian versions, see Bowyer 1972: 439-455.

[519] For the details on the Dutch version of the Treaty, see Ginsbergen 1966: 129, quoted in Tabory 1980: 157, ft. 180.

Amending Treaties

Like in case of the founding treaties, drafters of amending treaties also have to find new terms.[520] Sometimes they even change existing terms used in treaties that are being amended.[521] The main drafting difficulty, however, stems from the necessity of inserting changes, modifications and new elements into existing treaty or treaties. Therefore, the drafting of an amending treaty is very demanding and challenging process. The difficulties in the drafting of this kind of treaties is increased by the fact that amendments have to be introduced not to one but several (at present twenty-three) language versions. All versions render the same meaning and attempt is made to synchronise their structures. Nevertheless, the grammar, and consequently structure of sentences, is not identical in all languages. Moreover, the terminology of various languages is never absolutely congruent. Lack of a perfect structural and terminological correspondence, which derives - not from awkwardness of drafters or translators – but from the nature of a language, makes the process very difficult, detailed and time-consuming. Tuts (2007: 4), from the Legal Service, describes this work as follows: "C'est un travail de ciseleur, on travaille dans la dentelle, et ça a nécessité évidemment beaucoup de temps, beaucoup d'heures voir des nuits de travail (...)". The incongruence between language versions stemming from the intrinsic divergences between languages results in indispensable differences between language versions of an amending treaty. The differences result sometimes from the fact that not all language versions of the treaty being amended have to be changed in order to introduce the modification. For instance, while regulating the legal acts of the Union, the Lisbon Treaty amends Article 249 of the EC Treaty. In majority languages, the same terms denoting legal acts are used in the previous and

[520] The following Treaties have amended the founding Treaties and also sometimes other relevant acts: the *Treaty establishing a Single Council and a Single Commission of the European Communities* (*Merger Treaty*), 1965, OJ 152 of 13 July 1967; the *Single European Act*, 1986, OJ L 169 of 29 June 1987; the *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and Related Acts*, OJ C 340, 10 November 1997; the *Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and Certain Related Acts*, OJ C 80 of 10 March 2001; the *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community* (hereinafter the Lisbon Treaty), 2007, OJ C 306 of 17 December 2007.

[521] For instance, due to the merger of the three pillars, which is provided in the Lisbon Treaty, 2007, the term 'European Community' referring to the first pillar is not to be used anymore. Therefore, the Lisbon Treaty introduces terminological changes, to start with the replacement of the title of the *Treaty establishing the European Community* by '*Treaty on the Functioning of the European Union*' (Article 2(1) of the Lisbon Treaty), followed by the replacement of words 'Community' and 'European Community' by 'Union' and 'European Communities' by 'European Union' (Article 2(2a) of the Lisbon Treaty). The structural change is reflected, for instance, in the replacement of the name 'Court of Justice' by 'Court of Justice of the European Union' (Article 2(7)). Another terminological modification can be indicated as regards the Court of First Instance which is to be renamed and denoted as 'General Court' (Article 2(2n)).

amended version of Article 249 of the EC Treaty;[522] for instance, English version of Article 249 lists before and after amendment: regulations, directives, decisions, recommendations and opinions (*cf*. Article 2(235) of the Lisbon Treaty). But on the other hand, in some versions (i.e., Danish, German, Dutch and Slovene), the term denoting 'decision' has been changed.[523] Therefore, Article 2(9) of the Lisbon Treaty providing the appropriate terminological replacement in several articles of EC Treaty which refer to 'decision' applies only to the four afore-mentioned language versions. Since the Lisbon Treaty has been drafted in French, Article 2(9) is the only one which does not apply to the French version. There are more examples of the provisions of the Lisbon Treaty which apply to the French version but not to others.[524]

In order to illustrate the process of drafting of amending treaty, the reference is made to the recent example of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community[525] (hereinafter the Lisbon Treaty)[526] signed on 13 December 2007. This Treaty was drafted during the entire process in one single language, i.e., in French. However, the contributions and amendments of the Member States could be and were proposed in other EU languages. Then they were translated into French and subsequently the whole text of the Treaty was translated from French into all other twenty-two languages (Baes 2007: 2-3).[527] French was the main working language of the negotiation and the main drafting language. However, the Treaty is authentic in all twenty-three languages (Article 7 of the Treaty of Lisbon), and the French version cannot prevail over other authentic versions. Although French was mainly used during the negotiation and drafting process, the revision stage assured full equality between all Treaty languages, since all language versions were verified and harmonised by lawyer linguists in the legal service of the Council. The revision process started when a political agreement at the highest level had

[522] The Lisbon Treaty changes the name of the EC Treaty into 'Treaty on the Functioning of the European Union' (FEU Treaty).
[523] The Danish word *beslutning* is to be replaced by *afgørelse*, the German word *Entscheidung* is to be replaced by *Beschluss*, the Dutch word *beschikking* is to be replaced by *beslissing*, the Slovenian word *odločba* is to be replaced by *sklep* (Article 2(9) and 2(235) of the Lisbon Treaty).
[524] See, for instance, in the English version of Article 2 of the Lisbon Treaty, the following paragraphs 28b, 49(3e), 54b, 90d. Some paragraphs only indicate that the change does not concern the English version (e.g., Article 2(9)), and sometimes they state where the modification should be made in the French version (e.g., Article 2(49.3(e), 2(90d)). Others while stating that modification does not apply to the English version, describe the change that should be made to the French one (e.g., Article 2(28b), 2(54b)).
[525] OJ C 306 of 17 December 2007; if all twenty seven EU Member States ratify the Treaty, it will come into force in 2009.
[526] The Treaty of Lisbon is also called the Reform Treaty or Treaty of Lisbon.
[527] Language versions of the Lisbon Treaty were prepared in the language service of the Council by teams of around 5 translators and 5 assistants; hence, around 230 translators have been involved in preparation of the Treaty (Baes 2007: 2).

been achieved and all language versions were prepared by the language service of the Council (Tuts 2007: 3). Each version was verified in order to correct mistakes and assure comprehensibility and clarity of the text. Moreover, all language versions were compared in order to harmonise words and expression and to make sure that all language correspond and express the same meaning. Geneviève Tuts underlines in the interview on the work performed by the lawyers-linguists on the text of the Lisbon Treaty that lawyer-linguists "[…] must not only make sure that all languages correspond, but also harmonise the words that [they] choose, to express the same ideas. Words must be identical, because these texts are made to be implemented, interpreted, not only by the Court of Justice and the national courts, but also by citizens, companies, [and] people." (Tuts 2007: 4). Afterwards, the language versions verified by lawyer linguists were submitted to national experts of the Member States. Then during the meeting of all lawyer-linguists (one per language) and an expert from each Member State all language versions of the Lisbon Treaty were reviewed page by page to assure that they all correspond perfectly (Tuts 2007: 3).

Consolidated versions

Since modification of a treaty is very complex and often requires changes in paragraphing, in order to make the text of the amended treaty more legible, a consolidated version of the treaty is prepared.[528] During consolidation, all subsequent changes and modifications are incorporated into the amended treaty. Consolidation is made just for documentary purposes and it does not require any legislative procedure. Consolidation has no legal effect and leaves the treaty which amends the consolidated treaty in force. Consequently, the consolidated version of the treaty is not authentic, has no legal force and the institutions

[528] Not only treaties but also the amended secondary legislation can be consolidated; see, for instance, consolidated version of the Council Directive of 26 June 1964 on health problems affecting intra-Community trade in fresh meat (64/433/EEC), OJ C 189/31-49 of 20.08.1975. However, consolidation is without legal status. The consolidated text is a non-official document prepared for documentary purposes and the Institutions do not assume any liability for its content. As far as secondary legislation is concerned, consolidation is distinguished from codification. The latter means that one or more acts with all the amendments are brought together in a single text which is adopted as a new legislative act and all former acts are repealed. If codification does not result in changes of substance, then the act is adopted without debate as to substance (official codification); see, for instance, Council Directive 2007/74/EC of 20 December 2007 on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries, OJ L 346 of 29 December 2007, pp. 6–12. If there are amendments as to substance, then the act is adopted in the usual legislative procedure (recasting); see, for instance, Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (Recast) (Text with EEA relevance), OJ L 403 of 30 December 2006, pp. 18–60. The paragraph 1 of the Directive's recitals explains that "Council Directive 91/439/EEC of 29 July 1991 on driving licences [...] has been significantly amended on several occasions. Now that new amendments are being made to the said Directive, it is desirable, in order to clarify matters, that the provisions in question should be recast."

do not take any responsibility for the content of the consolidated text.[529] The consolidated versions of treaties are published in the Official Journals.[530]

Constitution for Europe

The next Treaty whose drafting process will be explained – is the *Treaty establishing a Constitution for Europe* (TCE). Instead of amending the existing treaties it was to replace them. The *Treaty establishing a Constitution for Europe* signed in Rome on 29 of October 2004, was not ratified due to the rejection of the Treaty in referendums in France (on 29 of May, 2005) and in the Netherlands (on 1 of June 2005).[531] Like in the case of drafting the Lisbon Treaty, which replaces the Constitution for Europe, French was the main drafting and working language during preparation of the TCE. During the plenary session of the European Convention, the simultaneous interpretation was provided in all eleven official languages and in some languages of the candidate states that were to join the European Union in May 2004. However, results of the Convention meetings were registered in English and French, but not always in other languages (Ziller 2006: 102). Although, it is not possible in all cases to indicate in what languages the first drafts of the Treaty were drawn up, it is doubtless that the dominant drafting language was French (*ibidem*). This stems from the fact that French was the main working language used by legal experts during the Intergovernmental Conference and by diplomats when most of the changes were introduced to the Treaty draft (Ziller 2005b: 257, ft. 12). Moreover, the first part of the Treaty was submitted in French to the Académie française by Valéry Giscard d'Estaing – Chairman of the Convention (*ibidem*). Despite the dominant role of French language in the drafting process, not always French version is of the best quality in terms of precision, clarity and style. Ziller notes that the Italian version is often more elegant than French one and German version is more precise (Ziller 2006: 103). On the other hand, it is the English version, although not the most precise, that is the text from which

[529] See, for instance the text of consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community published in OJ C 321 E/1-331 of 29 December 2006 that - as explained in the introductory note - "has been produced for documentary purposes and does not involve the responsibility of the institutions".

[530] See the consolidated versions of the Treaty on European Union in OJ C 340 of 10 November 1997 and OJ C 325 of 24 December 2002 and the consolidated versions of the Treaty establishing the European Community published in OJ C 224 of 31 August 1992, OJ C 340 of 10 November 1997 and in OJ C 325 of 24 December 2002.

[531] OJ C 310 of 16 December 2004. Eighteen Member States ratified the Treaty and seven postponed the ratification after the rejections in France and the Netherlands. If the Treaty was ratified, it would enter into force on 1st of November 2006 (Article IV-447). Instead of the TCE the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community was prepared and signed on 13 December 2007.

the translation of the Treaty into other languages is most often made. The TCE is the only treaty drawn up at EU level that provides the possibility of the official translation of that Treaty, which can be made into languages that have - according to the constitutional order of Member States - official status in all or part of their territory (Article IV-448(1) of the TCE).[532] The official translation does not have, however, the status of authentic version.

Accession Treaties

The last type of treaties, this section refers to, are the treaties of accession that provide the accession of new Member State(s) to the European Union, the accession conditions and the consequent changes in existing Treaties and other acts.[533] The accession of the new Member States to the European Union usually results in the increase of number of EU official languages. Therefore, in the context of EU legal multilingualism, important change introduced by the accession treaties is the granting of the authentic status to new language versions of the acts of EU institutions, and of the European Central Bank adopted before accession. The accession treaties provide that those acts were drawn up by the Council, the Commission or the ECB in the new languages and that new language versions become - at the date of the accession - authentic under the same conditions as the versions in languages that have been authentic and official before the accession.[534] Moreover, the accession treaties require the new language versions of legal acts be published in the Official Journal.[535] Due to the accession treaties, the provisions of the Council Regulation 1/1958 are being changed;

[532] The official translation of the TCE into Catalan has been submitted. For further details see subsection 1.1.3., and Ziller 2005a: 64, 2006: 102).

[533] For instance, the Accession Treaty concerning the accession of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia to the European Union, 2003 consists of the proper Treaty (Treaty concerning the accession of the above mentioned countries to the EU) and of the Act of Accession (Act concerning the conditions of accession of the afore-mentioned countries and the adjustments to the Treaties on which the European Union is founded) which is the integral part of the Treaty (Article 1(2) of the Accession Treaty, 2003).

[534] See, for instance Article 58 of the Act - annexed to the Accession Treaty as its integral part - concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, OJ L 236/48 of 23 September 2003 (hereinafter the Act of Accession of 2003), or Article 58 of the Protocol - annexed to the Accession Treaty as its integral part - concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union, OJ L 157/44 of 21 June 2005 (hereinafter the Act of Accession of 2005).

[535] The ECJ decided in case Skoma-Lux sro v Celní ředitelství Olomouc C-161/06 of 11 December 2007 - where the Court considered the lack of a proper publication of a Community regulation in the Official Journal in the language of a new Member State, which became an official language of the EU – that "a Community regulation which is not published in the language of a Member State is unenforceable against individuals in that State" (paragraph 74(2)). According to the ECJ, the enforceability of the act does not mean that the act is invalid (paragraph 74(2)).

especially the change concerns Article 1 on official languages of EU institutions, Article 4 on languages in which legal acts are drawn up, and Article 5 on languages in which legal acts have to be published in the Official Journal. The accession treaties not only increase the number of authentic language versions of secondary legislation but also change the number of treaty languages, since the existing treaties become authentic in new Member States' languages that are new official languages of the EU.[536]

The accession treaties are drawn up and authentic in official languages of the EU and in new Member States' languages that are to become from the date of accession EU official languages. As accession treaties - while regulating conditions of the accession – use EU legal language, the main linguistic challenge during drafting the Treaty is the search for equivalents of EU legal terms in languages of candidate states. Since the process of preparing the accession treaty preceded by long negotiation is very difficult and usually results in a very long document,[537] in order to facilitate this process, at least at a language level, the treaty is usually prepared in one language (usually in the main language of negotiations) and then it is drawn up in other languages. English was, for instance, the main language used for drafting of the Treaties of Accession during two last enlargements in 2004 and 2007. The enlargement of 2004 brought nine new official languages of the EU and the Accession Treaty, which was the legal basis of accession of ten new Member States on the 1st of May 2004, had to be drawn up and authentic not only in eleven but in twenty languages. However, firstly, the English version of the Accession Treaty of 2003 was drafted and then other language versions were prepared. For instance, the Polish version of the Accession Treaty of 16 April 2003 was prepared when final legal and linguistic corrections were introduced to the English version of the Treaty. Firstly, on 5 of February 2003, an English-language draft of the Accession Treaty was submitted to the Polish Government, which proposed legal, linguistic and editorial corrections to the English draft.[538] During the last enlargement of 2007, the Accession Treaty was mainly prepared in English. For instance, when the Bulgarian version of the Treaty was

[536] See, for instance, Article 61 of the Act of Accession of 2003 which provides that the texts of the Treaty on European Union, the Treaty establishing the European Community and of the Treaty establishing the European Atomic Energy Community, and the Treaties amending or supplementing them, including the previous accession treaties are also drawn up in the new languages (i.e., Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian) and those texts of the Treaties in the new languages are authentic. See also Article 60 of the Act of Accession of 2005 that states the authenticity of the Bulgarian and Romanian texts of the Treaties. See, as well, Article 314 of EC Treaty (in its consolidated version, OJ C 321 E/180 of 29 December 2006) and Article 53 of EU Treaty (in its consolidated version, OJ C 321 E/35 of 29 December 2006).

[537] For instance, the Accession Treaty of April 2003 comprises 5,5 thousands pages.

[538] See press release of the Office of the Committee for European Integration "English-language version of Accession Treaty draft", 12 February 2003, available at ttp://www1.ukie.gov.pl/WWW/en.nsf/0/4EC2B84510CCBBEDC1256E82004F8EA2?Open#, last consulted in September 2007.

ready, revisions were made first in Bulgarian and English versions and then verification of the Bulgarian version was made at the expert meeting of the lawyer-linguists.[539] The 2007 enlargement resulted not only in increase of number of EU official languages, but also in recognition of the Cyrillic alphabet as one of the three alphabets officially used in the European Union.[540]

As mentioned, each treaty states in what languages it has been drawn up and in which languages the treaty is authentic. In fact, all treaties (except of the ECSC Treaty) are drawn up and authentic in all official languages of the European Union. If new languages are granted the status of EU official languages, the treaties are also authenticated in the new languages. The treaties are prepared at intergovernmental conferences where direct negotiations between the Member States' governments take place. Usually interpretation during such negotiations is provided. If just significance of treaties and complexity of regulated issues are taken into consideration, it has to be admitted that, the process of treaty drafting is more difficult than drafting of secondary legislation. Sometimes, in order to achieve the agreement unclear words and phrases are used. The intentionally vague terms or expressions have to be rendered in several languages. It is already difficult to reach the agreement on treaty's provisions and to draft them in one language. The process is more challenging when a treaty – like in the case of treaties in the EU – has to prepared and authentic in several languages. For practical reasons, as illustrated above, the draft of treaty is drawn up in one main language, which is usually the main language of negotiations. Then the language service of the Council prepares other language versions of the treaty. However, the full equality of language versions of the treaty is guaranteed during revision process where all language versions of the treaty are taken into consideration, compared and verified. The revision of treaty's language versions is provided by the lawyer linguists of the Council. The meeting of lawyer-linguists (one per one language) and experts (one from each Member State) and introduction all accepted corrections into language versions is the last step of the treaty preparation. When the treaty is signed, it is published in all authentic languages in the Official Journal. Those texts published in OJ are authentic language versions of the treaty. In order to come into force, the treaty has to be ratified according to a national procedure applied in a Member State (usually by the national parliament or by referendum).

[539] See information on the accession of Bulgaria to the EU and on the Accession Treaty at http://www.evroportal.bg/article_view.php?id=720740#top, last consulted September 2007.
[540] See Declaration by the Republic of Bulgaria on the use of the cyrillic alphabet in the European, OJ L 157/392 of 21.06.2005.

Subsection 4.1.2.
Language of international agreements concluded by the European Union

While discussing languages of international agreements concluded by the EU,[541] it should be noted that international agreements are authentic often in several languages, usually in all EU official languages. Although Article 4 of Council Regulation 1/1958 applies to secondary legislation but not to international agreements, the Council underlines that "the same rules as those that flow from Article 4" are generally applied to the establishment of texts of international agreements concluded by the European Union (Council of the European Union 2002: 125). As a general rule, international agreements should be drafted and authentic in all EU official languages (*ibidem*). However, it is exceptionally possible that a treaty is authentic only in one or two languages. It is especially the case of some agreements with the United States (agreements authentic only in English)[542] or with Canada (agreements authentic in English and French)[543]. However, agreements with Canada and the United States are not the only example of international agreement's authentication in only one or two languages.[544] If an agreement concluded with Canada is drawn up in all official languages, usually Canadian government declares - in the form of a 'note verbale' or of an Exchange Letters - that "the English and French texts are equally authentic". According to the Council, this Canadian declaration seems to be a result of a misunderstanding on Canadian side, since the European Community always accepts the official languages of the contracting states and, moreover, usually those languages (like English and French) have also the status of official languages in the European Union (Council of the European Union 2002: 125). When an international agreement is authentic not in all EU official languages, non-authentic language

[541] For information on international agreements concluded by the EU and their kinds, consult, for instance, eur-lex website http://eur-lex.europa.eu/en/droit_communautaire/droit_communautaire.htm#1.2, last consulted in September 2007.

[542] For instance, *Agreement between the European Union and the government of the United States of America on the security of classified information* (OJ L 115 of 03.05.2007, pp. 30-34) is authentic only in English.

[543] For instance, *Agreement between the European Community and the Government of Canada on the conclusion of GATT Article XXIV: 6 Negotiations* (OJ L 169 of 29.06.2007, pp.55-57) is authentic only in English and French.

[544] For instance, Agreement between the European Union and the Democratic Republic of the Congo on the status and activities of the European Union police mission in the Democratic Republic of the Congo (EUPOL Kinshasa) (OJ L 256 of 01.10.2005, pp. 58–62) is authentic only in French and Agreement between the European Atomic Energy Community and the Government of Japan for the Joint Implementation of the Broader Approach Activities in the Field of Fusion Energy Research (OJ L 246, 21.9.2007, pp. 34–46) is authentic only in Japanese and English. The latter example illustrates that international agreements concluded by the EU can be authentic as well in a language which is not an official language of the Union (in this case in Japanese).

versions prepared by EU institutions are regarded to be translations. The text of an agreement in non-authentic language is preceded by the term 'translation' and cannot be taken into consideration for interpretation purposes.

Since the decision in which languages the agreement is authentic is made by contracting parties and since official languages of contracting party are accepted by the European Union when an international agreement is concluded, an agreement is sometimes authentic also in language or languages that are not official languages of the EU but are official languages of the state that signed the agreement with the Union.[545]

International agreement usually provides directly in which language(s), it has been authenticated. The Council states that even when the provision determining authentic languages is lacking, it is always possible to find out in which languages an agreement is authentic, since all texts covered by the signature page in the original versions are considered authentic, unless it is provided otherwise. (Council of the European Union 2002: 125).

Multilingual international agreements are usually negotiated in one language for the same reasons as treaties prepared within the EU (already explained in preceding subsection 4.1.1.). It may happen that the publication of the text of an international agreement in authentic languages others than language of negotiations is delayed because of material reasons. In such a situation, a note informing about the delay should be printed on the published text (Council of the European Union 2002: 125).

If the text of the international agreement is drafted and authenticated in several languages, the text is equally authentic in each language due to Article 33(1) of Vienna Convention on the Law of Treaties, 1969. According to the Council, international agreements concluded by the European Union with third countries or international organizations or between the Member States should follow the practice of international law, especially the rules of Vienna Convention on the Law of Treaties, 1969 (Council of the European Union 2002: iii).[546] The provisions of Article 33 have been already mentioned in the thesis (see

[545] For instance, Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the establishment of a European Common Aviation Area - Annexes - Annexes – Declarations (OJ L 285, 16.10.2006, pp. 3–46) is authentic in all EU official languages and in Albanian, Macedonian, Serbian, Icelandic and Norwegian. See also § 4. on authentic languages in the EU in subsection 1.2.4. on languages of the European Union.

[546] The *Vienna Convention*, 1969 does not bind all members of the European Union. Moreover, the *Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations*, 1986 (not yet in force) - which provides that the *Vienna Convention*, 1969 is applied *mutatis mutandis* to international organizations - has not been ratified by the EU. However, since the rules of the two

subsection 1.2.3. on the principle of equal authenticity within the European Union). In the context of multilingualism of international agreements concluded by the European Union, it should be emphasised that "the terms of the treaty are presumed to have the same meaning in each authentic text" (Article 33(3)).

Since issues related to international agreements are the subject of international law, I leave aside analysis of drafting of multilingual agreements concluded by the European Union.[547] The following subsection analyses language(s) of EU secondary legislation whose multilingual drafting is the focus of this thesis.

Subsection 4.1.3.
Language and form of EU legal instruments

§ 1. Language of preparatory materials and other documents

This subsection examines in which languages legal instruments of the European Union are drafted and explains which types of these instruments are taken into consideration when drafting and legislative process is analysed. However, throughout the drafting and legislative process, various preparatory materials are produced, and, EU institutions draft other documents that can influence the language of EU legal instruments. Therefore, at the outset, these documents are taken into account.

As it is demonstrated in chapter 5, all working and official languages of the European Union are used throughout drafting and legislative process. Therefore not only final versions of legal instruments are multilingual but also preparatory documents drawn up during drafting and legislative process are often prepared in all EU official languages. Since preparation and adoption of these documents is explained in detail in chapter 5 of this thesis, in the present paragraph the main multilingual documents are only indicated. First, legislative proposals from the Commission should be mentioned. Although proposals for legal instruments are

---

Vienna Conventions codified to a large extent (especially as far as substantive provisions of the Conventions are concerned) customary international law, Member States, which did not signed and ratified the Convention, as well as the European Union, are bound indirectly by its rules as long as they reflect international customary law (Verwey 2004: 2, 88). For details on the treaty-making competence of the EU and application of the Vienna Convention to international agreements concluded by the EU, see, *inter alia*, Manin 1987: 457-481and Verwey 2004.

[547] For instance, Tabory (1980) provides the comprehensive analysis of multilingualism in international law where drafting and judicial interpretation of multilingual international law is considered (including as well treaties drawn up within the EU).

prepared only in one of procedural languages of the Commission[548] but then they are always translated into all the official languages and subsequently published as a communication from the Commission (COM document). Moreover, when legal instruments are prepared, the European Economic and Social Committee or the Committee of the Regions or both of them are consulted. Sometimes the consultation is obligatory. The Committees on their own initiative or at the request of the Commission, the Council or the Parliament issue non-binding opinions which are drafted and published in all the official languages in the Official Journal. In co-decision procedure when the Council does not agree with the opinion of the EP and always when cooperation procedure is applied, the Council adopts the common position on a legislative proposal from the Commission which is drafted in all official languages. Moreover, at various stages of legislative procedure, the European Parliament adopts documents that contain opinions or amendments. These documents are usually adopted as legislative resolutions and drawn up in the official languages in accordance with Rule 138 of the *Rules of Procedure of the European Parliament*.[549] If the Parliament proposes amendments to the Council's common position, the Commission issues an opinion in all official languages on these amendments.[550]

EU institutions produce also other documents which are not prepared during or as a result of legislative procedure but which can influence language of legislative instruments. For instance, Green Papers published by the Commission stimulate debate and consultation on specific subjects. A Green Paper can result in publication of the White Paper which proposes Community action in European areas and can result in legislative developments. In White Papers and Green Papers, which are published in all official languages as communication from the Commission, some new concepts and terms are used for first time and then they might become terms of EU legal language.

The following paragraph explains what decides in which languages various types of legal instruments are drafted and which of these instruments are taken into consideration when multilingual legal drafting process is examined.

[548] On procedural languages of the Commission, see this thesis, subsection 1.2.4, paragraph 3, point B.
[549] O.J. of 15.2.2005, L 44/49
[550] See also the brochure *Translating for a Multilingual Community* where 'a practical example: drafting, approving and implementing a new directive' demonstrates which documents are translated by the Directorate-General for Translation of the European Commission during preparatory, legislative and implementation stage when a new directive is drafted and adopted (Directorate-General for Translation 2007: 4-5).

§ 2. Binding force and addressees of EU legal instruments – two criteria determining languages of legal instruments

Although EU law is described as multilingual, it should be borne in mind that not all EU legal instruments are drafted, adopted and published in all official languages. According to one of the reasons for EU legal multilingualism, addressees of legal instruments should have an access in language(s) they know to instruments that bound and affect them. Therefore, in order to indicate which instruments are multilingual, it should be determined which of them are binding and who is bound by them. The latter, i.e., indication of addressees of the instrument under consideration, gives the answer to the question in what languages the instrument should be drafted, adopted, authenticated and published.

Article 249 of the *Treaty establishing the European Community* lists three types of binding instrument, i.e., regulations, directives and decisions, and two types of non-binding instruments, i.e., recommendations and opinions. [551, 552] It should be noted that it is not the name or form of the instrument but its substance that determines into which type the instrument in question should be classified.[553] A regulation has general application and not only is binding in its entirety but also is directly applicable in all the Member States. Therefore regulations must be drafted in all the official languages. This requirement is expressly provided under Article 4 of *Council Regulation 1/1958* pursuant to which "[r]egulations and other documents of general application shall be drafted in the official languages".

The second type of binding instrument listed in Article 249 of the *EC Treaty* – directives – bind Member States to which they are addressed as to the results to be achieved. A directive should be drafted and authentic in those EU official languages which are also the official languages in the Member States to which the directive is addressed. Consequently, directives addressed to all Member States are authentic in all EU official languages, but a

[551] Secondary legislation is also adopted under Article 14 of the *Treaty establishing the European Coal and Steel Community* (ECSC) which indicates decisions, recommendations and opinions, and under Article 161 of the Treaty establishing the *European Atomic Energy Community* (Euratom) which indicates regulations, directives, decisions, recommendations and opinions.

[552] If the *Lisbon Treaty* is adopted, the legal acts of the Union will be regulated in Article 288 of the *Treaty on the functioning of the European Union* (TFEU). Since pursuant to the *Lisbon Treaty*, three pillars are merged, there is no division between instruments of the European Community and instruments of second and third pillar. Article 288 of TFEU indicates the same legal instruments as Article 249 EC Treaty, and in the same way regulates their binding force and addressees. However, it should be noted that the instruments in the meaning of Article 288 of TFEU are the legal acts of the Union not of the European Community.

[553] See judgment of 13.05.197 in joined cases 41 to 44/70 *NV International Fruit Company and others* v *Commission (No 1),* [1971] ECR 411.

directive, which is addressed to one Member State, can be authentic only in one language. For instance, Directive 91/466/EEC is addressed only to Ireland (pursuant to Article 2) and authentic only in English.[554] Unlike regulations, directives are not directly applicable and must be transposed into national legislation of Member States, which are addressees of the directive in question. Since directives are not binding in their entirety but only as to results to be achieved, Member States choose "the most appropriate forms and methods to ensure the effective functioning of the directives"[555]. When a directive is drafted, it should be taken into consideration that its transposition into a domestic legal system usually involves amendment or enactment of a national legal act which is drafted in the legal language of the Member State that differs from EU legal language. In particular, directives should be drafted in clear way in order to facilitate the transposition. The next paragraph explains what kind of differences can be observed between EU legal language(s) in which a directive is drafted and a national legal language in which the directive is transposed into a Member State's legal system (subsection 4.1.3., paragraph 3).

The last type of binding instrument - denoted as 'decision' – binds in its entirety but only upon Member State(s) or person(s) to whom it is addressed.[556] Under Article 3 of *Regulation 1/1958*, "[d]ocuments which an institution of the Community sends to a Member State or to a person subject to the jurisdiction of a Member State shall be drafted in the language of such State". Consequently, languages in which a decision must be drafted and authenticated are determined by addressees of this decision. It should be noted that if a decision is applied to a few Member States or to persons under jurisdiction of various Member States (hence the decision is drafted and authenticated in a few languages), the decision as an individual legal measure is binding only on the persons to whom it is addressed and "only in the language of the Member State under whose jurisdiction the addressee

[554] *Council Directive 91/466/EEC of 22 July 1991 amending Directive 85/350/EEC concerning the Community list of less-favoured farming areas within the meaning of Directive 75/268/EEC (Ireland)*, OJ L 251, 7.9.1991, pp. 10-84.

[555] Judgment of 8 April 1976 in case 48/75 Jean Noël Royer [1976] ECR 00497, paragraph 73.

[556] Decision adopted under Article 249 of the *EC Treaty*, Article 14 of the *ECSC Treaty* and 161 of the *Euratom Treaty* should be distinguished from *sui generis* decision that developed in practice. The *Manual of Precedents for Acts Established within the Council of the European Union* indicates three formal differences between them, firstly they have different names in some languages (terms used in the afore-mentioned articles in Danish, Dutch and German are following 'beslutning', 'beschikking', 'Entscheidung', whereas *sui generis* decisions are denoted as 'afgørelse', 'besluit', 'Beschluss' respectively); secondly, their introductory terms differ from each other (for decisions in the meaning of the afore-mentioned articles, the enacting terms are following 'has (have) adopted this Decision', for *sui generis* decision – 'has (have) decided as follows'; thirdly, *sui generis* decisions do not stipulate to whom they are addressed.

comes".[557] If a decision is not addressed to all Member States, it is not authentic in all the official languages of the Union.[558] In this situation *Commission Manual of Legislative Drafting* (hereinafter Commission Manual) requires the languages, in which an act is authentic, be indicated below the title of an act by the following phrase in parentheses "(Only the [name of language] text is authentic)" (2.3 (3b)). A similar guideline is provided in the *Joint Practical Guide*[559] where it is stated that "[f]or individual acts, the title is followed, as appropriate, by reference to the authentic language or languages" (guideline 8.6.). It should be noted that whereas the Commission adopts acts authentic only in one language, i.e., decisions addressed to an individual Member States or a person, the Council never does it (Commission Manual 1997: 6).

If a decision is not adopted in languages required under Article 3 of *Regulation 1/1958*, it can result in annulment of the decision. In the judgment rendered in PVC Case,[560] the European Court of First Instance decided to annul Commission Decision 89/191/EEC[561] because, among other reasons, it was not ready in all required languages at the moment of its adoption. Decision 89/191/EEC penalises seventeen undertakings - polyvinylchloride (PVC) producers - located and trade inside the Community although a small number of them have

---

[557] Opinion of Mr Advocate General Van Gerven delivered on 29 June 1993, on Case C-137/92 P, [1994] ECR I-02555). *Cf.* also paragraph 97 of *BASF AG and others* v *Commission of the European Communities*, joint cases T-80/89, T-81/89, T-83/89, T-87/89, T-88/89, T-90/89, T-93/89, T-95/89, T-97/89, T-99/89, T-100/89, T-101/89, T-103/89, T-105/89, T-107/89 and T-112/89 ; [1995] ECR II-729 where it is stated that Dutch, Italian and Spanish versions of Commission Decision 89/191/EEC are the only authentic texts as regards respectively DSM, Enichem and Montedison, and Repsol – the four of seventeen addressees of the Decision.

[558] See examples of Commission decisions which are not authentic in all EU official languages: *Commission Decision of 28 May 2008 on a financial contribution from the Community towards emergency measures to combat avian influenza in the United Kingdom in 2007* (notified under document number C(2008) 2169), 2008/415/EC, OJ L 146 , 05.06.2008, pp. 17-18, is addressed to the United Kingdom of Great Britain and Northern Ireland and authentic only in English; *Commission Decision of 30 April 2008 on the clearance of the accounts of the paying agencies of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia concerning expenditure in the field of rural development measures financed by the European Agricultural Guarantee Fund (EAGF) for the 2007 financial year* (notified under document number C(2008) 1710), 2008/395/EC, OJ L 139 , 29.05.2008, pp. 25-32, is addressed to the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and only the Czech, Estonian, Greek, English, Latvian, Lithuanian, Hungarian, Polish, Slovak and Slovenian texts of this Decision are authentic; *Commission Decision of 3 July 1972 pursuant to Article 88 of the ECSC Treaty, establishing that the Kingdom of Belgium has failed to fulfil its obligations by not furnishing to the Commission certain information concerning the application to particular cases of measures of aid in the iron and steel industry*, 72/283/ECSC, OJ L 179, 07.08.1972, pp. 9-10, addressed to bilingual Belgium is authentic in French and Dutch.

[559] *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions* adopted in 2000; (hereinafter the *Joint Practical Guide.*

[560] See *BASF AG and others* v *Commission of the European Communities*, joint cases T-80/89, T-81/89, T-83/89, T-87/89, T-88/89, T-90/89, T-93/89, T-95/89, T-97/89, T-99/89, T-100/89, T-101/89, T-103/89, T-105/89, T-107/89 and T-112/89; [1995] ECR II-729.

[561] *Commission Decision of 21 December 1988 relating to a proceeding pursuant to Article 85 of the EEC Treaty* (IV/31.866, LdPE), 89/191/EEC, OJ L 74, 17.03.1989, pp. 21-44.

their headquarters outside the EC (Part I, paragraph 1 of the Decision). Pursuant to Article 3 of *Regulation 1/1958*, a decision addressed to persons who are subject to the jurisdiction of various Member State should be drafted, adopted and thereby authentic in the languages of these Member States. According to this rule, Decision 89/191 should have been drafted in Spanish, German, English, French, Italian and Dutch and although the Decision expressly states that "only the Spanish, German, English, French, Italian and Dutch texts are authentic", at the moment of the adoption of the Decision only English, French and German versions were ready, whereas Dutch, Italian and Spanish ones have been submitted later. The Court of First Instance, after consideration of Article 3 of *Regulation 1/1958* and Article 12 of the *Commission's Rules of Procedure*, stated that where "the Commission intends to adopt by a single measure a decision which is binding on a number of legal persons for whom different languages must be used, the decision must be adopted in each of the languages in which it is binding in order to avoid making authentication impossible" (paragraph 97 of PVC Case).[562] Because of irregularities vitiating the procedure for authentication of the decision explained above and because of the other procedural errors (see esp. paragraphs 125),[563] the Court of First Instance annulled Decision 89/191 (paragraph 126).[564]

Recommendation and opinion - two non-binding instruments listed in Article 249 of TEC – are drafted in languages of their addressees. Recommendations can be addressed to Member States, institutions, or to EU citizens. If a recommendation or an opinion is not drafted in all the official languages of the European Union, authentic language(s) of the recommendation or opinion is (are) indicated. Whereas forms of abovementioned binding instruments are precisely prescribed,[565] the form of non-binding instruments is variable. The *Joint Practical Guide* recommends only that in case of non-binding instruments imperative

[562] *Cf.* paragraphs 54 and 55 of judgment of 27.02.1992 in case *BASF AG and others v Commission of the European Communities*, joint cases T-79/89, T-84/89, T-85/89, T-86/89, T-89/89, T-91/89, T-92/89, T-94/89, T-96/89, T-98/89, T-102/89 and T-104/89; [1992] ECR II-315. In this case the Court of First Instance stated non-existence of *Commission Decision of 21 December 1988 relating to a proceeding pursuant to Article 85 of the EEC Treaty* (IV/31.865, PVC) 89/190/EEC (OJ L 74, 17.3.1989, pp. 1-20) because, among other reasons, the Commission did not adopt Dutch and Italian versions of the decisions although Dutch version was authentic text for three addressees and Italian one was an authentic text for two addressees of the Decision.

[563] The procedural errors, which caused annulment of the Decision, are explained in Hefferan III and Katsantonis 1992: 30-32.

[564] See also Richard Brent (1995: 268-279) according to whom the decisions of the Court of the First Instance in PCV cases are anomalous and approach of the CFI to breach of the procedures for the adoption of the Decision is "uncharacteristically formalistic". The author states that the Court should not only look to the procedural defects but rather "to see whether the interests of the applicants had been substantively affected as a result of these irregularities".

[565] Forms of regulations, decisions, directives are prescribed in Annex V to *Council Decision of 22 March 2004 adopting the Council's Rules of Procedure*, O.J. of 15.04.2004, L 106/44; schematic forms of all types of acts are provided in *Manual of Precedents for Acts Established within the Council of the European Union* and in the *Joint Practical Guide*; structure of acts is explained in *Legislative Drafting – A Commission Manual*.

forms should not be used and structure too close to forms required for binding instruments should be avoided (guideline 2.3.3.).

Beside the afore-mentioned legal instruments of the European Community which form part of secondary legislation, various forms of instruments are provided in the second (common foreign and security policy) and third pillar (police and judicial cooperation in criminal matters) under the *Treaty on European Union*. Joint actions, common strategies and common positions are instruments of the second pillar (Article 12 of the *EU Treaty*) whereas common positions, framework decisions and decisions are instruments of the third pillar (Article 34 of the *EU Treaty*). The analysis of drafting the instruments indicated in Article 12 and 34 of *the EU Treaty* is not the objective of this thesis. As mentioned, if the *Lisbon Treaty* is adopted, due to merger of three pillars, those instruments that form nowadays secondary legislation of the European Community become also instruments of common foreign and security policy and of police and judicial cooperation in criminal matters. Besides, the thesis aims at examining how supranational multilingual legal instruments are drafted in procedures which are typical for the Community and especially where three EU institutions are involved. Moreover, multilingual legal drafting is to be compared with drafting of Canadian legislation. Therefore the thesis concentrates on drafting of instruments which are, on one hand, comparable with national legislation, and on the other, typical for supranational legal system. Since instruments drafted under second and third pillar[566] have political and intergovernmental nature and are adopted only by one institution, i.e., the Council, examination of their drafting is out of scope of this thesis. Accordingly their language is not analysed in this subsection.

Because of similar reasons, i.e., the objective of the thesis which is the analysis how multilingual law is drafted throughout procedures typical for EC, languages and drafting of soft law instruments are not examined. Various types of 'soft law instruments' are adopted by the institutions without reference to any legal basis and without following any adoption procedure (Lenaerts and Desomer 2005: 748). [567] Consequently, drafting of soft law instruments adopted outside legal framework is not within scope of this doctoral research.[568]

[566] Even though some of these instruments are similar to those adopted in the first pillar, e.g., framework decisions adopted in the second pillar - like EC directives - are binding upon the Member States as to the result to be achieved.

[567] Soft law instruments can be adopted in various forms, e.g., EU guidelines, policies, declarations and recommendations (other than recommendations adopted under Article 249 of the TEC), resolutions, or conclusions. For details on soft law instruments, see Borchardt and Wellens 1989: 267-321.

[568] For more details on the forms of EU law, see *int. al.* Craig and de Búrca 2008: 111-117; Hanlon 2003: 102-127.

The next paragraph analyses changes in legal language when a directive is transposed into legal order of a Member State. This analysis is illustrated with examples of transposition of directives into Polish legal system.

§3. Language of directives at their drafting and transposition – the example of transposition into Polish law

As mentioned, directives are binding only "as to the results to be achieved". In other words, directives describe the aim that is to be accomplished and leaves the choice of form and methods to the Member States.[569] In order to achieve the results, national legislation transposing a directive does not necessarily have to apply the same concepts that are used in the directive. In the context of the research on drafting of multilingual EU law and on its application in Member States, the situation worth considering appears when the national legislation uses, nevertheless, the concept applied in the directive but denotes it with different term from that used in the directive. Sometimes the definition of the concept included in a directive is even repeated in a national legal act but the concept is named with different term (see examples derived from Polish legislation in table 5). Directives, like other forms of EU law, are drafted in EU legal language; in other words, in the language of EU law. Therefore, when equivalents denoting EU autonomous concepts are searched, any terms typical for national legislation are avoided in accordance with EU drafting guideline.[570] The process of deculturalisation – in a sense of the use of terms and expressions which are culturally neutral in national legal systems and cultures of Member States – takes place at this stage of EU legal drafting.[571] However, when a directive is transposed into national law, its form or terminology can be changed.[572]

---

[569] The European Court of Justice, bearing in mind the freedom of the choice of forms and methods left to the Member States by Article 249 of the EC Treaty, underlines that the Member States are obliged to choose the most appropriate forms and methods to ensure the effectiveness of the directives (see paragraph 73 and 75 of judgment of 8 April 1976 in case 48/75 Jean Noël Royer [1976] ECR 00497). On various forms and methods of transposing of EC directives, see, for instance, the example of Ireland analysed in Donelan (1997: 1-20).

[570] See guideline no 5 of the *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions*. For more information on guidelines for the quality of drafting of EU legislation, see subsection 5.2.1.

[571] The process of deculturalisation has been explained in section 2.2.

[572] See the example provided by Wagner (Wagner, Bech, Martínez, 2002: 58), who indicates Council Directive 88/378/EEC on the safety of toys (OJ L187/88, pp. 1-13), which in its Italian version uses the word *bambini* ('children'), whereas Italian national law (Decreto legislativo 27.09.1991, n.313, GURI - Serie generale n. 234 del 05.10.1991) transposing this Directive uses the term *minori* ('minors'), and the examples of Polish terms used in legislation implementing EC directives explained in the subsequent part of this paragraph.

Accordingly, two stages of equivalents' search can be distinguished. Firstly, when a directive is drafted, equivalents are sought at EU level in twenty-three languages of the European Union. Secondly, when a directive is transposed, equivalents are chosen, at the national level, in a Member State's legal language (or languages in the case of bilingual or multilingual country). If the concept or notion used in the directive is also applied in the domestic legal act, which transposes the directive into national legal system, the same term which was used in the directive can be applied in a national act or a national legislator can choose different term that denotes better the concept or notion. The focus of the analysis is on the second situation.

Although drafting process of EU law is not regarded as translation, the challenge of finding and choice of the proper equivalents in a few languages – present in EU legal drafting - is typical for translation process and analysed in translation studies.[573] Therefore, the translation studies terminology referring to equivalence issue can be plausibly applied for the comparison of equivalent choice in EC directives and national legislation transposing directives.

Traditional translation involves source and target language and source and target culture. Since the subject of the analysis is equivalence in legal terminology, in order to use terms more precisely, the term source and target legal system is used instead of source and target culture. In the case of a directive transposition, it is possible to indicate the source legal system, which is the legal system of a directive, i.e., EU legal system and the target legal system, i.e., national legal system of a Member State that transposes a directive. As far as distinction between source and target language is concerned, twenty-three equally authentic languages of EC directive can be treated as a source language and a legal language of a Member State can be regarded as a target language. If search for equivalents is analysed at EU level, neither distinction between source and target legal system, nor between source and target language can be applied. Since all authentic language versions of a directive are regarded as originals, the distinction between source and target language is replaced by the correspondence and coexistence of twenty-three authentic language versions. The distinction between source and target legal system is not appropriate either, because equivalents in twenty-three languages are searched in one, i.e., European Union legal system.

[573] See Chesterman who states that "equivalence is obviously a central concept in translation theory" (1989: 99; quoted in Munday 2001: 49). On the notion of equivalence as a key issue in translation, see Munday 2001: 49-50.

Due to conceptual and terminological incongruity between legal languages, absolute equivalence between them is not possible to achieve.[574] Nevertheless, the principle of fidelity to the source text - traditionally accepted in legal translation[575] - required the form and substance of the source text be reconstructed as closely as possible (Šarčević 2000b: 335). Hence, the literal equivalent[576] is chosen – in the sense of the closest decontextualised counterpart to the term denoting the concept.[577] Over time, the attitude to the equivalence in legal translation changed. Nowadays, commonly accepted principle of legal equivalence requires not only equality of language versions of a legal text in meaning but also in legal effect (Garzone 2000: 412; *cf*. Šarčević 2000a: 48). As a result, in order to establish legal equivalence between language versions, a drafter (or a translator) should choose the term which designates "a concept or institution of the target legal system having the same function as a particular concept of the source legal system" (Šarčević 2000a: 236), in other words, a functional equivalent[578] should be chosen.[579] [580] When EU legal texts are drafted, usually literal equivalents are selected, since the terms should "be easily recognizable in all languages" (Šarčević 2000a: 261). However, when EC directive is transposed into a national legal system, in order to denote a concept used in the directive, a functional equivalent is often chosen instead of a literal one.

In order to illustrate this situation and to demonstrate how EC and national legal language develops, transposition of a few directives in Polish law is analysed.[581] In Poland, generally, in order to transpose a directive, the existing legislation is changed (*nowelizacja*) or a new legal act is adopted. The following analysis refers only to the adoption of new acts

---

[574] On the terms 'equivalence' and 'equivalent' in general translation theory and their application in legal translation, see Šarčević 2000a: 234.

[575] Šarčević notes that literal translation ('the stricter the better') was regarded as "the golden rule for legal texts" (2000b: 335).

[576] In general translation theory, the notions like 'formal' (Nida 1964), 'semantic' (Newmark 1981/1988), 'linguistic' (Shuttleworth and Cowie 1997: 94-95) or 'word-for-word' (Shuttleworth and Cowie 1997: 197-198) equivalent (translation) convey similar meaning to the notion 'literal equivalent' (translation). See also definition of literal translation in the glossary.

[577] Literal equivalent is typical for foreignizing translation strategy (Venuti 1995) which is usually used in source text-oriented translation (Toury 1995).

[578] In general translation theory, the notions like 'communicative' (Newmark 1981/1988), 'dynamic' (Nida 1964), 'natural' (Nida and Taber 1969/1982) equivalent (translation or approach) convey similar meaning to the notion 'functional equivalent' (translation or approach). See also definition of free and idiomatic translation in the glossary.

[579] Functional equivalent is typical for domesticating translation strategy (Venuti 1995) which is usually used in target text-oriented translation (Toury 1995). On various opinions on the merits and demerits of the use of functional equivalent in legal translation, see Harvey 2000: 360-362.

[580] Literal and functional equivalents are not contradictory terms. Literal equivalents can be also functional equivalents, when they refer to institutions which exist in the target culture; see Harvey (2000: 360), who refers to formal (in the sense of literal) and functional equivalents.

[581] On transposing EC directives in Poland, see Kurcz 2004.

transposing directives. In order to simplify the analysis, the national act transposing the directive is compared with Polish version of that directive. However, it should be bear in mind that all authentic languages of the directive contribute into its meaning. It is presumed for the analysis purposes that Polish version expresses the same meaning as other language versions. Reference to English is done in order to explain the meaning of analysed terms and concepts.

The Polish acts often apply the same terms which are used in the implemented directive, especially in case of terms which refer to new concepts in Polish law. In this way, new terms are introduced into Polish legal system and language (e.g., 'electronic signature')[582]. In order to transpose precisely EC law expressed in directives and to avoid interpretative uncertainty, Polish legislation uses the same definition as EC directives do, especially in the case of definitions of concepts which are new or never defined before in Polish law. It is the so-called 'mirror reflection' of a definition from the directive (zabieg *tzw. „lustrzanego odbicia" definicji z dyrektywy*).[583] The 'mirror reflection' method has been, for instance, applied when the *Unfair Commercial Practices Directive* 2005/29/EC of 11 May 2005 (hereinafter the *Unfair Commercial Practices Directive*)[584] has been implemented in Polish law. Polish *Act of 23 August 2007 law on prevention of unfair market practices*[585] which transposes the *Unfair Commercial Practices Directive* into Polish law, repeats the definition of 'transactional decision' almost identically as it was provided in the *Directive*, just with slight stylistic changes; see table 5 below.[586]

---

[582] The concept and term 'electronic signature' has been introduced in the European Community in *Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures* (OJ L 13, 19.01.2000, pp. 12-20) and in Poland before accession to the EU in *Ustawa z dnia 18 września 2001 o podpisie elektronicznym* (Act of 18 September 2001 on electronic signature), Dz.U.2001.130.1450. The term 'electronic signature' is defined in the Polish Act on electronic signature (see Article 3.1) in the similar way as in the Directive 1999/93/EC (see Article 2.1).

[583] See *Uzasadnienie rządowego projektu ustawy o przeciwdziałaniu nieuczciwym praktykom rynkowym*; druk sejmowy nr 1682 [Explanation of governmental proposal of the law on prevention of unfair market practices; parliamentary paper no 1682]; available at http://orka.sejm.gov.pl/proc5.nsf/opisy/1682.htm, last consulted in September 2007.

[584] The full name of Unfair Commercial Practices Directive is following: *Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council*; OJ L 149/22, 11.06.2005, pp. 22-39.

[585] *Ustawa z dnia 23 sierpnia 2007 o przeciwdziałaniu nieuczciwym praktykom rynkowym*, Dz.U.2007.171.1206. English title of the Act from Consumer Affairs website at http://ec.europa.eu/consumers/rights/index_en.htm, last consulted in September 2007.

[586] Another example of the 'mirror reflection' of the definition from the *Unfair Commercial Practices Directive* is the definition of *praktyki rynkowe* ('market practice') in Article 2.4 of *Polish Act of 23 August 2007 law on prevention of unfair market practices*. Article 2.4 repeats the definition of 'business-to-consumer commercial practices' (Polish equivalent in the Directive is following: *praktyki handlowe stosowane przez przedsiębiorstwa wobec konsumentów*) provided in Article 2(d) of the *Unfair Commercial Practices Directive*.

Definition in English version of the *Unfair Commercial Practices Directive*	Definition in Polish version of the *Unfair Commercial Practices Directive*	Definition in Polish act implementing the *Unfair Commercial Practices Directive*
Article 2(k) **"transactional decision"** means any decision taken by a consumer concerning whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product or to exercise a contractual right in relation to the product, whether the consumer decides to act or to refrain from acting;	Article 2 (k) **„decyzja dotycząca transakcji"** oznacza każdą podejmowaną przez konsumenta decyzję co do tego, czy, jak i na jakich warunkach dokona zakupu, zapłaci za produkt w całości lub w części, zatrzyma produkt, rozporządzi nim lub wykona uprawnienie umowne związane z produktem, bez względu na to, czy konsument postanowi dokonać czynności, czy też powstrzymać się od jej dokonania;	Article 2.7. Art. 2. Ilekroć w ustawie jest mowa o: **decyzji dotyczącej umowy** - rozumie się przez to podejmowaną przez konsumenta decyzję, co do tego, czy, w jaki sposób i na jakich warunkach dokona zakupu, zapłaci za produkt w całości lub w części, zatrzyma produkt, rozporządzi nim lub wykona uprawnienie umowne związane z produktem, bez względu na to, czy konsument postanowi dokonać określonej czynności, czy też powstrzymać się od jej dokonania;

Table 5. Comparison of the definition of 'transactional decision' in EC Directive and Polish legal act implementing the Directive

It should be noted that although the definition of 'transactional decision' is almost identical to the definition provided in the Polish version of the *Unfair Commercial Practices Directive*, Polish legislator did not follow Polish equivalent of 'transactional decision' used in the *Directive*, i.e., *decyzja dotycząca* ***transakcji***, but used the term *decyzja dotycząca* ***umowy***, since it is the word *umowa* ('contract') that is a legal term whereas the term *transakcja* ('transaction') belongs rather to economical terminology.

Polish terms or expressions used in the directive can be changed sometimes just because of stylistic reasons, especially in order to use in a Polish legal act terminology and language typical for Polish domestic legislation. For instance, the *Act of 13 April 2007 on electromagnetic compatibility*,[587] which transposes the *Directive on the approximation of the laws of the Member States relating to electromagnetic compatibility*,[588] uses the expression *tereny zabudowy mieszkaniowej* ('housing built-up area') – which has been already used in Polish legislation – instead of the term *obszary mieszkalne* ('residential areas') applied in the *Directive* on electromagnetic compatibility (see example 1 in table 6.1.).

[587] *Ustawa z dnia 13 kwietnia 2007 o kompatybilności elektromagnetycznej*; Dz.U.2007.82.556.
[588] *Directive 2004/108/EC of the European Parliament and of the Council of 15 December 2004 on the approximation of the laws of the Member States relating to electromagnetic compatibility and repealing Directive 89/336/EEC Text with EEA relevance*; OJ L 390, 31.12.2004, pp. 24-37.

Besides style domestication, there are also other important reasons which result in the use in Polish legal acts terms different from those applied in Polish versions of EC directives. The following paragraph focuses on three of them.[589]

Firstly, when the concept applied in EC directive exists in Polish law and the term denoting this concept differs from the Polish equivalent used in the transposed directive, then the term of Polish law is used instead of the Polish equivalent in the directive. For instance, instead of *staranność zawodowa* - which is the literal equivalent of 'professional diligence' - applied in the *Unfair Commercial Practices Directive*, the term *dobre obyczaje* ('good manners' or 'good practices'), which is known in Polish law, is used in Polish *Act of 23 August 2007 law on prevention of unfair market practices*[590] transposing the Directive into the national legal system (see example 2 in table 6.2.).

Secondly, the Polish term used in the directive already exists in Polish law, but conveys a different meaning from that given to this term in the directive (see example 5 in table 6.3.). To illustrate this situation, the example of Polish equivalents of 'legal aid' used in the Polish version of the *Unfair Commercial Practices Directive* and in the Polish Act[591] transposing this Directive into national system is analysed. According to Article 2 of the *Unfair Commercial Practices Directive*, legal aid consists of pre-litigation advice, legal assistance and representation in court and exemption from, or assistance with, the cost of proceedings. The Polish term *pomoc prawna* - used in the *Directive* - is the literal equivalent of the English term 'legal aid'. The term *pomoc prawna* is known in Polish legal system. However, the literal equivalent *pomoc prawna* does not reflect the meaning in which the term 'legal aid' is used in the *Directive*. Moreover, the meaning of the term *pomoc prawna* in Polish law is ambiguous. On the one hand, the term means legal assistance rendered by a professional representative[592] but not exemption from the cost of proceedings. Hence, it does not convey the entire meaning that the Directive gives to 'legal aid'.[593] On the other hand, the term *pomoc prawna* is used in the meaning of judicial aid for Polish courts from foreign

---

[589] This analysis does not aim at providing a comprehensive list of reasons for differences between terminology of EC directive and terminology used in national acts transposing directives, but just at demonstrating those differences in order to explain better characteristics of EC legislation and its language(s).

[590] *Ustawa z dnia 23 sierpnia 2007 o przeciwdziałaniu nieuczciwym praktykom rynkowym*, Dz.U.2007.171.1206.

[591] As mentioned above the *Unfair Commercial Practices Directive* has been transposed into Polish legal system in *Ustawa z dnia 23 sierpnia 2007 o przeciwdziałaniu nieuczciwym praktykom rynkowym* (Act of 23 August 2007 law on prevention of unfair market practices), Dz.U.2007.171.1206.

[592] See, for example, *Ustawa z dnia 26 maja 1982 r. - Prawo o adwokaturze* (*Act of 26 May 1982 – Law on the Bar*), consolidated version Dz.U. 2002.123.1058 and *Ustawa z dnia 6 lipca 1982 r. o radcach prawnych* (*Act of 6 July 1982 on legal advisers*), consolidated version Dz. U.2002.123.1059.

[593] Compare especially with *Prozesskostenhilfe* - the German equivalent of 'legal aid' used in the *Unfair Commercial Practices Directive*.

courts (Article 1130 of the *Code of Civil Proceedings*)[594]. Thus it conveys completely different meaning than 'legal aid' in EC Directive.[595] Therefore, Polish legislator decided to use a different term from the Polish equivalent of 'legal aid' used in the *Unfair Commercial Practices Directive*. The term that has been applied in the Polish Act transposing the Directive – *prawo pomocy* ('right to assistance') – had been already used in another Polish act, i.e., in *Act of 30 August 2002 on procedure before administrative courts* (Article 2441 § 1)[596] where the assistance includes legal assistance and the exemption from costs of proceedings. Hence, the meaning is very close to the meaning of 'legal aid' in the *Unfair Commercial Practices Directive*.

Thirdly, the Polish term used in EC directive is not known in Polish law but is connoted with a Polish legal concept, which, however, differs from the concept used in the directive (examples 3 and 4 in table 6.2.). The example illustrating this situation is the term 'undue influence' used in the *Unfair Commercial Practices Directive.* The Polish equivalent for 'undue influence' applied in the Directive is the term *bezprawny nacisk* (that can be back-translated into English as 'illegal influence'). In the draft of Polish *Act of 23 August 2007 law on prevention of unfair market practices*, which transposed the *Unfair Commercial Practices Directive*, the term *bezprawny nacisk* has been used. This term - unknown in Polish law - can be, however, connoted with the concept of illegal threat that is penalised in the Polish *Penal Code*.[597] The *Law on prevention of unfair market practices* provides a fine in the case of undue influence, which is less strict penalty than one provided in the *Penal Code* (see Article 190 of the *Penal Code*). Consequently, according to the rule that the law that is more lenient to the perpetrator should be used, if the illegal threat was used towards a consumer, less strict provisions of the *Law on prevention of unfair market practices* would be applied. Therefore, the legislator decided, eventually, to use the term *niedopuszczalny nacisk* ('inadmissible influence'). Hence, there is no doubt that in the case of illegal threat, which is conducted towards a consumer, the *Penal Code* should be applied.[598]

---

[594] *Kodeks postępowania cywilnego* Dz.U.64.43.296.

[595] For more detailed terminological analysis of the meaning of pomoc prawna in Polish legal system, see *Uzasadnienie rządowego projektu ustawy o prawie pomocy w postępowaniu w sprawach cywilnych, prowadzonym w państwach członkowskich Unii Europejskiej*, druk sejmowy nr 3261 [Explanation of governmental proposal of the act on right to legal assistance in civil matters pending in the European Union member states, parliamentary paper no 3261]; available at http://ks.sejm.gov.pl/proc4/opisy/3261.htm, last consulted in September 2007.

[596] Ustawa z dnia 30 sierpnia 2002 Prawo o postępowaniu przed sądami administracyjnymi; Dz.U.2002.153.1270.

[597] *Act of 6 June 1997 the Penal Code* (*Kodeks karny*), Dz.U.97.88.55.

[598] Although, according to the *Law Dictionary*, the Polish counterpart of the term 'undue influence' is *bezprawny nacisk* (Collin and Bartnicki 2001: 366), the appropriateness of this Polish equivalent of 'undue

Table 6.1. Comparison of Polish terms used in the directives and terms used in the Polish acts transposing the directives; example from Directive 2004/108/EC and Polish Act of 13 April 2007 on electromagnetic compatibility

	Directive	**English term used in a directive**	**Polish term used in a directive** (literal equivalent of English directive term)	**Polish legislation transposing a directive**	**Polish term used in Polish legislation transposing a directive** (functional equivalent of English directive term)	**Polish term used in previous Polish legislation**
1	**Directive 2004/108/EC** of the European Parliament and of the Council of 15 December 2004 on the approximation of the laws of the Member States relating to electro-magnetic compatibility and repealing Directive 89/336/EEC Text with EEA relevance OJ L 390, 31.12.2004, pp. 24-37	**in residential areas** (article 9.4 of the Directive)	**na obszarach mieszka-lnych** (article 9.4 of the Directive)	Ustawa z dnia 13 kwietnia 2007 o kompatybilno-ści elektromagne-tycznej (Dz.U.2007.82 .556) **EN:** *Act of 13 April 2007 on electromagneti c compatibility*	**tereny zabudowy mieszkanio-wej** **EN:** *housing built-up area* (article 15 of the Act)	Rozporządze-nie Ministra Środowiska z dnia 29 lipca 2004 r. w sprawie dopuszczal-nych poziomów hałasu w środowisku (Dz.U.2004.178 .1841); **EN**: *Regulation of the Environment Minister of 29 July 2004 on permissible level of noise in the environment* (see Annex to the Regulation)

influence' used in the Directive can be questionable. Equivalents in other languages do not use the terms whose the first meaning is 'illegal' or 'unlawful'. For instance, *nielegalny*, *bezprawny* ('illegal', 'unlawful') is the second meaning of the English word 'undue', the first meaning provided in Stanisławski (1990, vol. O-Z) is *nadmierny* ('excessive'). The same observation is made as far as the Spanish version of the Directive is concerned. The first meaning of the Spanish word *indebida* (used in the expression *influencia indebida*) is 'improper' or 'wrong'. It is the second meaning that is 'unlawful' or 'illegal' (Diccionario Espasa Concise 2000). The French version of the Directive does not use the word *illégal*, but applies the expression *influence injustifiée*. The Polish counterpart of *injustifié* is *nieuzasadniony* ('unjustified'), not *bezprawny* ('illegal') (Pieńkos 2002: 651). The first meaning of *unzulässig* - the German word used in the Directive – is *niedopuszczalny* ('inadmissible') (Walewski 1990: 1103, vol. II), hence the same as the term used in the Polish Act transposing the Directive. It can be stated that *niedopuszczalny nacisk* – the term used in the Polish Act is a literal equivalent of German *unzulässige Beeinflussung* – used in the Directive. *Unzulässig* in the expression *unzulässige Einfluß* is, however, translated as 'undue'.

Table 6.2. Comparison of Polish terms used in the directives and terms used in the Polish acts transposing the directives; examples from Directive 2005/29/EC and Polish Act of 23 August 2007 law on prevention of unfair market practices

	Directive	English term used in a directive	Polish term used in a directive (literal equivalent of English directive term)	Polish legislation transposing a directive	Polish term used in Polish legislation transposing a directive (functional equivalent of	Polish term used in previous Polish legislation
2	**Unfair Commercial Practices Directive 2005/29/EC** OJ L 149/22, 11.06.2005, pp. 22-39	**Professional diligence** (cf. Article 2(h) of the Directive)	**Staranność zawodowa** (cf. Article 2(h) of the Directive)	Ustawa z dnia 23 sierpnia 2007 o przeciwdziała-niu nieuczciwym praktykom rynkowym Dz.U.2007.171.1206 **EN:** *Act of 23 August 2007 law on prevention of unfair market practices*	**Dobre obyczaje** **EN:** *Good manners* /or/ *good practices* (Article 4.1 of the Act)	Ustawa z dnia 2 lipca 2004 o swobodzie działalności gospodarczej; Dz.U.2004. 173.1807, Article 17 **EN:** *Act of 2 July 2004 on freedom of economic activity*
3		**Invitation to purchase** (cf. Article 2(i) and 7.4 of the Directive)	**Zaproszenie do dokonania zakupu** (cf. Article 2(i) and 7.4 of the Directive)		**Propozycja nabycia produktu** **EN:** *Proposition of product purchase* (cf. Article 2.6 of the Act)	Term used for the first time
4		**Undue influence** (Article 2(j), 8 and 9 of the Directive)	**Bezprawny nacisk** (Article 2(j), 8 and 9 of the Directive)		**Niedopuszczalny nacisk** **EN:** *Inadmissible influence* (Article 8.1 and 8.2 of the Act)	Term used for the first time

Table 6.3. Comparison of Polish terms used in the directives and terms used in the Polish acts transposing the directives; examples from Directive 2002/8/EC and Polish Act of 17 December 2004 on right to legal assistance in civil matters pending in the European Union member states

	Directive	**English term used in a directive**	**Polish term used in a directive** (literal equivalent of English directive term)	**Polish legislation transposing a directive**	**Polish term used in Polish legislation transposing a directive** (functional equivalent of English directive term)	**Polish term used in previous Polish legislation**
5	**Council Directive 2002/8/EC** of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes OJ L 26, 31.1.2003, pp. 41-47	**Legal aid** (Title of the Directive)	**Pomoc prawna** (Title of the Directive)	Ustawa z dnia 17 grudnia 2004 o prawie pomocy w postępowaniu w sprawach cywilnych prowadzonym w państwach członkowskich Unii Europejskiej Dz.U. 2004.10.67 **EN:** *Act of 17 December 2004 on right to legal assistance in civil matters pending in the European Union member states*	**Prawo pomocy** **EN:** *Right to assistance* (Title of the Polish Act)	Ustawa z dnia 30 sierpnia 2002 Prawo o postępowaniu przed sądami administracyj-nymi; art. 244 § 1 (Dz.U.2002.153 .1270) **EN:** *Act on procedure before administrative courts*

Table 6. Comparison of Polish terms used in the directives and terms used in the Polish acts transposing the directives

Conclusion to section 4.1.

In this section language of primary legislation (treaties), of international agreements and of EU legal instruments has been examined. The focus of the thesis is on drafting of multilingual and supranational legal instruments. Therefore drafting of acts of international character (primary legislation and international agreements) or of intergovernmental and political character (instruments of the second and third pillars) is not considered in the following chapters. The exemption is the analysis of subsequent drafting of the *acquis communautaire* conducted due to the accession of new Member States to the European Union. Since the *acquis* encompasses also primary legislation, in chapter 6 subsequent drafting of new language versions of treaties is discussed (especially, the preparation of an English version of the EEC Treaty before enlargement in 1973).

Hence, in order to analyse how supranational law is drawn up in many languages, the next chapter (chapter 5) takes into consideration drafting of instruments of secondary legislation (EC legal instruments). In particular, two types of legal instruments – regulations and directives - are of the main concern of this chapter. The reason for the choice of regulations as a subject of the analysis is threefold. Firstly, a regulation - as an act of general application - is always drawn up in all the official languages pursuant to Article 4 of *Council Regulation 1/1958*. Secondly, a regulation is directly applicable in the Member States, and therefore it is described as similar to national legal instruments and thereby comparable with Canadian legal acts. Finally, a regulation is a typical supranational legal instrument which is drafted and enacted in procedures where three institutions, i.e., the Commission, the Council and the Parliament, are involved. Regulations are usually enacted in co-decision which is, at this moment, the most often applied EC legislative procedure.

Directives – the second type of the instrument – are neither generally nor directly applicable. Directives are binding only on Member States to whom they are addressed. Hence, Article 4 of *Regulation 1/1958* does not apply to them. However, they are often drafted and authenticated in all the official languages because they are addressed to all Member States. Unlike regulations, directives are not directly applicable. On the contrary, they have to be transposed to domestic legal systems of the Member State to whom the directive is addressed.

This transposition makes directive interesting for research on multilingual legal drafting. Firstly, the question arises how a directive (especially multilingual one) should be drafted. The challenge of this drafting results from the twofold objective of directives, which aim, on one hand, at aligning legislation of Member States and at guaranteeing the uniformity of EC law, and on the other hand, at respecting of diversity of national legal traditions. Directives bind only as to results to be achieved. Therefore Member States can choose forms and ways of transposition, which are the most appropriate for national legal systems and traditions. Usually a new national legal act is adopted by a Member State in order to transpose a directive. A language of directives and a language of a new legal act which transpose the directive have been already analysed in this section (see subsection 4.1.3., paragraph 3).

The following section analyses Canadian legal instruments in the aspect of legal bilingualism and indicates which types of these instruments are of the main concern for the next chapters where drafting and subsequent drafting of language versions of Canadian and EU multilingual law are analysed.

SECTION 4.2.
Forms and sources of Canadian law and their language

Introduction

Canadian law is expressed in various forms and through documents of different legal effect. In the subsequent chapters of the thesis bilingual drafting of Canadian legal instruments is compared with drafting of EU multilingual law. This section provides short overview on forms and language(s) of Canadian constitutional and federal law and explains drafting of which types of legal instruments is examined.

The first subsection (4.2.1.) examines the Constitution of Canada. Although the thesis does not aim at analysing in detail how the acts of the Canadian Constitution are drafted but there are two reasons why form and language of the Constitution should be taken into consideration. Firstly, since the Canadian Constitution is not one document but is based on many various acts, the explanation concerning composition of the Constitution should be helpful while referring to constitutional acts regulating legal and official bilingualism of Canada. Secondly, preparation of French versions of some acts of the Canadian Constitution provides a very interesting example of subsequent drafting and therefore is analysed in the following chapter (chapter 6).

The second subsection (4.2.2.) describes various forms of legal instruments and especially indicates which of them are required to be drafted, enacted and published in English and French. Moreover, since some terms denoting legislative instruments are ambiguous, the subsection clarifies how these terms are used throughout the thesis. Finally, short overview on language of international treaties and federal-provincial agreements concluded by Canada is provided (subsection 4.2.3.).

Subsection 4.2.1.
The Constitution of Canada and its language

The Canadian Constitution is based on the British constitutional tradition and like the Constitution of the United Kingdom is not comprised in one single document.[599] Section 52 of the *Constitution Act, 1982* states that "[t]he Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect" (Section 52(1)). Paragraph 2 of Section 52 indicates written documents which make up the Canadian Constitution.[600] Two documents are considered to be the most important, i.e., the *Constitution Act, 1876*[601] and the *Constitution Act, 1982*[602].[603] The latter contains in Part I the *Canadian Charter of Rights and Freedoms.* Since the *Canadian Charter of Rights and Freedoms* regulates issues concerning official languages of Canada and language rights, the relevant provisions of the constitutional document are of special interest to this thesis. The *Constitution Act, 1867* contains as well provisions on language use in the Parliament of Canada, in the Legislature of Quebec and in the Courts of Canada and of Quebec (see Section 133), therefore the thesis refers as well to the *Constitution Act, 1867*.

The list of constitutional documents in Section 52(2) is not exhaustive.[604] The constitution of Canada is consisted not only in written documents – both listed and not listed

[599] See preamble to the *Constitution Act, 1867* that refers to the Constitution of Canada as "a Constitution similar in Principle to that of the United Kingdom".
[600] Section 52(2) indicates as written portions of the Constitution of Canada: the *Constitution Act, 1982*, the Acts and orders referred to in the Schedule and any amendments to the recently mentioned Acts and orders. The Schedule to the *Constitution Act, 1982* lists 30 acts, however six of them are repealed (i.e., five British North America Acts (BNA Acts) and *Canadian Speaker Act, 1895*). Consequently, the Canadian Constitution consists of 25 primary documents in force (including the *Constitution Act, 1982*), i.e., fourteen acts of the British Parliament (*Constitution Act, 1982* and ten BNA Acts (renamed Constitution Acts) and *Parliament of Canada Act, 1875*, 38-39 Vict., c. 38 (U.K.), *Canada (Ontario Boundary) Act, 1889*, 52-53 Vict., c. 28 (U.K.), *Statute of Westminster, 1931*, Geo. V, c.4 (U.K.)), four British Orders in Council, i.e., *Rupert's Land and North-Western Territory Order*, 1870; *British Columbia Terms of Union*, 1871; *Prince Edward Island Terms of Union*, 1873; *Adjacent Territories Order*, 1880, and seven acts of the Canadian Parliament (four BNA Acts (renamed Constitution Acts) and *Manitoba Act, 1870*, 33 Vict., c. 3 (Can.), *Alberta Act, 1905*, 4-5 Edw., VII c. 3 (Can.), *Saskatchewan Act, 1905*, 4-5, Edw. VII c. 42 (Can.)). It should be, however, kept in mind, as it is explained in the further part of this subsection, that the list in the Schedule is not exhaustive.
[601] The *Constitution Act, 1876* (30-31 Vict., c. 3 (U.K.)) used to be called the *British North America Act, 1867*; the name was changed by the *Constitution Act, 1982*.
[602] *The Constitution Act, 1982*, English version being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11. The *Constitution Act*, 1982 was enacted as *Canada Act*, 1982 and was the last act enacted by the Parliament of the United Kingdom.
[603] For instance, *Guide to Making Federal Acts and Regulations* (2001: 34) indicates the *Constitution Act, 1876* and the *Constitution Act, 1982* as the most important constitutional instruments.
[604] Section 52(2) uses the word 'include' that often implies an incomplete listing (The American Heritage Dictionary of the English Language 2000). This dictionary meaning of the verb 'include' is in line with

in Section 52(2)[605] - but also in unwritten traditions which are called constitutional conventions.[606] This has been confirmed by the Supreme Court of Canada which stated, "constitutional conventions plus constitutional law equal the total constitution of the country".[607]

While examining the Constitution of Canada, one should recognise - besides the constitutional instruments - quasi-constitutional acts which can be regarded as a part of the Constitution.[608] Quasi-constitutional acts are distinguished from constitutional instruments because - unlike constitutional acts - they can be legally overruled. As quasi-constitutional acts provide values of fundamental importance, the derogation from them must be explicit (*Guide to Making Federal Acts and Regulations* 2001: 36). Acts which are inconsistent with quasi-constitutional legislation are very rarely and reluctantly enacted. *Guide to Making Federal Acts and Regulations* (2001: 36) indicates the following instruments as the most important quasi-constitutional acts: the *Canadian Bill of Rights*,[609] the *Canadian Human Rights Act* [610] and the *Official Languages Act* [611]. The latter is certainly discussed throughout this thesis. The quasi-constitutional character of an act can be directly expressed in one of its provisions or it can derive from the court decision. In case of the *Official Languages Act*, *1988*, Section 82 provides primacy of Parts I to V over all acts of Parliament and regulations except the *Canadian Human Rights Act*. The quasi-constitutional status of the *Official Languages Act, 1988* has been recognised by the Federal Court of Appeal[612] and then confirmed by the Supreme Court[613].

---

interpretation of the word 'include' which usually is used in Canadian statutes to indicate non-exhaustive definition, whereas in exhaustive definitions the verb 'mean' is applied (Hogg 2007: 7).

[605] See, for instance, Hogg (2007: 8) who indicates several instruments of importance for Canada or Canadian provinces that have been omitted in the definition in Section 52.

[606] On constitutional conventions, see, for instance, in the field of political science Heard 1991.

[607] *Patriation Reference Case,* [1981] 1 S.C.R. 753. For more details on this case and on unwritten constitutional law, see *inter alia* Mandel 2002: 48-55 and Walters 2001: 91-141.

[608] For more details on quasi-constitutional legislation in Canada, see *inter alia* Tremblay 1997: 87-104, definition is provided at page 88, and Chapter 1.2 of *Guide to Making Federal Acts and Regulations* (2nd edition) available at website of Privy Council Office http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=Publications&doc=legislation/lmgchapter1.2_e.htm (last modified 02.10.2006); available also in French under the title *Lois et règlements: l'essentiel*.

[609] Full title of the *Canadian Bill of Rights* is following: *An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms*; [S.C. 1960, c.44].

[610] Full title of the *Canadian Human Rights Act* is following: *An Act to extend the laws in Canada that proscribe discrimination*; [R.S., 1985, c. H-6].

[611] Full title of the *Official Languages Act* is following: *An Act respecting the status and use of the official languages of Canada*; [1985, c. 31 (4th Supp.)]; [1988] c. 38, assented to 28th July, 1988.

[612] Canada (Attorney General) v. Viola, [1991] 1 F.C. 373 at 386; and *Rogers v. Canada (Correctional Service)*, [2001] 2 F.C. 586 (T.D.), at pp. 602-3.

[613] Lavigne v. Canada (Office of the Commissioner of Official Languages), [2002] 2 S.C.R. 773 at paragraph 23; see also Hurtubise-Loranger 2006: 8.

Paradoxically, several pre-1982 constitutional instruments of bilingual Canada - including act providing and regulating official and legal bilingualism - are authentic only in English. However, this is not surprising if we take into consideration that until 1982 many acts forming the Constitution of Canada were enacted by the British Parliament, accordingly they were enacted only in English.[614] For instance, the *Constitution Act, 1867* – regarded, as mentioned earlier, as one of the most important constitutional acts – enacted by the British Parliament - is authentic only in English, and its French versions are considered unofficial translations. Nevertheless, the French-language versions of constitutional acts have been prepared by the French Constitutional Drafting Committee that assisted the Minister of Justice of Canada who was obliged, due to Section 55 of the *Constitution Act, 1982*, to prepare "as expeditiously as possible" a French language version of constitutional acts listed in the Schedule to the *Constitution Act, 1982*.[615] The Committee not only drafted the French versions of documents (both in force and repealed) listed in the Schedule but it also prepared the French versions of additional documents not listed in the Schedule but linked with the constitutional documents contained in that Schedule.[616] Moreover, the Committee reviewed and redrafted the French versions of the constitutional acts included in the Schedule, which already have had official French versions. Preparation of the French versions of constitutional documents can be considered as a subsequent drafting discussed in the following parts of the thesis (see chapter 6).

The French version of each constitutional act will become authentic only when this French version is enacted pursuant to one of the special procedures applicable to an amendment of the act in question (Section 55 and 56 of the *Constitution Act, 1982*).[617] However, since none of the French versions prepared pursuant to Section 55 has been adopted under the Constitution's amendment procedures, those constitutional acts, that have been enacted only in English, are still official and authentic only in English.[618] The constitutional documents listed in the Schedule and enacted prior to the *Constitution Act, 1982* in English and French are authentic in English and French (Section 56 of the *Constitution Act, 1982*).

---

[614] See supra note 600 indicating fourteen acts (listed in the Schedule to the *Constitution Act, 1982*) that are portions of the Canadian Constitution and have been enacted by the British Parliament; they are mainly British North America Acts (nowadays Constitution Acts) and Orders in Council. The partial right to amend the Constitution was granted to Canada in 1949 and this right became complete in 1982, see footnote 791 and 792 in subsection 6.2.1.

[615] The constitutional acts listed in the Schedule are indicated in supra note 600.

[616] French versions of eight additional acts have been prepared by the Committee; for further details, see subsection 6.2.1.

[617] See also subsection 6.2.1, especially footnote 794.

[618] However, lack of the authenticity does not prevent Canadian courts to refer to the French version of constitutional acts prepared by the Committee; see subsection 6.2.1.

However, the corrections proposed to these acts by the French Constitutional Drafting Committee have not been enacted yet pursuant to applicable amendment procedure.[619]

As it is confirmed in case law, the *Constitution Act, 1982* does not provide any legal consequences in case of "failure to comply with the requirement of section 55".[620] Especially lack of authentication of French version of a constitutional instrument (in other words, the breach of Section 55 of the *Constitution Act, 1982*) does not result in its invalidity or inoperativity.[621] Section 55 does not require the constitutional documents listed in the Schedule be enacted in English and French, but only that their French version be prepared and enacted according to the amendment procedure. To date, only the first duty (preparation of the French version) was fulfilled. Preparation and enactment of the French version is not, however, the condition for the validity of the authentic English version of the Constitution and for the validity of the Constitution of Canada. As noted by Newman, Section 55 differs in this respect from other constitutional provisions that regard the enactment of the laws in two languages as a condition for their validity (1998: 6).[622] Newman explains that the Section 55 could not have been construed differently, since "one part of the Constitution cannot override or invalidate another part" (*ibidem* 1998: 7).

To sum up, some documents forming the Constitution of Canada are authentic in English and French and others are authentic only in English, although their French versions have been prepared by the Committee assigned by the Minister of Justice. Pursuant to Section 56 of the *Constitution Act, 1982*, pre-1982 constitutional instruments enacted by the Canadian Parliament and drawn up in English and French are equally authentic in the both languages. The acts enacted by the British Parliament are enacted and authentic in English. The exemption is the *Constitution Act, 1982* enacted by the Parliament of the United Kingdom and authentic in English and French pursuant to Section 57 of the *Act*. This Act was passed as the *Canada Act, 1982* (U.K.) and included the French version of the *Constitution Act, 1982*

[619] For more details on preparation and enactment of French version of the Constitution, see subsection 6.2.1 of this thesis, see also esp. Newman 1998 and Final Report of the French Constitutional Drafting Committee responsible for providing the Minister of Justice of Canada with a draft official French version of certain constitution enactments, 1990, available at http://www.justice.gc.ca/en/ps/const/loireg/index.html; last updated 18.01.2008.

[620] *A.G. (Quebec)* v. *Langlois* (December 5, 1997), Quebec 200-73-000514-979, decision on a motion (Que. C.) Vallières J; affirmed on appeal by *A.G. (Quebec)* v. *Langlois* (April 21, 1998), Quebec 36-511-972, (Que. S.C.) Tremblay J; see also Department of Justice of Canada and Department of Heritage Canada 2000: 51.

[621] See paragraph 157 and 160 of case *Bertrand* v. *Quebec (Attorney General)* (1996), 138, D.L.R. (4th) 481 (Que. S.C.).

[622] See Section 23 of the *Manitoba Act, 1870* and the judgment of the Supreme Court in the *Manitoba Language Reference* 1985 (the provision and the case explained in the thesis, see subsection 1.3.1.) and Section 133 of the *Constitution Act, 1867* and the judgment the Supreme Court in the *Blaikie* cases 1979 and 1981 (the provision and the cases explained in the thesis, see subsection 1.3.1.).

(Schedule A) and the English version of the *Constitution Act, 1982* (Schedule B). The details on the drafting of a French version of the Constitution (especially on the work of the Committee) and the further explanation of the reasons for a lack of authentic French version of some portions of the Constitution are provided in the chapter on subsequent drafting (chapter 6, subsection 6.2.1.). The following subsection focuses on forms of Canadian federal legislation which are of concern to the thesis.

Subsection 4.2.2.
Federal legal instruments and their language

This subsection clarifies terminology used to denote various forms of Canadian legal instruments and explains which of instruments are drafted, enacted and published in the two official languages.

Pursuant to Section 133 of the *Constitution Act, 1867*, all Acts of Parliament should be printed and published in English and French. Unquestionably, Section 133 applies to statutes and since 1867 statutes have been not only published but also enacted in the two languages.[623] In 1969 the first *Official Languages Act, 1969*[624] required rules, orders, regulations, by laws and proclamation be made, enacted and published in English and French. Consequently, since 1969 not only statutes but also other legislative instruments have been drafted in the two languages. This requirement and practice did not, however, result from the constitutional provision. The situation change in 1981 when the Supreme Court of Canada decided in the *Blaikie No 2* case[625] that requirement of Section 133 applies also to regulations.[626]

Moreover, in 1992 the Supreme Court of Canada in *Reference re Manitoba Language Rights*[627] decided that orders in council[628] and other instruments should be enacted, printed

[623] On interpretation of phrase 'printing and publishing' in Section 133 as presupposing 'enacting', see this thesis, subsection 1.3.1; § 1.
[624] The *Act Respecting the Official Languages of Canada* (Bill C-120); S.C. 1968-1969, c. 54, S.C. 1969, c. O-2; hereinafter the *Official Languages Act, 1969*.
[625] *Blaikie* v. *Quebec (Attorney General)* (No 2) [1981] 1S.C.R. 312; for more details see this thesis, subsection 1.3.1; § 1.
[626] Regulation is a form of law which has binding effect. Regulations are called delegated or subordinate legislation because they are made not by Parliament but by persons or bodies (e.g., the Governor in Council, a Minister) to whom Parliament delegated - under an enabling Act - authority to make regulations (Guide to Making Federal Acts and Regulations 2001: 176).
[627] *Reference Re Manitoba Language Rights*, 1992, 1 S.C.R. 212.
[628] By means of orders in council, the Governor in Council exercises its executive power. Orders are made on recommendation of the responsible Minister of the Crown under statutory authority or, to less extent, by virtue of royal prerogative. In order to have legal effect, an order in council has to be approved and signed by the

and published in English and French when they are of a legislative nature. The Court set up three types of criteria – criterion of form, content and effect - which enable to distinguish legislative instruments from other types of instruments. It is enough if one criterion is fulfilled in order to state that an instrument is of a legislative nature. An instrument is legislative in form, if the connection between the instrument and the legislature can be stated; in content, if the instrument embodies a rule of conduct; in effect, if the instrument has the force of law and applies to an undetermined number of persons (Hurtubise-Loranger 2006: 6). The judgment of the Supreme Court in *Reference re Manitoba Language Rights*, 1992 deals with Section 23 of the *Manitoba Act, 1870*,[629] which regulates legal, legislative and judicial bilingualism in Manitoba. However, since Section 23 of *Manitoba Act* and Section 133 of the *Constitution Act, 1867*, which regulates the same issues at federal level and in Quebec, are virtually identical, the afore-mentioned judgment of the Supreme Court applies as well to interpretation of Section 133 (Hurtubise-Loranger 2006: 6, ft. 19).[630] Accordingly, if form, content or effect of orders in council or of other instruments passed at a federal level indicates their legislative nature, those instruments have to be printed and published in English and French.

Nowadays, the obligation to prepare legislative instruments, and if they are printed and published, to print and publish in two languages is established in the *Official Languages Act, 1988*.[631] Section 7(1) requires legislative instruments made in the execution of a legislative power under an act of Parliament which are made with the approval of or by the Governor in Council or minister(s) of the Crown (Section 7 (1a)), which are published in the *Canada Gazette* (Section 7 (1b)), or which are of a public and general nature (Section 7 (1c)) be made in English and French and printed and published in both official languages, if they are printed and published. The same requirement applies also to instruments made in the exercise of a prerogative or other executive power that are of public and general nature (Section 7(2)). Hence the provisions of the *Official Languages Act, 1988* goes beyond the judgment of the Supreme Court in the *Reference re Manitoba Language Rights*, 1992 (Hurtubise-Loranger 2006: 8).

According to above explained judicial interpretation of Section 133, this Section applies not only to statutes but also to other legislative instruments like regulations and orders

---

Governor General. For further details on orders in council, see Dukelow and Nuse 1995: 846 and the Orders in Council Website at http://www.pco-bcp.gc.ca/oic-ddc/welcome.asp?lang=EN; last consulted in September 2007.

[629] 33 Victoria, chap. 3, 1870 (Canada); reprinted in R.S.C. 1970, App. II, 247.

[630] On Section 133 of the *Constitution Act, 1867*, see this thesis subsection 1.3.1., paragraph 1; on Section 23 of *Manitoba Act, 1870*, see this thesis subsection 1.3.2., paragraph 4.

[631] *An Act respecting the status and use of the official languages of Canada*; [1985] c. 31 (4th Supp.); [1988] c. 38, assented to 28th July, 1988.

in council of legislative nature. In view of that, the term 'Act of Parliament' comprises statutes and other legislative instruments. On the other hand the *Official Languages Act, 1988* makes a distinction between Acts of Parliament (Section 6), legislative instruments (Section 7(1)) and instruments under prerogative or other executive power. In this thesis, this terminology is followed. Accordingly, the term 'Act of Parliament' or 'Act' is used in the sense of a form of written law made by Parliament through the process called enactment (Guide to Making Federal Acts and Regulations 2001: 49). Dukelow and Nuse define 'Act of Parliament' as a statute (1995: 16) and a statute as "a law or act which expresses the will of a legislature or Parliament" (1995: 1192). Pursuant to Section 6 of the *Official Languages Act, 1988*, all Acts of Parliament must be enacted, printed and published in both official languages. Therefore, in the thesis, their drafting is mainly analysed and compared with EU legal drafting.

In order to facilitate analysis of the drafting process, some terminological clarification should be provided. First, the term 'Act' should be distinguished from the term 'bill'. The latter is used to denote a draft of an Act which is introduced to Parliament. A bill becomes an Act (in other words a bill becomes law) after it is approved by both Houses of the Parliament and by the Crown (i.e., when it receives Royal Assent). Accordingly, while speaking about drafting and legislative process, the term 'bill' should be used.

A bill can be introduced to Parliament as a public or private bill and then it becomes a public Act or a private Act respectively.[632] In the case of doubts about the status of a bill, the Speaker decides whether the bill in question is private or public. The distinction of public and private bills (Acts) is based on the criterion of purpose and matter, which a bill aims at and deals with (House of Commons Canada 2003, chapter 11). A public bill (Act) regulates matters of public policy and its purpose is general whereas a private bill (Act) refers to particular interest or benefit of a person or persons (Dukelow and Nuse 1995: 985). A private Act of Parliament provides special rights or exemptions from the application of the law for particular individuals or groups, including corporations. Since a private Act is an exception to the general law, it cannot prevail over any other Act of Parliament (Bosley 1985).

A public bill can be introduced by a member of the Cabinet (a sponsoring Minister) or by a member of the Senate or the House of Commons who is not in the Cabinet under his or

[632] Unlike in the British legal system, a public bill affecting private interests, called a hybrid bill, is not recognised in the Canadian legal system (Bosley 1985).

her own name (a private Member). The former has to be approved by the Cabinet and is called a government bill. The latter is denoted as a private member's bill.[633]

The above explained classification of bills and Acts of Parliament explained above is illustrated in Figure 4 below.

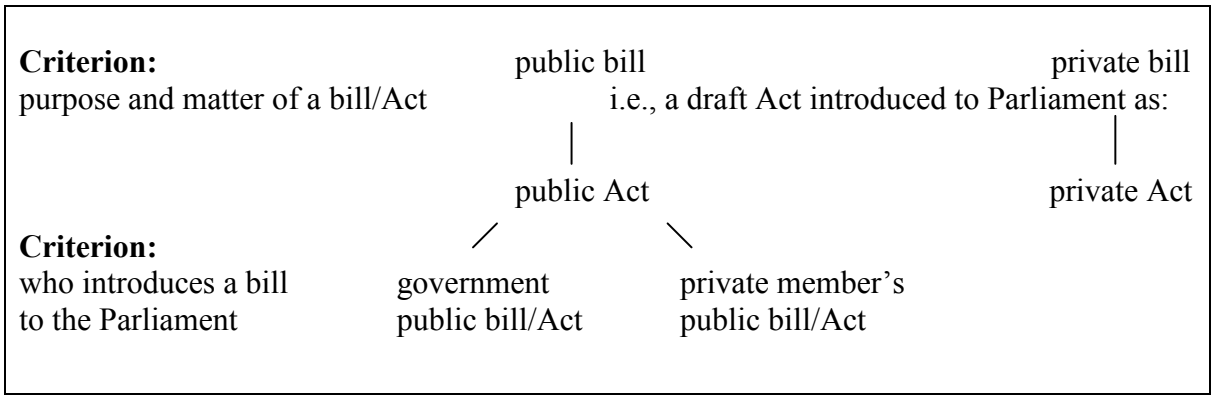

Figure 4. Divisions between bill and Act, public and private bill/Act and government and private member's bill/Act

The drafting and legislative processes that result in enactment of a public Act differ from those resulting in a private Act. In particular, different methods are applied to draft a public bills and to draw up private bills. Moreover, the introduction and debate on public bills and private bills are regulated differently. In addition, the process of enactment of government bills is based on different rules than the procedure of enactment of bills introduced by a private member. These differences, mainly in the drafting process before a bill is introduced in Parliament, influence the decision that drafting of public bills submitted by the members of the Cabinet is going to be examined in the thesis (chapter 5). Moreover, drafting of French versions of other legislative instruments enacted before 1969 only in English is analysed (chapter 6).

[633] See Guide to Making Federal Acts and Regulations 2001: 49; Dukelow and Nuse on government bill (1995: 520) and on private member's bill (1995: 946). Government bills are numbered from C-1 to C-200 in the House of Commons and from S-1 in the Senate in the order in which they are introduced and they may be considered each day during Government Orders. Private Members' bills are numbered from C-201 to C-1000 the House of Commons and from S-1 in the Senate in the order in which they are introduced and the rules of procedure ("Standing Orders") provide that private Members' bills may be considered only during limited time periods, i.e. during Private Members' hours (House of Commons Canada 2003, chapter 11a on Government bills and chapter 15 on private members' bills).

Subsection 4.2.3.
Language of international treaties and federal-provincial agreements concluded by Canada

As in the case of international agreements concluded by the European Union,[634] drafting of international treaties between Canada and other states or organizations is out of scope of this thesis. Therefore, only basic information on language of international treaties is provided. Section 10(1) of the *Official Languages Act, 1988* obliges the Government of Canada to ensure "any treaty or convention between Canada and one or more other states is authenticated in both official languages". According to Article 33(1) of *Vienna Convention on the Law of Treaties, 1969*, signed by Canada in 1970 (entered into force on 27 January 1980),[635] a text of an international agreement drafted and authenticated in more than one language is equally authentic in all the languages.[636]

Moreover, the *Official Languages Act, 1988* requires agreement between Canada and one or more Canadian provinces be made and authenticated in English and French, when an agreement requires the authorisation of Parliament or the Governor in Council, or when one or more provinces which are parties of the agreement recognise English and French as official languages or require agreement to be made in the two languages, or when provinces which are parties of an agreement do not use the same language (Section 10(2)).

[634] See this thesis, subsection 4.1.2.
[635] Canada Treaty Series 1980/37.
[636] For more details on how issues related to multilingual international agreements are regulated in *Vienna Convention on the Law of Treaties, 1969* (especially Article 33), see this thesis subsections 1.2.3. and 4.1.2.

Conclusion to section 4.2.

The two following chapters examine how multilingual law is drafted in Canada and in the European Union. Canadian co-drafting (see chapter 3) is regarded as a model of legislative drafting which guarantee the equality between languages and between language versions of multilingual law already during drafting process. Therefore, the criterion that determines which Canadian legal instruments are taken into consideration in chapters 5 is not their languages but the method that is used for their drafting. Consequently, in the next chapter where EU and Canadian drafting techniques are compared, the analysis deals with public acts because all federal governmental public acts are co-drafted. Co-drafting is applied as well for production of English and French language versions of some federal regulations and some legal instruments of New Brunswick. Only a short overview on drafting of private bills and Private Members' bills is provided.

Moreover, in chapter 6 where subsequent drafting – an irregular drafting of a new language version of already enacted legal instruments – is analysed, portions of the Canadian Constitution, federal legal instruments other than statutes and various forms of provincial and territorial legal instruments - that have been drafted and enacted only in one language - are taken into account and subsequent drafting of their new language version is examined.

CONCLUSION to CHAPTER 4

This chapter aimed at examining language of various types of EU and Canadian legal instruments and at explaining which of them and why are taken into consideration when multilingual legal drafting is analysed.

In order to decide which legal instruments are going to be analysed, one should refer to the thesis objective and statement. The theoretical analysis of various drafting methods conducted in chapter 3 demonstrated the thesis statement which assumes that the equality between authentic language versions results not only from legal presumptions and provisions but can also be consolidated in practice throughout a drafting process. The objective of the next chapter is to verify whether the thesis statement is valid in practice. As explained in chapter 3, co-drafting is a drafting technique which best assures equality between languages and language versions during drafting process. In practice, this method is applied when Canadian bilingual law is drafted. For the purpose of this thesis, Canadian co-drafting is regarded as a model with which EU drafting is compared in order to find out whether the thesis statement is correct also for drafting law in more than two languages. However, not all Canadian legal instruments are co-drafted. This method is used only at federal level to draft governmental public bills and some regulations. Moreover, an attempt is made to co-draft provincial acts of New Brunswick. Since all federal public bills must be co-drafted, drafting of these instruments is examined in chapter 5.[637] Co-drafting of federal public bills in Canada should be compared with drafting of EU legal instruments which are drafted and enacted in many languages, in the procedure typical for supranational legal system and at the same time are comparable with national legal instruments. As a result of the analysis conducted in section 4.1., it can be stated that all these criteria are fulfilled by regulations which, firstly, are drafted in all official languages as acts of general application; secondly, are adopted in typical supranational legislative procedures frequently by the Council in conjunction with the

[637] The analysis of drafting of Canadian federal legislation is completed with a short overview on drafting of private bills and Private Members' bills to which co-drafting does not apply.

European Parliament; and thirdly, are similar to national instruments due to their direct applicability in Member States. Another type of EC legal instruments interesting for the analysis of drafting process is a directive. Directives are not generally applicable but they are often drafted in many languages or in all official languages of the European Union. Moreover, they are adopted in procedures which are typical for the EC and where the Commission, the Council and the Parliament are often involved.[638] Directives are also typical EC legal instruments since at the same time they aim at respecting diversity of national legal traditions and at assuring the uniformity of EC law and its uniform application in all Member States.

To sum up, in the next chapter (chapter 5) the Canadian process of co-drafting of federal governmental public acts is compared with multilingual drafting of regulations and directives in the European Union. The last chapter (chapter 6) examines irregular drafting process denoted in the thesis as 'subsequent drafting' which is an exception from Canadian and EU multilingual legal drafting analysed in chapter 5. Because of irregularity of this process, the afore-mentioned criteria of the choice of legal instruments for the purpose of the analysis do not apply. Accordingly, subsequent drafting of a new language version of the entire *acquis communautaire* in the European Union and of various types of Constitutional, federal, provincial and territorial acts in Canada is investigated.

[638] Regulations and directives can be also adopted by the Commission acting alone.

CHAPTER 5.
Multilingual legal drafting process in the EU and Canada – the equality of language versions of a legal act throughout the drafting process

Introduction

The theoretical analysis of various drafting methods - applied to drawn up multilingual law - conducted in chapter 3 demonstrated that it is possible to ensure equality between authentic language versions of a legal act already in the drafting process, hence before they become authentic. This chapter, mainly in section 5.3., examines how these methods are applied in practice for drafting of Canadian bilingual law and EU multilingual law.

Since legislative procedures in Canada and the European Union differ from each over to large extent. It was necessary to find out, in Canadian and EU legislative process, some comparable stages where drafting takes place. These stages are indicated in section 5.1. which provides a brief overview on legislative procedures applied to adopt multilingual legislative instruments in the European Union and Canada. Section 5.2. investigates guidelines and manuals on legislative drafting applied in the EU and Canada and draws the comparison between Canadian and EU principles and rules on multilingual legal drafting. As mentioned, section 5.3. examines whether drafting of multilingual law can be in practice conducted in a way that presumptions of the principle of equal authenticity and of theory of original texts are not just fictions. In order to attain this aim, at the outset, the practice of the drafting process in both legal systems is described in detail and then it is analysed whether all languages are taken into consideration during this process. Moreover, co-drafting and translation elements are indicated during the process. If translation elements are observed, it is investigated whether the original version can be distinguished from the translation. While legislative drafting in the European Union and Canada is analysed, it should be borne in mind that, as explained in chapter 2, Canadian and EU laws are applied in legal systems based on various legal traditions (i.e., common law and civil law). Therefore, finally, section 5.4. analyses how legal traditions influence drafting techniques applied to drawn up EU autonomous and multilingual law and Canadian bijural and bilingual law.

SECTION 5.1.
Variety of legislative procedures in the European Union and Canadian federal legislative procedure – search for comparable stages of the legal drafting

Introduction

The aim of this chapter is to explain how bilingual and multilingual law is drafted in Canada and the European Union; in particular, to find out whether the equality between language versions, which are to become authentic after the adoption of a legal act, can be achieved already when these versions are drawn up. The method applied in Canada seems to attain this objective. Therefore the Canadian drafting method is described and then it is examined whether legislative drafting in the European Union is able to fulfil this aim. In order to accomplish this analysis, the comparison of Canadian and EU drafting methods and process should be conducted.

The analysis – presented in chapter 1 - of EU legislative multilingualism and Canadian legislative bilingualism revealed the common features of EU and Canadian language regimes which make the comparison of multilingual and bilingual legal drafting in the EU and Canada plausible. However, it should be taken into consideration that the European Union – as a supranational organization - and Canada – as a federal country – have different legislative procedures. To make the comparison of drafting methods possible, this section aims at indicating comparative stages of legislative process in the European Union and Canada. In particular, the focus of the analysis is on these stages where drafting or drafting elements can be observed. After short overviews on legislative processes and procedures in the European Union (subsection 5.1.1.) and Canada (subsection 5.1.2.), the comparative stages of legislative drafting process in the EU and Canada are specified in the conclusion to this section.

Subsection 5.1.1.
Co-decision and other legislative procedures in the European Union

The multilingual character of legal drafting is not the only one distinctive feature of EU drafting process. Firstly, in contrary to states, in case of the European Union, there is no single institution "which can be called the Community legislature" (Tillotson and Foster 2003:114). In other words, in many cases there are a few institutions involved in legislative process. It should be, especially, mentioned: the European Commission that initiate legislation and present proposals to the next institutions, i.e., to the Council and the European Parliament that pass the laws. Furthermore, in some cases, the European Economic and Social Committee or the Committee of the Regions are consulted before the adoption of laws. Secondly, it should be also noted that there is no single procedure whereby EU legal acts are enacted. Various types of legislative procedures – which are the subject-matter of many publications[639] - are recognised and different numbers of them are indicated.

Nevertheless, nowadays it is possible to indicate one main procedure, i.e., a co-decision procedure, which is applied to enact legal acts in majority of cases. *The Lisbon Treaty*, which - at the moment of writing of this thesis - has been prepared, changes classification of EU legislative procedures and distinguishes 'ordinary legislative procedure' and 'special legislative procedure'. The ordinary legislative procedure replaces the term 'co-decision' and extends matters that can be regulated by means of this procedure.[640] Since the 'co-decision' is the main procedure applied in the European Union, this subsection focuses on this procedure. When the doctoral research has been conducted, the Lisbon Treaty has not been adopted yet. Therefore the thesis follows the term 'co-decision' and refers to provisions in force before the adoption of the Lisbon Treaty.

The co-decision procedure was introduced by the *Treaty on European Union*[641] in 1992. Before the consultation procedure[642] regulated in the *Treaty establishing the European*

[639] See *inter alia* Chalmers *et al.* 2006: 140-178; Hanlon 2003: 21-27.
[640] The new areas relate, among others, to agriculture, fisheries and matters included in the current third pillar.
[641] OJ C 191 of 29 July 1992.
[642] In case of the consultation procedure, after a proposal is submitted by the Commission, the Council, before starts acting, has to send a proposal to the European Parliament and sometimes to the Economic and Social Committee or to the Committee of the Regions or to both for their opinions. When the Commission proposal is obtained by the Parliament for the opinion, the proposal is analysed by proper Parliamentary committee, which produces a report that contains a draft legislative resolution. The resolution is drawn up in the official languages accordingly to the Rule 138(1) of Rules of Procedure of the European Parliament (16th edition, July 2006). After the Parliamentary debate on the report, the resolution is sent as an opinion to the Council and the Commission (Evans 1998: 56). The Parliamentary opinions are published in the Information and Notices section of the Official Journal (*ibidem* 1998: 55). The Commission can amend the proposal accordingly to the submitted opinion(s). The Council adopts the act after the debate in the Committee of Permanent Representatives (COREPER) (see Hartley 2003: 42-43); see also Hanlon 2003: 22

Economic Community (1957) was the only procedure until 1987, and then the co-operation procedure[643] introduced by the *Single European Act*[644] (Article 6 and 7) and regulated by Article 252 of the *EC Treaty* was the main procedure. The *Single European Act* introduced also the assent procedure (Article 8 and 9).[645]

Owing to the complexity of the co-decision procedure - called as well 'joint-legislative procedure' (Hartley 2003: 43) - some authors indicate its stages or phases (see Hanlon 2003: 24-25, Mathijsen 2004: 59-61). Usually three stages are specified: first reading, second reading and third reading with conciliation (Hakala 2006: 149). At each of them the procedure can be concluded. For the purposes of this thesis another stage – as a first stage of the co-decision - is indicated, i.e., drafting and revision of a legislative proposal, usually for a regulation or a directive, by the Commission.[646] Once a proposal is prepared in all the official languages, it is submitted to the Council and to the Parliament and the second stage, i.e., first reading, starts. After the consideration of a proposal, the European Parliament can propose amendments. Some amendments can result from negotiations with the Council. If the Parliament does not propose any amendments or if the amendments are approved by the Council, the act can be adopted.

If the Council does not approve the amendments proposed by the Parliament, it prepares a common position which includes the version of the act favoured by the Council (Hartley 2003: 45). It is the beginning of the third stage, i.e., the second reading. The

[643] When the co-operation procedure is applied, after obtaining the proposal from the Commission and then opinion on that proposal from the Parliament (sometimes also from the Economic and Social Committee and from the Committee of the Regions), the Council adopts a 'common position', which is sent to the Parliament. Within three months the Parliament approves, amends or rejects the proposal. If the EP does not act for three months or approves the proposed legislation, the Council adopts the common position as a legislative act. If the common position is rejected, the Council can adopt the legislation but then unanimity is required. If the Parliament proposes amendments, the Commission has to re-examine the proposal and submit it again to the Council. The Council can adopt amended proposal or adopt different version but then it has to act unanimously. For further details on the co-operation procedure, see Craig and de Búrca 2008: 141-143, Evans 1998: 58-59, Hanlon 2003: 22-24, Hartley 2003: 41-44, Nugent 2001: 225-257.

[644] OJ L 169 of 29 June 1987.

[645] The assent procedure is not of the main concern for the thesis because of subject matters that are regulated by means of this procedure and because of legal instruments that are adopted because of this procedure. The assent procedure is used for special and important circumstances (Hanlon 2003: 26); for instance, sanctions in case of a serious and persistent breach of fundamental rights by a Member State (Article 7(1) of the EU Treaty), accession of new Member States (Article 49 of the EU Treaty) – drafting of the Accession Treaties has been examined in this thesis, in subsection 4.1.1., certain international agreements (Article300(3) of the EC Treaty) – drafting and language of international agreements have been analysed in this thesis, in subsection 4.1.2. For more detailed list of matters regulated through the assent procedure, see Craig and de Búrca 2008: 148; for details on this procedure, see Cram, Dinan, Nugent 1999: 146-148, Evans 1998: 59-61, Nugent 2001: 257-260, Mathijsen 2004: 59.

[646] A proposal is prepared by the Commission. There are, however, two provisions that allow the Council (Article 208 of the *EC Treaty*) and the Parliament (Article 192 of the *EC Treaty*) to suggest the Commission the matters that should be the subject of proposal. The Articles do not vest either the Council or the Parliament with the right of legislative initiative. For the detailed analysis see Craig and de Búrca 2008: 148-149. Moreover for details on the origins of legislation in the EU see Nugent 2001: 236-237.

common position is sent to the Parliament, which within three months can approve the position or not take any decision. Then the legislative act is submitted directly for the signature of the Presidents and Secretaries-General of the European Parliament and of the Council and published in the Official Journal. The Parliament can also propose the amendments to the common position. In this situation, the fourth stage - i.e., the third reading with conciliation - begins.

The text amended by the Parliament is sent to the Council and the Commission. The latter prepares the opinion on the amendments. If the Council approves the Parliament's amendments, it adopts the act. However, if the Commission does not accept the amendments, the Council has to approve unanimously each of the amendments that the Commission does not accept. If the act is not adopted, the Conciliation Committee is set up. The Committee is composed of an equal number of representatives from the Council and from the Parliament. The objective of the Committee is an agreement on the joint texts. The Commission also participates in works of the Committee and helps the Council and the Parliament to achieve a compromise. If within six weeks the Committee does not approve the joint text, the procedure is finished and the act is not adopted. When the joint text is approved by the both institutions, the act can be adopted by the Council acting by a qualified majority and the Parliament acting by a majority of votes. If an act is approved at any stage, before the act is adopted, all its language versions are revised by lawyer-linguists in the Parliament and in the Council and then the act in all languages is published in the Official Journal of the European Union.

Within this complex procedure which has been described above, it is possible to indicate stages which are important for drafting and which can influence language versions of a legal act. They are following: drafting and revision of a proposal for a regulation, directive or a decision by the Commission, amendments proposed by the Parliament at various stages of co-decision procedure, revision of the final version of an act by lawyer-linguists in the Parliament and in the Council. Moreover, the negotiation between the Parliament and the Council can also influence language of a legal act. It also should be taken into consideration that language versions of a legal act become equally authentic when an act is adopted and published in the Official Journal of the European Union. The above-mentioned staged of co-decision procedure, which influence drafting and language of a legal act, are comprehensively investigated in section 5.3. in order to find out whether equality between language versions which are to become authentic can be assured throughout the drafting process.

Subsection 5.1.2
Legislative process at the federal level

As explained in chapter 4 (see especially section 4.2.), the focus of the thesis is on drafting of government public bills and – if not stated otherwise – this subsection concentrates on legislative process pertaining to government public bills. A government bill - which at the end of a legislative process becomes an act (if a bill is adopted) – is drafted in order to fulfil the policy submitted by the sponsoring Minister. If the policy is approved by the Cabinet, a bill is drafted in the Legislation Section of the Department of Justice. Once a bill is drafted, revised[647] and obtains required approvals,[648] it can be introduced in the Parliament. Introduction of a bill starts a parliamentary process, during which a bill can be adopted, or amended and adopted, or rejected. Since drafting and revision of a bill is a subject of the following section (5.3.), this subsection focuses on a parliamentary process.

The stages of a parliamentary process are distinguished in various ways. Usually divisions of stages differ from each other in level of detail. For the purpose of this thesis the following stages are indicated: introduction of a bill in the Parliament of Canada, first reading, second reading and third reading. Moreover, subsection considers the Crown approval, printing and publishing, which are necessary to adopt an act properly.

The study of stages in parliamentary process aims mainly at examining the issues which can influence a language of a bill. In particular, the use of languages in the Parliament and committees is investigated. Both oral (debate, speeches, questions, etc.) and written (documents, reports, and especially amendments) communication is taken into consideration.

Therefore, before the afore-mentioned stages are discussed, a bilingual character of the Canadian Parliament should be underlined.[649] English and French have an equal status as official languages of legislation as well as working languages of Parliament. Pursuant to Section 133 of the *Constitution Act, 1876* either English or French language may be used by any person in the debates of the houses of the Parliament of Canada. Moreover, both languages must be used in the respective Records and Journals of those Houses. The use of English and French in a legislative process is not only the right but also the obligation, due to

[647] The thesis concentrates on linguistic and legal revision conducted in the Legislation Section of the Department of Justice by jurilinguists, legal reviser and editors. However, a bill should be reviewed as well by the Leader of the Government in the House of Commons.
[648] Before introduction to the Parliament, a bill should be approved by Cabinet; for details on stages of the Cabinet approval process, see *Guide to Making Federal Acts and Regulations* 2001: 113-114.
[649] For details on the use of official languages in the Parliament, see the recent analysis in Hurtubise-Loranger 2006.

the decision of the Supreme Court of Canada, which in the *Reference Re Manitoba Language Rights*, 1985[650] ruled that "simultaneity of the use of both English and French is required throughout the process of enacting bills into law" (see Beaupré 1987). In order to make the use of English and French in the legislative process possible, in 1934 the Translation Bureau of the Government of Canada was created (Covacs 1983).[651] The Translation Bureau is the federal government's centre of expertise in translation and other linguistic services; especially, it exclusively delivers translation, revision and interpretation services for the Parliament. Simultaneous translation service for the Parliament is provided since 1959.

As mentioned above, after a bill is drafted, revised and approved, it is introduced in the Parliament, usually in the House of Commons.[652] A government bill is introduced by the Minister, which is called a sponsoring Minister, whereas a private Members' bill is introduced by a Member of the Parliament who is not in the Cabinet. The following overview on parliamentary legislative process deals only with public government bills, which are co-drafted in the Department of Justice before their introduction in the Parliament.

In order to introduce a public bill in the House of Commons, a 48-hour notice of introduction is required.[653] A notice has a written form, includes the title of the bill, and is accompanied by a copy of the bill. After a notice is given, a bill is introduced by a sponsoring Minister automatically without any debate (*Guide to Making Federal Acts and Regulations* 2001: 147). However, a sponsoring Minister who introduces a government bill may make a short explanation of the bill in the House. The speech given by a Minister is interpreted into another official language (French or English).

Although the *Rules of procedure* do not require it in the direct way, a bill should be presented in English and French languages. The statement of Standing Order 110 of the House of Commons, which provides that "All bills shall be printed before second reading in the English and French languages", could suggest that a bill can be introduced and considered during first reading only in one language and then printed in two languages. It is, however,

[650] Reference re Manitoba Language Rights, [1985] 1 S.C.R. 721 at pp. 775 and 767; *Reference Re Manitoba Language Rights*, 1985 is also brought up in this thesis, in paragraph 4 of subsection 1.3.1., in subsection 4.2.2. and in subsection 6.2.3.

[651] For further details, see the website of the Translation Bureau at http://www.translationbureau.gc.ca, last consulted in January 2008.

[652] If a bill does not involve expenditure of public money either increase or imposing of taxes, the introduction firstly in the Senate is possible.

[653] A notice of introduction is not required in the Senate.

the breach of Section 133 of the *Constitution Act, 1867*, as ruled by the Supreme Court in the *Reference Re Manitoba Language Rights*, 1985 (Beaupré 1987).[654]

After the introduction of a bill in the Parliament, first reading, which is a purely formal stage, takes place. At this stage, no debate is conducted, no amendments are proposed, and no questions are posed. Usually, a bill is not even read aloud. Before second reading, a bill is printed in two official languages pursuant to afore-mentioned Standing Order 110. [655]

The second reading takes place in the same House of Parliament as the first one. The debate and voting are conducted on the principles of a bill, which can be accepted or rejected at this stage. The House may send a bill to a legislative, standing or special committee, or to a Committee of the Whole, where every clause of a bill is studied. Before clause-by-clause study, a committee hears the sponsoring Minister who introduced a bill. A committee can also ask experts for information that could help to improve the bill and receive testimony from outside witnesses. At the second reading stage, amendments, which can relate to any part of a bill (i.e., to the title, preamble, clauses) can be proposed. All proposed amendments are reported by a committee to the House, which votes for or against amendments. All amendments should be drafted in the two official languages. Amendments to a government bill are always drawn up in English and French by co-drafters and revised by jurilinguists and legal revisers in the Legislative Services Branch.

Once a bill is amended, it is forwarded to the next stage, i.e., to the third reading, where a bill is read and reviewed in its final form, i.e., with all amendments. It can be also referred back to a committee in order to amend it or reconsider a clause or clauses. Accordingly, it is still possible to propose amendments at third reading stage. Members of the House debate and vote on an amended bill. They decide whether to adopt a bill or not. After the third reading a bill is sent to the Senate for consideration.

In order to become a law, a bill has to receive the Royal Assent. Therefore it is send to the Governor General who may give the assent to a bill in the name of the Queen or refuse to give the assent or reserve the assent. The royal assent shall be given to a bill in both languages. Once a bill receives the Royal Assent, it becomes an Act of the Parliament of

---

[654] For details on interpretation of Section 133 of the *Constitution Act, 1867* and on the case *Reference Re Manitoba Language Rights*, 1985, see this thesis, subsection 1.3.1., 4.2.2. and 6.2.3.

[655] Before Standing Order 110 came into force, the legislative process was regulated by Standing Order 93, which provides the exception of the rule that "all Bills shall be printed, before the Second Reading, in both languages". The exception referred to "Bills exclusively relating to any one or more Provinces other than the Province of Quebec, which may be printed in English only, unless otherwise required by The House; or Bills merely continuing Acts, or other short Bills of minor importance, with the printing of which The Speaker or the House may dispense". This statement was in incompliance with Section 133 of the *Constitution Act, 1867* (Beaupré 1987).

Canada. Then, pursuant to Section 133 of the *Constitution Act, 1867*, the Acts of the Parliament of Canada are printed and published in English and French languages.

Conclusion to section 5.1.

Based on the short overviews of the co-decision, which is the main legislative procedure in the European Union (subsection 5.1.1.), and of the federal legislative process in Canada (subsection 5.1.2.), the main stages of legislative drafting are indicated in the table (Table 7.) below. The indication of stages is simplified, because - as it is demonstrate in this section - Canadian and EU legislative process are different to large extent. These differences result, especially, from a number of institutions involved in legislative process in the European Union. In Canada, the initiative to draft and enact a government bill arrives from one of the departments represented by a sponsoring Minister and after a bill is drafted in the Department of Justice, it is introduced in the Parliament which can reject or amend and adopt the act. In the European Union, the legislative initiative belongs to the Commission which drafts a proposal for a legal act. A drafted act is considered and amended by the two co-legislating institutions – the Parliament and the Council - which in order to achieve an agreement on the content of a legal act must conduct difficult negotiations which can influence a language of that act. Negotiation is an element which is not observable to such extent during Canadian legislative process.

Stage of legislative process	Institution or body of the European Union (EU)	Canadian Federal Institution (CA)
Drafting and revision of a draft (a proposal (EU) or a bill (CA))	Commission (DG responsible for the sector concerned, Legal Service, DGT)	Legislation Section of the Department of Justice
Amendments	Council, Parliament	Parliament, Legislation Section of the Department of Justice
Negotiations	Council and Parliament	-
Revision of a final draft	Council	-
Adoption and authentication	Commission or Council	Governor General on behalf of the Queen
Publication	Office for Official Publications of the European Communities	

Table 7. Stages of legislative drafting in the European Union and Canada

After the examination of principles and rules of legislative drafting in the European Union and Canada in the next section (5.2.), drafting of EU law and Canadian at the above-mentioned stages is thoroughly analysed in section 5.3.

SECTION 5.2.
Rules applied for drafting of multilingual law on the basis of EU and Canadian drafting guidelines and manuals

Introduction

The thesis examines whether it is possible to strengthen equality between authentic language versions of a legal act already during drafting of the language versions. Two important drafting factors influence how in practice authentic language versions are treated after adoption of a legal act. Firstly, it is important to take into consideration all languages at all stages of drafting process. It is, especially, essential to draft all language versions in the way that all of them can be regarded as originals. This aspect of drafting is examined in the next section. Secondly, the good legal and linguistic quality of language versions, and especially full coherence and equivalence between all authentic language versions can positively influence the factual equality between them after adoption of a multilingual legal act. In order to assure the quality and coherence of authentic language versions, drafting rules should be standardised and unified. Therefore, in Canada and in the European Union various drafting manuals and guidelines are prepared. This section investigates and compares rules and guidelines on which drafting of bilingual federal and multilingual supranational law is based.

Subsection 5.2.1.
Guidelines for linguistic and legal quality of drafting of EU legislation

As explained at length in this thesis, all the official languages of the EU share the same system of reference (see subsection 1.2.4., paragraph 5). On the one hand, it should simplify drafting process, especially in comparison with legal translation involving two languages, when each of them denotes and represents a different legal system. On the other hand, since the same languages (in linguistic sense; see subsection 3.1.1. and conclusion to section 3.1.) are used to draft EU law and domestic law of Member States,[656] inaccurate use of legal terms can cause confusions. Moreover, due to the same system of reference for all languages as well as to the principle of equal authenticity, full equivalence and coherence between all language versions is demanded. It is very difficult to achieve, since EU law is created through the negotiation and consultation process involving more than one EU institution or body and each of these institutions has its own services assisting in drafting process, i.e., translation services and legal reviser or lawyer-linguist groups. Therefore, strict cooperation between institutions and their services should be assured, as well as a form of legal acts and legal terminology should be standardised.

In order to improve quality of legislative drafting, EU institutions as well as their services prepared drafting guidelines, glossaries, terminology databases, style guides and reports on drafting quality. The Commission and the Council - two institutions involved in drafting and legislative process – adopted drafting guidelines for their internal use, i.e., a *Commission Manual on Legislative Drafting*,[657] and the Council's *Manual of precedents for acts established within the Council of the European Union* (Council of the European Union: 2002).[658] They are internal documents not accessible for public information. Moreover, the European Commission Directorate-General for Translation adopted the *English Style Guide* -

[656] As explained, although languages used for purpose of EU legal system and domestic legal systems of Member States are the same in linguistic sense (e.g. German), but they are various legal languages (e.g. legal German of EU legal system, legal German of German legal system and legal German of Austrian legal system).
[657] As far as multilingual legal drafting is concerned, especially Part III 'Drafting Rules' (pp. 62 and following) should be taken into consideration.
[658] As far as multilingual legal drafting is concerned, especially Part III 'Indications for Drafting' (pp. 98 and following) and Part IV 'Rules Governing the Languages' (pp. 124 and following) should be taken into consideration.

A handbook for authors and translators in the European Commission.[659] The *Guide* focuses mainly on linguistic conventions applicable applicable to documents originating in the Commission including drafts and proposals of EU legislative acts. It is particularly important, because proposals in the Commission are drafted very often in English but not by native speakers. Another document that aims at standardisation of form, structure and terminology of EU legal acts is the *Interinstitutional style guide - Vade-mecum for editors* adopted by the Office for Official Publications of the European Communities (publisher of Official Journals of the European Union).[660] The application of the *Interinstitutional Style Guide* is compulsory for all EU institutions, bodies and agencies. It is prepared by representatives for each language from all the EU institutions, i.e., lawyer-linguists, translators, terminologists and proofreaders, who work under a coordinating group based at the Publication Office. The *Guide* was published for the first time in 1997 in eleven EU official languages. Nowadays it is available in twenty-three languages and constantly updated, supplemented and amended.

Moreover, in order to improve the drafting process the European Parliament, the Council and the Commission jointly adopted the interinstitutional agreement and guide. In 1992, the European Council stated in the Declaration titled *A Community Closer to its Citizens*, so-called the Birmingham Declaration, that "We want Community legislation to be clearer and simpler".[661] To achieve this objective, at the Amsterdam Intergovernmental Conference in 1997 *Declaration No 39 on the quality of the drafting of Community legislation* has been adopted. The Declaration called on the institutions to "establish by common accord guidelines for improving the quality of the drafting of Community legislation".[662] Accordingly, the European Parliament, the Council and the Commission adopted the *Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation*.[663] The Agreement includes guidelines characteristic for

---

[659] The last version of the *English Style Guide*, i.e., the fifth edition of June 2005, last updated in April 2008, is available at http://ec.europa.eu/translation/writing/style_guides/english/style_guide_en.pdf, last visited in May 2008.

[660] *Interinstitutional style guide - Vade-mecum for editors* of 1997, last updated in April 2008, in the first part describes mainly the structure of the Official Journal and its publication procedure, the structure of legislative acts. It also provides conventions common to all languages related to names, abbreviations or currency (see Section 7 of the Guide). The Guide indicates the main reference works for texts to be published in the Official Journal; i.e., the Guide points out as reference works: dictionaries for spelling problems and matters of a linguistic nature, guides of EC institutions for legislative drafting as well as the *Joint Practical Guide*, online glossaries and terminology or other database for acronyms and abbreviations and for checking the titles, contents, last amendments of acts (see Section 2 of the Guide). The *Interinstitutional style guide* is available at http://publications.europa.eu/code/en/en-000500.htm, last consulted in May 2008.

[661] European Council (1992) *A Community Closer to its Citizens*, adopted at its meeting in Birmingham, 16 October 1992; see also Piris 2004a: 11 and Robinson 2005: 7.

[662] OJ C 340, 10.11.1997, p. 139.

[663] OJ C 73, 17.3.1999, p. 1.

plain language rules; namely to draft in clear, precise and simple way, or to create short sentences. Furthermore, it stated that provisions should be consistent within one act and between acts in the same field (Robinson 2005: 7). Pursuant to the *Interinstitutional Agreement* the three Legal Services drawn up the Guide where drafting guidelines have been developed and explained "by commenting on each guideline individually and illustrating them with examples" (Preface to the Joint Practical Guide). In 2000 the three EU institutions involved in drafting and legislative process adopted this Guide as the *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions* (hereinafter the *Joint Practical Guide* or JPG). Three years later (in 2003), the *Guide* was published by the Office for Official Publications and it is available now in all the official languages.[664] The Guide is addressed to persons who prepare the first draft (a proposal) of a legislative act, to those who revise and comment a draft, to translators who produce all language versions of drafts and legal acts and to those who negotiate the final text (Robinson 2005: 8). The guidelines are illustrated with example of drafted texts to be avoided and to be preferred. Among rules of good quality drafting, there are also those referring directly to multilingual and autonomous nature of EC law. The rule of this kind is the guideline no 5 that I will focus on subsequently.

The guideline no 5 states that:

> Throughout the process leading to their adoption, draft acts shall be framed in terms and sentence structures which respect the multilingual nature of Community legislation; concepts or terminology specific to any one national legal system are to be used with care.

The first rule of guideline 5 (i.e., drafting with respect to the multilingual nature of Community legislation) is explained in the following paragraphs of this subsection, whereas the second rule ("concepts or terminology specific to any one national legal system are to be used with care") is analysed in subsection 5.4.1.

First, while drafting a Community act of general application, it should be kept in mind that Council Regulation 1/1958 requires legal acts be drawn up in all the official languages (guideline 5.1. of JPG). In practice, it means that legislative proposal or amendment drafted in one language has to be translated into other twenty-two official languages. Therefore, a text should be written in a simple and clear way, since any, even slight, ambiguity or over-complexity "could result in inaccuracies, approximations or real mistranslations in one or

[664] The *Joint Practical Guide* is available at http://europa.eu/eur-lex/en/about/techleg/ guide/pdf/en.pdf, last consulted in May 2008.

more of the other Community languages" (guideline 5.2.). The *Guide* explains what it means to write clearly and simply. In particular, elliptical turns of phrase or short cuts, overly complicated sentences, that comprise several phrases, subordinate clauses or parentheses (interpolated clauses) should be avoided. Moreover, the grammatical relation between the different parts of the sentence has to be clear. Furthermore, jargon, certain vague words and Latin expressions used in a sense other than their generally accepted legal meaning should be also avoided.[665]

The requirement to write in simple, clear and plain language applies also to monolingual national legislation, Community multilingual drafting, however, has to follow some additional demands. Since a legal act of general application is to be expressed in twenty-three official languages, when provisions are drafted, expressions that are particular to one language and have no equivalent in others should not be used. If translation of an expression involves circumlocutions and approximations, it can result in semantic divergence between language versions. Therefore, for instance, legal revisers in the Commission while comparing version of proposal in his/her mother tongue with version in language that proposal has been drafted, they, sometimes, require to change the expression used in 'original' version into a phrase that is translatable into his/her mother tongue.[666] This practice is in accordance with guidelines 5.5.2., which calls authors of the legislative drafts for taking into account comments of translators and revisers and states that in many cases it is better to change the original rather than the translation.

The following subsection examines legislative drafting manuals, guidelines and rules applied in Canada. Afterwards, the Conclusion to this section compares Canadian and EU drafting rules. Some comparative elements and references to EU drafting guidelines are also included in the next subsection.

[665] On clear writing and plain language, see *Fight the Fog – How to write clearly: Guide to writing clearly* and information about the Fight the Fog Campaign of the Translation Service of the European Commission, available at http://ec.europa.eu/translation/writing/clear_writing/fight_the_fog_en.pdf, last consulted in May 2008; see also Cutts and Wagner 2002 and Wagner 2001a. For examples of clear and plain drafting of EU legislation, see redrafting of *Council Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States concerning the safety of toys* (OJ L 187, 16.07.1988, pp. 1-13) proposed by Martin Cutts (2001), Cutts' proposition was then rejected by Legal Service of the Commission; see also plain language guidelines explained on the example of *Directive 2002/2/EC* (OJ L 63, 06.03.2002, pp. 23-25) by Tanner 2004: 223-250, 2006: 150-175.

[666] The data obtained during an interview at Legal Reviser Group of the Commission conducted in 2006.

Subsection 5.2.2.
Guidelines for linguistic and legal quality of drafting of Canadian legislation

Like in the European Union, in Canada several guidelines and manuals for bilingual drafting of federal legislation has been prepared and applied. At the end of 1970s, when co-drafting policy was introduced, the *Groupe de jurilinguistique française* prepared language-related guide on drafting of French version of legislation, i.e., the *Guide fédéral de jurilinguistique législative française* (Labelle 2000). Later on, a manual on drafting English version, i.e., *Legistics*,[667] was developed by an English Legislative Language Committee[668] (Bergeron and Lortie 2007: 106, Labelle 2000). *Legistics* can be compared with the afore-mentioned *English Style Guide* which provides linguistic conventions applicable in EU legislative acts and helps drafters and translators to drawn up English versions of EU legal instruments.

Besides the two manuals, which assist in drafting law in one of the official languages, there are also bilingual manuals which include guidelines regarding drafting of laws in English and French. In particular, one can point out the *Legislation Deskbook* (*Manuel de légistique*) which is focused on legal and technical aspects of legislative drafting and is constantly developed by co-drafters and jurilinguists. In the European Union there is also the guide - namely, the *Interinstitutional style guide - Vade-mecum for editors* - which is regularly updated, supplemented and amended in all official languages of the EU.

Moreover, the *Guide to the Making of Federal Acts and Regulations* (*Lois et règlements, l'essentiel*)[669] should be indicated as another important bilingual document on preparation of bilingual federal laws. This *Guide* explains, in detail, the policy-making and all stages of drafting, printing and enactment of acts and regulations. In particular, the *Guide* clarifies the process of co-drafting, its objectives as well as tasks and role of co-drafters, jurilinguists and legal revisers. The *Guide* is founded on the *Cabinet Directive on Law-*

[667] Available at http://www.justice.gc.ca/fra/min-dept/pub/legis/n28.html, last updated on 07.05.2008.
[668] An English Legislative Language Committee has been renamed as the English Legislative Language Working Group.
[669] Last edition (2nd) published in 2001, Government of Canada - Privy Council Office 2001.

making,[670] which underlines the importance of bilingual and bijural drafting and requires proposed laws to be properly drafted in both official languages and both official language versions to respect both the common law and civil law legal systems. The *Guide* includes as well information on rules provided by *Legislative Drafting Conventions* (pp. 115-119).

Co-drafters follow *Legislative Drafting Conventions*, which are linguistic guidelines, and *Drafting Notes*, which include directives on all aspects related to the drafting of laws (International Cooperation Group 2002: 88-89). The latter is frequently developed and included in the *Legislation Deskbook* and *Federal Regulations Manual*. Both Conventions and Notes are issued by the Deputy Chief Legislative Counsel (*ibidem*). The *Guide to the Making of Federal Acts and Regulations* underlines that *Legislative Drafting Conventions* help to reduce the ambiguity and vagueness of a natural language applied to draft federal legislation (p. 116). However, since ambiguity and vagueness appear in different forms in various languages and, consequently, there are different methods which help to cope with them in different languages, drafting conventions are not always the same for English language and for French one.

Important drafting conventions are prepared by the Uniform Law Conference of Canada. Although their recommendations are expressed as rules, they are just guidelines which can be properly adapted to the circumstances.[671] Conventions have been prepared by the Conference since 1919. However, at the beginning, they were drawn up only in English. The bilingual *Drafting Conventions of the Uniform Law Conference of Canada*,[672] published in 1991, include guidelines which relate to legislative bilingualism. First, the Conventions underline that for quality of both language versions, it is important that legislative drafting is always conducted in two languages, by two – ideally bilingual – drafters, even if it seems that preparation of a version in one language and than translation into another language is easier and faster. The Conventions explain as well how to achieve the compromise between identity in substance of two language versions, correspondence of their structure and their linguistic quality. Identical substance of two language versions should be achieved in a way that both versions are written in a correct and idiomatic language. Consequently, both drafters should make necessary compromises and adjust language versions to each other but not in forcible manner (rule 36). The parallel structure of both language versions promotes identity of

[670] The Directive is included in the *Guide* at pp. 3-17.
[671] See *Report of the Committee Appointed to Prepare Bilingual Legislative Drafting Conventions for the Uniform Law Conference of Canada*, available at http://www.ulcc.ca/en/us/index.cfm?sec=6, last consulted in September 2007.
[672] Available at http://www.ulcc.ca/en/us/index.cfm?sec=6, last consulted in September 2007.

substance and therefore the structure of a bilingual act should be the same in both versions (rule 37(1)). However, some differences are acceptable. For instance, the corresponding English and French provisions do not have to use the same syntax (rule 37(2)). Moreover, versions of a subsection (or of a section that does not encompass any subsections) can have a different number of sentences. It is also acceptable that only one language version includes definitions. This difference result from the fact that in one language the term can be unequivocal and in another language the equivalent term can have more than one meaning. Accordingly, the latter requires a definition. The *Drafting Conventions* provide as well rules on plain and clear drafting. In particular, it is underlined that sentences should be terse, simple and "as short as clarity and precision will allow" (Section 22(3); see also *Legistics* (Sentence Structure: Complexity and Organization)).

As explained in section 4.2., with regard to Canadian legislative drafting, this thesis concentrates mainly on drafting federal government public acts. Therefore, guidelines pertaining to regulatory drafting and process are solely indicated here. Besides the *Guide to the Making of Federal Acts and Regulations* which in its Third Part (titled 'Making Regulations') provides information how regulations are drafted, two bilingual manuals should be mentioned, firstly the *Guide to the Regulatory Process*[673] and the *Federal Regulations Manual*[674].

The conclusion to this section summerizes common rules and principles applied for the purposes of multilingual legislative drafting in Canada and the European Union.

[673] Privy Council Office (Regulatory Affairs and Orders in Council Secretariat) available at http://www.pco-bcp.gc.ca/raoicssrdc/default.asp?Language=E&Page=Publications&Sub=RegulatoryProcessGuide, last consulted in September 2007.
[674] Published in 1998 by the Department of Justice (Regulations Section).

Conclusion to section 5.2.

One of the presumptions of the principle of equal authenticity assumes that all authentic language versions of a legal act have the same meaning. If all authentic language versions actually render the same meaning, there is no reason to disregard one of l versions because of discrepancy. Therefore, it is important to develop methods and drafting tools which can help to achieve the full equivalence between all authentic language versions. Both Canadian and EU drafting guidelines and manuals contain methods and rules which standarize drafting techniques, legal language and terminology as well as a form and structure of legal instruments, and facilitate to draft coherent and uniform law and to drawn up consistent and equivalent language versions of a legal act.

First, coherent legal drafting is easier to achieve when legal acts are written in plain language. Therefore Canadian and EU guidelines emphasize that law should be drafted in a simple way and short sentences should be drawn up.[675] Moreover, the same structure and organization of a legal act in all languages promote consistency between language versions. Therefore drafting manuals indicate parts and elements of the act and explain what each part should contain.[676] The formulas always used in legal instruments are also listed. Guidelines clarify as well to what extent differences in syntax, number of sentences in one section or article are acceptable. In Canada more differences are allowed than in the European Union. Taking into consideration the number of official languages of the EU, any divergences between language versions as regards form or structure, even at the level of a sentence, should be allowed with great caution.

Moreover, in order to assure coherence and consistency of legal acts in all languages, in Canada and in the European Union, drafting guides indicate reference materials, such as dictionaries, glossaries, terminological databases, handbooks on grammar, style, or legal writing and expressions, guides on legislative drafting or on institutions. Accordingly, in case

[675] For Canada, see, e.g., the *Drafting Conventions of the Uniform Law Conference of Canada* and *Legistics*; for the EU, see, e.g., the *Joint Practical Guide* and the Fight the Fog Campaign of the Translation Service of the European Commission.
[676] For Canada, see, e.g., *Drafting Conventions of the Uniform Law Conference of Canada*; for the EU, see, e.g., a *Commission Manual on Legislative Drafting* and the *Manual of precedents for acts established within the Council of the European Union*.

of any doubts, drafters, translators, lawyer linguists, legal revisers and editors look up and search for necessary information in the same materials. As regards Canada, reference materials are indicated in *Legistics*, whereas for the European Union, reference works are listed in the *Interinstitutional style guide - Vade-mecum for editors* (Section2).

The Canadian and EU manuals and guidelines underline also that law should be drafted in a way that respects Canadian legislative bilingualism and EU legislative multilingualism, correspondingly. It means that a drafter should take into consideration that a version that s/he is drafting is not the only one language version of a legal act and that sometimes it is necessary to adjust language versions to each other so all of them can render the same meaning in correct and idiomatic language.[677]

To sum up, the above-study of drafting guidelines and manuals applied in Canada and in the European Union results in indicating common rules and principles of drafting of Canadian and EU law expressed in more than one authentic language. According to these guidelines, in Canada and in the European Union, all language versions should be drafted in a simple, clear and coherent language, which assures the full equivalence between them. Moreover, as regards Canada, drafting should respect bilingual and bijural character of federal law, whereas concerning the European Union, drafting should take into consideration multilingual and autonomous nature of supranational law. The application of these rules should result in producing in fact equally authentic language versions of a legal act. Next section explains whether this equality can be achieved during the drafting process and which drafting techniques fulfil this objective, whereas Section 5.4. concentrates on drafting methods applied to draft EU autonomous law and Canadian bijural law.

[677] For Canada, see, e.g., Rule 36 of the *Drafting Conventions of the Uniform Law Conference of Canada*; for the EU, see, e.g., guideline 5 of the Joint Practical Guide.

SECTION 5.3.
Pure co-drafting in Canada and co-drafting elements in EU drafting process

Introduction

This section aims at explaining whether and how equality between language versions of a legal act can be assured and strengthened during the drafting process. This objective is achieved in Canada where at federal level and in New Brunswick co-drafting method is applied. Since this method is assumed to be an ideal solution in this part the analysis starts from examination of situation observed in Canada - hence, differently than in other chapters and sections, which always start with investigation of issues related to the European Union.

The co-drafting – theoretically and generally analysed and compared with translation in chapter 3 of this thesis – has not been always applied in Canada. At the beginning, law was drafted in English and then translated into French. In order to avoid drawbacks and shortcomings of legislative drafting by means of translation, the co-drafting method has been developed. At the outset, the subsection on legislative drafting in Canada provides a short overview on development of Canadian drafting methods. Then reasons for co-drafting are explained and the co-drafting process is investigated in detail.

It is obvious that a pure co-drafting method based on simultaneous drawing up of all language versions of a legal act cannot be applied for drafting of EU law in twenty-three languages. However, it is also important in drafting of EU law to guarantee equality between all language versions. The second subsection investigates what methods are or can be applied for drafting of EU law which can fulfil the objective of equality between language versions of a legal act already in drafting process. In other words, the objective of this subsection is a search for co-drafting elements in drawing up of language versions of EU law.

Subsection 5.3.1.
Co-drafting of federal legislation in Canada

§1. Bilingual legislative drafting at the federal level – from translation to co-drafting

Although the history of Canadian legislative bilingualism had already started in 1867, when Section 133 of the *Constitution Act, 1867* required laws of the Parliament be printed and published in English and French,[678] a co-drafting method - that is the main subject of this subsection – has been applied not longer than for thirty years.

The literal wording of Section 133 could suggest that Canadian legal acts should be only printed and published in two languages. Nowadays, it is evident that Canadian legislative bilingualism means that Canadian laws are not only printed and published in English and French but also they have to be made and enacted in the two official languages. The requirement to draft, enact, print and publish Canadian laws in English and French results from Section 133 of the Constitution Act, 1867 pursuant to the interpretation of the Supreme Court of Canada expressed in *Blaikie* v. *Quebec (Attorney General)*, 1979 and confirmed in *Re Manitoba Language Right*s, 1985 and from Section 13 of the *Official Language Act, 1988*.[679]

From 1867 to the late 1960s this constitutional requirement of drafting, enacting, printing and publishing of Canadian legal acts in the two official languages has been fulfilled by drawing up an act in English and then translating it into French. This method did not assure the equality of two official language versions. Not only because it was possible to distinguish the original (English version) from the translation (French version), but also because of a very poor quality of French versions of legal acts. This problem has been formally stated for the first time in the Studies of the Royal Commission on Bilingualism and

[678] For details on Section 133 of the *Constitution Act, 1876* (30-31 Vict., c. 3 (U.K.)) and its interpretation by the Canadian Courts, see subsection 1.3.1.; for information on laws which should be drafted, enacted, printed and published in English and French, see subsection 4.2.2.
[679] For details on this requirement, on the judicial interpretation of Section 133 and on Section 13 of the *Official Language Act, 1988*, see this thesis, subsection 1.3.1., paragraph 1.

Biculturalism[680] (Bergeron and Lortie 2007: 93). Translators preparing French versions usually were not trained in either legal language or legislative drafting, since all courses on legislative drafting were conducted only in English. In order to convey the same legal message in a French version, they literally, even slavishly, translated an English one (Beaupré 1986: 179). It resulted in terminological, syntactical and lexicographical calques in French versions. As examples of Anglicisms the following terms can be indicated: *mérite* (from English term 'merits') instead of *fond*, *évidence* (from English 'evidence') instead of *preuve*, *acte* instead of *loi* (Beaudoin 2006). Since French translators did not take into consideration intricacies of French language and did not use this language in idiomatic way, very often French language versions were almost incomprehensible to French-speaking persons (Bergeron and Lortie 2007: 94).

Furthermore, besides bad quality of French versions, mainly due to a strong influence of English language, legal acts did not reflect bijural character of Canadian legal system.[681] It resulted from the fact, that drafters of English and translators of French versions lacked terminology of the civil law in English and of common law in French (Levert 2000: 129). Federal law drafted in English was mainly based on common law tradition. Accordingly, a slavish translation into French reflected as well common law. As a result, at this federal law was unijural. Hence, as rightly stated by Levert "[t]he requirements of bilingualism were met, at least formally, but legislative bijuralism was, so to speak, non-existent" (2000: 129).

In the 1960s, language issues have been intensified, among others, because of the Quiet Revolution in Quebec that postulated bilingualism in various domains of life and for protection and preservation of French language.[682] As a consequence, in 1969 Parliament enacted the *Official Languages Act, 1969*,[683] which recognised English and French as the official languages of Canada, and as well equality between both languages, stating explicitly that English and French have "equality of status and equal rights and privileges". Moreover, the *Official Languages Act*, *1969* established the Office of the Commissioner of Official Languages responsible for protection of language rights and promotion of the equality of status and use of English and French in Canada.[684] In 1976, the Commissioner of Official

[680] The Law of Languages in Canada, Studies of the Royal Commission on Bilingualism and Biculturalism, Study Number 10, 1971.
[681] On Canadian bijuralism, see this thesis, section 2.2.; on bijural drafting techniques, see this thesis, subsection 5.4.2.
[682] For details on language issues concerned during the Quiet Revolution, see Bélanger 2000.
[683] S.C. 1968-1969, c. 54.
[684] More information on tasks and roles of the Commissioner can be found at the website of the Office of the Commissioner of Official Languages, available at http://www.ocol-clo.gc.ca/, last visited December 2006.

Languages - in the annual report - analysed reasons for poor quality of French versions of legal acts.[685] This report was the outset for a search for a better drafting method.

The study of the Commissioner revealed the reasons explaining why bills are always drafted in English, although in the Department of Justice French speaking drafters were also employed. First, all documents (like drafting instructions) on which drafting of a bill is based were submitted only in English. Moreover, instructing officers and other officials from departments sponsoring a bill and providing drafting instructions usually spoke only English. Accordingly, it was easier to draft a bill first in English. As a result, even those drafters, for whom French was their mother tongue, preferred to draft in English. Furthermore, there were no manuals on French legislative drafting either database of French legal terminology, and as mentioned above, all courses on legislative drafting were offered only in English.[686]

In order to improve the situation, the Legislative Section of the Department of Justice proposed several bilingual drafting methods which can guarantee equality between the language versions, and the high quality of both English and French language versions and the reflection of bijuralism in the two languages versions. These methods included co-drafting, alternate drafting, shared drafting and double entry drafting. All of them are described in this thesis, in section 3.3. Moreover, it was proposed that drafter-translator teams can be established which would assure constant contact and cooperation between a drafter and assigned to him/her a legal translator (Bergeron and Lortie 2007: 101). The afore-mentioned methods were applied and tested. Drafting both language versions by one person (a double-entry drafting) was firstly abandoned, since it was not easy to find persons not only ideally bilingual but also trained in both common law and civil law traditions and in legislative drafting techniques. Hence, a task to draft bilingual and bijural bills by one person was too demanding. Co-drafting has been chosen as an optimal method. However, for several years alternate drafting and shared drafting methods were used together with a co-drafting method until enough French-speaking and English speaking co-drafters were recruited (Bergeron and Lortie 2007: 102).

Co-drafting applied constantly since 1978 has undergone some modification and improvements and is still used in practice (Levert 2000: 129).[687] This method was pre-evaluated in 1996 by the Legislative Services Branch Committee on Drafting and Language

[685] Office of the Commissioner of Official Languages, Special Study: Department of Justice, December 1976.
[686] For more details on reasons for poor quality of French versions of legal acts, see Bergeron and Lortie 2007: 96-99.
[687] On the development of the co-drafting method, see Labelle 2000.

Services and considered as the most efficient method of guaranteeing high quality and equality of language versions of a legal act (Bergeron and Lortie 2007: 102-103).

When co-drafting is applied, two language versions are drawn up simultaneously by two drafters: an Anglophone one usually trained in the common law, and a Francophone one usually specialised in the civil law. Each of them is responsible for his or her mother tongue version. The further details on a co-drafting method as it is used nowadays at the federal level are provided in the third paragraph of this subsection. It should be noted, however, that this method is applied only to governmental public bills (acts) and to regulations (not in all cases). A co-drafting method is also used at provincial level, namely, in officially bilingual New Brunswick (see Keating 1995: 203-217, Labelle 2000).

Language versions of legal acts co-drafted since the late 1970s are both of high quality and reflect common law and civil law traditions. Language versions (especially French ones) of federal legislation, prepared before co-drafting method came into use, are corrected due to revisions which are conducted in every 15 years. During these revisions, federal acts and regulations which have been amended are consolidated or renumbered. During the revision of 1985, jurilinguists and drafters corrected to large extent French versions of federal legal acts. However, as a result, federal law became semi-bijural instead of fully bijural because after the revision French version of laws reflected civil law whereas English reflected common law tradition. In the late 1990s, harmonization of federal law with civil law of Quebec, which is still continued, assures legislative bijuralism.[688]

There are, however, acts that have not been co-drafted and have not been corrected either. For instance, as regards the *Criminal Code of Canada*,[689] instead of creating a new act, new provisions are added to the *Code*. Consequently, provisions prepared by means of co-drafting are well drafted in English and French, whereas those prepared by means of translation can be of poor quality, especially as regards French version. Hence, its quality is unequal throughout the *Code*.[690]

[688] On Canadian bijuralism, see this thesis, section 2.2.; on bijural drafting techniques, see this thesis, subsection 5.4.2.
[689] *An Act respecting the criminal law*, R.S.C. 1985, c. C-46.
[690] Information obtained during an interview conducted in the Legislative Services Branch at the Department of Justice, Canada.

§2. Reason for a co-drafting method - vulnerable position of French language

Before the co-drafting process is described in detail, the objectives and tasks of a co-drafting method as well as reasons for the development of that method should be explained. The main objective of a co-drafting method is a guarantee of equality between the two authentic language versions of a drafted act. As explained above, if it is not possible to distinguish the original and the translation during the drafting process, hence two language versions can be regarded as originals, they are equal not only *de iure* but also *de facto*. Moreover, in order to assure that during interpretation and application of a bilingual legal act, two language versions are concerned, they both should convey the same meaning. The aim of that method is also to reassure that while drafting two language versions, bijural character of Canadian legal system and the spirits of both official languages are taken into account.

Those objectives and tasks are fulfilled in the optimal way through co-drafting. Since both versions are drafted simultaneously, no language version serves as a source text for another one. Consequently, they both are considered originals and none can prevail over the other. Moreover, participation of Anglophone and Francophone drafters specialised in the common and civil law assures high linguistic quality of drafting and a respect for both legal systems of Canada.

As explained in the previous paragraph, the co-drafting method assuring the equality between language versions resulted from a very poor quality of French versions of legal acts and dominant position of English versions. It should be, however, kept in mind that although nowadays the equality between both language versions is granted and the quality of French versions has been considerably improved, French language is still vulnerable. It results from the proportion between knowledge of English and of French in Canadian community. In 2001, rate of English-French bilingualism was 17,7% (5,231,575) for Canada, the highest in French province Quebec – 40,8% and in the only officially bilingual province - New Brunswick - 34,2%.[691] On the other hand, 67.5% of population (20,014,645 persons) knows

[691] Language statistic data come from website of Statistics Canada, Language Composition of Canada: Highlight Tables, 2001 Census available at http://www12.statcan.ca/english/census01/products/highlight/__Language Composition/Index.cfm?Lang=E. The census provides a statistical portrait of Canada and its people. The most recent census was on May 16, 2006. Language topic will be released in 2007 (Release no. 4: Tuesday, December 4, 2007).

only English, whereas 13.3% (3,946,525 persons) knows only French.[692] The statistics demonstrates that the Canadian community is mostly English speaking. It is reflected also in Canadian public service. Although many persons employed in public service are bilingual, they tend to use their mother tongue which is - for majority of them – English. Consequently, English is usually used as a working language. The dominant position of English is observable during pre-legislative and legislative process. The truly bilingual work takes place during drafting in the Legislative Services Branch of the Department of Justice.

As far as public governmental acts are concerned, at the pre-legislative stage before the drafting process starts, proposal for a bill[693] is prepared in the sponsoring Ministry. It is usually long and complex process during which most of discussions are usually held in English, documents are written as well in English, and then French translation is provided if necessary. Drafting instructions prepared during a proposal stage are the basis for the drafting of a bill. Therefore, they must be submitted in the two official languages to Legislative Services Branch responsible for drafting of a bill. However, drafting instructions usually are drawn up in English and then translated into French. Although drafting of a bill is based on the instructions, co-drafters, however, are not obliged to follow terms or expressions used in the instructions, and frequently they do not. But since a version of instructions, which has been drafted in English, is usually clearer, there are more difficulties in drafting of a French version of a bill. The discussions are held and documents are prepared hardly ever in French during policy proposal stage. A rare example of a bill that has been discussed in French and then the drafting of its English version has caused problems is the *Immigration and Refugee Protection Act, 2001*.[694]

Because of difficulties in drafting of a French version of a bill, which result from late development of French Canadian legal language at the federal level and from weak position of French language, French Jurilinguistics Group have been established in the Department of Justice in 1979, whereas the first Anglophone jurilinguist has been employed in 1998. At present, there are six Francophone jurilinguists and only one full-time and one part-time Anglophone jurilinguist working in the Legislative Services Branch.[695]

---

[692] On the statistic source, see footnote above.
[693] The term 'bill' is understood as a project of an act; see this chapter, section 3.1., paragraph 3, point B.
[694] The *Immigration and Refugee Protection Act*, Bill C-11, S.C. 2001, c. 27. Information obtained during an interview conducted in the Legislative Services Branch at the Department of Justice, Canada.
[695] Information obtained during an interview conducted in the Legislative Services Branch at the Department of Justice, Canada.

As far as legislative stage is concerned, constitutional rules and case law require the use of both official languages in the Parliament proceedings and publications.[696] However, majority of Members of Parliament is English speaking and this influences the use of languages in practice. The vulnerable position of French language is illustrated well by the following example given by Senator Grimard (2000) in the reference to bilingualism in the National Capital:

> (…) there is an unofficial mathematical formula: if five francophones are talking together in French and one anglophone happens by, the entire group will start speaking English. The majority is no longer in the majority. It bows to the minority. Sometimes, the opposite effect occurs: it is French that prevails. But that is a vastly rarer phenomenon, usually shorter in duration, (…)

Everybody has the right to use the language of his or her choice, and simultaneous interpretation of all Parliamentary speeches is provided, but because most Members of the Parliament know English and because "Parliamentary speeches have much less impact when experienced through a headset" (Grimard 2002), Francophone Members of the Parliament choose often English instead of French. Moreover, as regards preparation of official publication usually less attention is paid to French than to English version (*ibidem*). Hence, in oral and written communication usually English prevails over French.

In this context, the role of truly bilingual co-drafting cannot be overestimated. The next paragraph focuses on two following issues. Firstly, it is explained how, nowadays, both languages are taken into consideration at each step of the drafting process. Secondly, the paragraph examines how the equality of authentic language versions can be assured during drafting process.

[696] For details on bilingual character of the Parliament, see this thesis, section 5.1.2.

§3. Drafting of bilingual federal legislation – co-drafting in practice

The main purpose of this paragraph is to demonstrate how equality between two language versions of a bill and a high quality of them is achieved through a co-drafting process. Nowadays all governmental public bills are co-drafted. Therefore, the main concern is about the drafting of this kind of legislative instrument. Moreover, some remarks are provided on regulations which are mostly co-drafted as well. Furthermore, some observations on methods applied in drafting of private Members' bills are also included. The following stages important for drafting can be indicated: policy proposal stage where instructions which are the basis for drafting are prepared, co-drafting of two language versions of a bill, revision of a bilingual bill. It should be noted that co-drafting pertains not only to drafting of a new bill but also to amendments proposed to the bill by the Parliament and to amending the act that has been already adopted by the Parliament. This paragraph concentrates mainly on the co-drafting of a new bill and of parliamentary amendments to it. Accordingly, the focus is on a pre-parliamentary phase.[697]

A. Policy proposal stage

Government public bill

Before a draft bill is introduced in the Parliament, the government (a sponsoring Minister) submits to the Cabinet the policy proposal that requires legislation. The appropriate Cabinet committee considers the proposal and makes recommendations to the Cabinet. It is a crucial point of the process, because as long as the Cabinet does not approve the proposal and does not issue the decision authorising the drafting of a bill, the process of drafting cannot be commenced. In order to obtain policy approval and authority to draft the bill, a sponsoring Minister submits - to the Cabinet - a Memorandum (called Memorandum to Cabinet (MC)),[698] that includes an annex with drafting instructions. These instructions are very important for the co-drafting process, since they provide the framework for drafting the bill. The responsibility for preparing the instructions lies with the instructing officers. The instructing officers, who were preparing instructions for the MC, are also responsible for providing drafting instructions when the bill is being drafted by co-drafters. This ensures continuity in the

[697] For details on legislative procedure and parliamentary phase, see subsection 5.1.2.
[698] The MC is prepared on the basis of a special guide, i.e., *Memoranda to Cabinet: A Drafter's Guide* published by the Privy Council Office. It is available at: http//:www.pco-bcp.gc.ca/default.asp?Language=E&Page=publications&S=mc&Doc=mc_e.htm, last consulted in December 2007.

drafting process. Moreover, legal advisors from the sponsoring department participate in the preparation of drafting instructions that are to be included in the MC. They give advice to instructing officers on general principles and policies that can influence the bill that is to be drafted. Legal advisors also give essential information on requirements (e.g., relating to the time of procedures) of submission of the MC. Finally, they verify legal aspects of drafting instructions and check whether the chosen legislative measure is adequate to achieve the objectives set by the department. Furthermore, although the main role of legislative drafters is to prepare a draft of the bill, often they also participate in the preparation of the MC. In order to avoid problems during the drafting process, instructing officers ask legislative drafters for advice on formulation of the drafting instructions. As soon as the MC and drafting instructions are ready, they are submitted to the Cabinet.

The drafting instructions, which are the basis for drafting a bill, should be submitted to the co-drafters in the Legislative Services Branch in the two languages. As explained above, usually instructions are written in English – as English as the main language of debates on the policy proposal – and then translated into French. The instructing officers, who prepared instructions, are present when a bill is drafted by co-drafters in order to provide additional oral instructions.

When the Cabinet approves the Memorandum, it issues a Committee Report. If the latter is ratified, a Record of Decision is enacted and sent to all ministers and to the Legislative Services Branch of the Department of Justice which prepares a draft bill in two languages. As soon as the responsible Minister approves the bill draft, it is submitted to the Cabinet for approval. After the approval, the draft is introduced in the Parliament. The point B describes how a bill is co-drafted in the Legislative Services Branch.

Regulation

Unlike policy stage which initiate the drafting of a government public bill, regulations are initiated in a much less formal way. To start the drafting of a regulation, it is enough if the Department of the Departmental Legal Services Unit submits a written request to the manager of the Headquarters Regulations Section or to the proper Drafting Services Section (International Cooperation Group 2002: 43).

Private Member's Bill

Private Members' Bills are initiated by a Member of a Parliament on his or her written request (International Cooperation Group 2002: 43).

B. **Co-drafting**

Government public bill

Although the legislative process takes place mainly in the Houses of the Parliament, legislative drafting is centralised in the Department of Justice and is carried out by the Legislative Services Branch (Covacs 1983). It is in the Legislative Services Branch that bills - to be introduced in the Parliament - are prepared in the two official languages. Till the late 1970s, a draft bill was usually prepared by the Legislation Section in English and then literally translated into French by a service outside the Department of Justice. Afterwards it was not even revised or reread by a French-speaking lawyer. The situation has been changed since 1979, when the French Jurilinguistics Group (FJG) was created in the Department of Justice.[699]

The drafting process can begin when the Cabinet gives the approval to the policy proposal and authorise the drafting of the bill. The Cabinet approval has a form of a Record of Decision which includes drafting instructions that have been prepared for the Memorandum to Cabinet. The instructions are the basis on which the bill will be drafted in the Legislative Services Branch of the Department of Justice. There are no particular requirements for the form of instructions. They should be clear and as simple as possible. Sometimes, instructions are very detailed, especially for technical bills. But they also can be very general; for instance, drafters are requested to give effect to a court decision (International Cooperation Group 2002: 46). It is important that instructions do not have a form of a bill. During the drafting stage, instructing officers can provide more detailed instructions.

Although there is a formal requirement that the drafting should start after a policy proposal is approved by the Cabinet, exceptionally, the drafting can begin before this approval. It is denoted as 'speculative drafting' or as a 'pre-authorisation drafting'. Drafting without Cabinet authority must be motivated by the priorities of the Government and approved by the Leader of the Government in the House of Commons. In case of speculative drafting, drafters in the Department of Justice receive 'pre-drafting instructions' and start preparing a bill before a policy proposal is approved by the Cabinet.[700]

---

[699] For details on development of co-drafting method and on drafting of French version before co-drafting, see this thesis, subsection 5.3.1., paragraph 2, and Bergeron and Lortie 2007: 83-118.

[700] Information obtained during an interview held in the Legislative Services Branch at the Department of Justice, Canada and from *National Survey of Legislative Drafting Services* (International Cooperation Group 2002: 44).

If the normal procedure takes place, a Record of Decision with drafting instructions is sent to the Legislative Services Branch of the Department of Justice. Then two drafters are appointed by the Director of the Legislative Services Branch.[701] They have to be bilingual and trained in law (civil and common law). An Anglophone drafter is responsible for the English version and a Francophone one for the French version. Moreover, one of them coordinates and organises their work. But it does not mean that she or he has more responsibility for the quality of drafting, since each drafter is responsible for his or her language version. Both drafters cooperate and work together very closely. Their work differs depending on whether drafters work on a new bill or a bill that is to be amended. In the last case, co-drafters prepare only amendments proposed in the Parliament. In the case of a new act, co-drafters, at the outset, decide about a structure of a bill; in particular, how a bill should be divided into sections and paragraphs. If co-drafters predict difficulties as regards the formulation of a bill in one or both languages, they can ask jurilinguists to make relevant research, especially in order to prepare terminology, before the drafting process begins. Although jurilinguists are not present when a bill is drafted, they help the co-drafters in case of any linguistic difficulties. If a new bill is drafted, sometimes drafters or jurilinguists look at English and French legislation of other countries or international organizations in order to find proper terminology (e.g., when a very technical copyright act was being drafted, drafters of the French version investigated Belgian legislation and EU legislation on copyright, in order to find the proper terminology[702]).

Although jurilinguists assist drafters, they are not present when a bill is drafted. The only persons who have the right to be present during the actual drafting of a bill are instructing officers of the sponsoring department who provide detailed instructions on drafting. Usually there are two instructing officers, one instructs on the English version and the other – on French version (International Cooperation Group 2002: 39).[703] The drafting process takes place in special rooms where co-drafters sit side-by-side in front of computers and where there are also two additional screens (without keyboards) for instructing officers. Co-drafters - supported by verbal instructions from officers – discuss, first, what should be included in the provision, and then each co-drafter writes a piece of text in the language for he or she is responsible. This text appears in both languages on the screens and is visible to both

[701] If a bill is very complicated and long, exceptionally, more than one team of two drafters can be assigned.
[702] Information obtained during an interview held in the Legislative Services Branch at the Department of Justice, Canada.
[703] For details on the participation of instructing officers in the drafting process, see International Cooperation Group 2002: 38-39.

co-drafters and officers. The text is then discussed and any mistakes, discrepancies or vagueness are corrected. This method of work – as noted by Katharine MacCormick, Chief Legislative Counsel and head of the Branch – "can be very demanding and fairly stressful, but it does accomplish the job, often when there are extremely short deadlines" (Bindman, 2005). Sometimes, if the provision is very complicated, it can be first drafted in one language and be a basis for drafting in the second language. There is a direct interaction between co-drafters and instructing officers. However, co-drafters, not officers, are responsible for drafting the bill and for its quality. Therefore, co-drafters can refuse to introduce suggestions made by officers on terminology and expressions, structure of the act or choice of legal instruments. Moreover, officials from the sponsoring department other than instructing officers participate sometimes in the drafting meetings. The meetings are held in English and French. The instructing officers submit instructions, comments and other documentation in both official languages. Drafters during the meetings use the language of their choice. After every meeting drafters consult each other on the best way of drafting. They also consult jurilinguists on the linguistic issues.

Regulation

Most regulations are co-drafted in the Legislative Services Branch. Since these regulations that are co-drafted undergo the same process described above as governmental public bills, it suffices to say that those regulations which are prepared by means of translation have to be revised by jurilinguists of the Legislative Services Branch.[704] Such a revision assures a good quality of drafting in the two languages, despite the method of drafting.

Private Member's Bill

If a bill is proposed by a Member of Parliament who is not in the Cabinet, the Government is not involved in preparing this bill. A bill sponsored by a Member of the House of Commons is usually drafted in the Legislative Counsel of the House of Commons. However, when a bill is at the committee stage (second reading in the Parliament), drafters, jurilinguists and legislative revisers in the Department of Justice can be asked for help in drafting or reviewing motions in order to amend them. However, as a rule, amendments are not revised by jurilinguists of the Legislative Services Branch. A bill sponsored by a Member

[704] Information obtained during an interview conducted in the Legislative Services Branch at the Department of Justice, Canada.

of Senate is, in general, drafted by drafting services of the Law Clerk of Senate. All private Members' bills have to be drafted in French and English. Since the co-drafting method is not applied, usually translation is involved in the process of drafting in two languages. There are units for translators for the House of Common and one for the Senate.

C. Revision

Government public bill

When the draft of the bill is ready, the revision stage begins and a draft is sent to jurilinguists[705] and legislative revisers[706]. Jurilinguists are experts in a legal language, and especially in language of law.[707] Usually they are trained translators or linguists and sometimes they also have a legal background. However, jurilinguists usually are not lawyers, since there is the risk that for a lawyer legal substance will be more important than linguistic correctness and form, and readability of a bill. Nowadays there are Francophone (six persons) and Anglophone jurilinguists (only 2 persons) in the Jurilinguistic Services Unit. They have to be bilingual, since they are obliged to read both language versions in order to check whether they convey the same meaning. Jurilinguists correct all contradictions and discrepancies between language versions in order to ensure the convergence between them. Apart from that, they verify the quality of drafting as regards style, terminology and phraseology in both languages. Jurilinguists correct also grammatical and spelling mistakes. They can also suggest reorganization of a bill if it can improve its readability. Sometimes an Anglophone jurilinguist can suggest changes in the French text and *vice versa*.

A bill is also verified by legislative revisers[708] who consider, not only language issues (like clarity and consistency of language), but also the standard wording of particular expressions, the conformity of the draft with precedents and citations, with rules and standards on drafting. They also take into consideration correctness of cross-references, historical and marginal notes. They examine as well whether there are no rewritings, whether there is consistency within a text and if a text is logical. Revisers are also responsible for the management of the printing of the bill. When this revision stage is finished, the drafted bill is

[705] The Jurilinguistic Services Unit was set up in 1998. However, first jurilinguists were employed, when co-drafting was introduced, i.e., in 70s.
[706] The Legislative Revising Office is a unit of the Legislative Services Branch of the Department of Justice.
[707] For the explanation how the concepts 'legal language' and 'language of law' are used in this thesis, see section 3.1.
[708] They used to be called editors.

printed. Usually there are a few series of page proofs of the bill. In order to ensure quality control, the printed draft is revised again by drafters, jurilinguists, and revisers.

There are several persons involved in drafting a bill. Formally, responsibility for drafting quality falls on co-drafters who must sign the bill that they have drafted. In practice, however, one can speak about shared responsibility between drafters, jurilingusist and revisers. Although co-drafters are free to refuse suggestions made by jurilinguists, they usually follow them. If co-drafters want to reject a correction proposed by jurilinguists, they usually provide a justification and look for a compromise with jurilinguists. Moreover, co-drafters must sometimes convince instructing officers of the appropriateness of their solutions, then jurilinguist support often drafters with proper arguments. During the co-drafting process, there is constant cooperation and negotiations between jurilinguists, drafters, legal revisers and instructing officers. Although this method is very time-consuming, it gives very good results in practice.

Regulation

Regardless of the method used to draft regulations (co-drafting or translation), regulations are always revised by jurilinguists of the Legislative Services Branch.

Subsection 5.3.2.
Drafting of equally authentic language versions of EU multilingual law

Due to a number and complexity of forms of EU legal instruments and legislative procedures, it is necessary to clarify to which procedures and legal instruments the following analysis of multilingual legislative drafting refers. Section 4.1., where the overview of treaties, international agreements, secondary legislation and their language has been presented, explains that regulations which are directly applied in Member States, and directives which are instruments specific to EU legal system are also drafted and enacted in all official language and because of their multilingualism are subject of the following analysis. Moreover, as explained in section 5.1. the examination of legislative drafting of EU law is based on co-decision which is a procedure not only typical for the European Union but also the most often applied to adopted legal acts like regulations and directives

§ 1. Drafting and revision of a legislative proposal in the Commission

Drafting of a proposal in one language

A legislative proposal for a regulation or a directive is prepared in the Directorate-General (DG) responsible for the sector concerned. To be precise, it is drafted by the Commission's experts in consultation with a group of national experts nominated by the national governments who are usually civil servants but also academics (Hartley 2003: 41). Those experts are specialised at the subject of drafted legislation. Consequently, the first draft of proposal is not written by lawyers or specialists at drafting but by technical experts like economist, tax specialists, veterinarians, pharmacists and others depending on subject matter of the proposal (Frame 2005: 21; Robinson 2005: 4). A draft of a proposal is prepared through the process of extensive consultation that can be conducted with not only experts from Member States but also with international or non-governmental organizations. Moreover, it is also possible to consult services of the Commission. For instance, the Directorate General, which prepares a proposal, consults sometimes a team of editors in the Translation Directorate-General. Then the editors can rewrite a draft on the linguistic basis. A proposal is usually drafted in one language, namely or in English or in French, which are *de facto* working languages[709] of the Commission. The choice between English and French depends on the language used in the DG in question. Consequently, a proposal is very often prepared by drafters not in their mother tongue.

It can happen that a proposal is drafted in two languages, i.e., some parts are written in English and some in French depending who prepared which part. But it never happens that a proposal is prepared in two languages simultaneously, as it takes place in case of Canadian co-drafting, and two parallel language versions exist before they are submitted for translation. The only exception can be observed during written procedure, when a proposal must be submitted in at least three *de facto* working languages, i.e., in English, French and German.[710] Then the Directorate General prepares a proposal in the three languages but not necessarily simultaneously by means of co-drafting.

[709] In the Commission English, French and German are indicated as *de facto* working languages ('procedural languages' in the terminology of the Commission); on the concept of 'EU working languages and '*de facto* working languages', see this thesis, subsection 1.2.4., § 3, point B.
[710] See Article 12 of the Rules of Procedure of the Commission (OJ L 308 of 08.12.2000).

Inter-service consultation – legal and linguistic revision of a proposal

When the preliminary draft of a proposal is prepared, it is thoroughly examined in the inter-service consultation process. In order to conduct the examination, a proposal drawn up in one language by the competent Directorate General is sent to the other Directorates General to ensure that all aspects of the regulated matters are taken into consideration, to the Secretariat General to verify, among other things, whether the principle of subsidiarity is respected, and to the Legal Service to scrutinise legal and linguistic aspects of a proposal. Accordingly, as noted by Dragone (2006: 100), there is no centralised service responsible for quality of legislation. This paragraph focuses on examination of a proposal conducted by the Legal Service, which participates in all inter-service consultations. However, of over ten thousand consultations a year only two thousands are related to legislative acts.[711] Each of legislative proposals has to be revised by lawyers and legal revisers of the Commission Legal Service. Lawyers specialised in the sector concerned scrutinise such things as whether the proposal is in accordance with the law, i.e., with the Treaties and basic principles of Community law, and coherent with other legal instruments in the field (Robinson 2005: 5). On the other hand, the Legal Revisers Group is responsible for the quality of drafting of Community legislation. Legal revisers are lawyers with linguistic qualification.[712] They examine a proposal for its grammatical and stylistic correctness, and whether the draft follows the rules on form and presentation established, especially, in the *Joint Practical Guide* and the *Interinstitutional style guide - Vade-mecum for editors* issued by the Office for Official Publications of the European Communities as well as the Commission legislative drafting guide, i.e. a *Manual of Procedures*.[713] However, such revision is not always made by a native speaker of language the draft has been written At this preliminary stage of drafting, when a proposal is written only in one language, revisers are able to suggest many, sometimes essential, changes. They even can suggest different form of a legal act (for instance, directive instead of regulation).[714] The draft can be also completely rewritten, but doing so, legal

[711] The data obtained during an interview at Legal Reviser Group of the Commission conducted in 2006.
[712] For details on the Legal Reviser Group, consult the Commission website at http://ec.europa.eu/comm/dgs/legal_service/jurrev_en.htm.
[713] For details on EU drafting guidelines and manuals, see this thesis, subsection 5.2.
[714] For details on regulations and directives and their language, see this thesis, subsection 4.1.3. On the problems encountered in choosing between directives and regulations, see Kellermann 1998: xxxii. In short, directives, which bind only to the result to be achieved, are sometimes so detailed that Member States' freedom to choose the measure to attain the result is limited. Accordingly, they do not fulfill functions of directives.

revisers always consult the lawyer from Legal Service and often the author(s) of the draft to make sure that all changes are acceptable. After a revision, the official note is prepared and submitted by the Legal Service to the DG which drafted a proposal. There is only one note that includes opinions of a lawyer specialised in the subject-matter of a proposal and opinions of a legal reviser. Accordingly, the opinion on substance and on the form is presented in one official note. Legal revisers provide the most important points they noticed in the text and corrected revised text with tracked changes. When the DG receives the note with the opinion of the Legal Service, it can accept and introduce changes into the proposal or not follow them. The Legal Service cannot block a proposal because of drafting quality.

Drafting of other language versions of a proposal by means of translation

After revision and correction of the proposal, the text of proposal is sent to the Directorate-General for Translation of the European Commission (DGT) and translated into other official languages.[715] Translators almost always translate into his/her mother tongue (DGT 2008 *Translation tools and workflow*). However, translating into English and French out of mother tongue in the largest translation divisions is accepted by the DGT. As noted by Guggeis (2006: 115) translators are the prime interpreters of a text. They also can consult author of the draft when they are not sure what the meaning is conveyed by the text. Since a proposal is translated into twenty-two languages, in order to avoid divergences between various language versions, the translation has to be very close to original, in particular any corrections of vague or ambiguous terms or expressions should be avoided. If a translator notices an error, s/he can inform the author about it and ask for a correction. In case of a correction made by the author, all translators working on the texts should be informed about the change.

Revision of all language versions of a proposal

When the proposal is prepared in all the official languages, before it is approved by the Commission and submitted to the Parliament and the Council, all the language versions of the proposal can be revised by legal revisers. Each of legal revisers is responsible for a version in his/her mother tongue. Revisers always compare his/her mother language version

[715] For details on the DGT, consult its website at http://ec.europa.eu/dgs/translation/index_en.htm and the booklet *Translating for a multilingual community* available at http://ec.europa.eu/dgs/translation/ bookshelf/ brochure_en.pdf.

with the original version, but very often they also look at other versions. A choice of language versions to be compared usually depends on linguistic knowledge of a reviser. During interviews conducted for the purpose of this doctoral research, the revisers admitted that they often compare versions in languages that belong to the same family as his/her mother tongue. For instance, in case of doubts whether version conveys the proper meaning, a reviser of the Polish language version will check what linguistic solutions were chosen in the Czech or Slovak versions. Moreover, in the search for a meaning of legal concepts, revisers often refer to the German version, since versions in the German language usually provide different terms and expressions to English, French, Italian and Spanish which include very similar terms. The objective of this revision is to find out whether all language versions of the proposal convey the same legal message. In particular, exactness of legal terminology and identicalness of legal content are verified (Dragone 2006: 100-101).

However, only a small percentage of all proposals are revised in this way. The decision which proposals should be revised is made by the legal Reviser Group which informs the Directorate General which drafted a proposal about the need to resubmit the proposal for an examination.[716] Bevis Clarke-Smith, Director of the Quality of legislation team in the Commission Legal Service, stated that usually the most important texts are chosen or the texts which are known from the discussions during the inter-service consultation that can be troublesome. Dragone (2006: 101) notes that the reason for a choice of a proposal for a revision can be also its novelty. Moreover, the revision is provided for the text that were produce by a DG which generally does not follow advices and corrections made by legal revisers during the first revision done before translation. It is important also for legal revisers to examine all language versions of a proposal, since they can find out whether the wording of a proposal - before revised only in one language - suited to needs resulted from the differences in languages into which a proposal has been translated (Dragone 2006: 101).

Finally, the revised proposal is approved by the College of Commissioners. One of two procedures can be applied in order to adopt the proposal: a written procedure or an oral one (when the proposal is discussed by the College). After the adoption, the proposal is published in all the official languages as a COM document available on EUR-LEX.

To sum up, as far as preparation of a proposal is concerned, four drafting stages can be distinguished. Firstly, a proposal is drafted by technical experts who not always have a broad legal knowledge or experience in legislative drafting. Moreover, they often prepare a draft of

[716] Before, a revision of all language versions of a proposal was conducted on the request of the Directorate General responsible for drafting of a proposal (Dragone 2006: 101).

a proposal in a foreign language. Secondly, the consultation with different Commission departments is held. The so-called inter-service consultation includes also revision of the proposal by lawyers and legal revisers in the Legal Service. Thirdly, after internal consultation process revised proposal drafted in one language is translated into all the official languages. Sometimes, all language versions of a proposal are compared and revised, by legal revisers, as regards legal and linguistic quality and coherence between them. Finally, a proposal is adopted by the Commission, published in the Official Journal and sent to the Council and to the Parliament.

This subsection follows the stages of co-decision procedure – indicated in subsection 5.1.1. – which involves three institutions – the Commission as an institution with legislative initiative, and the Council and the Parliament as two co-legislators. The next paragraphs concentrates on legislative drafting conducted in the Council and the Parliament. However, it should be noted that the Commission has also legislative powers and can adopt an act without submitting a proposal to other institutions (not during co-decision). In this case, the three above-mentioned drafting stages are conducted before the adoption and publication of all authentic language versions of the act.

§ 2. Legislative proposal in the European Parliament – language use in preparing amendments and in negotiations with the Council

As already explained (see subsection 5.1.1.), the role of the European Parliament in legislative process varies. The Parliament can have only right to approve or reject a legislative proposal (the assent procedure), to present its opinion on a legislative text and propose amendments to a proposal (the consultation, co-operation, co-decision procedures) or even to prepare together with the Council the joint legislative text (within the Conciliation Committee set up in the last stage of the co-decision procedure). This subsection concentrates mainly on co-decision procedure, during which the Parliament is together with the Council a co-author of a legal act (Clariana 1998: 61). Consequently, the Parliamentary linguistic influence on a legal act is undoubted. Accordingly, the concern of the paragraph is specifically on how language is used when EP position on a legislative proposal and amendments are prepared and when the joint text of the Parliament and the Council is negotiated and drawn up. With regard to languages used for debate, negotiations, drafting documents - as noted by Hakala (2006: 150-160) and explained in this thesis (subsection 1.2.4., paragraph 3, especially, points

B and C) - informal meetings where political agreements are achieved should be distinguished from meetings where formal approvals and official decisions are made. During the latter, all official languages are used for oral communication due to simultaneous interpretation and documents are prepared in all official languages. During informal meetings, on the other hand, communication is often conducted only in *lingua franca* and based on documents very often prepared only in one language. The below analysis deals with both formal and informal meetings in the Parliament and between Parliament's and Council's representatives which aim at adopting a regulation or a directive in the co-decision procedure.

When the Commission submits a proposal in all official languages to the Parliament, it is examined by the appropriate committee which appoints a rapporteur who follows the issue throughout the procedure (Hakala 2006: 150). Political groups can appoint their own 'shadow-rapporteurs'. As explained in the thesis (subsection 1.2.4., paragraph 3), all the official languages can be used in the European Parliament as *de facto* working languages. With regard to meetings of a committee, the committee's members use their own language. Then interpretation is provided from and into the official languages requested by the members (Rule 138(3) of the *Rules of Procedure of the European Parliament*, hereinafter EP Rules of Procedure).[717] The situation where the principle of equality of all languages is maintained for core activities of the institution but it is also accepted that not all official languages must be applied in all activities is called 'controlled multilingualism'.[718]

The rapporteur prepares a draft report on the proposal which is debated and adopted in plenary session. The opinion can contain amendments to the proposal, which are tabled in writing by the Members of Parliament during the committee meetings in a language of their choice (Rule 150(1) of EP Rules of Procedure). Legal and linguistic consistency of these amendments is revised by Directorate of legislative acts in the Parliament' General Secretariat. After the revision, the amendments are translated into the working languages of the committee and voted one by one. Amendments approved in the committee are included in the report, translated into all official languages of the EU, printed, distributed[719] and examined in the Plenary, during which Members of the Parliament (MEPs) have the right to speak in the official language of their choice and their speeches are simultaneously interpreted into the

[717] OJ L 44 of 15 February 2005.
[718] For more details on this concept and the application of controlled multilingualism in the Parliament, see *inter alia* Ricci 2006: 135-137. See also the Code of Conduct on Multilingualism adopted by the Bureau of 4 September 2006 (PE 388.978/BUR/REV1).
[719] The Directorate-General for Translation and Publishing is responsible for translating amendments and other documents, and for printing and distributing them.

other official languages (Rule 138 (2) of the EP Rules of Procedure).[720]. The Parliament can decide that it is not necessary to distribute amendments in all the official languages. However, if at least thirty-seven Members of the Parliament object, the Parliament cannot make such decision (Rule 150 (6) of the EP Rules of Procedure).

Moreover, political groups after considering the report of the committee can propose additional amendments. These amendments are tabled by the group of at least forty MEPs and they can arise from the negotiations between the political group and the Council (Hakala 2006: 151). These amendments are prepared in one language and result from the negotiations conducted usually only in one language. They are tabled in one language and then translated.

It should be underlined that all amendments are scrutinised by the legal revisers, who take into consideration the same criteria as legal reviser group of the Commission, in particular, rules of the *Joint Practical Guide* (subsection 5.2.1.). It should be borne in mind that translation of amendments is prepared not by the same translators who worked on translation of the Commission's legislative proposal, since the Commission and the Parliament have separated translation services. Therefore, legal revisers examine whether legal terminology is applied correctly and consistently and whether the text of amendments is clear and comprehensible. The task of legal reviser is challenging, since amendments have to be introduced to all language versions and it is sometimes difficult to adjust them to grammatical structure of the sentence of which they are to become a part (Frame 2005: 22). Therefore, they can create legal, grammatical or stylistic errors very easily. Moreover, MEPs, who have the right to use the language of their choice, not only use their mother tongue but also apply legal terminology which is specific to their domestic legal systems. Consequently, revisers have to, particularly, pay attention whether terminology applied in the amendments is proper for autonomous legal system of the European Union.

If the Council does not agree with the legislative text of the European Parliament, it prepares its own legislative text - called the 'common position' - which is submitted to the Parliament in all official languages. The common position is prepared in the Council and considered in the Parliament during the second reading – the stage of the co-decision which is limited to three or four months. This time limit influence also preparation of all required

[720] Pursuant to Rule 138(2) of the EP Rules of Procedure, speeches can be also interpreted into other than official languages which the Bureau considers necessary. This provision makes possible the interpretation into additional languages like Basque, Catalan or Galician; for the explanation of the term 'additional language', see this thesis, subsection 1.2.4, paragraph 2. Simultaneous interpretation from and into all official languages during plenary sittings and meetings of Parliamentary bodies, as well as of the parliamentary committees and the political groups is provided by the Interpreting Directorate of the European Parliament.

language versions of documents drawn up during this stage. The Parliament can approve, reject or amend the common position. Amendments can be tabled by the committee or by the group of at least forty MEPs. Besides formal debates and voting in the committee and in the Plenary, there are informal meetings between the representatives of the Parliament and the Council which aim at achieving the agreement on the legislative text. These meetings and negotiations, where informal but politically binding decisions are reached, are usually held in one language (Hakala 2006: 155).

The Parliament prepares second reading position on the legislative text which is submitted in all official languages to the Council. If the Council does not accept EP position, the next stage – conciliation - starts. During conciliation, the Conciliation Committee consisted of the Council delegation (27 members (Ministers or their representatives) of the Council) and the Parliament delegation (27 MEPs) negotiate in order to establish a joint text. The meetings of the Committee are hold and documents for these meetings are prepared in the languages of the full members delegations. The Commission also participates in the conciliation process as "a facilitator and promoter of the negotiations between the colegislators" (Hakala 2006: 156). Languages covered by the interpretation during the meeting of the Parliament, the Council and the Commission (trialogues) are determined by real needs. As regards documents, very often in practice they are available only in one language. Consequently, negotiations are based on one language version. The most important document – four-column working document (the first column contains common position of the Council, the second – position of the Parliament with amendments from the second reading, the third – position of the Council towards EP amendments, the fourth – the reaction of the Parliament towards Council position) – is updated (the last two columns) throughout negotiations. Since the meetings take place frequently, updated document is delivered before the meeting in original language. However, translations are available at the meeting but not before. Consequently, the joint text – agreement of the Council and the Parliament over the legislative text – is negotiated and prepared in one language and then translated into the other official languages of the EU (Hakala 2006: 159). Therefore next stage (last stage before the adoption of the act) described in the following paragraph, i.e., revision of all language versions of a legal act by jurist linguist of the Council is very important for quality of all language versions, consistency between them and especially for equality of language versions of a legal act.

§ 3. Revision of language versions of a legal act before its adoption – co-drafting elements in the Council

The drafting process in the Council consists of several stages. In the previous paragraph the documents prepared by the Council and negotiations between the Council and the Parliament have been already examined. Therefore, the present paragraph focuses merely on finalisation of the legislative draft, which is carried out by a group of jurist-linguists in the Legal Service of the Council. This final phase is undertaken when the substance of the act is established (Morgan 1982: 109). Jurist-linguists revise concordance, consistency and congruence between all language versions of a legal act and verify the linguistic and legal quality of these versions (see Gallas 2001: 89 and Gallas and Guggeis 2005: 499, Guggeis 2006: 113-117). The verification and revision of the final draft of a legal act take place in the meeting attended by lawyer-linguists (one per each official language) and national experts in the subject matter of the legislation who participated in the working group which has been preparing the legislative text (Piris 2004a: 10; 2004b: 8, Guggeis 2006: 115). Since the European Parliament is a co-legislator together with the Council in the co-decision procedure, a lawyer from the Parliament who is competent to monitor the text, participate in the meeting (Guggeis 2006: 115). Moreover, Commission representatives and representative of the relevant Directorate-General of the Council are present at this meeting. The meeting is chaired by one of jurist-linguists. When Jurist-Linguists Section was set up in the 1960s, there were only four official languages; a chairperson was obliged to compare all language versions before a meeting, whereas other jurist-linguists were responsible only for versions in their mother tongue (Morgan 1982: 113). Nowadays, a number of EU official languages makes impossible for one person to compare all twenty-three language versions. Therefore, the chairman is responsible for the 'basic text'[721] and for the organisation and coordination of the legal linguistic revision. Before a meeting the chairman (who is also *chef de file* for the dossier) ascertains the language in which the text was drafted. English or French usually is a base language. Moreover, it is important to find out whether the text in question was based on precedent, i.e., on earlier and similar act(s). This situation takes place when provisions similar to these, which are applied in other sector, have to be adopted (so-called 'horizontal texts').

[721] This language or the text in this language are described as 'source' (Piris 2004a: 9) or 'original' or in the Council terminology as 'base language' (Morgan 1982: 114) or 'base' (Piris 2004a: 9) or 'basic text' (Gallas 2001: 90, Guggeis 2006: 114).Compare French equivalent 'texte de base' (Piris 2004b: 7; Gallas and Guggeis 2005: 499).

Then the drafted text should follow wording of the previous act(s) unless changes can correct errors or provide improvements.[722]

Once the base language and precedents are indicated, the "chef de file" examines whether the text is in line with the Joint Practical Guide and the Manual of Precedents. The other lawyer-linguists compare versions in their mother tongue with the base text in order to verify correspondence between them and scrutinise whether their versions follow precedents if they were indicated. The texts have to be verified before the meeting. During this preparation phase, lawyer-linguists contact also their colleagues from the Council, the Commission and the Parliament who are to be present at the meeting, in particular, who have been responsible for the text and negotiated the text and discuss with them possible amendments necessary to correct language versions (Guggeis 2006: 116). This phase – called by Guggeis (2006: 116) the enquiry phase - is especially important nowadays, after last enlargements, when agreement should be achieved between twenty-three lawyer-linguists and twenty-seven representatives of Member States and representatives from the Commission and the Parliament.

When the meeting is set up, it can be, theoretically, organised according to one of two methods of procedure: multilingual or monolingual. The first method requires the provisions to be read out in all languages, compared and checked by all present (Morgan 1982: 115). This method of work, although time consuming, was considered as thorough and reliable. Since in accordance with this technique, nowadays, twenty-three language versions would have to be read out, this procedure is regarded as unfeasible. Under the second method, only the base text is examined and each jurist-linguist verifies only his own language version (*ibidem*). In practice, however, mixture of these procedures is applied.

As mentioned above, the aim of such verification is ensuring good quality of drafted acts and congruence between all the language versions. Consequently, jurist-linguists can clarify the text, make it more logical and coherent, correct terminological mistakes and withdraw discrepancies. In doing so, they have to propose changes to the text. Not only texts that have been translated can be changed, also the base text is changeable; especially when it was badly drafted, or contains obvious mistakes (Gallas and Guggeis 2005: 499; Piris 2004a: 10-11; 2004b: 8). The shortcomings of the base text are sometimes disclosed through the comparison of this text with translations. Accordingly, paradoxically, multilingualism of EU law can contribute to the improvement of the quality of all language versions. Moreover,

[722] See part III, guidelines 1 of the *Council's Manual of Precedents* (2002: 98).

sometimes it is necessary to introduce changes into the base text in order to adjust it to linguistic needs of other language versions.

Linguistic and substantial changes can be proposed to language versions. Substantial change is very difficult to introduce. Firstly, in order to change text(s) in substance all delegations from Member states and the Commission and Council representatives have to be present at the meeting. Secondly, all of them and jurist-linguists have to agree on the amendment. As the drafted act is usually a result of compromise reached through difficult negotiations and long discussions, delegations and representatives are very reluctant to agree on substantial changes to the text. In case of linguistic changes proposed by jurist-linguists or experts from Member States or the Commission or Council representatives, it is jurist-linguist who decides in regard to his language version whether a change should be accepted or not. Such linguistic amendments are proposed in order to improve quality of a draft or to remove discrepancies between versions. The example of the pure linguistic change done by jurist-linguists in the Council is provided by Morgan (1982: 115): the following English version of article 3 of *Council Directive 79/279/EEC* of 5 March 1979:

> The Member States may subject companies to obligations
> *more rigorous than those imposed by* this Directive (…)

which was translation from the following French version

> Les Etats membres peuvent soumettre les sociétés à des obligations
> plus rigoureuses que celles qui sont prévues par la présente directive (...)

has been changed as follows:

> The Member States may subject companies to obligations
> *more stringent than those provided for by* this Directive (…)

As noted by Morgan (1982: 115) the reason for those changes was requirement for better translation ('provided for' was a better translation that 'imposed' for *prévues*) and better English (changes of 'rigorous' into 'stringent'). Moreover, the term 'stringent' has been already used in previous Directive (case of precedent).

In order to ensure good quality of legislation, since 2007 the new working method is applied during drafting and revising process. When the General Secretariat of the Council receives a proposal or a draft legislative act, it is referred to the Legal Service which in every case appoints two Legal Service advisers (a 'quality team'), i.e., a lawyer-linguist and a legal adviser from the Legal Service Directorate responsible for the substance. Advisers prepare 'quality note' for the most important acts and when it is necessary. A note relates only to

drafting quality, not to legal issues of substance. When the note is approved by the Legal Service and in agreement with the Directorate General responsible, it is sent to the Working Party. The advisers monitor the changes to the draft act until it is adopted by the Council. If it is necessary, they participate in preparatory meetings where they can give advices as to drafting quality. Hence, since 2007 lawyer-linguists not only revise the text ready for political adoption and finalise it, but they also participate and ensure quality of a legislative act throughout the legislative procedure.

Conclusion to section 5.3.

The above analysis demonstrated that it is possible to draft a multilingual legal act in a way that all language versions are originals, convey the same legal meaning and use idiomatic language. As a result, presumptions of the principle of equal authenticity are not fictions and equality between language versions is assured in a drafting process. These guarantees are provided by co-drafting method described and analysed in chapter 3 which in Canada at federal level is applied in a pure form which does not contain any elements of translation. As explained in chapter 3, in legal language it is improper to use the term 'translation' in reference to authentic language version because an authentic version of a legal instrument cannot be regarded as a translation of the other authentic version. In other words, all authentic language versions are originals.

However, the examination of drafting process in the European Union demonstrates that Canadian co-drafting method cannot be applied in drawing up twenty-three language versions of EU law and that translation is present in EU legislative drafting. Taking into consideration requirements of the principle of equal authenticity and the practice of drafting, the paradox can be indicated which Renato Correia describes in the following way "In practice, Community law is inconceivable w i t h o u t translation, whereas in strictly legal terms Community law is inconceivable w i t h it" (2003: 41). On the other hand, although language versions of EU legal acts are not drafted simultaneously, still requirement of the principle of equal authenticity that all language versions are originals can be fulfilled. It is possible to ascertain in which language the proposal was drafted and in which languages legislative text was negotiated. However, not at the level of entire text but at the level of provisions, it is not possible to indicate whether and which language influenced the provision in question. As explained in this section the original version, i.e., base text, can be changed because comparison with translated versions revealed mistakes or vagueness in the base text or the base text must be adjusted to linguistic needs of other language versions.

Because of number of languages, co-drafting method cannot be applied in a pure form in the European Union. However, some solutions applied in Canada may be considered as

useful for the European Union, e.g., drafting of legislative proposal by professional drafters. Major difference between legislative drafting in Canada and in the European Union derives not only from the lack of simultaneous drafting of all language versions but also from lack of professional drafters in the European Union. In Canada, each version of a legal act is drafted in mother tongue of a professional co-drafter trained in legislative drafting and in legal terminology, whereas in the European Union legislative proposals are drafted by experts in the domain which is legislated but not trained in legislative drafting and very often not in their mother tongue. As a result, texts written in English by non-native speakers are sometimes incomprehensible to English speaking persons (Guggeis 2006: 115), whereas versions which are translated by professional translators into their mother tongues are of much better quality.

SECTION 5.4.
Drafting of EU autonomous law and of Canadian bijural law

Introduction

The challenge of drafting of Canadian and EU law results not only from a number of languages in which laws must be drawn up but also from the variety of legal systems and traditions where EU law as supranational law and Canadian law as federal law are applied. Moreover, Canadian federal law is drafted in English and French, which are also (one of them or both, see subsection 1.3.2.) languages of provincial and territorial legislations that can derive from civil law (Quebec) or common law (other provinces and territories). Since federal laws is applied in these provinces and territories and in some cases complemented by provincial law, federal acts and regulations should reflect both common and civil law traditions. With regard to the European Union, as explained in detail in section 2.2., EU law is also expressed in languages, which are used to drawn up legislation of Member States, where EU multilingual law is – sometimes directly – applied. The European Union respects diversity of Member States, including diversity of their legal systems and traditions. However, at the same time, the European Union develops its own autonomous legal system which is mainly based on EU law that should be uniformly applied in all Member States.

This section presents the short overviews on drafting methods used in order to face the challenge of drafting of EU and Canadian autonomous law that respects (the EU) or reflects (Canada) diverse legal traditions and systems where EU or Canadian law is applied and that is drawn up in languages which are also languages used to draft legislation of legal systems where EU or Canadian law is applied. It should be underlined that these languages are the same languages in linguistic sense (as natural languages, see section 3.1.), however, they are different legal languages; e.g., French legal language of Canadian federal and bijural law should be distinguished from French legal language of civil law of Quebec, or French legal language of France or Belgium (EU Member States) should be distinguished from French legal language of EU law.

Subsection 5.4.1.
Drafting of EU autonomous law

As explained in subsection 2.2.2. of this thesis, the official languages of the European Union are also official languages in Member States and are used for drafting national legal acts. Although the Community law is applied, in some cases even directly, in Member States, EU legal system is autonomous and has its own legal terminology. Terms used in EU legislation have their own specific meaning that differs from the meaning of legal terminology used in Member States. Hence, in order to avoid confusions, when EU law is drafted, legal terms too closely linked to national legal systems should be avoided (the *Joint Practical Guide*, guideline 5.3.2.). Similar rule is also provided in a *Commission Manual on Legislative Drafting*[723] and in the Council's *Manual of precedents for acts established within the Council of the European Union*[724] where it is also noted that the use of a term typical to a national legal system can be difficult to translate into other EU official languages.

The rule to avoid in EU legal instruments terms used in domestic law of Member States is in compliance with case law of the European Court of Justice, that stated in CILFIT case that

> (…) Community law uses terminology which is peculiar to it. Furthermore, it must be emphasized that legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States. [725]

If the meaning of Community legal terms was derived from national legal systems of Member States, the uniform application of EU law would not be possible. The rule stated in paragraph 19 in CILFIT case has been confirmed in several judgments of the ECJ, e.g., in *Adolf Truly GmbH* v *Bestattung Wien GmbH*.[726] One of the questions referred to the Court for a preliminary ruling in this case was whether the definition of the term 'needs in the general

[723] See Part III of a Commission Manual, rule 1.2. referring to concordance of language versions (p. 63) which states "In Community legislation it is often necessary to avoid using terms that are commonly used in domestic law but have no satisfactory equivalent in one or more of the other Community languages, or where concepts are broader or narrower in the different languages. In such situations, either use a different term which, while it may be less elegant, may be more appropriate in context, or, as long as the will of the enacting institution is still achieved, rephrase the text in such a way that it can be rendered in the same way in all the languages".
[724] See Part III of Manual of precedents, rule 2 referring to legal terms (p. 98) states that "In Community law it is often necessary to avoid a term of national law which has no satisfactory equivalent in one or more Member States and which does not cover exactly a given notion or corresponds to a more general notion. In such a case a new, more appropriate, term should be used in its place (even if it is perhaps less elegant).
[725] Case 283/81 Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health; [1982] ECR 3415.
[726] Case C-373/00, [2003] ECR I-1931.

interest' in the second subparagraph of Article 1(b) of Directive 93/36[727] must be derived from the national legal system of the Member State. The Court answered that terms of Community law can be interpreted by reference to national concepts only in exceptional cases in which reference is expressly or implicitly made to definitions laid down by the legal systems of the Member States (paragraph 30). Since such an exceptional situation does not take place here, the Court decided that the term 'needs in the general interest' is an autonomous concept of Community law (paragraph 45) and must be interpreted in the light of the context of Article 1(b) and the purpose of Directive 93/36 (paragraph 40). In case C-449/93 *Rockfon A/S* v *Specialarbejderforbundet i Danmark*, the Court, which was asked about the definition of 'establishment' that has not be defined in Directive 75/129/EEC,[728] stated that "the term 'establishment', as used in the Directive, is a term of Community law and cannot be defined by reference to the laws of the Member States" (paragraph 25).[729] In Case C-498/03 *Kingscrest Associates Ltd and Montecello Ltd* v *Commissioners of Customs & Excise*, the national court referred for a preliminary ruling to the Court the question "whether the word 'charitable', used in the English version of Article 13A(1)(g) and (h) of the Sixth Directive,[730] must be given a definition distinct from that given it by domestic law and, if so, whether the word's interpretation must take account of all the language versions of the Sixth Directive."[731] The Court taking into consideration settled case law stated that the word 'charitable' in the English version of the Sixth Directive has its own independent meaning in Community law and must be interpreted by taking into account all the language versions of that directive (paragraph 27).

Accordingly, as confirmed in ECJ case law, EU legal system is autonomous and creates its own autonomous concepts that must be denoted in twenty-three official languages. As noted by Dickerson (1986: 5), in a drafting process a conceptual level should be distinguished from a verbal one. Hence, it is not enough to create a new concept but it is also necessary to find the term which denotes this concept. As analysed in subsection 2.2.2., creation of autonomous terminology in languages, which are also natural languages applied to draft domestic legislation of Member States, requires 'deculturalisation' of these languages.

---

[727] *Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts*, OJ L 199, 09.08.1993, pp. 1-53.
[728] *Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies*, OJ L 048, 22.02.1975, pp. 29-30.
[729] Case C-449/93 [1995] ECR I-4291.
[730] *Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment*, 77/388/EEC, OJ L 145, 13.06.1977, pp. 1-40.
[731] Case C-498/03 [2005] ECR I-4427.

Due to the reduction of the cultural embedding of Member States' legal languages, it is possible to develop terminology which is neutral towards national legal systems of Member States. In doing so, various methods are applied. Sometimes drafters give a new meaning to already existing terms ('re-semantisation' of terms, Gallas 2006: 127).[732] If such a term exists only in one or a few EU official languages, in order to find equivalents in other EU languages, a calque[733] or loan-translation[734] can be applied. In search for neutrality of EU terminology, EU draftsperson can also create neologisms (euronyms)[735] in order to denote new concepts.[736] Although this practice is not so often applied (Gallas 2006: 126, Piris 2004a: 6, Piris 2004b: 5).

The next subsection explains the methods applied to draft Canadian federal law which not only is autonomous but also must reflect common law and civil law traditions in both authentic languages of a legal act.

[732] For instance, the term 'third country' - existing in the national legislation - within EU law means a non-EU country, in other words, a country which is not a Member of the European Union; see, e.g., this term in the expression 'third-country nationals' used *inter alia* in *Council Directive 2003/109/EC* of 25 November 2003 *concerning the status of third-country nationals who are long-term residents* (OJ of 23.01.2004 L 16/44).

[733] A linguistic calque takes place when in order to create an equivalent, the semantic components of a term or expression in a source language are literally translated into the target language. For instance, the French expression '*balance des paiements courants*' has been literally rendered in English as 'balance of current account payments' although in English there is the expression 'balance of payments on current account' (Goffin 1990: 16).

[734] Loan-translation or a borrowing takes place when a term whose equivalent does not exist in a target language is borrowed from a source language without changing a form; an example of loan-translation within EU terminology is a French term '*acquis communautaire*' used in the same form in majority of EU official languages; on equivalents of the term '*acquis communautaire*', see Šarčević 2000a: 261.

[735] *Cf*. French term 'euronymes' (Goffin 1994: 641).

[736] On different types of neologisms within EU terminology and their examples, see Goffin 1994: 639-640.

Subsection 5.4.2.
Drafting of Canadian bijural law

As explained in section 2.3. of this thesis, Canadian federal law is bijural and sometimes complemented by provincial private law. When federal legal provisions rely on provincial law concepts (it is, especially, in the area of property and civil rights; see subsection 2.3.3.), a term used in federal legislation can refer to the concept which is differently developed and understood in various provinces. The major differences are observed between concepts of common law provinces and civil law of Quebec. Therefore, federal law should reflect both common law and civil law of Quebec.

For long legislative bijuralism has not been required in Canada. However, the enactment of the *Civil Code of Quebec, 1994*, which introduced new concepts and terminology in the area of civil law, resulted in the necessity of harmonisation of federal law with the civil law of Quebec and requirement to draft future law in a way that both language versions of a legal act reflect common law and civil law traditions.

Nowadays, due to the *Federal Law-Civil Law Harmonization Act, No. 1, 2001*,[737] which amended the *Interpretation Act, 1985*,[738] in Canada not only two official languages – English and French – but also the common law and the civil law are equally authentic (Section 8.1. of the *Interpretation Act, 1985*).

As explained in subsection 2.3.3., the *Policy on Legislative Bijuralism* recognises four legal audiences in Canada - Francophone civil law lawyers, Francophone common law lawyers, Anglophone civil law lawyers and Anglophone common law lawyers – which should be able to find, in each language version of a legal act, terminology and wording that respects and reflects concepts and institutions of the legal system (common law and civil law) of their province or territory. Therefore the *Cabinet Directive on Law-Making*, 1999 states that

> It is equally important that bills and regulations respect both the common law and civil law legal systems since both systems operate in Canada and federal laws apply throughout the country. When concepts pertaining to these legal systems are used, they must be expressed in both languages and in ways that fit into both systems (*Guide to Making Federal Acts and Regulations* 2001: 10).

It is the Bijuralism and Drafting Support Services Group – a part of the Legislative Services Branch – which applies the *Policy on Legislative Bijuralism*, harmonizes existing

[737] S.C. 2001, c. 4.
[738] R.S., 1985, c. I-21.

federal law with civil law of Quebec and especially ensures that both Canadian legal traditions are reflected in English and French versions of federal laws. The Group has also a Jurilinguistic Services Unit and a Legislative Editing and Publishing Services Unit which are responsible for revising federal legislation as regards bijural character of the both language versions of federal acts and regulations. Since the *Policy on Legislative Bijuralism* and harmonisation of existing federal law with civil law have been already examined in subsection 2.3.3., this subsection concentrates on bijural drafting techniques applied since the 1990s for drafting of new federal legislation. It should be underlined that bijural drafting is especially required when provisions of federal law rely on the concepts derived from provincial law, i.e., usually in the area of property and civil rights (see section 2.3.), and drafting techniques – subsequently described – pertain mainly to this area.

In order to respect and reflect common law and civil law in federal legislation, legal acts are drafted or in neutral language or in bijural language. Various techniques are used to develop both neutral and bijural language. To achieve legislative neutrality, a term can be proposed that has no juridical connotation in either common law or civil law tradition and at the same time is applicable in both legal systems (Morel 1999c).[739] A neutral term will be understood differently in common law provinces and Quebec, but it is also possible that differences of the meaning of the same term are observed between common law provinces (*ibidem*). Neutrality of legal language can be also accomplished, when autonomous rules - dissociated from common law and civil law - are applied (Morel 1999c). Morel (1999c) denotes this neutrality as "conceptual neutrality, or neutrality in substance or content". Another technique used to attain neutrality is a 'generic definition' which - due to use of abstract and generic terms - can be applied to concepts or institutions in Quebec and common law provinces (*ibidem*).

Different techniques are used in order to express federal law in bijural language. In particular, legal rule which is applied in both legal traditions is expressed in different terms (Wellington 2001: 9). This technique is called 'double' (Gaudreault 2003, Wellington 2001: 9-10) or 'doublet' (Morel 1999c). Two types of this technique can be distinguished, i.e., firstly, simple double, and secondly, paragraphed double. When the former is applied, the provision of a federal act contains two terms denoting a concept. One term is specific to common law and another – to civil law. Usually, in French version, a civil law term is followed by a common law term, whereas in English versions, a common law term is used

[739] For example, "lease"/"bail" and "loan"/"prêt" (Wellington 2001: 9).

first and then a civil law term is provided (Gaudreault 2003, Wellington 2001: 9).[740] When paragraphed double is applied, the concepts and rules applicable in common law provinces and in Quebec are provided in separate paragraphs (Wellington 2001: 10). A paragraph which refers to Quebec contains the expression "in the province of Quebec", whereas a paragraph which is applied in common law provinces includes the wording "in the other provinces" or "elsewhere in Canada" (Gaudreault 2003).

After this short overview on bijural drafting techniques and explanation of drafting methods applied to draw up EU autonomous law in previous subsection, in the conclusion to this section the comparison of techniques used to draft bilingual and multilingual law which is applied in different legal systems (legal systems of Canadian provinces and territories, and of EU Member states) and traditions (common law and civil law).

Conclusion to section 5.4.

The analysis conducted in chapter 2 on legal traditions of the European Union and Canada and their influence on legal language and the examination - presented in this section - of drafting techniques, which take into consideration complexity of EU and Canadian legal systems as regards legal traditions, revealed more differences than similarities.

The European Union respects diversity of legal traditions in Member States likewise Canada respects common law and civil law of its provinces and territories. However, only in Canada two main legal traditions – common law and civil law – are recognised as equally authentic. On the other hand, the European Union concentrates rather on development an autonomous legal system based on autonomous legal concepts and autonomous legal language. Therefore, in the European Union, bijural drafting techniques which aim at using in the same provisions two terms or two expressions – one specific to common law and another to civil law ('double technique') – are not applied to drawn up EU law. However, Canadian drafting techniques, which aim at achieving legislative neutrality, are comparable with EU drafting methods based on deculturalisation of a legal language.

[740] For example, "The title to the **real property or immovable** intended to be granted (…)" and "le titre sur **l'immeuble ou le bien réel** est dévolu (…)" [emphasis added] (Wellington 2001: 9).

CONCLUSION to CHAPTER 5

The analysis conducted in this chapter demonstrated that in the European Union and Canada the principles and rules of multilingual legislative drafting are very similar or even the same (section 5.2.). In particular, it is underlined that drafters should take into consideration that their language versions are not the solely one version and some adjustment to grammar, syntax and idiomatic features of other languages are required. Moreover, the analysis of Canadian and EU legislative procedures allowed indicating comparable stages where drafting of language versions of a legal act can be observed. Taking into account these stages, the chapter investigated legislative drafting process in Canada and the European Union. As a result, pure co-drafting of Canadian law at federal level has been demonstrated. By means of this drafting method two authentic language versions of Canadian laws are produced simultaneously. Consequently, they are not in the relation original – translation, hence they satisfy one of the main presumptions of principle of equal authenticity. Bilingual co-drafters with perfect command of one of official language, assisted by jurilinguists who are experts at legal terminology of both Canadian common law and Quebec civil law, draw up in idiomatic language two versions which render the same legal meaning.

This ideal method cannot be, however, applied to draft all twenty-three language versions of EU law. Nevertheless, the examination how co-drafting method is applied in Canada revealed features of co-drafting which are also observed in the European Union during the last stage of legislative drafting, i.e., revision of all twenty-three language versions. Given that during revision not only translated versions are corrected but also version which was originally drafted can be adjusted to other versions and improved due to influence of translated language versions (e.g., when discrepancies between translated versions reveals vagueness of terms in original versions which can be clarified), it is difficult to ascertain which language influenced the provision in question.

Since – as demonstrated in this chapter – all official languages participate in setting up the text of a legal act, it is not possible to recognise a single original (source) language. Instead of one original version that is subsequently translated, hybrid texts are produced. Therefore, when legislative drafting in the European Union is analysed in translation studies, a lack of a proper source language/text is underlined (see subsection 3.4.4.). Since there is no source text, it is questioned in translation studies whether EU legislative drafting can be

considered as a translation process. This observation made in translation studies is in accordance with the results of the analysis of EU legislative drafting conducted in this chapter.

The following co-drafting elements have been observed in drafting of language versions of Canadian legal acts as well as in revision of language versions of EU legislation. First, when language versions are co-drafted, none of them prevails over others and dictates its form and content to other language versions. In particular, none of language versions should be forcibly adjusted to grammar, syntax semantics and idiomatic features of other language(s). Therefore, all of them should be adjusted to each other. Accordingly, co-drafted language versions influence each other. Because of this mutual influence, even if language in which the text has been originally drafted is known, it is difficult to indicate whether and which language had a major impact on the provision in question. Consequently, it is not possible to distinguish source and target languages. Drafting which fulfils these conditions ensures equality between language versions of a legal act.

CHAPTER 6
Subsequent drafting and authentication of new language versions of law in the European Union and Canada

INTRODUCTION

After analysis of regular drafting of EU multilingual law and Canadian bilingual law, the last chapter of the thesis examines subsequent drafting which takes place when a new language version of a legal instrument is prepared and authenticated after drafting and authentication of the legal instrument (Šarčević 2000a: 93). Accordingly, a new language version is prepared on the basis of authentic version(s) of legal instruments by means of translation. However, as explained in this thesis in subsection 3.2.3. which provides general information on subsequent drafting, instead of the term 'translation', the term 'subsequent drafting' is used. The choice of this term results mainly from the principle of equal authenticity and theory of original texts which require all authentic language versions of legal instruments be considered as originals. Consequently, drafting of a new language version(s) of a legal instrument already enacted which are to become equally authentic should not be denoted as translation. Moreover, as explained in subsection 3.4.4., in classical translation, it is easy to distinguish a source text from a target one and, especially, a source text cannot be changed or corrected. When new language version(s) of EU law is drafted, there is no one source language or text but all authentic language versions of a legal instrument are the basis for subsequent drafting. On the other hand, in Canada, subsequent drafting of a new language version results sometimes in changes in the authentic language version which has been used as a source text. Therefore not only from a legal standpoint but also in the context of translation studies, the use of the term 'translation' to denote the process of preparation of a new language version of legal instruments can be regarded as improper.

In this chapter, when subsequent drafting is analysed, not only preparation of a new language version, but also authentication and publication of a new language version are taken

into consideration. Consequently, three stages of the process are examined and only the first one involves translation. The entire process can be denoted as a subsequent drafting *sensu largo*, whereas its first stage – as a subsequent drafting *sensu stricto*.

This chapter investigates the practice of subsequent drafting of a new language version of legislation in the European Union (section 6.1.) and in Canada (section 6.2.). The analysis takes into consideration legal, linguistic and organizational aspect of a drafting process. The chapter aims at comparing, in the EU and Canada, the reasons for subsequent drafting, organization of drafting process, drafting methods used to produce a new language version, authentication of a new language version, and legal consequences of lack of a language version that should have been drafted and authenticated.

In Canada and in the European Union the practice of subsequent drafting is complex and various methods of preparation and authentication of a new language version are used. For instance, in Canada there is no one model of subsequent drafting but different reasons and methods of this drafting have been observed at constitutional, federal, provincial and territorial level. Alike, in the European Union, several times subsequent drafting has been conducted and organised in various ways. In the thesis, it is illustrated with an example of subsequent drafting before two last enlargements in 2004 and 2007. Due to complexity of subsequent drafting process in both settings and due to distinctiveness of subsequent drafting in each setting, subsequent drafting in Canada and in the European Union is analysed separately in two sections. Following the analysis of Canadian and EU methods of subsequent drafting, similarities and differences are indicated in the conclusion to the chapter.

SECTION 6.1.
Subsequent drafting of new language versions of EU *acquis communautaire*

Introduction

Subsequent drafting can result from extension of a number of official languages. As regards the European Union, the increase of a number of official languages usually is directly related to the accession of new Member States to the EU. An exception to this rule is Irish language. The status of official and working language of EU institutions has been conferred on Irish since 2007 pursuant to Council Regulation No 920 of 2005.[741] However, a legal recognition of Irish as EU official language did not result from enlargement of the European Union. Ireland has been a member of the European Community since 1973, but Irish – the first official language of bilingual Ireland - had only the status of authentic language of primary legislation (a treaty language). Pursuant to Council Regulation 920/2005, Community secondary legislation, which has been already adopted, must be translated into Irish.[742] This is a typical situation of subsequent drafting.

Nevertheless, subsequent drafting usually comes about together with accession of new Member States. Each enlargement generally results in expanding a number of official languages. Drafting of the *acquis communautaire*[743] in national language of a candidate state[744] before the date of the accession is a prerequisite for the accession to the European Union (Šarčević 2002: 256).[745] Accordingly, a new language version of legal instruments,

[741] See the *Regulation No 920/2005* (OJ L 156/3, 18.6.2005). For further details on the status of Irish, see this thesis § 2 of subsection 1.2.4.

[742] In the beginning, the scope of documents that should be translated into Irish is limited; then it will be extended. On documents that should be translated at first and on the conditions of the extension of the range of documents that are to be translated, see respectively Article 2 and 3 of *Council Regulation No 920/2005* and this thesis, subsection 1.2.3., § 2.

[743] The French term *acquis communautaire* means the total body of EU law in force, which comprises the primary legislation, the secondary legislation, the case law of the Court of Justice, international agreements; for more details on the *acquis*, see Curti Gialdino 1995: 1089-1121. The focus of this subsection is on subsequent drafting of EU legislation.

[744] Drafting in the national language of a candidate state is required when this language is to become official language of the European Union.

[745] The requirement to translate the *acquis* into the language of a candidate state is not directly and formally provided in EU law. It can be, however, inferred from the Council Regulation 1/1958, which is the main legal basis of EU legal multilingualism and from fundamental democratic rights which demand the access to law for citizens. For the analysis of this issue, see this thesis, subsection 1.2.1.; on reasons for EU multilingualism and on legal basis of EU official multilingualism, see subsection 1.2.2.; see also Gozzi 2001: 25-26 and Rzewuska 2001a: 87. Furthermore, the requirement of pre-accession translation can be also inferred from Acts concerning

which have been already adopted, is being prepared. Yet again, we deal with a typical case of subsequent drafting.

First subsection (6.1.1.) examines in general interpretative value of authentic language versions prepared by means of subsequent drafting. Interpretative value of a language version depends not only on legal requirement to consider all authentic versions for interpretation purposes but also on quality of the text. Therefore, subsection analyses also how subsequent drafting is and should be performed. Since preparation of a new language version of a legal instrument is based on multilingual text of this instrument, it is discussed whether all, a few or only one authentic language version of a legal instrument should be taken into consideration for the purpose of subsequent drafting of a new language version.

Next subsection (6.1.2.) considers the process of preparation of the *acquis* in national languages by candidate states[746] which joined the European Union in 2004 and 2007. The analysis conducted in this subsection aims at comparing drafting methods and organization of drafting process in various acceding countries (nowadays Member States). The decision to analyse subsequent drafting of new language versions of the *acquis* during two last enlargements was made, first, due to practical reasons. The two enlargements and pre-accession drafting took place when the research for this thesis has been conducted. Consequently, the information on translation of EU legislation in various candidate states was directly accessible and therefore research results were reliable. Moreover, during the

---

the conditions of accession which provide that the new language versions of Treaties and of the acts of the institutions, and of the European Central Bank, adopted before accession shall, from the date of accession, be authentic under the same conditions as the texts drawn up in the present official languages; see, for instance, Article 18, 56 and 60 of the *Act concerning the conditions of accession of the Republic of Bulgaria and Romania* (OJ of 21.6.2005, L 157/203). Moreover, pre-accession translation of the *acquis* is regulated in national law of candidate states; see, for instance, in case of Poland, the *National Programme of Preparation for Membership in the European Union* approved by the Council of Ministers of the Republic of Poland on June, 12 2001 or Resolutions of the Committee for European Integration, e.g., *Resolution adopted on July, 24 2000 on co-ordination and revision of translations of Community acts*.

[746] These states are at present EU Member States, however, in this subsection the term 'candidate states' is used to describe them. In explanation of such a terminological choice, some remarks on the status of a state before the accession are useful. Before a state becomes a full Member of the EU, it is granted with different status: firstly, before its application is accepted, it is called 'applicant country'; then just after the European Council officially accepts its application for EU membership, a state becomes a 'candidate country' or 'candidate state'; finally, since the Treaty of Accession is signed with a country until the date of its full membership, a state is called in this interim period an 'acceding country'. The translation of the *acquis* into a national language is mainly made during the period when a state is granted the status of a candidate state. However, the process of translation starts once a country applies for the membership or even before. Moreover, translation sometimes is finished after the Treaty of Accession is signed. Bearing that in mind, the term 'a candidate state' is used in this subsection to denote countries translating the *acquis* before their accession in 2004 or 2007, and which are now Member States.

enlargement in 2004, which was the largest one, ten candidate states[747] followed different approaches to organization of drafting process and applied various drafting methods. Comparison of pre-accession drafting processes in the ten states which became Member States in May 2004 (and Bulgaria and Romania that join the European Union on the 1st January 2007) can provide an interesting example of the phenomenon of subsequent drafting. Furthermore, countries which consider integration into the EU - especially those which have started negotiation with the European Union and started translation of EU legislation - refer to the experience in subsequent drafting of new language versions of the *acquis* achieved by states which joined the EU in 2004.[748]

Finally, last subsection (6.1.3.) examines an example of subsequent drafting of new language versions of international agreements between the Community and non-Member States. The focus of this subsection is not on drafting methods but on authentication of a new language version of international agreements which differs from authentication of new language versions of EU secondary legislation.

Subsection 6.1.1.
Interpretative value of subsequently drafted language versions of EU legal instruments

Due to the accession of new Member States to the European Union which usually results in granting official status to new language(s) and, consequently, in preparing new language versions of already adopted legal instruments, subsequent drafting is unavoidable. In the case of drafting a language version of a legal act after its adoption, the presumptions of simultaneous preparation of authentic language version is a fiction. The question arises whether this fiction influences in a negative way interpretative value of subsequently drafted language versions of legal instruments. This subsection examines the approach of the European Court of Justice towards interpretative value of these language versions. Since a good quality of language versions of a legal instrument can positively influence their interpretative value, the subsection discusses also how new language versions of already adopted legal instruments should be prepared. The analysis will be illustrated with some

[747] In May 2004, the following states joined the European Union: the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic.

[748] See for instance materials of the conference 'Legal Translation. Preparation for Accession to the European Union' (Šarčević 2001) organised by the Ministry of European Integration and the Faculty of Law in Rijeka on translation of the *acquis* into Croatian; see esp. paper by Paolo M. Gozzi 2001: 23-34.

examples of subsequent drafting of new language versions of EU law due to accession of new Member States.

As explained in previous chapter (chapter 5), during regular drafting of multilingual legal instruments before their adoption, it is important to respect principle of equal authenticity. In practice, it means that at all drafting stages, drafters/translators should take into account that a legal instrument is to be expressed in several languages and that all those languages should be taken into consideration and applied throughout entire drafting process. Alike in the case of regular drafting, the principle of equal authenticity should be taken into account also when language versions are subsequently drafted. Pursuant to this principle, all authentic language versions of a legal instrument contribute to its meaning. Accordingly, is it necessary to prepare a new language version based on all authentic versions of a legal instrument? It was possible during the first enlargement when only four language versions had to be considered. In this manner, for instance, the English version of the *Treaty establishing the European Economic Community* (hereinafter the *EEC Treaty*) has been prepared when Great Britain joined the European Community, although it was difficult to find experts who would have a good knowledge of five languages (i.e., French, German, Dutch and Italian as source languages and English as a target language) and understanding of EC law (Akehurst 1972: 23). Preparation of English version of the *EEC Treaty* is an example of subsequent drafting that was conducted after the authentication of the 'original' texts in French, German, Dutch and Italian. The process of drawing up the English version of the *Treaty* has been described by Michael Akehurst (1972) - a member of a joint Working Party on the Authentic English Text - the team that translated the *Treaty establishing the EEC* into English - and of the English Translation Section of the Commission of the European Communities where the English version of the *EEC Trea*ty was revised. Akehurst admits that during preparation of the English version of the *Treaty* all four authentic language versions were considered. Although the team working on the translation was aware that the text of the Treaty was drafted mainly in French and when it was signed, on 25 March 1957, only the German and French versions were ready and compared by lawyers and linguists. Despite the fact that at the moment of signing the *Treaty*, there were only rough drafts of Italian and Dutch versions, the team respected the principle of equal authenticity of all official language versions of act and considered all four versions regardless which were originals and which were translations.[749]

[749] For further details on preparation of the English version of the *EEC Treaty*, see Maas 1968-1969: 205; and this thesis footnote 480.

If the ambiguity was noticed in all language versions, it was retained in English translation, because - as stated by Akehurst - "my job was to translate the Treaty, not to improve it" (1972: 25). Akehurst explains as well what methods were used when discrepancies among the four versions of the *EEC Treaty* were observed. He indicates some solutions which were tempting to apply but had to be rejected because they disregarded one or more authentic languages. According to the first method, priority should be given to the meaning in language in which the *Treaty* was originally drafted. This solution was rejected not only because of its contradiction to the principle of equal authenticity but because it was difficult to find out in which language the provision in question was originally drafted and because the discrepancy was usually observed between French and German versions, hence between languages that were used during negotiations and drafting process. Secondly, Akehurst considers a rule of numbers that proposes to choose the meaning which is expressed in the majority of language versions. Hence, again the method could not be used because it does not respect the principle of equal authenticity. Moreover, it was not easy to establish a common meaning of majority of texts, since sometimes two versions expressed a meaning different to the meaning expressed in two other versions or, worse still, all four versions expressed different meanings. Therefore, in the case of discrepancy, the function and purpose of the provision in question were analysed in order to establish the common meaning of four versions. Moreover, the meaning that harmonised best with "other provisions of the Treaty or with the spirit of the Treaty as a whole" was chosen (Akehurst 1972: 25). The methods applied - during subsequent drafting of English version of the EEC Treaty - to find the meaning of four language versions in case of discrepancies among them are in accordance with methods applied by the Supreme Court of Justice for interpretation of EC multilingual law.[750]

Each successive enlargement of the European Community has added new official languages. Consequently, it was more and more difficult to take into consideration all authentic language versions of the *acquis communautaire* while preparing its new language

[750] See paragraph 14 of Case 30/77 *Regina v Pierre Bouchereau* [1977] ECR 1999 "The different language versions of a Community text must be given a uniform interpretation and hence in the case of divergence between the versions the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part". It should be noted that this rule was expressly stated by the Court after preparation of English version of the *EEC Treaty*. The ECJ has been referred to the above quoted paragraph 14 several times, e.g., in Case 100/84 *Commission of the European Union v United Kingdom of Great Britain and Northern Ireland* [1985] ECR 1169, paragraph 17; Case C-449/93 *Rockfon A/S* v *Specialarbejderforbundet i Danmark* [1995] ECR I-4291, paragraph 28; Case C-236/97 *Skatteministeriet* v *Codan* [1998] ECR I-8679, paragraph 28; and Case C-420/98 *W.N.* [2000] ECR I-2847, paragraph 21; and Case C-257/00 *Nani Givane and Others* v *Secretary of State for the Home Department* [2003] ECR I-345, paragraph 37.

version. Before the enlargement in May 2004, the *acquis* was authentic in eleven official languages. Accordingly, eleven authentic language versions should have been considered, when new nine language versions were drafted. Due to the last enlargement in January 2007, Bulgarian and Romanian were added to the list of EU official languages. The translation of the *acquis communautaire* into Bulgarian and Romanian commenced before 2004, i.e., before authentication of versions in new nine languages that had become official due to the enlargement of 2004.[751] Consequently, translation made until 1 May 2004 into Bulgarian and Romanian should have been based on eleven authentic versions languages, and afterwards on twenty authentic language versions. Because of a great number of official languages and thereby of authentic versions of the *acquis communautaire*, preparation of new language versions that takes into consideration all authentic texts of legal instruments is practically impossible. Thus, the following question arises: from which language(s) should a new version be translated? Maybe it should be the language(s) in which the act was drawn up. This solution was chosen, e.g., by Finland which joined the European Union in 1995. Drafters of Finnish version of the *acquis* presumed that EU legislation has been mainly drafted in French, and therefore versions in other languages than French were considered as unreliable (Nartis 1997: 22). Consequently, French version was selected as a source text for translation of the *acquis* into Finnish (*ibidem*). Preparation of Finnish versions based on only one language version, considered original, does not take into account the principle of equal authenticity and theory of original texts which state that all authentic language versions of EU legal instrument are originals and contribute to the meaning of the instrument. Moreover, presumption that French is the only language in which EU legal instrument are drafted is false. First, as demonstrated in chapter 5 although proposal is drafted usually only in one language, in the further stages of drafting and legislative process all official and working languages are taken into consideration and drafts of legal instruments and amendments are prepared in all official languages. Language versions influence each other during translation and revision process

[751] For the first time Regular Report from the Commission on Bulgaria's Progress Towards Accession of 2000 (Commission of the European Communities (2000a), available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/bg_en.pdf) and Regular Report from the Commission on Romania's Progress Towards Accession of 2000 (Commission of the European Communities (2000b), available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/ro_en.pdf) include information on the progress in translating the *acquis* into respectively Bulgarian and Romanian. According to the Report on Bulgaria's Progress, as at 15 June 2000, Treaties (i.e. the EEC Treaty, EU Treaty, ECSC Treaty and EUROATOM) and 10,646 pages of secondary legislation have been translated (see p.85). In 2000 Romania translated into its national language only ECC Treaty. However, as to Romania, much progress has been made in 2001. As of September 2001, the Translation Co-ordination Unit has translated approximately 14 300 Official Journal pages of *acquis* into Romanian and National Institute of Information and Documentation, translated 11 600 Official Journal pages of *acquis* (see Commission of the European Communities (2001), Regular Report on Romania's Progress Towards Accession, Brussels, 13.11.2001, SEC(2001) 1753, pp. 97-98).

which can result in changes in 'original' version. Therefore, it is difficult to indicate language which actually influenced the provision in question. Secondly, proposals are drafted not only in French, but also in German and since 1973 in English. Consequently, subsequent drafting based on one language version that is considered original should be rejected not only because of the contradiction of this solution with the principle of equal authenticity but also because it is difficult to determine 'original' language of legal provisions.

In practice, however, pragmatic reasons (e.g., knowledge of language) decide very often about the choice of language version(s) based on which a new version is drafted. For instance, when the *acquis communautaire* was subsequently drafted by candidate states before the enlargement in 2004, translation of EU legal instruments into new languages was based on the most commonly known languages, i.e., on English (the most often),[752] French and German versions.[753] This practice displays that, often, subsequent drafting is based on the version that had been also subsequently translated. English and French and to less extent German are nowadays the main working and drafting languages in the Commission.[754] However, it should be taken into account that French and German have been official and working languages since the European Communities were established, whereas English became official language of the EC in 1973 when the United Kingdom became a member of the European Community. Accordingly, legal instruments drawn up before this date were not drafted in English which is now the main source language for subsequently drafted new language versions of the *acquis*.

---

[752] For instance, see *Evaluation of Phare Programmes in Support of EU Integration and Law Approximation*, *Final Reports of May 1999 for Estonia and Hungary*. Report for Estonia says about translation of legislation and other EU materials only *from English* into Estonian (p. 24); alike report for Hungary speaks about translation *from English* into Hungarian (p. 23). In case of Malta, also *English* has been chosen as a source language for translation of the *acquis* into Maltese; but French and Italian versions were as well available on request; see Commission of the European Communities (2002c) *2002 Regular Report on Malta's Progress Towards Accession*, Brussels, 9.10.2002, SEC (2002) 1407, COM (2002) 700 final, p. 106, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/ml_en.pdf, last visited in January 2007.

[753] For instance, *Evaluation of Phare Programmes in Support of EU Integration and Law Approximation*. *Final Report of May 1999 for Poland* states that source languages for translation of secondary legislation into Polish were English, French and German (p. 14). Translation into Czech language was also based on the three languages. The translation agencies responsible for translation of the *acquis* into Czech were provided with French, English German versions of the *Official Journal of the European Communities*. Moreover, the revision of translated texts was carried out with regard to French, English and German versions. Consequently, legal revisers in the Czech Coordination and Revision Centre were required to have one of the source languages at the level A, the second one at the level B, and the third one at the level C. Furthermore, the Czech Manual, which contained rules for translating EC law, was based on English, French and German as source languages with Czech as a target one (Obrová and Pelka 2001: 105, 107).

[754] Until the beginning of 1990s, French has been the main dominant language in EU institutions. On the use of official languages in the EU institutions, see *int.al.* Truchot 2003.

The same practice, i.e., the choice of English as the basic source language for translation of the *acquis*, is continued as far as future accession of Croatia is concerned.[755]

When the *acquis* is subsequently drafted in a new language, it is necessary to take into consideration at least a few if not all authentic language versions of legal instruments not only because of normative reasons expressed in the principle of equal authenticity but also because it is pragmatic to do so. Comparison of different versions of authentic texts during drafting or revision process may help to notice and explain divergences and ambiguities of existing language versions of a legal instrument. If ambiguity is present in compared versions, it should be retained in a target text (a new language version). Vagueness often results from very difficult negotiations and delicate political arbitration.[756] Since ambiguity is often a result of the compromise that was very difficult to achieve, a translator does not have the right to improve the legal act (Akehurst 1972: 25, Correira 2003: 42). On the other hand, a comparison of two or more versions can sometimes clear vagueness, in particular, when it is difficult to derive a clear meaning from one language version. Some examples of mistakes resulting from translation based only on one language version can be found in Polish text of Council Regulation (EC) 1346/2000 of 29 May 2000 on insolvency proceedings,[757] which was translated only from English. For instance, at the end of Article 13 the English term 'act' is used in the meaning of 'action by a person'. This term has been translated into Polish as a 'document' (*dokument* (PL)). Such a mistake would not have been made, if a translator had considered another language version, e.g., in the German version of Article 13 the unambiguous term *Handlung* is used (Porzycki 2004). Hence, taking into account more than one language version can help to avoid mistakes in a new language version produced by means of subsequent drafting.

Afore analysis demonstrates that in order to assure good quality of subsequently drafted new language versions of the *acquis* and to respect the principle of equal authenticity, it is not enough to rely only on one authentic language version when a new one is prepared. On the other hand, practical factors (e.g., time pressure, organizational problems, economical or financial restrictions, and lack of qualified translators who have not only linguistic but also legal knowledge) make translation based on all language versions impossible.

---

[755] See *General Guidelines for Translating the Acquis Communautaire for Croatia* which states that English was chosen as a basic source text because of practical reasons (Šarčević 2003: 13).

[756] See e.g. Hartley (1996: 273-274) on so-called 'deliberate uncertainty' that occurs when the representatives of the MS cannot achieve agreement and therefore use vague terms.

[757] OJ of 30.06.2000 L 160/1.

According to translation theory, drafting of a target text - in the case of subsequent drafting, drafting of a new language version of the *acquis* - is not the last stage of translation process. Leaving behind different approaches to and classifications of translation stages, for the purpose of this dissertation, three essential stages specific to the process of translating can be pointed out: firstly, analysis when a source text is read and analysed by a translator; secondly, synthesis when a target text is produced; and finally, revision when a draft translation (target text) is evaluated, edited and adjusted to meet the standards of translation (Bell 1997: 187). In my opinion, during synthesis when a new language version of a legal act is produced, it is acceptable to limit a number of language versions taken into consideration during subsequent drafting. It is, however, important not to reduce a number of source language versions only to one. Despite presumption of identicalness of all official language versions, languages are not identical. Consequently, for instance, a term in a source language (i.e., in one of authentic language versions) can have two equivalents in a target language (i.e., in a new language in which legal instrument is subsequently drafted). In this situation, it is useful to consider more than one authentic language version. For example, the English word 'account' can be translated into German as *Abschluss* or *Rechnung* and in Czech accordingly *účet* and *účetní závěrka*. Accordingly, when the term 'account' is translated into Czech, it cannot be sufficient to take into consideration only English version as a source one (Obrová and Pelka 2001: 113).[758] On the other hand, during the last stage of drafting, i.e., during revision, all (or as many as possible) authentic versions should be compared with a new one in order to ensure the legal and linguistic consistency of the legal instruments in all official languages of the European Union.[759]

Hence, because of practical reasons, especially time constraint, financial restriction and difficulties to find drafters and translators who know – as in case of enlargement of 2004 and 2007 - eleven or more languages, it is not possible to take into consideration all authentic versions when new language version of the *acquis* is prepared. However, when the authentic version, which is used as a source text, is ambiguous or obscure, it is useful to consult other language versions. This practice is consistent with interpretation of requirement to take into account all authentic versions when national courts of Member States interpret EU law. Although drafters and translators do not interpret EU legal instruments, but they also have to

[758] For more examples, see Obrová and Pelka 2001: 113.

[759] In a such way versions of a legal act in all official languages are prepared in EU institutions before adoption of the act; revision of texts are made by jurist-linguists in legal services of the Commission and Council. Such revision of translated texts was also made before the last two accessions in 2004 and 2007 first by Translation Co-ordination Units of candidate states and then by jurist-linguists in the Council and the Commission (on further details see Phare reports, and following subsection 6.1.2.).

find the meaning of legal provisions in order to prepare a new language version. Advocate General Tizzano explains that when the European Court of Justice in the CILFIT judgment stated that the "interpretation of a provision of Community law […] involves a comparison of the different language versions",[760] the Court wanted the national courts to "bear in mind that the provision in question produces the same legal effects in all those versions".[761] For translators and drafters who prepare a new language version of legal instruments already adopted, this interpretation means that none of authentic language versions can be rejected when the meaning of legal provisions is determined. Consequently, the requirement to consider and compare all authentic language versions does not mean that in practice all of them have to be taken into account but that any of them cannot be reject, even if one or some of authentic versions are vague or express different meaning than others.

When language versions, which have been subsequently drafted, are authenticated and published (in the special edition of Official Journal), they become equally authentic and have the same interpretative value as language versions drafted before the adoption of legal instruments. The practice of the European Court of Justice confirms that when the meaning of the term or expression is determined, especially when the divergence between different versions exists, the Court considers all language versions including, in accordance with the theory of original texts, a version in a language which did not have an official status when the legal instrument was drafted and adopted. This practice can be illustrated with an example of the judgment of 24.10.1996 in the case *Aannemersbedrijf P.K. Kraaijeveld BV e. a. v Gedeputeerde Staten van Zuid-Holland*,[762] where the Court based interpretation of Article 10(e) of Annex to Council Directive 337/85 on all authentic language versions. Accordingly, the Court took into consideration also Finnish and Swedish versions, although Finland and Sweden became Member States in 1995, and consequently the Directive of 1985 could not be drafted in Finnish and Sweden before its adoption. However, after the accession of Finland and Sweden to the European Union, official languages of these states were granted with status of EU official languages, and consequently, Finnish and Swedish language versions of EU legal instruments are equally authentic as other authentic versions.[763] Advocates General in

[760] Case 283/81 Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health; [1982] ECR 3415, par. 18.
[761] Opinion of Advocate General Tizzano delivered on 21 February 2002 in Case C-99/00 Criminal proceedings v Kenny Roland Lyckeskog [2002] ECR I-04839, par. 75.
[762] C-72/95, ECR 1996, p. I-5403.
[763] See other examples of judgments where in order to find out the meaning of the term or expression, the European Court of Justice takes into consideration all authentic language versions regardless whether languages were official languages of the European Union when the interpreted instrument was drafted and adopted' e.g., judgment of 07.12.1995 in the case *Rockfon A/S* v *Specialarbejderforbundet i Danmark*, C-449/93 [1995] ECR I-4291, see paragraph 26; judgment of 14.12.1999 in the case *General Motors Corporation v Yplon S.A.*, C-

their opinions also refer to language versions that did not exist when the legal instrument had been drafted and adopted. [764]

The following subsection (6.1.2.) explains how subsequent drafting of new language versions of the *acquis* was organized and conducted before two last enlargements in 2004 and 2007 and in two applicant countries (Croatia and Turkey), especially work of Translation Coordination Units is explained.

Subsection 6.1.2.
Practice of subsequent drafting illustrated with translation of the *acquis communautaire* during last EU enlargements in 2004 and 2007

§1. Diversity of Translation Coordination Units and their tasks

Responsibility of translation of the *acquis* lies with the candidate states not with the EU institutions (Šarčević 2002: 256). In order to fulfil this task candidate states establish special translation bodies or mandate existing institutions to organise and coordinate a process of translation of EU legislation into national languages. Those bodies or institutions are in general called Translation Coordination Units (TCUs). It is up to a candidate state to organise a structure and activity of the TCU in the way consistent with country's needs and domestic circumstances. The diversity of TCUs in countries which became Member States in 2004 and 2007 and in two candidate countries is illustrated in the table 8. The table demonstrates that Translation Coordination Units have different names and are administered by various governmental bodies. The mandate to fulfil tasks of TCU can be granted specialised translating institutions (e.g. the Estonian Legal Language Centre or a Latvian State Agency - the Translation and Terminology Centre) but it is usually given to the translation departments of the government or of the line minister (*Towards EU Integration* 2004: 3).[765] The most often Translation Coordination Units are submitted to ministries or governmental institutions

375/97, [1999], ECR I-5421 where Article 5(2) of Directive 104/1989 is interpreted, see paragraphs 20, 21, 22; judgment of 14.09.2000 in the case *D v W*, C-384/98, [2000] ECR I-6795 where Article 13A(1)(c) of Council Directive 388/1977 was interpreted, see paragraph 17; judgment of 09.01.2002 in the case *Nani Givane and Others* v *Secretary of State for the Home Department,* C-257/00, [2003] ECR I-345, see paragraphs 26, 35; judgment of 26.06.2003 in the case *Finanzamt Groß-Gerau* v *MKG-Kraftfahrzeuge-Factoring GmbH*, C-305/01, [2003] ECR I-6729, paragraphs 73, 75, 77, 79.

[764] See, for instance, paragraphs 14 and 15 of the opinion by Advocate General Elmer of 02.10.1997, in the case *Göritz Intransco International GmbH* v *Hauptzollamt Düsseldorf*, C-292/96, [1998] ECR I-165.

[765] See Table 8.

responsible for European integration (e.g. the Czech TCU is supervised by the Department for Compatibility with EC Law, the Hungarian TCU by the European Community Law Department in the Ministry of Justice, the Polish TCU by the Office of the Committee for European Integration, the Slovak TCU by the Institute for Approximation of Law, the Slovenian TCU by the Government Office for European Affairs, the Romanian TCU by the European Institute of Romania coordinated by the Ministry of European Integration; the similar solution has been chosen as well by two applicant states, i.e., in Croatia TCU is administered by the Ministry of Foreign Affairs and European Integration, in Turkey by the Secretariat General for EU Affairs). However, TCU can be also governed by the Ministry of Justice (e.g. in Estonia and Malta), by Ministry of Interior (in Cyprus) or Minister of the State Administration (in Bulgaria). On the other hand, Latvian TCU is supervised by the Ministry of Education and Science.

The main mission of Translation Coordination Units is to organise translation of the *acquis communautaire* into national languages. Considering only diversity of subjects covered by EU law[766] and amount of pages[767] to be translated and short deadlines, it is palpable that they deal with a challenging and difficult task. Translation of EU legislation embraces various activities which can be differently organised. First, it should be noted that rendering the meaning from one language into another is the first step of the process, then translated versions ought to be revised. For instance, in her article, Maria Rzewuska (2001b: 72) - a vice-director of Polish Translation Department of the Office of the Committee for European Integration – distinguishes seven stages of translation process undertaken in the Polish TCU. Most of them are different types of revision. Firstly, a text is translated in the form it was published in the Official Journal of the European Community (series L). Secondly, the content of a translated text is revised by experts at relevant and proper domains.

[766] Just to illustrate this diversity, one can mention 31 chapters into which the *acquis* was divided for the purposes of the negotiation between the EU and candidate states during two last enlargements in 2004 and 2007. They are the following: 1. Free movement of goods, 2. Free movement of persons, 3. Freedom to provide services, 4. Free movement of capital, 5. Company law, 6. Competition policy, 7. Agriculture, 8. Fisheries, 9. Transport policy, 10. Taxation, 11. Economic and Monetary Union, 12. Statistics, 13. Social policy and employment, 14. Energy, 15. Industrial policy, 16. Small and medium-sized enterprises, 17. Science and research, 18. Education and training, 19. Telecommunication and information technologies, 20. Culture and audio-visual policy, 21. Regional policy and coordination of structural instruments, 22. Environment, 23. Consumers and health protection, 24. Cooperation in the field of Justice and Home Affairs, 25. Customs union, 26. External relations, 27. Common Foreign and Security Policy (CFSP), 28. Financial control, 29. Financial and budgetary provisions, 30. Institutions, 31. Others.

[767] Before the last enlargement in 2007, Bulgaria and Romania had to translate 90,000 pages of the Official Journal and about 15,000 pages of key judgments of the Court of Justice. See *2004 Regular Report on Bulgaria's progress towards accession* (European Commission 2004:136) and *Romania. 2005 Comprehensive Monitoring Report* (European Commission 2005: 78).

This stage includes a check of special terminology and of comprehensibility of technical issues. Thirdly, linguistic revision, i.e., examination of Polish language correctness, takes place. Then terminology is unified, that is, it is scrutinised whether the terms, names, expressions, quotations and titles of the approved version of legal acts are used consistently. After that, a form of an act is unified. When a text has almost a final form, the legal revision is undertaken by lawyer-linguists. The main purpose of this stage is to examine whether source text and translated text have the same legal effect. Finally, a translated text is edited.

When the *acquis* is translated into a national language and revised from both legal and linguistic points of view, a Translation Coordination Unit sends it to the Commission and to the Council for the final revision made by lawyer linguists.[768] Then new language versions are revised and approved by lawyer linguists. Since then new language version of *acquis* is granted with the status of official version and as such equally authentic with other official versions of EU law, and consequently cannot be called 'translation'. After accession of a state to the EU, an official version of EU legislation expressed in a national language of a new Member State is published in the Special Edition of the Official Journal of the European Union.

The activity of TCUs includes also terminological work that consists not only with search for new terms or the best equivalents for EU terms, but also with preparation of glossaries and databases of EU terms in a national language with usually English (sometimes also with French and German) equivalents. Moreover, TCUs are responsible for translation of national legislation into one of EU official languages, usually into English. One of the reasons for this translation is a requirement to examine whether national legislation is harmonised with EU law. The main concern of this subsection is, however, on translation of the *acquis* into national languages of candidate states and related terminological activity. Accordingly, the next paragraph concentrates on organization of translation and terminological work in various Translation Coordination Units.

[768] On complexity of the task of revising the translation of the *acquis* conducted by the jurist-linguists in the Council, see Guggeis 2006: 114.

State	Characteristics of a state	Translation Coordination Unit	Supervisory body
Bulgaria	Member State since January 2007	Translation and Revision Centre (created in May 2001) http://www.trc.government.bg/en/index.html[769]	Centre is independent body under the responsibility of the Minister of the State Administration
Croatia	Applicant country	Directorate for Information, Education and Translation	Ministry of Foreign Affairs and European Integration
Cyprus	Member State since May 2004	Translation Office	Public Information Office Ministry of Interior
Czech Republic	Member State since May 2004	Coordination and Revision Centre http://isap.vlada.cz/	Department for Compatibility with EC Law
Estonia	Member State since May 2004	Estonian Legal Language Centre http://www.legaltext.ee/; http://www.legaltext.ee/indexen.htm (English website)	Since 1995 State agency administered by the State Chancellery; Since 2003 within area of Ministry of Justice
Hungary	Member State since May 2004	Translation Coordination Unit http://www.im.hu/fooldal/cikk/cikk.phtml?menupontid=87	Ministry of Justice European Community Law Department
Latvia	Member State since May 2004	Translation and Terminology Centre (State Agency); created in 1996 http://www.ttc.lv/; http://www.ttc.lv/?id=2 (English website)	Ministry of Education and Science
Lithuania	Member State since May 2004	Translation, documentation and information centre	decentralised
Malta	Member State since May 2004	Translation and Law Drafting Unit http://www.justice.magnet.mt/	Ministry of Justice and Local Government
Poland	Member State since May 2004	Translation Department http://www.ukie.gov.pl/; http://www1.ukie.gov.pl/WWW/en.nsf/0/8F30E2DFEBBA0BD9C1256E83004D89F1?open (English version)	Office of the Committee for European Integration (UKIE)
Romania	Member State since January 2007	Translation Co-ordination Unit http://www.ier.ro/; http://www.ier.ro/EN/index_en.html (English version)	European Institute of Romania Coordinated by the Ministry of European Integration

[769] All website addresses included in the table have been last consulted in January 2007.

Slovak Republic	Member State since May 2004	Central Translation Unit	Institute for Approximation of Law Office of the Government
Slovenia	Member State since May 2004	Translation, Revision and Terminology Unit http://www.svez.gov.si/index.php?id=1002&L=1	Government Office for European Affairs
Turkey	Applicant country	Translation Coordination Unit http://www.abgs.gov.tr/	Prime Ministry Secretariat General for EU Affairs

Table 8. Diversity of TCUs in Member States that joined the EU in 2004 and 2007, and in two applicant countries.

§2. Centralised and decentralised translation process

The process of translation - including transfer from one language into another (translation *sensu stricto*) and linguistic, terminological, legal and format revision – can be centralised or decentralised. Centralised translation signifies that all activities embraced by the process are done by and within the same specialised institution. On the other hand, decentralised translation of the *acquis* means that a Translation Coordination Unit merely organises and monitors the process and only some of activities are done in a TCU. Translation process can be centralised or decentralised but in both situations coordination and control of translation process is centralised and carried out by one body of public administration.

Centralisation of all translation stages in one place facilitates the cooperation of all professionals involved in translation process (professional translators, linguists, terminologists, lawyers and specialists in various domains) and helps to organise meetings and exchange of information between all experts involved in translation of the *acquis*. Work organised in this way and close cooperation ensure high quality of translated texts. On the other hand, however, it is quite difficult to set up this kind of high-specialised institution that provides altogether legal translation, revision of translated texts and linguistic, terminological, legal or other specialised expertises. The centralisation of pre-accession translation activity has been chosen in Estonia. The Estonian Legal Language Centre (ELLC) established in 1995

and administered since 2003 by the Ministry of Justice employed 76 persons.[770] Most of them (61 persons) worked in the Translation Department as translators, terminologists, linguists and legal revisers. For organizational reasons, the Translation Department was divided into three translation units (the English Translation Unit in Tallinn translating Estonian legislation into English, the Estonian Translation Unit in Tallinn translating EC legislation into Estonian, and the Estonian Translation Unit in Tartu translating the agricultural *acquis* into Estonian). Within ELLC, there was also the Terminology Unit responsible for terminological work and the administration of the terminology database. All EU law was translated in the Centre and then translations were revised by linguists and legal revisers working in ELLC. However, when it was possible translations were edited by "a subject area specialist in the ministry concerned" (Commission – 2002 Regular Report 2002: 118). Moreover, terminologists cooperated with "subject field specialists in the line ministries and other institutions" (*ibidem*).

Activity of the Estonian Legal Language Centre is a unique example of the centralisation of pre-accession translation. Translation Coordination Units usually organise and control translation process and most of work is outsourced to translation agencies, specialised institutions or even individual free-lancers. For instance, in case of translation of the *acquis* into Hungarian, actual translation, linguistic and technical revision have been contracted out to agencies and only final legal-linguistic revision and terminology work have been done in the Hungarian Translation Coordination Unit (Somssich and Varga 2001: 59). The similar practice has been followed by the Polish Translation Department of the Office of the Committee for European Integration (UKIE) which employed revisers and terminologists (twenty persons together with support staff).[771] Hence, terminological work and linguistic revision were done in the Translation Department whereas the translation of the *acquis* was outsourced by public tenders mainly to translation agencies, sometimes to freelancers. Translated texts were firstly revised for consistency and terminological correctness, not by revisers in the Translation Departments, but by experts in the relevant ministries. Afterwards the Translation Department's revisers checked translations as far as language and style consistency is concerned (Rzewuska 2001a: 89). All translation of EU legislation was

[770] The 2002 data; see Commission of the European Communities (2002b) *2002 Regular Report on Estonia's Progress Towards Accession*, Brussels, 9.10.2002, Sec(2002) 1402, Com(2002) 700 Final, p. 118, available at: http://Ec.Europa.Eu/Enlargement/Archives/Pdf/Key_Documents/2002/Ee_En.Pdf, last visited January 2007.

[771] The 2002 data; see Commission of the European Communities (2002d) *2002 Regular Report on Poland's Progress Towards Accession*, Brussels, 9.10.2002, Sec(2002) 1408, Com(2002) 700 Final, p. 135, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/pl_en.pdf, last visited in January 2007.

outsourced also by the Czech Coordination and Revision Centre (CRC), whereas revision of translated texts from legal and linguistic points of view was made in the Centre. The revision was supported by consultations on specialised terminology with line ministries.[772]

The process of translation has been decentralised also in case of Bulgaria that joined the EU during the last enlargement in 2007. The Bulgarian Translation and Revision Centre employed 18 persons – mainly linguistic and legal revisers as well as terminologists. Consequently, the revision of translated texts could be done in the Centre whereas all translation was provided by professional freelance translators (approximately 150 persons) selected by means of competitions.[773] The additional task undertaken by the Bulgarian Translation and Revision Centre was development of system for transliteration of the Bulgarian proper names and texts in Cyrillic letters into Roman letters. The system has been already approved by the Institute for the Bulgarian language at the Bulgarian Academy of Science.

The number of Translation Coordination Units' employees usually was not high, i.e., around 20 persons, but even a TCU like the Slovenian Translation Unit of the Government Office for European Affairs which was employing approximately 40 persons (esp. translators, translators-revisers, legal revisers, language editors-revisers and terminologists) had to outsource translation to external freelance translators. Moreover, legal revision of translated *acquis* was undertaken by legal revisers in the Government Office for Legislation which cooperated with the Translation Unit. It is very common practice that Translation Coordination Units not only contract out some tasks like, e.g., translation of texts, but also search for expertises from exterior specialists. An interesting example in this context is terminological consultation with outer experts undertaken by the Hungarian Translation Coordination Unit. If linguist-lawyers during revision of translated texts come across inconsistency in use of legal or technical terms or other terminological inaccuracy that cannot be solved by them, they extract such terms from the legal texts and forward them to the in-house terminologists. The role of terminologists is not to give an answer to terminological questions, but to gather all documentation and background materials that can help linguist-lawyers to make terminological decision. In order to fulfil their task, terminologists analyse the data related to the term in question and consult relevant external specialists. The Ministry

[772] See Commission of the European Communities (2002a) *2002 Regular Report on Czech Republic's Progress Towards Accession*, Brussels, 9.10.2002, SEC(2002) 1402,COM(2002) 700 final, pp. 129-130, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/cz_en.pdf, last visited in January 2007.

[773] Consult the website of the Bulgarian Translation and Revision Centre at http://www.trc.government.bg/en/aboutus.html, last visited in January 2007.

of Justice prepared a list of experts who can be consulted by terminologists. Those experts were appointed by line ministries, national bodies, the Hungarian Academy of Science and universities. Terminologists are required to consult several experts at the same time on the same issue. In case of diverging answers, terminologists initiate conciliation procedure in order to help the experts to reach a common position. However, if the consensus between experts could not be achieved or if materials on the term in question prepared by terminologists were unclear and doubtful or in case of terms of fundamental importance (especially those inserted into Treaties), the Terminology Committee is appointed. Members of the Committee are appointed by the same institution that chooses experts for consultations. The Terminology Committee is the ultimate forum in which terminological decision is taken by consensus. These original procedures and techniques of solving terminological problems illustrates how complex and difficult the production of consistent and precise new language versions of EU law can be (Somssich and Varga 2001: 67-73).

§3. EU assistance in translation of the *acquis communautaire* – role of TAIEX and Phare, and other sources of aid

It is a candidate state, which is responsible for translation of the *acquis* and financing this activity. However, the European Union provides help and assistance in translation process. During the last two enlargements, financial support for translation activity has been offered especially under the pre-accession fund - Phare programme, and technical assistance has been provided by a department of the Commission's Directorate-General for Enlargement known as the Technical Assistance Information Exchange (TAIEX).

Due to Agenda 2000,[774] the Phare programme should concentrate mainly on the preparation of the candidate states to EU accession.[775] The programme had two priorities: institution building and *acquis*-related investment. The latter included financing translation of EU legislation. For instance, in Latvia, Phare financed the following translation-related projects of the Translation and Terminology Centre (TTC): "Strengthening the Capacity of the Latvian Translation and Terminology Centre" (1998-1999), "Urgent translations at the

[774] Commission of European Communities (1997) Agenda 2000: For a stronger and wider Europe, COM (97) 2000, Supplement to the Bulletin of the European Union 5/97, Luxembourg: Office for Official Publications of the European Communities.

[775] The Phare programme was initially (in 1989) set up to support economic structural reorganization in Hungary and Poland (PHARE - Poland and Hungary: Assistance for Restructuring their Economies). Then the programme was extended in order to give support to other countries of Central and Eastern Europe. Among countries participating in enlargements of 2004 and 2007 the Phare programme covered: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia, Bulgaria and Romania.

TTC" (1999-2000), project aiming at publishing two glossaries and two translation handbooks (1999-2000), "Support for the TTC in *Acquis* translation" (2000). As a result of these projects considerable number of pages was translated (e.g. 13 000 pages in 1999-2000), consultations and trainings for TTC employees were organised, trips aiming at exchange of experience were financed for TCC employees, translation tools were provided, the document management system was established.[776]

While Phare provided financial support for translation process, the Technical Assistance Information Exchange (TAIEX) focused on organizational and technical assistance. Generally speaking, TAIEX provides information and technical assistance to candidate countries[777] in order to help them with approximation, application and enforcement of EU law. As far as translation is regarded, TAIEX was mandated by the European Commission „to support the setting up and maintaining of a centralised translation and interpretation capacity in each candidate country" (MEMO/04/34).[778] First, TAIEX provides the assistance in establishment and organization of Translation Coordination Units. Usually, in cooperation with other departments of the Commission, especially with Translation Service, TAIEX organises trainings for officials from candidate states. They are afterwards responsible for setting up a TCU in their countries (Gozzi 2001: 27). Trainings are continually organised also after establishment of a TCU. TAIEX arranges meeting, seminars and workshops for translators, revisers and terminologists who deal with translation of the *acquis* into a national language.[779] Moreover, with help of TAIEX round tables are organised. They enable professionals in translation to meet their colleagues from various candidate countries and exchange their experiences. TCUs can also ask TAIEX terminologists for help in finding

[776] For more details on those projects financed by the Phare programme in Latvia, consult the following website http://www.ttc.lv/?id=68, last consulted in January 2007.

[777] TAIEX provides support not only to candidate and acceding countries but also to the New Member States, to the administration of the Western Balkans, to countries included in the EU's European Neighbourhood Policy, and to Russia. Consequently, TAIEX help was and still is provided to the countries that joined the EU in 2004 and 2007. For the full list of TAIEX beneficiary countries, consult http://taiex.cec.eu.int/, last visited in January 2007.

[778] Press Release: *Commission steps up its translation capacity to meet demands of enlargement*, Brussels, 17 February 2004, MEMO/04/34, available at http://europa.eu/rapid/pressReleasesAction.do?reference= MEMO/04/ 34&format=HTML&aged=1&language=EN&guiLanguage=en, last visited in January 2007.

[779] In order to find out what sort of meetings, seminars, workshops and other activity is organized by TAIEX, consult website on TAIEX events available at http://taiex.cec.eu.int/. For further details consult also *TAIEX Activity Reports* for years 2003, 2004 and 2005 available in English, French and German at http://taiex.cec.eu.int/; especially take into consideration parts on translation included in English version at page17 of TAIEX Activity Report 2004 (http://taiex.cec.eu.int/Library/ActRep2003/TAIEX%20EN% 20Jen% 2008_12.pdf), at page 20 of TAIEX Activity Report. 2004 (http://taiex.cec.eu.int/Library/ActRep2004/ TAIEXActivityReportEN.pdf), and at page 19 of TAIEX Activity Report. Building Europe Together 2005 (http://taiex.cec.eu.int/Library/ActRep2005/ TAIEXActivityReportEN.pdf). All websites mentioned in this footnote were last consulted in January 2007.

proper terms for EU concepts. Furthermore, TAIEX provides TCUs with translation tools and equipment such as dictionaries, glossaries and reference books but also with hardware and software. One of the important tools set up by TAIEX was the CCVista Translation Database – a repository of legal acts translated into national languages of candidate countries. The CCVista database enables candidate countries to forward their translations to the European Commission and the Council where a final revision of translated acts is undertaken by lawyer linguists.

Translation Coordination Units receive support not only from EU institutions. The assistance can be obtained from foreign governments, agencies, organizations or foundations.[780] A very interesting example of help coming not from the European Union is activity of the Canadian International Development Agency (CIDA) which is a governmental agency offering support programmes in developing countries and countries in transition. Two CIDA projects have been implemented in the Latvian Translation and Terminology Centre (TTC) and at the Estonian Legal Language Centre and made the two Centres started to collaborate, exchange their experiences and consult each other. In the framework of CIDA projects, the Translation Bureau of the Government of Canada[781] organised trainings for TCUs' employees. Moreover, a team of Canadian employees worked full-time in the TCUs and participated in translation of national legislation into English. CIDA offered also computer hardware, software and reference materials.[782]

Latvian and Estonian TCUs collaboration is not the only example of cooperation between candidate countries in the field of pre-accession translation. In accordance with an *Agreement on co-operation with regard to the approximation of laws signed by the Czech and Slovak Governments*, the TCUs in those two countries were able to exchange EU legal acts already translated in each of a TCU. Those translations were regarded as working documents. Owing to the similarity of Slovak and Czech languages, such an exchange could facilitate and speed up the translation process (see Gozzi 2001: 29). This method involving comparison of versions in two very similar languages can, on the other hand, run a risk of mistakes caused, for instance, by *faux amis* which are especially characteristic for such close related languages or by transferring shortcomings from one language version into another.

[780] One of many examples of such assistance is support of the Embassy of France and the Robert Schuman Foundation for the project for the development of Latvian Translation and Terminology Centre's Library.
[781] The Translation Bureau of the Government of Canada - established in 1934 - is the federal government's centre of expertise in translation and other linguistic services; see http://www.translationbureau.gc.ca, last consulted in January 2008.
[782] For more details on CIDA project, consult Latvian TTC website http://www.ttc.lv/?id=68, last consulted in January 2007.

§4. Translation Coordination Units after accession

After the accession to the European Union, a national language of a new Member State becomes EU official language. Then a Member State is no longer responsible for translation of new drafted law into its language or, put it better, for drafting law in its language. This task is transferred to the translation and legal services of EU institutions. The question arises here what happens with Translation Coordination Units when their mission of translation of *acquis communautaire* is completed. Generally speaking, the outlook of various TCUs after the accession to the EU depends on decisions of a state government. Many TCUs still operate; especially those which were established not only to prepare national language versions of EU legislation. For instance, the State Agency 'Translation and Terminology Centre' (hereinafter TTC) in Latvia, apart from translation of the *acquis*, tackled and still does translation of documents related to the North Atlantic Treaty Organiżation into Latvian, as well as translation of international agreements and other legislative acts, and deals with unification of terminology and its usage.[783] However, some of TCUs whose the only task has been pre-accession translation of the *acquis* still are carrying out some work. For example, only key judgments of the European Court of Justice must be translated before accession, therefore some of TCUs translate the rest of the jurisprudence of the ECJ. It is, for instance, a task of the Czech TCU - Coordination and Revision Centre or of Latvian TTC. Various Translation Coordination Units present linguistic and legal comments on draft acts of the EU to lawyer linguists of the Council. Moreover, for instance, the Czech Coordination and Revision Centre – examines "the accuracy of translation of agreements and decisions that were not negotiated in the Czech language".[784] On the other hand, there are also TCUs that stop their activity. For instance, majority of the translators, language editors, terminologists and documentalists from Slovenian Translation, Revision and Terminology Unit became, as from June 2005, employees of the Government Translation, Interpreting and Revision Service at the General Secretariat of the Government. However, the Government Office for European Affairs – supervisory body of Slovenian Translation Unit – still scrutinizes the use of Slovene language in EU institutions. The responsibility for this mission lies with the Department for

[783] Consult website of the Latvian State Agency 'Translation and Terminology Centre' at http://www.ttc.lv/?id=75, last visited in January 2007.

[784] See the website of the Government of Czech Republic; Brief History of Department of Compatibility, at http://www.vlada.cz/en/eu/okom/defaulta.html, last visited in January 2007.

EU Law and Language Regime established after the accession within the Government Office for European Affairs. The website of the Department describes its tasks as follows:

> (…) the Department monitors the issue of language reservations made by Slovenian representatives in the EU legislative procedures, participates in the elaboration of positions regarding language issues for Coreper, coordinates inter-institutional cooperation of Slovene departments of the translation, interpreting and legal-linguistic services of the EU institutions and with the Slovenian line ministries in relation to expert-terminological revision of proposals of EU acts and to their needs for interpreting within the EU Council Working Parties.[785]

The necessity of this kind of activity undertaken by the Estonian Department for EU Law and Language Regime demonstrates that accession to the EU and transfer of responsibility of drafting law in national language to the services of EU institutions does not cease challenging work on quality of EU legal texts in all official languages.

Subsection 6.1.3.
Subsequent drafting and authentication of new language versions of international agreements between the Community and non-Member States

Due to the accession of new Member States to the European Union, the subsequent drafting and authentication can concern as well agreements between the Community and non-Member States. The authentication method of this kind of agreements can be illustrated with the example of the *Agreement between the European Economic Community, the Swiss Confederation and the Republic of Austria on the extension of the application of the rules on Community transit* of 12 July 1977 (hereinafter the *Transit Agreement*),[786] which was drawn up and equally authentic in the Danish, Dutch, English, French, German, Greek and Italian languages. When the Kingdom of Spain and the Portuguese Republic joined the Community in 1986, they were bound by the *Transit Agreement* from the moment of their accession. Therefore, the texts in the Spanish and Portuguese languages of the *Agreement* should be given a value equal to the texts in the Danish, Dutch, English, French, German, Greek and Italian languages. However, the authentication required two steps. First, at international level, the contracting parties to the *Transit Agreement*, i.e., the Community, the Swiss Confederation and the Republic of Austria,[787] concluded the *Agreement on the texts in the*

[785] Consult the website of the Department for EU Law and Language Regime at http://www.svez.gov.si/en/presentation/organisation_structure/sektor_za_pravno_in_jezikovno_ureditev/, last visited in January 2007.
[786] OJ L 142, 09.06.1977, p.1.
[787] Austria and Sweden joined the European Union in 1995.

Spanish and Portuguese languages of the Agreement between the European Economic Community, the Swiss Confederation and the Republic of Austria on the extension of the application of the rules on Community transit.[788] In the Agreement, the contracting parties agreed that the texts in the Spanish and Portuguese languages of the *Transit Agreement* have equal authenticity with the texts in the Danish, Dutch, English, French, German, Greek and Italian languages. The Spanish and Portuguese texts of the *Transit Agreement* have been attached to the Agreement in the Annex. Then, at the Community level, the Agreement on the texts in the Spanish and Portuguese languages of the Transit Agreement has been approved with the recommendation from the Commission in Council Regulation 4017/86.[789]

[788] OJ L 375, 31.12.1986, pp. 2-6.
[789] Council Regulation (EEC) No 4017/86 of 16 December 1986 on the conclusion of the Agreement on the texts in the Spanish and Portuguese languages of the Agreement between the European Economic Community, the Swiss Confederation and the Republic of Austria on the extension of the application of the rules on Community transit; OF L 375, 31.10.1986, pp. 1-1.

Conclusion to section 6.1.

Subsequent drafting has been conducted in the European Union several times when new languages were added to the list of EU official languages usually due to accession of new Member States to the Union (with the exception of Irish which became EU official language more than thirty years after the accession of Ireland to the EC). The analysis of pre-accession drafting of new language versions of the *acquis* before enlargement in 2004 and 2007 demonstrated that subsequent drafting is a complex and challenging process that involves not only rendering the *acquis* in new languages but also terminological research aiming at finding new terms to denote new concepts and at harmonising terminology in new languages. The unique feature of subsequent drafting in the European Union is a number of source languages on which drawing up new language versions is based. Already during first subsequent drafting conducted before enlargement of 1973, four authentic language versions had to be taken into consideration. Due to the increase of EU official languages and, consequently, due to the increase of the number of authentic language versions of the *acquis,* it is practically impossible to consider all versions for drafting purposes. Nevertheless, it should borne in mind that even if in practice not all authentic language versions can be taken into account, none of them can be rejected because it is ambiguous or has different meaning than other authentic versions.

Before a new language version of EU legal instruments becomes authentic and starts to contribute to the meaning of the instrument, the following stages have to be completed; firstly, translation of the *acquis* into a new language organised by the Translation Coordination Unit of the applicant/candidate state with financial and organizational assistance of the European Union (1); secondly, terminological and form unification (2); then, linguistic and legal revision by the TCU of the candidate state (3); afterwards, linguistic and legal revision by the lawyer-linguists of the Commission and the Council (4); authentication of the new language versions (5); and finally, publication of the new language version in the Special Edition of the Official Journal of the European Union.

Next section (6.2.) examines subsequent drafting of new language version of constitutional, federal, provincial and territorial law in Canada. Finally, in the conclusion to this chapter, subsequent drafting in the European Union is compared with various circumstances and methods of subsequent drafting in Canada.

SECTION 6.2.
Practice of subsequent drafting in Canada at constitutional, federal, provincial and territorial level

Introduction

As demonstrated in section 1.3., language regime in Canada evolved because of long and complex process. Nowadays, Canadian legislative and legal bilingualism is palpable, but even at federal level requirement to draft and enact regulations and other legislative instruments in English and French was not always obvious and even more some portions of Canadian Constitution are still valid and authentic only in English. Moreover, the requirement of bilingual drafting sometimes was not provided or sometimes was not respected in Canadian provinces and territories.

In Canada, due to change of law or due to judicial decisions that confirmed or extended legislative bilingualism, law enacted only in one language had to be subsequently drafted in a new language. This section investigates subsequent drafting of a new language version of Canadian constitutional (subsection 6.2.1.), federal (subsection 6.2.2.), provincial and territorial law (subsection 6.2.3.). Unilingual enactment of legal instruments can result from different reasons and requirement of subsequent drafting of legislation in a new language can have various grounds. Section explains why the necessity of subsequent drafting appeared in Canada and its provinces and territories and investigates legal basis for subsequent drafting. Then the process of drafting, enactment and publication of a new language version is examined. Finally, it is discussed what are legal consequences when subsequent drafting is required but a new language version is not drafted or not enacted or not published.

Subsection 6.2.1.
Subsequent drafting of a French version of portions of the Canadian Constitution

As explained in section 4.2.1. the Constitution of Canada is consisted of several constitutional instruments. Since 1867 - when the *British North America Act, 1867* (nowadays the *Constitution Act, 1867*) was enacted and made Canada a federal state[790] – until 1949[791] and in some areas until 1982,[792] acts forming the Canadian Constitution (mainly British North America Acts or Orders in Council) were enacted by the British Parliament in English. Consequently, they were authentic only in English.[793] Legal basis for the authentication of the constitutional documents also in French is provided in the *Constitution Act, 1982*, which required a "French version of the portions of the Constitution of Canada referred to in the schedule [to the Constitution Act, 1982] [...] be prepared by the Minister of Justice of Canada as expeditiously as possible" (Section 55). The French version of the Constitution does not become authentic automatically. Pursuant to Section 55 of the Constitution Act, 1982, when a French version of a constitutional instrument is ready, it must be enacted in the procedure applied for the amendment of this constitutional instrument.[794] Only a French version enacted pursuant to Section 55 is authentic ('authoritative' in the wording of Section 56) equally to the English one. Although the duty for enactment of the French version dates at 1982 and this version is ready since 1990, up to date no French version of the constitutional instruments prepared pursuant to section 55 has been enacted yet according to required procedures. Therefore, the constitutional acts - that have been enacted only in English and whose French versions have never been adopted under the Constitution's amendment procedure - are official

[790] The *Constitution Act*, *1867* created the Dominion of Canada (Section 1) by federally uniting Nova Scotia, New Brunswick and the Province of Canada (Section 5). The latter became the separate provinces of Ontario (former Upper Canada) and Quebec (former Lower Canada) (Section 6). The *Act* created the Parliament consisted of the Queen, the Senate and the House of Commons (Section 18), as well as provincial legislatures.

[791] In 1949, the Canadian Parliament has been granted limited power to amend the Constitution of Canada in many areas. However, the approval of the British Parliament was required for some changes (a partial patriation of the Canadian Constitution from the United Kingdom); see Section 91(1) of the *British North America Act, 1867* changed by the *British North America Act (No. 2), 1949* (13 Geo. VI, c. 81 (U.K.)). The *British North America Act (No. 2), 1949* was repealed by the *Constitution Act, 1982*; for further details on the *British North America Act, 1949 (No. 2)*, see Scott 1950: 201-207.

[792] In 1982, the full patriation of the Constitution of Canada from the United Kingdom was introduced by the *Constitution Act, 1982*. For details on changes of constitutional amendment process in 1982, see, *inter alia*, Lederman 1984: 339-359, McWhinney 1984: 241-267, Scott 1982: 249-281.

[793] See in this thesis, subsection 4.2.1. on language of the Canadian Constitution.

[794] When a French version of any portion of the Constitution is prepared, Section 55 requires it to "be put forward for enactment by proclamation issued by the Governor General under the Great Seal of Canada pursuant to the procedure then applicable to an amendment of the same provisions of the Constitution of Canada". Section 55 applies to constitutional instruments (included in the Schedule to the *Constitution Act, 1982*) which should be amended pursuant to one of the procedures for amending the Constitution of Canada provided in Sections 38, 41, 43 of the *Constitution Act, 1982* (Newman 1998: 2).

and authentic only in English.[795] When in 1990 the French version was submitted to the Parliament (in the form of the report of French Constitutional Drafting Committee),[796] the Parliament distributed it to the provinces and at this stage, the process was halted. Accordingly, some portions of the Canadian Constitution are still authentic only in English, although their French versions were ready and submitted to the Parliament of Canada in 1990. The question why some parts of the Constitution of bilingual Canada have not been yet authenticated in two languages have been raised by judges[797] and Members of the Parliament,[798] but the enactment process is at a halt since 1990.

In order to fulfil the obligations under section 55 of the *Constitution Act, 1982*, the Minister of Justice of Canada set up in 1984 the French Constitutional Drafting Committee composed of the experts in jurilinguistics, drafting and constitutional law.[799] At the outset, the Committee drew up a provisional French version of the constitutional instruments on the basis of drafts prepared and commented by the jurilinguists. This provisional version was then reviewed by the jurilinguists. Subsequently, the Committee - taking into consideration observations made by jurilinguists and comments made by officials of the Department of Justice - prepared the final version. While drafting the French version of the constitutional instruments, the Committee followed the rule of legal accuracy and good style. The Committee aimed at guaranteeing "the greatest possible consistency in the documents without

[795] Nevertheless, Canadian courts refer to the French version of the Constitution prepared by the French Constitutional Drafting Committee, drawing at the same time attention to the fact that this French version is not official either authentic yet. See, for instance, decisions of the Federal Court of Appeal in the case Isen v. Simms, 2005 FCA 161, 254 D.L.R. (4th) 273, 334 N.R. 233, [2005] 4 F.C.R. 563, paragraph 66 or in the case Fédération Franco-Ténoise v. R., 2001 FCA 220, [2001] 3 F.C. 641, 203 D.L.R. (4th) 556, 274 N.R. 1, 2001, paragraph 11.

[796] Final Report of the French Constitutional Drafting Committee responsible for providing the Minister of Justice of Canada with a draft official French version of certain constitution enactments; hereinafter Final Report; available at http://www.justice.gc.ca/en/ps/const/loireg/index.html, last updated 18.01.2008, last consulted in January 2008.

[797] *Cf.* Justice Robert Pidgeon of the Superior Court of Quebec in paragraph 158 of case *Bertrand* v. *Quebec (Attorney General)* (1996), 138, D.L.R. (4th) 481 (Que. S.C.), p. 511 who states: "On peut certes s'étonner et spéculer sur les circonstances responsables de ce que 17 des 24 textes encore en vigueur des annexes de la *Loi constitutionnelle de 1982* n'aient pas encore été adoptés. Il n'en demeure pas moins que des questions de fait importantes devront être appréciées par un juge saisi de l'affaire au fond. À titre d'exemples: comment expliquer qu'il se soit écoulé plus de huit ans avant que la version définitive des textes ne soit prête? Les légistes, constitutionnalistes et traducteurs chargés de préparer la version française de ces textes ont-ils rencontré des difficultés hors de l'ordinaire? Pourquoi les provinces, sur réception de la version finale des textes, n'ont-elles pas posé de gestes afin qu'elle soit adoptée? Leur adoption devait-elle faire l'objet de consultations auprès des provinces, comme le prétend L'Intervenant? Dans l'affirmative, pourquoi n'ont-elles pas été tenues?"

[798] *Cf.* for instance, the comment of Hon. Lucien Bouchard (expressed during the debate in the House of Commons on February 15, 1994, p. 1348) who stated, "Despite the commitments made in 1982, we are still awaiting the official, authoritative French version of the Canadian Constitution. In passing, I have one small question. How is it that a country like Canada, which claims to be bilingual, still does not have an official French version of the Constitution? We will get back to that some other day."

[799] See Membership of the French Constitutional Drafting Committee, available at http://www.justice.gc.ca/en/ps/const/loireg/meme.html, last updated 18.01.2008, last visited in January 2008.

changing the substance of the laws contained in them" (Final Report 1990) and at ensuring that the same meaning is rendered in French and English versions. Besides the legal aspect, the quality of language and style of a French version was also important. Especially, the Committee emphasised that the French version should not imitate the "language, syntax or sentence structure" of the English one and that both versions should render the same meaning in the most natural way for each of them (Final Report 1990).

The Committee underlined that in order to ensure the consistency in broader context of the whole constitutional law, when the version is prepared, each word and expression had to be considered "with respect to constitutional law in its entirety" (Final Report 1990). Therefore, the Committee decided to extend its task beyond the obligation of Section 55 and draft as well a French version of constitutional documents that were already repealed and constitutional documents that were not included in the Schedule to the *Constitution Act, 1982*. Moreover, in order to ensure good style and correspondence between both versions, the Committee revised and redrafted the existing authentic French versions of constitutional instruments and proposed some changes in the authentic English version of the *Constitution Act, 1982* to make both language versions more coherent.[800] Those modifications cannot, however, change the substance of the law and in order to become valid they have to be enacted pursuant to applicable constitutional amendment procedure.

In 1986 the Committee submitted a French version of the *Constitution Act, 1867* and fourteen Acts amending it in the form of the First Report[801] which was tabled in the House of Commons and in the Senate and then sent to all provinces and territories (Newman 1998: 2). Four years later, a complete French version of the thirty constitutional instruments listed in the Schedule to the *Constitution Act, 1982* was submitted in the Final Report of the Committee.[802] The Report contained as well eight French version of constitutional documents that were not included in the Schedule,[803] and, proposition of minor changes in French and

[800] For details on the changes in redrafted documents, see Introduction to Final Report of the Committee.

[801] *First report of the French Constitutional Drafting Committee responsible for providing the Minister of Justice with a draft official French version of certain constitutional Acts*, and tabled in Parliament by the Minister of Justice on December 17, 1986.

[802] See Final Report of the French Constitutional Drafting Committee, Part I: The Thirty Enactments referred to in the Schedule to the Constitution Act, 1982.

[803] See Final Report of the French Constitutional Drafting Committee, Part II: Additional Enactments. The Committee prepared French versions of the following constitutional enactments: the *Rupert's Land Act*, 1868 (31-32 Vict., c. 105 (U.K.)), *An Act for the temporary Government of Rupert's Land and the North-Western Territory when united with Canada, 1869* (32-33 Vict., c. 3 (Can.)), the *Statute Law Revision Act, 1893* (56-57 Vict., c. 14 (U.K.)), the *British North America Act, 1916* (6-7 Geo. V, c. 19 (U.K.)), the *Statute Law Revision Act, 1927* (17-18 Geo. V, c. 42 (U.K.)), the *Statute Law Revision Act, 1950* (14 Geo. VI, c. 6 (U.K.)), the *Miscellaneous Statute Law Amendment Act, 1977* (25-26 Eliz. II, c. 28, section 31 (Can.)), the *Miscellaneous Statute Law Amendment Act, 1977* (25-26 Eliz. II, c. 28 subsection 38(1) (Can.)).

English versions of the *Constitution Act, 1982* and changes in French versions of two acts enacted after 1982 (i.e., the *Representation Act, 1985*, Part I and the *Constitution Amendment Proclamation, 1987* (*Newfoundland Act*)).[804] The Final Report was tabled by the Minister of Justice to the Parliament and then sent to all provinces and territories for consultation on the French version and proposed changes. At this stage, the process of enactment of the French version has been halted by Quebec. The *Constitution Act, 1982* – especially the Canadian Charter of Rights and Freedoms - was the subject of difficult political negotiations between the Prime Minister and the premiers of provinces.[805] The final agreement - achieved on 5 November 1982 - did not provide Quebec with greater autonomy, especially with a veto right over constitutional amendments. Therefore, Quebec was the sole province that did not join the agreement.[806] Since Quebec does not accept the *Constitution Act, 1982*, it has resisted fulfilling any requirements of the *Act* including the duty of Section 55 to prepare and enact a French version of constitutional acts. In 1997, an attempt to restart consultation with provinces and territories was made by the government of Canada. However, the government of Quebec refused to participate in the process of the enactment of the French version of the Constitution (Newman 1998: 10-11).[807]

It should be kept in mind that failure to enact the French version of the constitutional acts does not result in invalidity or inoperativity of the English version of the acts or of the whole Constitution of Canada.[808]

---

[804] See Final Report of the French Constitutional Drafting Committee**,** Part III: Minor consequential changes.

[805] The debate on constitutional proposal and process of the enactment of the Constitution Act, 1982 is explained, *inter alia*, in Hogg's 'Introduction' to the special issue of the *American Journal of Comparative Law* (The New Canadian Constitution (Spring, 1984), vol. 32, no. 2) devoted to the amendments introduced to the Constitution of Canada by the *Constitution Act, 1982* (Hogg 1984: 221-224). For details in the political science see Russel 2004: 107-126 (Chapter 8 Round Three Patriation); Webber 1994: 106-120, on the position of Quebec towards the Constitution Act, 1982, see esp. pp. 117-120.

[806] The Supreme Court of Canada in *Re Resolution to Amend the Constitution* ([1981] 1 S.C.R. 753) decided that the consent of the provinces to the constitutional amendments was not required by law to the validity of the amendments. However, according to the Court, the "substantial degree of provincial consent" is required by the convention. In the following case *Re Attorney General Quebec and Attorney General Canada* ([1982] 140 D.LR. (3d) 385 (S.C. Can.) the Court decided that the consent of nine out of ten provinces (without Quebec) satisfies the "substantial degree of provincial consent" (Hogg 1984: 223).

[807] See the letter dated April 11, 1997 of the Associate Deputy Minister of the Department of Justice of Canada to provinces and territories regarding the enactment of the French-language version of the Constitution and the written response dated May 21, 1997 of the Deputy Minister of Justice and Deputy Attorney General of Quebec; quoted in Newman 1998: 10-11.

[808] For further details, see subsection 4.2.1. on language of the Constitution of Canada.

Subsection 6.2.2.
Subsequent drafting in Canada at federal level

Subsequent drafting took place at federal level not only in the case of the Constitution of Canada but also with regard to federal legislative instruments others than statutes. As explained above (see subsection 1.3.1.) Section 133 of the *Constitution Act, 1867* required Acts of Parliament be enacted,[809] published and printed in English and French. Until 1969, when the *Official Language Act* stated that also rules, orders, regulations, by laws and proclamation, which are required to be published in the official gazette of Canada, should be issued, printed and published in English and French (Section 4), Parliament of Canada had enacted and published only statutes in two languages. In 1979 the Supreme Court of Canada in *Blaikie case No 1* decided - and then confirmed in *Blaikie No 2, 1981* - that requirement of bilingual enactment, printing and publishing provided in Section 133 applies not only to statutes but also to delegated instruments like regulations or orders in council of legislative nature. As mentioned, those instruments have been enacted and printed bilingually since 1969 pursuant to Section 4 of the *Official Language Act*. However, from 1867 to 1969, majority of these instruments were enacted and published only in English or not published at all. It is, however, possible to indicate some regulations that were published in two languages before 1969. To be precise, pursuant to the *Regulations Act, 1950*,[810] since 1951 regulations should be published in English and French in the *Canada Gazette* within 30 days of being made. Moreover, in 1978 the revision and consolidation of federal regulations was published in English and French (*Consolidation of Regulations of Canada, 1978*). However, publication of an act in two languages is not sufficient for its validity, since according to interpretation of Section 133,[811] requirement to print and publish an act in English and French presupposes enactment of the act in the two languages.

The validity of legislative instruments enacted only in English (even if published in two languages) was questioned by the Standing Joint Committee of the Senate and the House of Commons for the Scrutiny of Regulations (hereinafter the Joint Committee) in the report

[809] Although Section 133 does not expressly refer to enactment but 'publishing and printing' is interpreted as involving 'enactment'. This interpretation was confirmed by the Supreme Court in *Blaikie No 1 case*, 1979; for more details see this thesis, subsection 1.3.1.
[810] S.C. 1950, c. 50; the act proclaimed in force on 1 January 1951.
[811] *Blaikie No 1 case*, 1979; for more details see this thesis, subsection 1.3.1.

tabled in Parliament in 1996.[812] The Joint Committee did not listed all invalid regulations,[813] but stated that hundreds of federal regulations can be invalid since they were enacted only in one language and therefore contravened Section 133 of the *Constitution Act, 1867* (Dunsmuir 2002: 3).

The Government did not agree with the opinion of the Joint Committee and stated that unilingual regulations are valid, since it was a consensus among authorities that Section 133 did not apply to regulations and the government acted in good faith. The Joint Committee did not agree with these arguments and did not accept either the opinion of the Department of Justice which maintained that the regulations - made between 1958 and 1969 - that were published in two languages in *Consolidation of Regulations of Canada, 1978* are valid. (Dunsmir 2002: 2-3). According to Committee, for the validity of the regulations, it was not enough to publish them in two languages but they should be also (re-)enacted in English and French. Consequently, if a legislative instrument - whose enactment in one language contravenes Section 133 - is not re-enacted in two languages, the entire instrument is invalid

In order to ensure the validity of legislative instruments made and enacted only in English, the Minister of Justice and Attorney General decided to propose the *Legislative Instruments Re-enactment Act,* which was enacted in 2002.[814] The Act aims at re-enacting in English and French two kinds of legislative instruments: firstly, legislative instruments that were enacted in one language but published in two official languages (Section 3),[815] and secondly, legislative instruments enacted in one language and published in one language or not published at all[816] (Section 4). Those instruments that were enacted in one language but published in two official languages are re-enacted in two languages automatically and retroactively, i.e., on the same date as a legislative instrument in one language came into force. Legislative instruments, which were enacted in one language and published in one language or not published, are re-enacted not automatically but at the discretion of the Governor in Council. Those instruments enacted and published in one language or unpublished, which are not re-enacted in two languages within six years after the *Legislative Instruments Re-enactment Act, 2002* comes into effect, will be automatically repealed. The

[812] The Joint Committee's Third Report of the 35th Parliament (No 59).
[813] The Joint Committee indicated, for instance, the unilingually enacted *Public Lands Mineral Regulations, 1969*, (1969, C.R.C., c 1325).
[814] *An Act to re-enact legislative instruments enacted in only one official language*, Bill S-41, Statutes of Canada 2002, c.20; hereinafter short title: the *Legislative Instruments Re-enactment Act* is used.
[815] Section 3 was introduced to *The Legislative Instruments Re-enactment Act, 2002* mainly in order to ensure the validity of regulations published in *Consolidation of Regulations of Canada, 1978*.
[816] Section 4 of the *Legislative Instruments Re-enactment Act, 2002* applies only to unpublished instruments that were exempted from publishing requirement.

Legislative Instruments Re-enactment Act, 2002 expressly states in Section 6 that English and French versions of re-enacted instruments are equally authoritative.

The example of subsequent drafting of French versions of unilingually enacted federal regulations demonstrates that if a new language version of a legal act produced by means of subsequent drafting is to be in force and valid, it is not enough to draft a new language version but also a legal act has to be published and re-enacted in a new language. Re-enactment in two languages is sine qua non of the validity of not only a new language version but also of the entire instrument. The same rule is applied with regard to subsequent drafting at provincial level examined in the following subsection (6.2.3.). Subsequent drafting of unilingual portions of the Canadian Constitutions also involves enactment. It is not, however, re-enactment of the constitutional act, but enactment of French version of an act. Consequently, as explained in the previous subsection (6.2.1.), if French version of a portion of the Constitution is not enacted, this French version has no legal force and effect but a constitutional act is valid.

Subsection 6.2.3.
Various reasons for subsequent drafting of a new language version in Canadian provinces and territories

Subsequent drafting was applied as well in a few Canadian provinces in order to prepare English (in case of Quebec) or French version of provincial legislation enacted and published only in one language. In Canadian provinces subsequent drafting of legislation in a second language results from one of three reasons; firstly, from a change of law which starts to require to enact law bilingually and to prepare new language versions of unilingual legislation enacted before the requirement entered into force; secondly, from the practice of unilingual drafting based on the unconstitutional requirement to draft unilingually; thirdly, from the practice of unilingual drafting that breaches law. In this subsection, the three situations are explained and illustrated with examples.

First reason for subsequent drafting - akin to the reason of subsequent drafting in the European Union - is observed when law that required enacting and publishing legislation in one language is changed and commences to require legal and legislative bilingualism. As explained in this thesis in subsection 1.3.2, in most Canadian provinces no legal provision

recognises any official language of a province[817] but *de facto* official language(s), and in particular official language(s) of legislature and authentic languages of law, can be indicated. Consequently, no new language is granted with a status of official language of province (unlike in the EU) but a new language becomes a language of legislation due to a change of law (like in the EU). Usually amended provincial law not only requires to draft, enact and publish new legal acts in two languages but also to prepare new language versions of legislation enacted unilingually before the requirement to draft bilingually entered into force. This situation is similar to subsequent drafting in the European Union when a new language becomes official, and, pursuant to *Regulation 1/1958*, EU law must be drafted in a new language and law enacted beforehand should also be subsequently drafted in a new language. The example of this kind of subsequent drafting applied in Canada can be observed in Ontario where law was drafted and enacted only in English for more than one century and the requirement to draft law in English and French came into force in January 1991 pursuant to the *French Language Service Act*, *1986*[818]. This Act introduced the requirement not only to draft bilingually but also to prepare French language version of public general statutes consolidated and re-enacted in the *Revised Statutes of Ontario, 1980* and those public statutes that were enacted in English after the *Revised Statutes of Ontario, 1980* had come into force. The Attorney General was responsible for translation of the afore-mentioned statutes which should be completed by the end of 1991 and for presenting the translations to the Legislative Assembly for enactment. As a result of the enactment, translated French versions of public acts became official law equally authentic with English versions.[819]

An interesting example of potential subsequent drafting can result from the change of law in Prince Edward Island when respective provisions of the *French Language Services Act, 1999*[820] come into force. The *French Language Act* requires bilingual enactment of provincial law and subsequent drafting and authentication of French version of acts enacted only in English. However, the subsequent drafting is not required for all unilingual acts but only for those that are amended. Consequently, preparation of French version of the act could take place only if the act was amended. Since neither requirement to enact bilingually nor to draft subsequently French versions of unilingual acts, which are being amended, has not come

[817] Exception from this rule is New Brunswick and Quebec where law recognises official language(s) of the provinces. The latter recognises French as an official language of the province, the former is officially bilingual.
[818] S.O., ch. 45, par. 4 (1986) (Ont.); the consolidated version in R.S.O. 1990, c. F.32.
[819] For more details on language regime in Ontario, see this thesis, subsection 1.3.2., paragraph 3.
[820] S.P.E.I. 1999, c. 13.

into force yet, at this moment subsequent drafting in Prince Edward Island is just a hypothetical example.[821]

Secondly, subsequent drafting can result from practice of unilingual drafting which is based on unconstitutional law. Although drafting and enactment of legislation in two languages is required by the Constitution, new law is passed and grants the status of legislative language to French only or to English only. Consequently, the requirement to draft, publish and enact legislation in two languages is unconstitutionally changed and provincial legislation drafted and enacted in one language pursuant to unconstitutional law is invalid. The invalidity of unilingual legal acts from the date of their enactment in one language is stated by Canadian courts. In order to make legislation valid and effective, unilingual legal acts were translated into another language and re-enacted in two languages. Examples of this kind of subsequent drafting resulting from unconstitutional law and involving translation and re-enactment are observed in Quebec and Manitoba.

In Quebec subsequent drafting resulted from application of Bill 101[822] which contravened Section 133 of the *Constitution Act, 1867*. Pursuant to Bill 101, provincial legislation was enacted and published only in French, whereas Section 133 required the Acts of the Legislature of Quebec be printed and published in English and French. In *Blaikie Case No 1, 1979*, the Supreme Court of Canada stated unconstitutionality of Bill 101 and invalidity of unilingual acts. According to the Supreme Court of Canada, Section 133 of the *Constitution Act, 1867* requires Acts of Parliament (see *Blaikie Case No 1, 1979*), regulations (see *Blaikie Case No 2, 1981*) and other instruments of a legislative nature (see *Sinclair* v. *Quebec, 1992*) be enacted, published and printed in English and French.[823] In order to fulfil the requirement of bilingual drafting, enacting and publishing, pursuant to *an Act respecting a judgment rendered in the Supreme Court of Canada on 13 December 1979 on the language of the legislature and the courts in Québec*, 1979 (hereinafter the *Act, 1979*) Quebec re-enacted those acts that had been enacted only in French after Bill 101 had come into force. Due to the *Act, 1979*, unilingual versions of Acts were replaced with French text and English version of these Acts. The French text and English version of each Act published in the *Gazette officielle du Québec* formed a separate Act which should be cited in the same way as the Act it replaced and should have effect from the date the replaced Act came into effect (Section 1). The *Act,*

[821] For more details on language regime in Prince Edward Island, see this thesis subsection 1.3.2., paragraph 9.
[822] *Charter of the French Language*, *1977* - *La charte de la langue française*, 1977, L.R.Q. chap. C-11 (1977, chap. 5); S.Q. 1977, c. 5; R.S.Q., c. C-11.
[823] For more information on legislative bilingualism in Quebec and for references to the above-mentioned cases of the Supreme Court of Canada, see subsection 1.3.2., paragraph 1.

1979 provided that the Government could, by general reference, replace unilingual regulations and other instruments of legislative nature with the French text and English version published in the *Gazette officielle du Québec* (Section 3).

Another example of unconstitutional requirement to draft unilingual law which resulted in subsequent drafting can be indicated in Manitoba.[824] In 1890, the Legislature of Manitoba enacted the *Official Language Act*[825] that required Manitoban legislation to be enacted, printed and published only in English. This Act was, however, in the contradiction to the Section 23 of *Manitoba Act, 1870*,[826] pursuant to which acts of Manitoban legislature must be enacted, printed and published in English and French. Since *Manitoba Act, 1870* is part of the Constitution of Canada, the Legislature of Manitoba cannot change provisions of that Act. In the *Reference Re Manitoba Language Rights*, 1985,[827] the Supreme Court of Canada declared that the *Official Language Act, 1890* is unconstitutional and legislation enacted, published and printed only in one language is, and always have been, invalid.[828] In order to preserve the rule of law, the Court provided, however, the period of temporary validity of unilingual legislation from the date of the judgment in the case *Reference Re Manitoba Language Rights*, 1985 until legislation is re-enacted, printed and published in two languages. Moreover, rights, obligations and other effects that arose under unilingual current laws and repealed or spent laws and which are not saved by any 'saving' doctrine,[829] are "deemed temporarily to have been and continue to be effective and beyond challenge" (*Reference Re Manitoba Language Rights*, 1985, paragraph 107). In the same paragraph the Supreme Court stated that "[i]t is only in this way that legal chaos can be avoided and the rule of law preserved".

Preparation of new language version of legislation that has been already enacted in one language is the classical case of subsequent drafting. For validity of Manitoba legislation, it was necessary not only to translate English version of Manitoba statutes and regulations and other laws into French but also to re-enact them in two language versions. The Supreme Court in Order of 4 November 1985[830] established the minimum period necessary for translation, re-

[824] For details on language regime in Manitoba, see this thesis, subsection 1.3.2., paragraph 4.
[825] *Act to Provide that the English Language shall be the Official Language of the Province of Manitoba,* S.M. 1890, c. 14.
[826] 33 Victoria, chap. 3, 1870 (Canada); reprinted in R.S.C. 1970, App. II, 247.
[827] *Reference Re Manitoba Language Rights*, 1985, 1 S.C.R. 721.
[828] See Bilodeau *v.* A.G. (Man.), 1986, 1 S.C.R. 449.
[829] The Supreme Court mentioned three 'saving' doctrines: mistake of law, *res judicata* and *de facto* doctrine. For more details on these three 'saving' doctrines and others in the context of *Reference Re Manitoba Language Rights*, 1985, see Gibson and Lercher 1986: 305-331.
[830] Order: Manitoba Language Rights, [1985] 2 S.C.R. 347.

enactment, printing and publishing of unilingual Acts of the Legislature of Manitoba and the unilingual repealed and spent Acts of the Legislature of Manitoba. This period was fixed at 31 December 1988 for statutes (the Continuing Consolidation of the Statutes of Manitoba) and regulations of Manitoba, and for Rules of Court and Administrative Tribunals. They should be printed and published in bilingual, parallel column. All other laws of Manitoba should be translated, re-enacted, published and printed until 31 December 1990. After the periods established by the Court, those acts that had not been re-enacted, published and printed in two languages were regarded as invalid and of no force. The *Supreme Court Order, 1985* was in accordance with and gave effect to an agreement between the Government of Manitoba and the Franco-Manitoban Society (Société franco-manitobaine) that set up timetable for translation and re-enactment of unilingual legislation (Jourdain 1995). In 1987, the first act was adopted in order to re-enact statutes of Manitoba in English and French.[831] Then, between 1987 and 1990, several acts which aimed at re-enacting statutes have been adopted.[832]

Finally, subsequent drafting can result from practice of unilingual drafting which contravenes effective and valid law that requires legal acts to be drafted in two languages. The practice of unilingual drafting despite legislative bilingualism provided by law was observed in the Yukon Territory, Alberta and Saskatchewan which were curved from the Northwest Territories and where Section 110 of the *Northwest Territories Act, 1875*[833] was applied until it was repealed or amended by competent legislative authority of the Yukon Territory, Alberta or Saskatchewan respectively. Section 110 – similar to Section 133 of the *Constitution Act*, *1867* which provides legislative and judicial bilingualism in Canada and Quebec - required legal acts be drafted in English and French.[834] Despite this requirement, in both provinces and in the Yukon, laws was drafted, enacted and published only in English. In the Yukon, since 1898 when the territory was created until 1988 when the *Languages Act of the Yukon, 1988*[835] was enacted, legal acts were drafted and published only in English. The *Languages Act of the Yukon, 1988* required acts and regulations, which had been published before 31 December

[831] The *Re-enacted Statutes of Manitoba*, 1987 S.M. 1987-88, c. 9.
[832] Jourdain 1995 (see footnote 36) lists the following acts: *Re-enacted Statutes of Manitoba, 1987, Act,* S.M. 1987-88, c. 9; *Re-enacted Statutes of Manitoba, 1988, Act*, S.M. 1988-89, c. 1; *Re-enacted Statutes of Manitoba (Private Acts) Act, 1990*, S.M. 1990-91, c. 1; *Re-enacted Statutes of Manitoba (Public General Acts), 1990*, S.M. 1990-91, c. 3; *Statute Law Amendment (Re-enacted Statutes) Act*, S.M. 1988-89, c. 11; *Statute Law Amendment (Re-enacted Statutes) Act*, 1990, S.M. 1989-90, c. 91; *Statute Re-enactment Act, 1988*, S.M. 1988-89, c. 2; *Statute Re-enactment and By-law Validation (Municipal) Act*, S.M. 1989-90, c. 68; *Statute Reenactment and By-law Validation (Winnipeg) Act*, S.M. 1989-90, c. 9.
[833] S.C. 1875, c. 49.
[834] For details on Section 110, see this thesis subsection 1.3.2., especially paragraph 5 and 6; and on Section 133, see subsection 1.3.1., especially paragraph 1.
[835] S.Y. 1988, c.13; Revised Statutes of The Yukon 2002, c. 133.

1990 only in one language, had to be published in English and French before 1 January 1994, in order to be of force or effect (Subsection 13.2.). To fulfil the obligation under the *Languages Act*, in 1993 the Commissioner of the Yukon Territory with the advice and consent of the Legislative Assembly passed the *Enactments Republication Act*,[836] which authorised the republication of the English text and the first-time publication of the French text of the Revised Statutes Act and other instruments (see Subsection 1(a) and 1(b)), and declared the English and French texts to be equally authoritative (Subsection 1(c)). The *Enactments Republication Act* underlines that it does not aim at enacting new law or at changing the effect of the law, but "rather the intention is to provide two equally authoritative texts where formerly there was one" (Subsections 4.1 and 11.1). Preparation and publication of the French version of statutes, regulations or Orders-in-Council, which existed only in English at the time of their enactment, is an example of a subsequent drafting. As already mentioned, value of subsequent drafting can be questionable. Therefore, to avoid disregarding of the French version, which is *de facto* translation,[837] in case of discrepancy between a French version and first or republished English version, the *Enactments Republication Act* provides an interesting solution. If such discrepancy appears and questions the validity of a provision, "the discrepancy must be treated as inadvertent and a court may delay adjudication of the issue until the Legislative Assembly has had reasonable opportunity to correct the discrepancy" (Subsection 4.3. for Acts and Subsection 11.3. for regulations and Orders-in-Council).[838]

Alberta and Saskatchewan, where Section 110 was never applied, chose the solution different from the Yukon.[839] Although the Supreme Court of Canada stated the obligation to apply Section 110 in both provinces and invalidity of unilingual legislation,[840] instead of providing bilingual drafting of new legal acts and subsequent drafting of French language version of acts enacted only in English, the Alberta and Saskatchewan decided to repealed Section 110, validate unilingual legislation and provide the requirement to enact law only in

[836] S.Y. 1993, c.20. Due to general statute revision in 2002 (Yukon O.I.C. 2003/233), all statutes of Yukon enacted before January 1, 2003 – hence also the *Enactments Republication Act*, 1993 – are deemed to have been repealed.

[837] The term 'translation' is used here in the sense of a text or a version which is the product of translating process.

[838] For more details on language regime in the Yukon, see this thesis, subsection 1.3.2., paragraph 6.

[839] For more details on language regime in Alberta and Saskatchewan, see this thesis, subsection 1.3.2., paragraph 7.

[840] The Supreme Court of Canada rendered the decision for Saskatchewan in *Mercure* v. *Attorney General of Saskatchewan* case (1988 1 S.C.R. 234); and for Alberta in *Paquette* v. *R*. case ([1985] Alta. L.R. (2d) 38, [1990] 2 S.C.R. 1103). For more details on above mentioned decisions of the Supreme Court, see this thesis subsection 1.3.2., paragraph 7.

English. It was possible because Section 110 of the *Northwest Territories Act* is not a constitutional provision, consequently provinces can amend and repeal it. Moreover, the possibility to repeal, abolish or alter provisions of the Northwest Territories' acts and ordinances applicable in Alberta and Saskatchewan was provided expressly in Acts which are portions of the Constitution of Canada, i.e., the *Alberta Act, 1905*[841] (Section 16) and the *Saskatchewan Act, 1905*[842] (Section 16) respectively.

In Alberta, law is drafted and enacted only in English pursuant to the *Languages Act* (Bill 60).[843] However, in Saskatchewan, selected acts are enacted in English and French and, some selected acts which had been enacted only in English before *An Act respecting the Use of the English and French Languages in Saskatchewan* (Bill 2)[844] came into force, were subsequently drafted in French and re-enacted in French and English. Subsequent drafting in Saskatchewan, although involves only some selected acts, should be mentioned, because of the influence that French translation (subsequent drafting) can have on English version. For instance, in 1996 an *Act respecting the Maintenance of Dependants of Testators and Intestates*[845] was re-enacted in English and French. The *Dependants' Relief Act* was initially passed only in English in 1940. The *Act* of 1996 has not been substantially changed comparing to the *Act* of 1940. However, in order to facilitate translation into French long sentences were economized, gender-neutral words and an active tense was used.[846]

The analysis of drafting of provincial and territorial law in two languages brought an interesting example of subsequent drafting which was proposed as a regular drafting method. Regular legal drafting in two languages is not indicated as one of the reasons for subsequent drafting, because this solution is regarded as unconstitutional. Subsequent drafting as a regular drafting method was provided by the Legislature of Manitoba in an *Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes*, *1980*[847] (hereinafter *Act, 1980*). Pursuant to Section 4(1) of this Act, a statute could be enacted in one official language and then subsequently translated into the other official language. When the translation was certified a true translation and deposited with the Clerk of the House, it became valid and had

---

[841] *An Act to establish and provide for the Government of the Province of Alberta* (short title: *The Alberta Act*), *Statutes of Canada* 1905, 4-5 Edward VII, c. 3, p. 77; R.S.C. 1985, App. II, No. 20.
[842] *An Act to establish and provide for the Government of the Province of Saskatchewan (short title: the Saskatchewan Act*), 4-5 Edward VII, c. 42; R.S.C. 1985, App. II, No.21.
[843] Languages Act, S.A. 1988, c. L-7.5.
[844] Language Act, S.S. 1988, c. L-6.1.
[845] S.S. 1996, c. D-25.01. Hereinafter Dependants' Relief Act.
[846] See minutes of Standing Committee on non-controversial bills, May 29, 1996, available at http://www.legassembly.sk.ca/Committees/Archive/NCB/23Legislature/960529nc.htm, last consulted in August 2007.
[847] S.M. 1980, c.3.

the same effect as the language version that had been previously enacted. Despite validity and the same effect of the two language versions guaranteed by Section 4(1), actually, in the case of discrepancy between two language versions, the originally drafted version prevailed over the translation (Jourdain 1995). Moreover, the deposit of translation was not obligatory (Jourdain 1995). This legislative method and practice was in contradiction with the principle of equal authenticity and the Supreme Court of Canada declared in the case *Reference Re Manitoba Language Rights*[848] that this provision is unconstitutional[849] and the entire *Act, 1980* was repealed in 1987.[850]

[848] *Reference Re Manitoba Language Rights*, 1985, 1 S.C.R. 721.
[849] The Court stated also that if the *Act, 1980* was not enacted, printed and published in English and French, then the entire *Act* is invalid. If the *Act, 1980* was enacted, printed and published in the two official languages, then only Sections 1 to 5 (hence also Section 4(1) which is analysed above) are invalid and of no force and effect.
[850] See the *Re-enacted Statutes of Manitoba, 1987, Act*; S.M. 1987-88, c. 9.

Conclusion to Section 6.2.

As demonstrated in this section, in Canada, examples of subsequent drafting can be observed as far as constitutional, federal, provincial and territorial law is concerned. The necessity for subsequent drafting results from a constant development of complex linguistic situation in Canada. Various factors explain why after enactment of legal instruments in one language, a new language version of those acts has to be prepared. The requirement to draft subsequently a new language version of legal instruments can stem from legal act (e.g., Section 55 of the *Constitution Act, 1982* required portions of the Constitution of Canada enacted only in English to be drafted and enacted also in French) or from a judicial decision (e.g., *Reference Re Manitoba Language Rights*, 1985 required unilingual legislation of Manitoba to be drafted and enacted in French). However, in order to understand why subsequent drafting is required, one should consider why law has been drafted in one language. Pursuant to the analysis of subsequent drafting in Canada conducted in this section (6.2.), the following reasons for unilingual legal drafting can be indicated: lack of legal requirement to draft legislation in two languages, wrong interpretation of provisions required to draft in two languages, unilingual drafting that breaches the law, unilingual drafting that is based on unconstitutional law.

In Canada, regardless what are the reasons for subsequent drafting, three stages of this process should be distinguished. The first stage, where a new language version of a legal instrument is drawn up, involves translation. However, sometimes in order to facilitate preparation of a new language version or in order to correct some errors, the 'original' version is edited and slightly changed (see, for instance, subsequent drafting of French version of portions of Canadian Constitution or subsequent drafting in Saskatchewan). Accordingly, if an 'original' version is simplified, e.g., structure of sentences is changed, in order to facilitate drafting of a new version, elements of co-drafting can be observed at this stage. However, modification of an 'original' text made during subsequent drafting can introduce some changes in syntax or style of a legal instrument but does not influence the instrument semantically. The second stage involves enactment which can be based on various models. Sometimes, only a new language version is enacted, or sometimes a new language version is

enacted and 'original' version is re-enacted. Due to enactment, it is possible to change and correct the re-enacted ('original') version. During the last stage, both language versions are published.

If a new language version of legal instruments is not drafted, enacted or published,[851] it can result in invalidity of legal instruments which were to be subsequently drafted in a new language. Sometimes, lack of enactment or publication of a new language version does not cause invalidity of the instrument but makes this instrument valid only in one language because its new language version did not become authentic; e.g., French version of unilingual (English) portions of Canadian Constitution has not been enacted yet, consequently, these unilingual parts of the Constitution are valid and authentic but only in English.

[851] Sometimes 'original' version is also re-enacted and re-published.

CONCLUSION to CHAPTER 6

As a result of comparison of subsequent drafting in the European Union and Canada described in this chapter, four differences can be indicated.

The first significant difference relates to a number of languages based on which a new version is produced. In Canada, one language - only English or, in the case of Quebec, only French - is a source language, whereas in the European Union subsequent drafting is based on more than one language (before the first enlargement drafting of new language versions was based on four languages and during the last ones (in 2004) on eleven or even (in 2007) on twenty languages). Consequently, subsequent drafting of a new language version of EU law is more challenging. Because of a number of languages involved in the drafting process, the following difficulties and questions arise; firstly, whether all and if not which authentic language versions of legal instruments should be the basis for a subsequently drafted new language version; secondly, if more than one language is taken into consideration and there are discrepancies as to the meaning of the provision in question. As explained in subsection 6.1.1. as many authentic language versions as possible should be taken into consideration during drafting and especially during revision of a new language version. In particular, any of authentic language versions cannot be rejected because it is not 'original' or because it is ambiguous or causes dicrepancies among authentic versions. In case of discrepancy, the meaning of the legal provision should be determined by reference to other provisions of a legal instrument or other instruments and the meaning that harmonises with the function and purpose of the provision in question should be chosen. If authentic versions are ambiguous, this vagueness must be retained in a new language version.

Regardless number of languages involved in drafting process, drafters of a new language version of both EU law and Canadian law encounter a difficulty in rendering legislation from authentic language into a new language. In Canada if it is difficult to translate legal provisions into the new language, drafters modify 'original' version; e.g., simplify the structure of sentences. However, this modification cannot change the substance of a legal instrument. This practice to my best knowledge is not applied in the European Union. The modifications of this kind can be observed during regular drafting of EU law, especially

during revision when in order to express the substance of a legal instrument better and congruently in all language versions, the basic ('original') version can be changed. A new language version of EU *acquis* is subsequently drafted by experts of candidate state who do not have the competence to modify authentic language versions of EU law, even if the change doe not influence the substance of a legal act. In Canada, modifications are possible also because subsequent drafting results often not only in enactment of a new language version but also in re-enactment of 'original' language version.

The third difference refers to the reason for subsequent drafting. In the European Union, subsequent drafting results always from increase of a number of official languages which is caused in all cases - except of subsequent drafting of Irish version of secondary legislation – by the accession of new Member States to the Union. In Canada as demonstrated in section 6.2., a variety of reasons for subsequent drafting can be observed. Subsequent drafting of French version of Canadian constitutional and federal law did not result from granting official status to any new language. Although French and English were official languages of Canada, until 1969 most of federal regulations and legislative instruments were enacted only in English and then, due to *Blaikie case No 2, 1981* and to *Sinclair* v. *Quebec, 1992*, were subsequently drafted in French, re-enacted in English and French and published in both languages. Some portions of the Canadian Constitution enacted by the British Parliament only in English are required, pursuant to the *Constitution Act, 1982*, to be drafted and enacted in French. As explained in section 6.1. although the French version of unilingual portions of the Constitution was prepared, but to date has not been enacted yet. In Canadian provinces – except New Brunswick where English and French are official languages and Quebec where French has a status of official language – no language is recognised as the official language of a province. Consequently, granting an official status to a new language is not a reason for subsequent drafting of a new language version of provincial law. In Quebec where only French is official language, provincial law was subsequently drafted in English, because unilingual enactment of Quebecois law was based on unconstitutional legal provisions. Requirement to draft, enact and published Acts of Parliament, regulations and other instruments of a legislative nature in Quebec was confirmed by the Supreme Court of Canada in *Blaikie Case No 1, 1979*, *Blaikie Case No 2, 1981* and in *Sinclair* v. *Quebec, 1992*. Sometimes, in provinces and territories, subsequent drafting results from practice of enacting unilingual legal instruments that contravenes valid law which require to draft, enact and publish law in English and French (see an example of Yukon Territory, Saskatchewan and Alberta analysed in subsection 6.2.3.). Consequently, subsequent drafting in Canada usually

does not result from introduction of a new language into system of federal or provincial law. Reason for subsequent drafting of legislation in Ontario can be regarded as similar to a cause of subsequent drafting in the European Union. Although no new language was granted an official status, since in Ontario official languages of the province are not recognised, subsequent drafting of French version of provincial law resulted from enactment of the *French Language Service Act*, *1986* that required not only to draft, enact and publish legislation in two languages but also to draft, enact and publish French version of legal instruments that were drafted and enacted only in English. Accordingly, subsequent drafting in Ontario results from granting to French a status of legislative language similarly to subsequent drafting in the EU when new languages become official languages and thereby legislative languages.

The last difference between subsequent drafting in Canada and in the European Union refers to consequences of lack of a language version that should have been subsequently drafted. A lack of the new language version means that version has not been drafted or not has been authenticated or not has been published in a new language. Subsequent drafting in Canada was applied to constitutional, federal, provincial and territorial law. Therefore different consequences of lack of conduction or completion of subsequent drafting can be indicated. To sum up, in Canada, if a new language version of a legal instrument is not drafted, enacted and published or the entire instrument is invalid since it was enacted or a new language version is not authentic and the instrument is valid but only in one language. In the European Union, the consequence of a lack of the version that should have been drafted, authenticated and published in a new language was determined in case *Skoma-Lux sro* v *Celní ředitelství Olomouc* C-161/06 of 11 December 2007. The European Court of Justice discussed the lack of a proper publication of a Community regulation in the Official Journal in the language of a new Member State, which became an official language of the EU. In the afore-mentioned case, the ECJ decided: "a Community regulation which is not published in the language of a Member State is unenforceable against individuals in that State" (paragraph 74(2)). However, the enforceability of the act does not mean that the act is invalid (paragraph 74(2)).

Drafting of a new language after adoption of legal instruments is an exception to multilingual drafting applied in Canada and in the European Union. It is justified by special circumstances, i.e., when new language(s) are introduced into legal system or when practice of drafting law in one language contravenes law. Since a new language version of a legal instrument is authenticated and sometimes the entire instrument is re-enacted, the new

language versions and language versions drafted before enactment of the instrument are equally authentic and recognised as originals.

CONCLUSION TO PART II

The first chapter of this part – chapter 3 – provided theoretical framework for the analysis of the practice of Canadian bilingual and EU multilingual legislative drafting. In particular, it explained how equality between language versions of a multilingual legal act can be achieved in drafting process. The comparison between translation and drafting and overview over various legislative drafting techniques revealed that the co-drafting is the optimal drafting method which allows to overcome shortcomings of translation, assure high quality of all language versions and make distinction between original and translated versions impossible because all versions are produced as originals. The co-drafting process has been defined as follows:

> Co-drafting is a multilingual legal drafting process where all language versions - that are to become equally authentic after adoption or enactment of a legal act - are drawn up simultaneously, and as a result it is not possible to determine in what language a multilingual legal act was originally drafted. Co-drafting methods can be based solely on drafting (hence all language versions are drafted as originals from the beginning until the end of a process), or they can combine drafting and translating in various ways and degrees. However, even in the latter it is not possible to identify the sole original language of the entire multilingual legal act.

With the above-definition in place, chapter 5 investigated, in detail, legislative drafting practice in Canada and the EU which revealed that in Canada at federal level governmental public bills and some regulations - examined in chapter 4 – are drawn by means of pure co-drafting method where no translation elements are observed. As a result of this method which is accompanied by thorough revisions conducted by jurilinguists, legal revisers, and experts at legislative bijuralism two high quality language versions of legal act are produced. Both of them are originals drafted with respect to the idiomatic features of both languages and at the same time they render the same legal meaning and reflect two legal traditions of Canada.

On the other hand, the analysis of EU legislative drafting of directives and regulations – investigated in chapter 4 – in co-decision procedure revealed that language versions of EU law are prepared at almost all legislative stages mainly in one language and this process is mainly based on translation and interpretation. However, investigation of the final phase of revision demonstrates that also EU legislative drafting includes elements of co-drafting which make recognition of a single source language, in which a multilingual legal act has been

originally drawn up, impossible. It results from the fact that during revision all language versions are compared and can influence each other, especially changes in originally drafted language version can be affected by language versions which were translated.

The last chapter (chapter 6) describes subsequent drafting which is exception for legislative drafting in Canada and the European Union. This method is applied when a new authentic language version of a legal act, which has been already adopted, is prepared. However, especially, in case of Canada, where subsequent drafting often requires authentication not only new language version but also original one, the latter can be changed due to necessary adjustment to a new language versions or due to correction of obvious mistakes.

CONCLUSION

In order to preserve actual equality between two or more authentic language versions of a legal act, that act should not be drafted by means of translation. Such a method excluding translation from drafting process has been established and successfully developed in bilingual Canada where, at the federal level, legislation is co-drafted simultaneously in two languages. It is not, however, possible to apply that method in a legal system like the European Union's one comprising 23 official languages. However, if we look closely at the drafting process in EU institutions, we have to affirm that it is not based on a pure translation. First, it is not only the final version of an act that is translated but translation is used during the whole multi-stage process of drafting. The function of translation here is not only drafting law but also providing versions to participants of the legislative process in their mother tongues.

Moreover, during the revision of multilingual drafts carried out by lawyer-linguists in all institutions participating in the legislative process, and at various stages of this process, an original version can be changed. It is what differentiates revision of a 'translation' during multilingual drafting from revision during classical translation process when only translated text can be changed. Therefore, the work of jurist-linguists resembles the sort of 'co-drafting'. This term was used without any reference to Canadian drafting by Tito Gallas (2001: 90) - who has been until 2007 the head of jurist-linguists in the Council and Manuela Guggeis (2005: 499) – Head of the Unit "Quality" in the Directorate "Quality of legislation" (previously "service juristes linguistes" in the Legal Service) - in order to describe the revision process where all language versions are compared and in case of discrepancies, changes can be introduced also into an 'original version' (a 'basic text' in the Council terminology) (cf. Piris 2004a, 2004b).

Another particularity of EU production of multilingual law that approaches this process more to drafting than to translation is a role of translators and linguists in production of various language versions of a legal act. There are authors who postulate a change in the perception of translators' roles as more creative than in classical translation (cf. Correia 2003:

43; Šarčević 1998 and 2000a). Others even state that translators and linguists are entrusted with a role which is actually equal to that of a drafter of legislation (cf. Agius).

Language versions of a legal text - from a Commission proposal until signature of legislative authorities - undergo many linguistic changes and permutations of translation. Moreover, language versions can influence each other, e.g. divergence between versions that have been translated can result from bad drafted 'original' that has to be changed during revision. As a result, it is difficult to assert on which language a single provision of a legal act has been based on or by which it has been influenced. A provision (an expression or a term) could be changed during a legislation process, for instance by an amendment that was proposed in a language different from that this provision has been originally drafted in. Moreover, during the revision, 'original' version could be changed because it has been poorly drafted. This uncertainty about a language a provision has been originate from, makes impossible to distinguish original and translated language versions. Consequently, one can state that EU drafting process like Canadian co-drafting guarantee equality between authentic language versions of a legal act.

GLOSSARY

The analysis of multilingual legal drafting required interdisciplinary research covering not only legal disciplines but also linguistic and translation studies. In order to use terms in precise way and to avoid terminological confusion - since sometimes the same term can have different meaning when applied in law and when used in linguistic or translation studies (e.g. 'parallel texts') - the following glossary comprises definitions of terms applied by the linguistics and translation studies and used throughout the thesis. Leaving aside controversy over definitions and use of some terms, the glossary provides only these definitions of terms that are accepted for the purpose of research and of the thesis.

The glossary of linguistic and translatological terms is prefaced with the definitions of basic key concepts defined in thesis.

Explanatory signs and abbreviations

- ➤ refers to a term defined in the glossary
- ➢ refers to a term defined in the glossary and related to the defined term; means 'see also'

Abbr. abbreviation
Ant. antonymous
Syn. synonymous

DEFINTIONS OF KEY CONCEPTS

AUTHENTIC LANGUAGE VERSIONS
Language versions which are equally authentic (in a sense of being equally legally valid) and create a text of a ➤multilingual legal act, contribute to its meaning and have to be taken into consideration when this legal act is interpreted.

CLASSICAL TRANSLATION
A process of a text production that fulfils the following criteria:
1. This process consists in transfer of meaning and style from one language (source language) into another (target language);
2. During this process, the target text is produced in the target language in the secondary communicative situation on the basis of the source text that has been produced in the primary communicative situation (Schäffner 1998: 83);
3. A production of the target text starts once a production of the source text is finished (3a). Accordingly, both texts are drawn up at different time and also usually in different place (3b).
4. Finally, a source text is unchangeable and cannot be influenced by a target text, even obvious mistakes in a source text cannot be corrected. For that reason, a revision – the last stage of this process - results in changes and corrections only in a target text.

CO-DRAFTING PROCESS
A ➤multilingual legal drafting process where all language versions - that are to become equally authentic after adoption or enactment of a legal act - are drawn up simultaneously, and as a result it is not possible to determine in what language a ➤multilingual legal act was originally drafted. Co-drafting methods can be based solely on drafting (hence all language versions are drafted as originals from the beginning until the end of a process), or they can combine drafting and translating in various ways and degrees. However, even in the latter it is not possible to identify the sole original language of the entire multilingual legal act.

MULTILINGUAL LAW
Law drafted and authenticated in two or more languages which usually have a status of official languages in the legal system in question.

MULTILINGUAL LEGAL ACT
A legal act whose text and meaning is created by two or more language versions which are equally authentic.
- ➢ authentic language versions
- ➢ principle of equal authenticity

MULTILINGUAL LEGAL DRAFTING
The term 'multilingual legal drafting' covers all methods that can be applied to draft ➤multilingual law; these methods include both legal translation and ➤co-drafting.

PRINCIPLE OF EQUAL AUTHENTICITY
Refers to ➤multilingual law and states that all language versions of ➤multilingual legal act, which have been authenticated in prescribed manner, are equally authentic, in other words, have the same legal force and legal effect. To make this statement functional, the principle presumes that all authentic language versions have the same meaning and all of them are originals.
- ➢ theory of original texts

THEORY OF ORIGINAL TEXTS
Refers to ➤multilingual law and presumes that all ➤authentic language versions of ➤multilingual legal act are originals regardless how they were drafted; expresses and confirms presumptions of ➤the principle of equal authenticity.

GLOSSARY OF LINGUISTIC AND TRANSLATOLOGICAL TERMS

ATOMISTIC ANALYSIS
A process of textual analysis that concentrates on an isolated element (i.e., entities like e.g.: words, syntagmas or sentences) taken from ➤ the (source) text.
➢ holistic analysis (ant.)

COHERENCE
A property of ➤ a text or an utterance created by the logical, semantic, and syntactic interdependence of its constituent elements; in contrast to ➤ cohesion, which relates to language, coherence reflects conceptual interrelatedness within the text (Delisle, Lee-Jahnke, Cormier 1999: 124)
➢ cohesion

COHESION
A linguistic property of ➤ a text or an utterance created by means of grammatical and linking words used to connect words within the sentence or sentences with each other; in contrast to ➤ coherence which relates to logic, cohesion is situated on the language level (Delisle, Lee-Jahnke, Cormier 1999:124)
➢ coherence

CONTRASTIVE LINGUISTICS
A branch of linguistics whose object is the comparative study of two or more languages with respect to lexicon, syntax, and stylistics
Syn. Comparative linguistics

CORRESPONDENCE
The relation of identity established independent of discourse between words or syntagmas of different languages

EQUIVALANCE
The relation of identity established by translator between two ➤ translation units (Delisle, Lee-Jahnke, Cormier 1999:137)

FORENSIC LINGUISTICS
Linguistic study (of legal and non-legal language) applied in the domain of law; it covers mainly the following areas of study: analysis of courtroom discourse, courtroom translating and interpreting, legal language comprehensibility, the use of linguistic evidence in court
➢ jurilinguistics, legal linguistics

FREE TRANSLATION
A type of translation in which more attention is paid to producing a naturally reading ➤ target text than to preserving ➤ the source text wording intact
➢ idiomatic translation

GENERAL LANGUAGE
A language which everyone within the speech community is able to use and understand on the basis of shared amount of linguistic and factual knowledge
➢ special language (ant.)

HOLISTIC ANALYSIS
A process of textual analysis that provides a framework for the global interpretation of all linguistic, stylistic, terminological, and cultural elements of ➤ a source text in order to facilitate their reformulation in another language, while taking to the account the function of ➤ the text to be translated (Delisle 143)
➢ atomistic analysis (ant.)

IDIOMATIC TRANSLATION
➤ A translation strategy that consists of producing ➤ a target text that conforms to the conventions established in ➤ the target language (Delisle, Lee-Jahnke, Cormier 1999: 144)
➢ free translation

INTERPRETATION or ***INTERPRETING***
Oral translation
Note: interpretation in ➤ translation studies is also understood as a one of ➤ translation strategy

JURILINGUISTICS
The linguistic study of a legal language; the term used mainly by Canadian scholars
Syn. legal linguistics
➢ legal linguistics

LEGAL LINGUISTICS
The linguistic study of a legal language
Syn. jurilinguistics
➢ jurilinguistics

LITERAL TRANSLATION
➤ A translation strategy where a translator produces ➤ a target text while retaining the formal features of ➤ the source text, but conforming generally to the grammar of ➤ the target language (Delisle, Lee-Jahnke, Cormier 1999: 153)

MEANING
The semantic content of the word separate from any given context

PARALLEL TEXTS
1. In translation studies, ➤ a text that represents the same text type as ➤ the source text.
2. In legal meaning, texts of a legal instrument authenticated in two or more languages (Šarčević 1998: 282)

SOURCE LANUAGE (SL)
The language from which ➤ translation [1] is made
Abbr. SL
Ant. target language
Syn. donor language (term not used in the thesis)
➢ target language (ant.), source text

SOURCE TEXT (ST)
➤ The text on which translation is based
Abbr. ST
Ant. target text
➢ target text (ant.), source language

SPECIAL LANGUAGE
The language that conveys "special subject information among specialists in the same subject" (Sager, Dungworth and McDonald 1980: 210) and is understood by those who share a certain amount of factual or field specific knowledge in addition to the generally shared linguistic knowledge. A special language is usually developed for purposes of scientific domains or by professional communities
Syn. language for special purpose, technical language, technolect
➢ general language (ant.), sublanguage

SUBLANGUAGE
Special language which is a part of general or ordinary natural language; this language is usually used to communicate in specialised technical domain or for specialised purpose (Arnold *et al*. 1994: 216)
➢ general language (ant.), special language

TARGET LANGUAGE (TL)
The language into which ➤ a translation unit is translated
Abbr. TL
Ant. Source language
Syn. receptor language (term not used in the thesis)
➢ source language, target text, source text

TARGET TEXT (TT)
Any ➤ text that is the product of ➤ translation activity
Abbr. TT
Ant. Source text
➢ source text (ant.), target language

TERM
A meaningful lexical unit consisting of a word or a group of words used to univocally designate a concept in a specific subject field.

TEXT
A written document of variable length that constitutes a whole when viewed from semantic perspective

TEXT FOR SPECIAL PURPOSES or ***SPECIAL PURPOSE TEXT (SPT)***
➤ Text formulated in ➤ the special language or language for special purposes
Abbr. SPT
➢ special language

TRANSCODING
An operation where the translator establishes correspondences between two languages on the lexical or phraseological level

TRANSLATING
A process of ➤ translation [1]
➢ translation [1]

TRANSLATION
1. the process of transferring the meaning of utterances in one language to another
   ➢ translating (syn.)
2. the product of the process of ➤ translating (➤ translation [1])

TRANSLATION STRATEGIES
A coherent plan of action adopted by translators based on their intention with respect to a given ➤ text (Delisle, Lee-Jahnke, Cormier 1999: 192).

TRANSLATION STUDIES (TS)
Academic discipline dealing with study of the theory, the description and the application of ➤ translation and/or ➤ interpretation
Abbr. TS
Syn. traductology, translatology, science of translation

TRANSLATION UNIT
A text segment consisting of a single word, a phrase, a whole sentence, or even more than one sentence, which a translator treats as a single cognitive unit in establishing ➤ equivalance (Delisle, Lee-Jahnke, Cormier 1999: 194)

INTERVIEWS –persons consulted

INTERVIEWS IN EU INSTITUTIONS

Interviews in the Legal Service of the Commission			
Name of interviewee	**Occupation of interviewee**	**Subject of interview**	**Date of the interview**
Mr Bevis Clarke-Smith	Director of the Quality of legislation team in the Commission Legal Service	Drafting and revision process	April 2006
Mr William Robinson	Coordinator in the Legal Revisers Group	Drafting and revision process; visit of Canadian expert	April 2006
Mr Gilbert Lautissier	Coordinator in the Legal Revisers Group	Drafting and revision process; visit of Canadian expert	April 2006
Mr Marek Kaduczak	Legal Reviser	Revision process, work of legal revisers in the Commission	April 2006

Interviews in the Legal Service of the Council			
Name of interviewee	**Occupation of interviewee**	**Subject of interview**	**Date of the interview**
Mr Tito Gallas	Head of the Legal Revisers Group	Drafting and revision process	April 2006
Mrs Katarzyna Zieleskiewicz	Legal Reviser	Revision process; work of legal revisers in the Council	April 2006

INTERVIEWS IN CANADA, AT THE DEPARTMENT OF JUSTICE

Interviews in the Legislative Services Branch of the Department of Justice			
Name of interviewee	**Occupation of interviewee**	**Subject of interview**	**Date of interview**
Mr Andre Labelle	Chief Jurilinguist and Legislative Counsel, Francophone	Co-drafting process Drafting in the EU (observation based on a visit in EU institutions) Work of jurilinguists	December 2006
Mrs Lise Poirier	senior jurilinguist, Francophone	Work of jurilinguists	December 2006
Mrs Louise Faille	drafter, francophone	Co-drafting process	December 2006
Mr Peter Birt	drafter, jurilinguist, Anglophone	Work of jurilinguists Co-drafting process	December 2006

LIST OF CASES

Abbreviations

ECR – European Court Report
NBCA – New Brunswick Court of Appeal
N.B.R. – New Brunswick Reports
S.C.R. – Supreme Court Reports (Canada)

THE EUROPEAN UNION

Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeputeerde Staten van Zuid-Holland, 24 October 1996, Case C-72/95 [1996] ECR I-05403.

ACF Chemiefarma NV v. *Commission*, Case C-41/69, [1970] ECR 661

Adolf Truly GmbH v *Bestattung Wien GmbH*, Case C-373/00, [2003] ECR I-1931.

BASF AG and others v Commission of the European Communities, joint cases T-79/89, T-84/89, T-85/89, T-86/89, T-89/89, T-91/89, T-92/89, T-94/89, T-96/89, T-98/89, T-102/89 and T-104/89; judgment of 27.02.1992, [1992] ECR II-315.

BASF AG and others v *Commission of the European Communities*, joint cases T-80/89, T-81/89, T-83/89, T-87/89, T-88/89, T-90/89, T-93/89, T-95/89, T-97/89, T-99/89, T-100/89, T-101/89, T-103/89, T-105/89, T-107/89 and T-112/89; judgement of 6 April 1995, [1995] ECR II-729 (referred to as the *PVC Case*).

Commission of the European Communities v *BASF AG and others*, Case C-137/92, judgment of the Court of 15 June 1994, [1994] ECR I-2555.

Commission of the European Union v United Kingdom of Great Britain and Northern Ireland, Case 100/84 [1985] ECR 1169.

Costa v Enel, Case C-6/64, 15 July 1964, ECR 585.

Criminal proceedings v Kenny Roland Lyckeskog, C-99/00 [2002] ECR I-04839

D v W, C-384/98, [2000] ECR I-6795, 14.09.2000.

Ferriere Nord SpA v Commission of the European Communities, 17 July 1997, Case C-219/95 [1997] ECR I-04411.

Ferriere Nord SpA v Commission of the European Communities, 6 April 1995, Case T-143/89 [1995] ECR II-00917.

Finanzamt Groß-Gerau v *MKG-Kraftfahrzeuge-Factoring GmbH*, C-305/01, [2003] ECR I-6729, 26.06.2003.

General Motors Corporation v Yplon S.A., C-375/97, [1999], ECR I-5421, 14.12.1999.

Germany v. Council, Case C-280/93 [1994] ECR I-4973, I-5054-6.

Göritz Intransco International GmbH v *Hauptzollamt Düsseldorf*, C-292/96, [1998] ECR I-165.

Jean Noël Royer - Reference for a preliminary ruling: Tribunal de première instance de Liège - Belgium - Case 48/75, [1976] ECR 00497

Kik v. OHIM, Case T-120/99, 12 July 2001

Kingscrest Associates Ltd and Montecello Ltd v *Commissioners of Customs & Excise*, Case C-498/03 [2005] ECR I-4427.

Nani Givane and Others v *Secretary of State for the Home Department,* C-257/00, [2003] ECR I-345.

NV International Fruit Company and others v *Commission (No 1),* 13.05.1971, joined cases 41 to 44/70 [1971] ECR 411.

Rockfon A/S v *Specialarbejderforbundet i Danmark*, Case C-449/93 [1995] ECR I-4291, 07.12.1995.

SA Roquette Frères and Maizena v. *EC Council*, Case 138/79 [1980] ECR 3333.

Skatteministeriet v Aktieselskabet Forsikrinsselskabet Codan, 17 December 1998, Case C-236/97 [1998] ECR I-8679.

Skoma-Lux sro v *Celní ředitelství Olomouc* C-161/06 of 11 December 2007

Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health, 6 October 1982, Case 283/81 [1982] ECR 3415.

Sumitomo Chemical Co. Ltd and Sumika Fine Chemicals Co. Ltd v *Commission*, 6 October 2005, Joined cases T-22/02 and T-23/02 02, [2005] ECR II-04065.

Van Gend en Loos v Nederlandse Tariefcommissie, Case C-26/62, 5 February 1963, ECR 1.

W.N., Case C-420/98 [2000] ECR I-2847.

CANADA

Attorney General of Manitoba v. *Forest* [1979] 2 S.C.R. 1032 (referred to as the *Forest case*)

Bertrand v. *Dussault*, 30 January 1909; reported in 1977, 77 D.L.R. (3d) 458-62.

Blaikie v. *Quebec (Attorney General)* (No 1) [1979] 2 S.C.R. 1016 (referred to as the *Blaikie Case No 1*)

Blaikie v. *Quebec (Attorney General)* (No 2) [1981] 1 S.C.R. 312 (referred to as the *Blaikie Case No 2*)

Canada (Attorney General) v. *Viola*, [1991] 1 F.C. 373.

Charlebois v. *Moncton (City)* [2001] 242 N.B.R. (2d) 259, 2001 NBCA 117 (referred to as the *Charlebois decision*)

Dean v. *Beothuk Data Systems Ltd.* [1998] 1 F.C. 433.

Fédération Franco-Ténoise v. *R.*, 2001 FCA 220, [2001] 3 F.C. 641, 203 D.L.R. (4th) 556, 274 N.R. 1, 2001

Flota Cubana de Pesca (Cuban Fishing Fleet) v. *Canada (Minister of Citizenship & Immigration)* ([1998] 2 F.C. 303, 2 F.C. 303, [1997] F.C.J. No. 1713

Isen v. *Simms*, 2005 FCA 161, 254 D.L.R. (4th) 273, 334 N.R. 233, [2005] 4 F.C.R. 563,

Lavigne v. *Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773.

Medovarski v. Canada (Minister of Citizenship & Immigration; [2004] FCA 85.

Mercure v. *Attorney General of Saskatchewan*, [1988] 1 S.C.R. 234 (referred to as *Mercure case* of 1988)

Paquette v. *R.*, [1990] 2 S.C.R. 1103 (referred to as the *Paquette case*)

Patriation Reference Case, [1981] 1 S.C.R. 753

Pellant v. *Hebert*, 9 March 1892; reported in 1981, 12 R.G.D. 242.

R. v. *Forest*, [1976] 74 D.L.R. (3d) 704 Man. Co. Ct.

Reference re *Language Rights Under Section 23 of Manitoba Act, 1870 and Section 133 of Constitution Act, 1867,* [1985] 1 S.C.R. 721 (referred to as the *Manitoba case* or *Reference Re Manitoba Language Rights* of 1985)

Reference Re Manitoba Language Rights, [1992] 1 S.C.R. 212.

Rogers v. Canada (Correctional Service), [2001] 2 F.C. 586 (T.D.)

Schreiber v.*Canada (Attorney General)* [2002] 3 S.C.R. 269

Sinclair v. *Quebec (Attorney General)* [1992] 1 S.C.R. 579

Slaight Communications Inc. v. *Davidson*, [1989] 1 S.C.R. 1038 (S.C.C.).

BIBLIOGRAPHY

SUBJECT MATTER BIBLIOGRAPHY

LAW; esp., comparative law and theory of law

Ancel, Marc (1971) *Utilité et méthodes de droit comparé*, Paris.

Banakas, Efstathios (2002) "The Contribution of Comparative Law to the Harmonization of European Private Law", in Andrew Harding and Esin Örücü (eds.) *Comparative law in the 21st century*, W.G. Hart Workshop (2000): Institute of Advanced Legal Studies London; The Hague, New York: Kluwer Law International, pp. 179-191.

Bell, John (2001) *French Legal Cultures*, London, Edinburgh, Dublin: Butterworths.

Bix Brian (1991) "H. L. A. Hart and the "Open Texture" of Language", in *Law and Philosophy*, vol. 10, no. 1, February, pp. 51-72.

Blankenburg, Erhard et al. (2000) *Legal culture in Five Central European Countries, WRR Working Documents, no W111, The Hague.*

Busuttil, E. (1974) "Malta", in *International Encyclopedia of Comparative Law*, vol. I, "National Reports," sect. "M.", Tübingen, Mohr.

Charles, C.A. (1988) "The legal system of Malta", in Kenneth R. Redden (ed.) *Modern Legal Systems Cyclopedia*, vol. 4 (revised), Buffalo, New York, U.S.A.: W.S. Hein.

Cotterrell, Roger (1997) "The Concept of Legal Culure", in David Nelken (ed.) *Comparing Legal Cultures*, Dartmouth Publishing Company Limited.

David, R. and J. E. C. Brierley (1985) *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*, 3rd edition, London: Stevens.

Dehousse, Renaud (1994) "Comparing National and EC Law: The Problem of the Level of Analysis", in *The American Journal of Comparative Law*, vol. 42, no 4, pp. 761-781.

Dessemontet, François and Tuğrul Ansay (1995) *Introduction to Swiss Law*, 2nd edition, The Hague-Boston-London: Kluwer Law International.

Ehrmann, H. W. (1976) *Comparative Legal Culture*, Prentice-Hall, Inc., Englewood Cliffs, New Jersey.

Evans-Jones, Robin (1998) "Receptions of Law, Mixed Legal Systems and the Myth of the Genius of Scots Private Law", in *Law Quarterly Review*, vol. 114, pp. 228-249.

Friedman, L. M. (1975) *The Legal System. A Social Science Perspective*, New York: Russell Sage Foundation.

Friedman, L. M. (1977) *Law and Society*, Englewood Cliffs, NJ: Prentice- Hall.

Ganado, J. Max (1947) "Maltese Law", in *Journal of Comparative Legislation and International Law*, 3rd ser., vol. 29, No 3/4, pp. 32-39.

Glenn, H. Patrick (1993) "La civilisation de la *common law*", in *Revue internationale de droit comparé*, vol. 45, no 3, pp. 509-575.

Glenn, H. Patrick (2000) *Legal Traditions of the World*, Oxford: Oxford University Press.

Glenn, H. Patrick (2004) "Legal Cultures and Legal Traditions", in Mark Van Hoecke (ed.), *Epistemology and Methodology of Comparative Law*, Oxford: Hart, pp. 7-20.

Glenn, H. Patrick (2007) *On Common Laws*, Oxford University Press.

Gretton, George L. (2003) "Reception without Integration? Floating Charges and Mixed Systems", in *Tulane Law Review*, vol. 78, pp. 307-332.

Harding, Andrew (2002) "Global Doctrine and Local Knowledge: Law in South East Asia", in *International and Comparative Law Quarterly*, vol. 51(1), pp. 35-53.

Hart, H. L. A. (1962/1994) *The Concept of Law*, Oxford: Clarendon Press; 2nd ed. 1994.

Husa, Jaakko (2001) "Legal Families and Research in Comparative Law", in *Global Jurist Advances*, vol. 1, Issue 3, Article 4, available at http://www.bepress.com/gj/advances/vol1/iss3/art4, last visited March 2006.

Husa, Jaakko (2006) "Legal families", in J. M. Smits (ed.) *Edward Elgar Encyclopedia of Comparative Law*, Elgar Publishing, pp. 382-392.

International Cooperation Group (2002) *National Survey of Legislative Drafting Services*, available at http://www.canada-justice.ca/en/ps/inter/survey/NationalSurvey-EN.pdf, last updated on 20.10.2005, last consulted in February 2008.

Jackson, B. S. (1988) *Law, Fact and Narrative Coherence*, Roby Merseyside: Deborah Charles Publications.

Klinck, Dennis R. (1992) *The Word of the Law: Approaches to Legal Discourse*, Ottawa – Canada: Carleton University Press.

Kötz, Hein (2003) "The Value of Mixed Legal Systems", in *Tulane Law Review*, vol. 78, pp. 435-439.

Kroeber and Kluckhohn (1952) "Cultures: A Critical Review of Concepts and Definitions", in *Harvard University Peabody Museum of American Archeology and Ethnology Papers*, vol. 47, no 1.

Lando, Ole (2001) "Nordic Countries, a Legal Family? A Diagnosis and a Prognosis", in Global Jurist Advances, vol. 1, issue 2, Article 5, available at http://www.bepress.com/gj/advances/vol1/iss2/art5, last visited March 2006.

Law Drafting Division Department of Justice (2001) *Legislative Drafting in Hong Kong. Crystallization in Definitive Form*, 2nd edition, available at http://www.doj.gov.hk/eng/public/pdf/ldhkv2e.pdf, last consulted September 2005.

Lord Rodger of Earlsferry (2003) "'Say Not the Struggle Naught Availeth': The Costs and Benefits of Mixed Legal Systems", in *Tulane Law Review*, vol. 78, pp. 419-434.

Merryman, J.H. (1985) *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America*, 2nd edition, Stanford University Press.

Mill, John Stuart (1861/1972) "Consideration on Representative Government", in H.C. Acton (ed.) *John Stuart Mill: Utilitarianism. Liberty. Representative Government*, London: Dent, pp. 187-428.

Milo, Michael and Jan Smits (2000) "Trusts in Mixed Legal Systems: A Challenge to Comparative Trust Law", in *European Review of Private Law* vol. 3, pp. 421-426.

Nelken, David (1995) "Disclosig/Invoking Legal Culture: An Introduction", in *Social and Legal Studies*, vol. 4, pp. 435-452.

Nelken, David (2006) "Legal Culture", in J. M. Smits (ed.) *Edward Elgar Encyclopedia of Comparative Law*, Elgar Publishing, pp. 372-381.

Örücü, Esin (1996) "Mixed and Mixing Systems: A Conceptual Search", in Örücü, Atwood and Coyle (eds.) *Studies in Legal Systems: Mixed and Mixing*, Kluwer Law International, pp. 335-344.

Örücü, Esin (2001) "Public Law in Mixed Legal Systems and Public Law as a 'Mixed System'", in *Electronic Journal of Comparative Law*, vol. 5.2., available at http://www.ejcl.org/52/art52-2.html, last consulted in December 2007.

Örücü, Esin (2002) "*Unde Venit*, *Quo Tendit* Comparative Law?", in Andrew Harding and Esin Örücü (eds.) *Comparative law in the 21st century*, W.G. Hart Workshop (2000): Institute of Advanced Legal Studies London; The Hague, New York: Kluwer Law International, pp. 1-18.

Örücü, Esin (2004) *The Enigma of Comparative Law. Variations on a Theme for the Twenty-first Century*, Leiden/Boston: Martinus Nijhoff Publishers.

Örücü, Esin (2008) "What is a Mixed Legal System: Exclusion or Expansion?", in *Electronic Journal of Comparative Law*, vol. 12.1 (May 2008), pp.1-18, available at http://www.ejcl.org.

Palmer, Vernon Valentine (ed.) (2001) *Mixed Jurisdictions Worldwide: The Third Legal Family*, Cambridge University Press.

Palmer, Vernon Valentine (2008) "Two Rival Theories of Mixed Legal Systems", in *Electronic Journal of Comparative Law*, vol. 12.1 (May 2008), pp. 1-28, available at http://www.ejcl.org, last consulted in May 2008.

Paasiletho, Satu (1999) "Legal Cultural Obstacles to the Harmonisation of European Private Law", in Veijo Heiskanen and Kati Kulovesi (eds.) *Function and future of European law*, University of Helsinki Faculty of Law, pp. 99-105.

Powell, Richard (1993) *Law Today*, 1st ed., Harlow: Longman.

Reid, Kenneth G.C. (2003) "The Idea of Mixed Legal Systems", in *Tulane Law Review*, vol. 78, pp. 5-40.

Reid, Elspeth and David L.Carey Miller (2005) *A Mixed Legal System in Transition: T. B. Smith and the Progress of Scots Law*, Edinburgh Studies in Law.

Rot, Henryk (ed.) (1995) *Główne kultury prawne współczesnego świata* [Main legal cultures in the contemporary world], Wydawnictwo Naukowe PWN: Warszawa.

Sacco, Rodolfo (1990) *Introduzione al diritto comparato*, 4th edition, Torino.

Smits, Jan (1998) "A European Private Law as a Mixed Legal System", in *Maastricht Journal of European and Comparative Law*, vol. 5, pp. 328-340.

Smits, Jan (ed.) (2001) *The Contribution of Mixed Legal Systems to European Private Law*, Intersentia Uitgevers Antwerpen – Groningen.

Smits, Jan (2002) *The Making of European Private Law: Towards a Ius Commune Europaeum as a Mixed Legal System*, Antwerp – Oxford – New York: Intersentia.

Smits, Jan M. (2003) "Import and Export of Legal Models: The Dutch Experience", in *Transnational Law and Contemporary Problems*, vol. 13, pp. 551-574; updated version of "Systems Mixing and in Transition: Import and Export of Legal Models: The Dutch Experience", in *Netherlands Reports to the Fifteenth International Congress of Comparative Law*, E.H. Hondius ed., 1998, pp. 47-69.

Symeonides, Symeon C. (2003) "The Mixed Legal System of the Republic of Cyprus", in *Tulane Law Review*, vol. 78, pp. 441-455.

Tetley, William (2000) "Mixed Jurisdictions: Common Law v. Civil Law (Codified and Uncodified)", in *Louisiana Law Review*, Spring, vol. 60, pp. 677-738.

Tetley, William (2003) "Mixed Jurisdictions, Language, Legislatures and Courts", in Tulane Law Review, vol. 78, pp. 175-218.

Van Hoecke, Mark (2007) "European Legal Cultures in a Context of Globalisation", in Jerzy Stelmach and Tomasz Gizbert-Studnicki (eds.) *Law and Legal Cultures in the 21st Century. Diversity and Unity*, 23rd IVr World Congress, August 1-6, 2007, Cracow, Poland, Wolters Kluwer Polska, pp. 81-100.

Visser, Daniel (2003) "Cultural Forces in the Making of Mixed Legal Systems", in *Tulane Law Review*, vol. 78, pp. 41-78.

Watson, Alan (1983) "Legal Change: Sources of Law and Legal Culture", in *University of Pennsylvania Law Review*, vol. 131, pp. 1121-1157.

Weigend, Thomas (2006) "Criminal law and criminal procedure", in J. M. Smits (ed.) *Edward Elgar Encyclopedia of Comparative Law*, Elgar Publishing, pp. 214-227.

Zimmermann, Reinhard (2001) *Roman Law, Contemporary Law, European Law. The Civilian Tradition Today*, Oxford: Oxford University Press.

Zweigert, K. and U. Drobnig (1981) *International Encyclopaedia of Comparative Law: Installment 13*, Martinus Nijhoff Publishers.

Zweigert, K. and H. Kötz (1998) *An Introduction to Comparative Law*, trans. Weir, 3rd edition, Oxford University Press.

TRANSLATION STUDIES

Arnold, D., L. Balkan, R. Lee Humphreys, S. Meijer & L. Sadler (1994) *Machine Translation: An Introductory Guide*, Manchester & Oxford: NCC Blackwell.

Baker, Mona (ed.) (1997) *The Routledge Encyclopedia of Translation Studies*, London and New York: Routledge.

Chesterman, A. (ed.) (1989) *Readings in Translation Theory*, Helsinki: Finn Lectura.

Delisle, J., H. Lee-Jahnke, M.C. Cormier (eds.) (1999) *Terminologie de la traduction. Translation Terminology. Terminología de la Traducción. Terminologie der Übersetzun,* Amsterdam/Philadelphia: John Benjamins Publishing Company.

Fedorov, A. (1954) *Vvednie v teoriju perevoda*, Moskva.

Gentzler, E. (1993) *Contemporary Translation Theories*, London and New York: Routledge.

Goffin, R. (1971) "Pour une formation universitaire 'sui generis' du traducteur : Réflexions sur certain aspects méthodologique et sur la recherche scientifique dans le domaine de la traduction", in *Meta*, vol. 16, pp. 57-68.

Gutt, E.-A. (1990) "A theoretical account of translation – Without the translation theory", in *Target*, vol. 2.2, pp. 135-164.

Harris, B. (1977) "The Importance of Natural Translation", in *Working Papers on Bilingualism*, vol. 12, pp. 96-114.

Holmes, J. S. (1972/1988) "The name and nature of translation studies", Amsterdam: Translation Studies Section, Department of General Studies; reprinted in Gideon Toury (ed.) (1987) *Translation Across Cultures*, New Delhi: Bahri Publications, pp. 9-24; and in Holmes (1988) *Translated! Papers on Literary Translation and Translation Studies*, Amsterdam: Rodopi, pp. 67-80.

Holz-Mänttäri, J. (1984) *Translatorisches Handeln: Theorie und Methode*, Helsinki: Suomalainen Tiedeakatemia/Finnish Academy of Science.

Jumpelt, R. W. (1961) *Die Übersetzung naturwissenschaftlicher und technischer Literatur*, Berlin - Schöneberg: Langenscheidt.

Munday, Jeremy (2001) *Introducing Translation Studies. Theories and applications*, London and New York: Routledge.

Newmark, P. (1981) *Approaches to translation*, Oxford: Pergamon Press.

Newmark, P. (1988) *A Textbook of Translation*, London: Prentice Hall International.

Nida, E. A. (1964) *Toward a Science of Translating*, Leiden: E. J. Brill.

Nida, E. A. (1964/2000) "Principles of correspondence", in L. Venuti (ed.) *The Translation Studies Reader*, London and New York: Routledge, pp. 126-140.

Nida, Eugene A, and Charles R. Taber (1969/1982) *The Theory and Practice of Translation*, Leiden: E.J. Brill.

Popovič, A. (1976) *Dictionary for the Analysis of Literary Translation*, Edmonton: Department of Comparative Literature, The University of Alberta.

Postgate, J. P. (1922) *Translation and Translations: Theory and Practice*, London: G. Bell& Sons, Ltd..

Pym, A. (2001) "Against Praise of Hybridity", in *Across Languages and Cultures*, vol. 2, issue 2, pp. 195-206.

Pym, Anthony (2001) *Translation and International Institutions. Explaining the Diversity Paradox*. Paper presented to the workshop "Translation and Institutions" at the conference Language Study in Europe at the Turn of the Millenium, Societas Linguistica Europea, Katholieka Universiteit Leuven, 28-31 August 2001; available at http://www.fut.es/~apym/on-line/diversity.html, last consulted in October 2006, pp. 28-31.

Reiss, K. and H. J. Vermeer (1984/1991) *Grundlegung einer allgemeinen Translationtheorie*, 2nd edn, Tübingen: Niemeyer.

Schäffner, C. (1997a) "Action. Theory of 'translatorial action'", in M. Baker (ed.) *The Routledge Encyclopedia of Translation Studies*, London and New York: Routledge, pp. 3-5.

Schäffner, C. (1997b) “Skopos theory”, in M. Baker (ed.) *The Routledge Encyclopedia of Translation Studies*, London and New York: Routledge, pp. 235-238.

Schäffner, C. (1998) “Parallel Texts in Translation”, in L. Bowker, M. Cronin, D. Kenny and J. Pearson *Unity or Diversity? Current trends in Translation Studies*, Saint Jerome Publishing, pp. 83-90.

Schäffner, C. and B. Adab (1997) “Translation as Intercultural Communication - Contact as Conflict”, in M. Snell-Hornby, Z. Jettmarová and K. Kaindl (eds.) *Translation as Intercultural Communication. Selected Papers from the EST Congress - Prague 1995*, Amsterdam: Benjamins, pp. 325-337.

Schäffner C. and B. Adab (2001) “The Idea of the Hybrid Text in Translation: Contact as Conflict”, in *Across Languages and Cultures*, vol. 2, issue 2, pp. 167-180.

Schäffner, C. and U. Wieseman (2001) *Annotated Texts for Translation: English - German. Functionalist Approaches Illustrated*, Clevedon-Buffalo-Toronto-Sydney

Shuttleworth M., M. Cowie (1997) *Dictionary of Translation Studies*, Manchester: St. Jerome Publishing.

Snell-Hornby, M. (1988) *Translation Studies. An Integrated Approach*, Amsterdam: Benjamins.

Steiner, G. (1977) *After Babel*, Oxford: Oxford University Press.

Toury, Gideon (1980) *In Search of a Theory of Translation*, Tel Aviv: The Porter Institute for Poetics and Semiotics.

Toury, Gideon (1995) *Descriptive Translation Studies and Beyond*, Amsterdam & Philadelphia: John Benjamins Publishing Company.

Trosborg, A. (1997) “Translating Hybrid Political Texts”, in A. Trosborg *Text Typology and Translation*, Amsterdam/Philadelphia: John Benjamins Publishing Company, pp. 145-158.

Vásquez-Ayora, G. (1977) *Introducción a la Traductología*, Washington, DC: Georgetown University Press.

Venuti, Lawrence (1995) *The Translator’s Invisibility: A History of Translation*, London and New York: Routledge.

Venuti, Lawrence (1997) “Strategies of translation”, in Mona Baker (ed.) *The Routledge Encyclopedia of Translation Studies*, London and New York: Routledge, pp. 240-244.

Vermeer, H. J. (1978) “Ein Rahmen für eine allgemaine Translationstheorie”, in *Lebende Sprachen*, vol. 23, no 3, pp. 99-102.

Vermeer, Hans (1986) “Übersetzen als kultureller Transfer”, in M. Snell-Honby (Hg.) *Übersetzungswissenschaft – eine Neuorientierung*, Tübingen: Francke, pp. 30-53.

LINGUISTICS

Austin, John Langshow (1962) *How to Do Things with Words*, Oxford: Oxford University Press.

Beaugrande, Robert de (1989) "Special Purpose Language as a Complex System: The Case of Linguistics", in Christer Laurén and Marianne Nordman (eds.) *Special Language. From Human Thinking to Thinking Machines*, Clevedon-Philadelphia: Multilingual Matters Ltd., pp. 3-29.

Bell, R. T. (1997) "Psycholinguistic/cognitive approaches", in M. Baker (ed.) *The Routledge Encyclopedia of Translation Studies*, London and New York: Routledge, pp. 185-190.

Cabre, T. (1992) *Terminology: Theory, methods and applications*, Amsterdam/Philadelphia; PA: John Benjamins B.V.

Crystal, D. and D. Davy (1969) *Investigating English Style*, Bloomington: Indiana University Press.

Crystal, David (1997) *The Cambridge encyclopedia of language*, 2nd edition, Cambridge, UK: CU Press.

Halliday, M. A. K. (2003) "Appendix: The Functional Basis of Language", in Basil Bernstein (ed.) *Class, Codes and Control*, vol. 2. Applied Studies Towards a Sociology of Language, London: Routledge, pp. 343-366.

Havranek, B. (1964) "The Functional Differentiation of the Standard Language", in P. Garvin (ed.) *A Prague School Reader on Esthetics, Literary Structure and Style*, Washington: Georgetown University Press.

Hoffman, L. (1985) *Kommunikationsmittel Fachsprache. Eine Einführung*, Tübingen: Gunter Narr Verlag.

Hullen, Werner, Christian Galinski, Lothar Hoffmann, Hartwig Kalverkamper, Herbert Ernst Wiegand (eds.) (1998) *Fachsprachen. Ein Internationales Handbuch Zur Fachsprachenforschung Und Terminologiewissenchaft/Languages for Special Purposes. An International Handbook of Special Languages and Terminology*, Walter de Gruyter Inc.

Mayer, Felix (ed.) (2001) *Language for Special Purposes: Perspectives for the New Millennium*, vol. 2, Tübingen: Gunter Narr Verlag.

Sapir, E. (1929) "The status of linguistics as a science", in *Language*, vol. 5, pp. 207-214.

Sager, Dungworth and McDonald (1980) *English special languages: Principles and practice in science and technology*, Wiesbaden: Brandstetter

Sager, J. C. (1990) *A practical course in terminology processing*, Amsterdam/Philadelphia: Benjamins.

JURILINGUISTICS
legal language, legal drafting, legal translation

Ainsworth, Janet E. (2006) "Linguistics as a Knowledge Domain in the Law", in *Drake Law Review* (Intersection of Law and Science Symposium), vol. 54, pp. 651-668.

Belvedere, Andrea (1994) "Linguaggio giuridico", in *Digesto IV edizione. Sezione civile*, Torino, UTET, vol. 11, pp. 21-30.

Brennan, Colleen B. (2001) *Linguistics and the Law*, available at www.csa.com/hottopics/linglaw/oview.html, last consulted in August 2007.

Cao, Deborah (2007a) *Translating Law*, Clevedon, Buffalo: Multilingual Matters.

Cao, Deborah (2007b) "Inter-lingual uncertainty in bilingual and multilingual law", in *Journal of Pragmatics*, vol 39, pp. 69-83.

Cornu, Gérard (2005) *Linguistique juridique*, collection « Domat Droit Privé », 3e éd., Paris: Montchrestien.

Chodkiewicz, Christine (2004) Review of *La Langue de La Common Law* by Anne Wagner (2002), Paris: l'Harmattan, in *Speech, Language and the Law* vol. 11, no 1, pp. 150-156.

Coulthard, Malcolm and Janet Cotterill (2005) *Introducing Forensic Linguistics*, Routledge.

Cunningham, Clark D. (1989) "Tale of Two Clients: Thinking about Law as Language", in *Michigan Law Review*, vol. 87, no 7, pp. 2459-2494.

Cunningham, Clark D. (1991-1992) "The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse", in *Cornell Law Review*, vol. 77, pp. 1298-1387.

Danet, B. (1980) "Language in the legal process", in *Law and Society Review*, vol. 14, pp. 445-564.

Danet, B. (1985) "Legal Discourse", in Teun A. Van Dijk *Handbook of Discourse Analysis* vol. 1, London: Academic Press, Inc., pp. 273-291.

De Groot, G.-R. and Rayar, L. (1995) "Bilingual legal dictionaries: criteria for assessment", in M. Thelen and B. Lewandowska-Tomaszczyk (eds.) *Translation and Meaning Part 3*, Maastricht: Hogeschool Maastricht, pp. 204-211.

De Groot, G.-R. (1996) “Law, Legal Language and the Legal System: Reflections on the Problems of Translating Legal Texts”, in V. Gessner, A. Hoeland, C. Varga (eds) *European Legal Cultures*, Dartmouth, pp. 155-160.

Dickerson, Reed (1986) *The Fundamentals of Legal Drafting*, 2nd edition, Boston, Toronto: Little, Brown and Company.

Eriksen, Lars (2001) “Die juristische Fachsprache”, in Felix Mayer (ed.) *Language for Special Purposes: Perspectives for the New Millennium*, vol. 2, Tübingen: Gunter Narr Verlag, pp. 586-593.

Garzone, Giuliana (2000) “Legal Translation and Functional Approaches: a Contradiction in Terms?”, in *Actes du Colloque International “La traduction juridique. Histoire, théorie(s) et pratique”*, 17-19.02.2000, Genève, École de Traduction et d’Interprétation - Université de Genève, pp. 395-414, available at www.tradulex.org/Actes2000/Garzone.pdf, last consulted in August 2007.

Gémar, Jean-Claude (1982a) *Langage du droit et traduction. Essais de jurilinguistique./The Language of the Law and Translation. Essays on Jurilinguistics*, Montréal: Linguatech et Conseil de la langue français.

Gémar, Jean-Claude (1982b) “Fonction de la traduction juridique en milieu bilingue et langage du droit au Canada”, in Jean-Claude Gémar, (ed.) *Langage du droit et traduction. Essais de jurilinguistique./The Language of the Law and Translation. Essays on Jurilinguistics*, Montréal: Linguatech et Conseil de la langue français, pp.121-137.

Gémar, Jean-Claude (1990) “Les fondements du langage du droit comme langue de spécialité. Du sens et de la formed u texte juridique”, in *Revue générale de droit*, vol. 21, pp. 717-738.

Gémar, Jean-Claude (1995) *Traduire ou l’art d’interpréter. Langue, droit et société: elements de jurilinguistique. Tome 2: Application – Traduire le texte juridique*, Sainte-Foy, Québec: Presses de l’Université du Québec.

Gémar, Jean-Claude (2005) “Langage du droit et (juri)linguistique. États et functions de la jurilinguistique”, in Jean-Claude Gémar, and Nicholas Kasirer (eds.) *Jurilinguistique: entre langues et droits – Jurilinguistics: Between Law and Language*, Montréal: Les Édition Thémis, Bruxelles: Les Édition juridiques Bruylant, pp. 5-22.

Gémar, Jean-Claude and Nicholas Kasirer (eds.) (2005) *Jurilinguistique: entre langues et droits – Jurilinguistics: Between Law and Language*, Montréal: Les Édition Thémis, Bruxelles: Les Édition juridiques Bruylant.

Gibbons, J. (2003) *Forensic Linguistics: An Introduction to Language in the Justice System*, Blackwell.

Gizbert-Studnicki, Tomasz (1972) “Język prawny a język prawniczy”, in *Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace Prawnicze*, vol. 5, pp. 219-233.

Gizbert-Studnicki, Tomasz (1986) *Język prawny w perspektywie socjologicznej [Legal language in sociological perspective]*, Warszawa – Kraków.

Goddard, C. (1996) "Can linguists help judges know what they mean? Linguistic semantics in the court-room", in *International Journal of Speech Language and the Law*, vol. 3, no 2, pp. 250-272.

Harvey, Malcolm (2000) "A Beginner's Course in Legal Translation: the Case of Culture-bound Terms, in *Actes du Colloque International "La traduction juridique. Histoire, théorie(s) et pratique"*, 17-19.02.2000, Genève, École de Traduction et d'Interprétation - Université de Genève, pp. 357-369, available at http://www.tradulex.org/Actes2000/harvey.pdf, last consulted in August 2007.

Kielar, B. Z. (1977) *Language of the Law in the Aspect of Translation*, Rozprawy Uniwersytetu Warszawskiego, Warszawa: Wydawnictwa Uniwersytetu Warszawskiego.

Kielar, B. Z. (1996) "Translating statutory texts: in search of meaning and relevance", in M. Thelen and B. Lewandowska-Tomaszczyk (eds.) *Translation and Meaning Part 4*, Maastricht: Hogeschool Maastricht, pp. 393-398.

Kniffka, H. (1990) (ed). *Texte zu Theorie und Praxis forensischer Linguistik*, Tuebingen: Niemeyer.

Kurzon, D. (1997) "Legal Language: Varieties, Genres, Registers, Discourses", in *International Journal of Applied Linguistics*, vol. 7, pp. 119-139.

Lessig, Lawrence (1993) "Fidelity in Translation", in *Texas Law Review*, vol. 71, pp. 1165-1269.

Levi, Judith N. and A. G. Walker (eds.) (1990) *Language in the Judicial Process*, New York: Plenum Press.

Levi, Judith N. (1994) "Language as Evidence: The Linguist as Expert Witness in North American Courts", in *Forensic Linguistics*, vol. 1, no 1, pp. 1-16.

Mattila, Heikki E.S. (2006) *Comparative Legal Linguistics*, Aldershot, England; Burlington, VT: Ashgate.

Mazzarese, Tecla (1996) "Legal language and translation: six main sorts of problem", in M. Thelen and B. Lewandowska-Tomaszczyk (eds.) *Translation and Meaning Part 4*, Maastricht: Hogeschool Maastricht, pp. 399-412.

Mellinkoff, D. (1963) *The Language of Law*, Boston: Little & Brown.

Morrison, M. J. (1989/1993) "Excursion into the Nature of Legal Language", in *Cleveland State Law Review*, vol. 37, pp. 271-336; 2nd edition in Frederick Schauer (ed.) *Law and Language* Aldershot, Dartmouth, 1993, pp. 3-68.

Mounin, G. (1974) "La linguistique comme science auxiliare dans les disciplines juridiques", in *Archives dePphilosophie du Droit*, Paris, vol. 19, pp. 7-18.

Olsson, John (2004) *Forensic Linguistics: An introduction to Language, Crime and the Law*, London: Continuum.

Olsson, John (2005) "Suicide notes: can we distinguish the genuine from the simulated?" the paper presented at the conference 'Language and the Law 2005: East meets West', Łódź.

Olsson, John (2007) *What is Forensic Linguistics?*, available at http://www.thetext.co.uk/docs/what_is.doc, last consulted in August 2007.

Ostrower, Alexander (1965) *Language, Law and Diplomacy: A Study of Linguistic Diversity in Official International Relations and International Law*, 2 vols., Philadelphia: University of Pennsylvania Press.

Rieber, R. W. and Stewart, W. A. (1990) *The Language Scientist as Expert in the Legal Setting: Issues in Forensic Linguistics*, New York: The New York Academy of Sciences.

Roszkowski, S. (1999) "The language of Law as Sublanguage", in J. Tomaszczyk (ed.) *Aspects of Legal Language and Legal Translation*, Łódź: Wydawnictwo Uniwersytetu Łódzkiego, pp. 7-16.

Rotman, Edgardo (1995) "The Inherent Problems of Legal Translation: Theoretical Aspects", in *Indiana International and Comparative Law Review*, vol. 6, pp. 187-196.

Santos, Iolanda Galanes (2001) "La qualité linguistique de la langue spécialisée du droit: la cas des langues moins répandues", in Felix Mayer (ed.) *Language for Special Purposes: Perspectives for the New Millennium*, vol. 2, Tübingen: Gunter Narr Verlag, pp. 728-733.

Shuy, Roger W. (2006) *Linguistics in the Courtroom. Practical Guide*, Oxford: Oxford University Press.

Shuy, Roger W. (2005) *Creating Language Crimes: How Law Enforcement Uses (and Misuses) Language*, Oxford: Oxford University Press.

Solan, Lawrence M. (1993) *The Language of Judges*, Chicago: University of Chicago Press.

Šarčević, Susan (1985) "Translation of culture-bound terms in laws", in *Multilingua: Journal of Cross-Cultural and Interlanguage Communication*, vol. 4 (3), pp. 127-133.

Šarčević, Susan (1994) "Translation and the Law: An Interdisciplinary Approach", in M. Snell-Hornby, F. Pöchhnaker, K. Kaindl (eds.) *Translation Studies, An Interdiscipline*, Amsterdam, Philadelphia: Benjamins, pp. 301-307,

Šarčević, Susan (1998) "Creativity in legal translation: how much is too much?", in A. Chesterman, N. G. San Salvador, Y. Gambier (eds.) *Translation in Context. Selected Contributions from the EST Congress, Granada 1998*, Amsterdam/Philadelphia: John Benjamins Publishing Company, pp. 281-292.

Šarčević, Susan (2000a) *New Approach to Legal Translation*, The Hague: Kluwer Law International.

Šarčević, Susan (2000b) "Legal Translation and Translation Theory: a Receiver-oriented Approach", in *Actes du Colloque International "La traduction juridique. Histoire, théorie(s) et pratique"*, 17-19.02.2000, Genève, École de Traduction et d'Interprétation - Université de Genève, pp. 329-347, available at http://www.tradulex.org/Actes2000/sarcevic.pdf, last consulted in August 2007.

Sistach, Dominique (2000) "Mots, langues, langages et droit. Essai de relecture des concepts juridiques essentials", in Elsa Matzner (ed.) *Droit et langues étrangeres: concepts, problèmes d'application, perspectives*, Presses universitaires de Perpignan.

Terral, Florence (2002) "Les techniques de traduction en traduction juridique", in *Terminologie et traduction*, no 3, pp. 33-57.

Tiersma, Peter (1999) *Legal Language*, Chicago: University of Chicago Press.

Tiersma, Peter and Lawrence M. Solan (2002) "The Linguist on the Witness Stand: Forensic Linguistics in American Courts", in *Language*, vol.78, no 2, pp. 221-239.

Wagner, Anna (2002) *La Langue de La Common Law*, Paris: l'Harmattan.

White, James Boyd (1990) *Justice as Translation: An Essay in Cultural and Legal Criticism*, The University Of Chicago Press.

White, James Boyd (1992) "Translation as a Mode of Thought", in *Cornell Law Review*, vol. 77, pp. 1388-1398.

Witczak, Iwona M. (1996) "Selected issues concerning the legal performative and the language of legislation", in M. Thelen and B. Lewandowska-Tomaszczyk (eds.) *Translation and Meaning; Part 4*, Maastricht: Hogeschool Maastricht, pp. 413-418.

Witczak-Plisiecka, Iwona (2007) *Language, law and speech acts pragmatic meaning in English legal texts*, Wyższa Szkoła Studiów Międzynarodowych.

Wróblewski, Bronisław (1948) *Język prawny i prawniczy*, Prace Komisji Prawniczej, no 3, Kraków: Polska Akademia Umiejętności,.

Wróblewski, Jerzy (1963/1983) "Semantic Basis of the Theory of Legal Interpretation", in *Logique et analyse*, 1963, vol. 6, pp. 397-416; reprinted in Jerzy Wróblewski (1983) *Meaning and Truth in Judicial Decision*, Helsinki: A–Tieto Oy, pp. 22-48.

Wróblewski, Jerzy (1986) "Le problème de la traduction juridique", in *Rapports polonais présentés au douzième congrès international de droit comparé*, Warszawa: Ossolineum, pp. 35-43.

Wróblewski, Jerzy (1988) "Les langages juridiques: une typologie", in Le discours juridique. Langage, signification et valeurs, *Droit et société*, no 8, pp.13-27.

Abélès, Marc (1992) *La vie quotidienne au Parlement européen* Paris: Hachette.

Agius, Peter *Aspects of Interpretation of Multilingual Acquis Communautaire*, paper published at the intranet of the Council Legal Service.

Akehurst, M. (1972) "Preparing the Authentic English Text of the EEC Treaty", in B.A. Wortley (ed.) *An Introduction to the Law of the European Economic Community*, Manchester: Manchester University Press, pp. 20-31.

Ammon, Ulrich (1991) "The Status of German and Other Languages in the European Community", in Florian Coulmas (ed.) (1991a) *A Language Policy for the European Union: prospect and quandaries*, (Contributions to the sociology of language; 61), Berlin and New York: Mouton de Gruyter, pp. 241-254.

Ammon, Ulrich (2001) "Deutsch als Lingua franca in Europa", in U. Ammon, K.J. Mattheier, P.H. Nelde (eds), *Sociolinguistica. Verkehrssprachen in Europa – außer English. Lingua francas in Europe – except English. Langues véhiculaires en Europe – sans l'anglais*, Tübingen: Max Niemeyer Verlag, pp. 32-41.

Ammon, Ulrich (2006) "Language Conflicts in the European Union. On Finding a Politically Acceptable and Practicable Solution for EU Institutions that Satisfies Diverging Interests", in *International Journal of Applied Linguistics*, vol. 16, no 39, pp. 319-338.

Athanassiou, Phoebus (2006) *The Application of Multilingualism in the European Union Context*. Legal Working Paper Series, No 2, February 2006, European Central Bank, available at http://www.ecb.int or from the Social Science Research Network electronic library at http://ssrn.com/abstract_id=886048, last consulted in February 2007.

Aziz, Miriam (2004) "Mainstreaming the Duty of Clarity and Transparency as part of Good Administrative Practice in the EU", in *European Law Journal*, vol. 10, no 3, pp. 282-295.

Azoulai, Loïc, Florence Kramer, Dominique Ritleng (2003/2005) "Chronique de jurisprudence de la Cour de Justice des Communautés européennes", in Loïc Azoulai, Florence Kramer, Dominique Ritleng (eds.) *Annuaire de droit européen*, pp. 479-538.

Baes, Henk (2007) *Lisbon Treaty – "Making of" - Interview with Henk Baes from the Council's language service, on the work of the translators in the preparation of the Lisbon Treaty,* European Commission – DG Communication, Audiovisual Service, available at http://ec.europa.eu/avservices/services/showShotlist.do?out=PDF&lg=En&filmRef=i0558 last consulted in December 2007.

Bates, Jane D. N. (1989) "The Conversion of EEC Legislation into U.K. Legislation", in *Statute Law Review*, vol. 10, pp. 110-123.

Bellier, Irène (1995) "Moralité, langue et pouvoirs dans les institutions européen", in *Social Anthropology*, vol. 3, no 3, pp. 235-250.

Benda-Peter, Andrea (1999) "Le rôle et la place du français dans la vie des institutions de l'Union européenne: l'exemple du service de traduction", in *Communication à la Table ronde de l'Agence de la francophonie, Expolangues, 30 janvier*.

Berteloot, Pascale (1987) "Babylone à Luxembourg – Jurilinguistique à la Cour de Justice" in: *Vorträge, Reden und Berichte aus dem Europa-Institut der Universität des Saarlandes*, Nr 136.

Berteloot, Pascale (1999) "Le droit à la langue de l'Union européenne", in E. Jayme (ed.) *Langue et Droit*, Bruxelles: Bruylant, pp. 345-362.

Berteloot, Pascale (2001) "Language Policy in the European Union", in Susan Šarčević (ed.) *Legal Translation. Preparation for Accession to the European Union*, Rijeka: Faculty of Law, University of Rijeka, pp. 1-10.

Berteloot, Pascale (2002) "Legal French in France and in the European Communities", in Heikki E. S. Mattila (ed.) *The Development of Legal Language*, Papers from an International Symposium held at the University of Lapland, September 13-15, 2000, Helsinki, pp. 81-99.

Biel, Łucja (2005) *Translation of Multilingual EU Legislation as a Sub-Genre of Legal Translation*, unpublished.

Borgsmidt, K. (1988) "The Advocate General at the European Court: A Comparative Study", in *European Law Review*, vol. 13, no 2, pp. 106-119.

Bowyer, John (1972) "Englishing Community Law", in *Common Market Law Review*, vol. 9, no 4, pp. 439-455.

Brackeniers, Eduard (1995) "Le multilinguisme dans la Communauté européenne", in *Terminologie et traduction*, no 1, pp. 91-96.

Brent, Richard (1995) "The Binding of Leviathan? – The Changing Role of the European Commission in Competition Cases", in *International and Comparative Law Quarterly*, vol. 44, pp. 255-279.

Campbell, Alan and Thompson, Dennis (1963) *Common market law: texts and commentaries*, London: Stevens.

Campana, Marie-Jeanne (2000) "Vers un langage juridique commun en Europe?", in *European Review of Private Law*, vol. 1, pp. 33-50.

Carson, Lorna (ed.) (2003) *Multilingualism in Europe. Case Study*, Madriaga European Foundation.

Chalmers, Damian, Christos Hadjiemmanuil, Giorgio Monti and Adam Tomkins (eds) (2006) *European Union Law.Text and Materials*, Cambridge, UK; New York: Cambridge University Press.

Clariana, Gregorio Garzón (1998) "The Quality of European and National Legislation. Comments", in Alfred E. Kellermann, Giuseppe Ciavarini Azzi, R. Deighton-Smith and Scott H. Jacobs (eds.) *Improving the Quality of Legislation in Europe*, Martinus Nijhoff Publishers, pp. 60-66.

Climent-Ferrando (2005) *The origins and evolution of language secessionism in Valencia. An analysis from the transition period until today*, Mercator - Working Papers no. 18, Barcelona: CIEMEN.

Commission of European Communities (1997) *Agenda 2000: For a stronger and wider Europe*, COM(97) 2000, Supplement to the Bulletin of the European Union 5/97, Luxembourg: Office for Official Publications of the European Communities.

Commission of the European Communities (2000a) *Regular Report from the Commission on Bulgaria's Progress Towards Accession*, 8 November 2000, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/bg_en.pdf, last consulted in January 2007.

Commission of the European Communities (2000b) *Regular Report from the Commission on Romania's Progress Towards Accession*, 8 November 2000, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/ro_en.pdf, last consulted in January 2007.

Commission of the European Communities (2001) *Regular Report on Romania's Progress Towards Accession, Brussels*, 13.11.2001, SEC(2001) 1753, last consulted in January 2007.

Commission of the European Communities (2002a) 2002 *Regular Report on Czech Republic's Progress Towards Accession*, Brussels, 9.10.2002, SEC(2002) 1402,COM(2002) 700 final, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/cz_en.pdf, last consulted in January 2007

Commission of the European Communities (2002b) *2002 Regular Report on Estonia's Progress Towards Accession*, Brussels, 9.10.2002, Sec(2002) 1402, Com(2002) 700 Final, available at http://Ec.Europa.Eu/Enlargement/Archives/Pdf/Key_Documents/2002/Ee_En.pdf, last consulted in January 2007.

Commission of the European Communities (2002c) *2002 Regular Report on Malta's Progress Towards Accession*, Brussels, 9.10.2002, SEC(2002) 1407, COM(2002) 700 final, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/ml_en.pdf, last visited in January 2007.

Commission of the European Communities (2002d) *2002 Regular Report on Poland's Progress Towards Accession*, Brussels, 9.10.2002, Sec(2002) 1408, Com(2002) 700 Final, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/pl_en.pdf, last visited in January 2007.

Correia, R. (2003) "Translation of EU Legal Texts", in A. Tosi (ed.) *Crossing Barriers and Bridging Cultures. The Challenges of Multilingual Translation for the European Union*, Multilingual Matters Ltd., pp. 38-44.

Coulmas, Florian (1990) "The status of German: some suggestions for future research", in *International Journal of Sociology of Language*, vol. 83, pp. 171-185.

Coulmas, Florian (ed.) (1991a) *A Language Policy for the European Union: prospect and quandaries*, (Contributions to the sociology of language; 61), Berlin and New York: Mouton de Gruyter.

Coulmas, Florian (1991b) "European Integration and the idea of the national language. Ideological roots and economic consequences", in Florian Coulmas (ed.) 1991a, pp.1-43.

Council of the European Union (2002) *Manual of precedents for acts established within the Council of the European Union*, Fourth edition, Luxembourg: Office for Official Publications of the European Communities.

Craig, P. and G. de Búrca (2008) *EU Law. Text, Cases and Materials* (4th ed.), Oxford; New York: Oxford University Press.

Cram, Laura; Desmond Dinan and Neill Nugent (eds) (1999) *Developments in the European Union*, New York: St. Martin's Press.

Creech, Richard L. (2005) *Law and Language in the European Union. The Paradox of Babel "United in Diversity"*, Groningen: Europa Law Publishing.

Cunningham, Kristina (2001) "Translating for a Larger Union - Can We Cope with More than 11 Languages?", in *Terminologie et traduction*, no 2, pp. 22-33.

Curti Gialdino, C. (1995) "Some Reflections on the *acquis communautaire*", in *Common Market Law Review*, vol. 32, pp. 1089-1121.

Cutts, Martin (2001) *Clarifying Eurolaw*, Plain Language Commission, available at http://europa.eu.int/comm/translation/en/ftfo, last consulted in April 2008.

Cutts, Martin and Emma Wagner (2002) *Clarifying EC Regulations, Plain Language Commission*, available at http://www.clearest.co.uk/files/ClarifyingECRegulationsCont.pdf, last consulted in April 2008.

Czapliński, Władysław (2002) *Zarys prawa europejskiego*, 2nd edition, Warszawa: Helsińska Fundacja Praw Człowieka.

Davies, K. (2001). *Understanding European Union Law*. London, Sydney: Cavendish Publishing Limited.

De Groot, Gerard-René (1992) "European Education in the 21st Century", in Bruno de Witte and Caroline Forder (eds.) *The Common Law of Europe and the Future of Legal Education/ Le droit de l'Europe et l'avenir de l'enseignement juridique*, Deventer: Kluwer Law & Taxation.

De Swaan, Abram (2001) *Words of the World: The Global Language System*, Cambridge: Polity.

De Witte, Bruno (2004) "Language Law of the European Union: Protecting or Eroding Linguistic Diversity?", Chapter 7, in Rachael Craufurd Smith (ed.) *Culture and European Union Law*, Oxford: Oxford University Press, pp. 205-241.

De Witte, Bruno and Caroline Forder (eds.) (1992) *The Common Law of Europe and the Future of Legal Education/ Le droit de l'Europe et l'avenir de l'enseignement juridique*, Deventer: Kluwer Law & Taxation.

DGLF (Délégation générale à la langue française) (2000) *Rapport au Parlement sur la langue française dans les institutions internationals*, Paris, Ministère de la culture.

Directorate-General for Translation of the European Commission (2005) *Translating for a multilingual community*, europa.eu.int/comm/dgs/translation/bookshelf/brochure_en.pdf, last consulted in January 2006.

Directorate-General for Translation, Communication Unit, European Commission (2007) *Translating for a Multilingual Community*, Luxembourg: Office for Official Publications of the European Communities, also available at http://ec.europa.eu/dgs/translation/bookshelf/brochure_en.pdf, last consulted August 2007.

Donelan, E. (1997) "The Role of the Office of the Parliamentary Draftsman in the Implementation of European Union Directives in Ireland", in *Statute Law Review*, vol. 19, no 1, pp. 1-20.

Douglas-Scott, Sionaidh (2002) *Constitutional law of the European Union: A Constitution for Europe*, Pearson Education.

Dragone, Stefania (2006) "The Quality of Community Legislation and the Role of the European Commission Legal Revisers", in Barabara Pozzo and Valentina Jacometti (eds.) *Multilingualism and the Harmonisation of European Law,* Kluwer Law International, pp. 99-106.

Euromosaic (2005a) *The Euromosaic study. Basque in Comunidad Autónoma Vasca (Spain)* http://europa.eu.int/comm/education/policies/lang/languages/langmin/euromosaic/es31_en.html, last updated 04.02.2005, last visited 12.01.2006.

Euromosaic (2005b) *The Euromosaic study. Basque in France* http://europa.eu.int/comm/education/policies/lang/languages/langmin/euromosaic/fr2_en.html, last updated 04.02.2005, last visited 12.01.2006.

Euromosaic (2005c) *The Euromosaic study. Catalan in the Balearic Islands (Spain)*, http://europa.eu.int/comm/education/policies/lang/languages/langmin/euromosaic/es53_en.html, last updated 04.02.2005, last visited 12.01.2006.

Euromosaic (2005d) *The Euromosaic study. Catalan in Catalonia (Spain)* http://europa.eu.int/comm/education/policies/lang/languages/langmin/euromosaic/es51_en.html, last updated 04.02.2005, last visited 12.01.2006.

Euromosaic (2005e) *The Euromosaic study. Catalan in France*, http://europa.eu.int/comm/education/policies/lang/languages/langmin/euromosaic/fr4_en.html last updated 04.02.2005, last visited 12.01.2006.

Euromosaic (2005f) *The Euromosaic study. Gallician in Spain*, http://europa.eu.int/comm/education/policies/lang/languages/langmin/euromosaic/es6_en.html, last updated 04.02.2005, last visited 12.01.2006.

European Parliament (2001) *Multilingualism in the European Parliament in the run-up to enlargement* – Working document n° 3 for the Podestà report – SG.EL/01- 38/fin.

Evaluation of Phare programmes in support of EU Integration and Law Approximation - 05/1999 - ref. 951483 – Final Reports:
for Estonia available at:
http://www.eu.int/comm/europeaid/evaluation/reports/cards/951483_est.pdf,
for Hungary available at:
http://www.eu.int/comm/europeaid/evaluation/reports/cards/951483_hun.pdf,
for Poland available at:
http://www.eu.int/comm/europeaid/evaluation/reports/cards/951483_pl.pdf, last consulted on August, 30, 2005.

Evans, Andrew (1998) *A textbook on EU law*, Oxford: Hart.

Fenet, Alain (2001) "Diversité linguistique et construction européenne", in *Revue trimestrielle de droit européen*, vol. 37, no 2, avr.-juin, pp. 235-269.

Fosty, Anne (1985) *La langue française dans les institutions communautaires de l´Europe* Québec.

Frame, Ian (2005) "Linguistic oddities in European Union Legislation: don't shoot the translator", in *Clarity. Journal of the international association promoting plain legal language*, no 53, pp. 21-24.

Galetta, Diana-Urania and Jacques Ziller (2007) "Il regime linguistico della Cominità", in: Mario P. Chiti and Guido Greco (eds.) *Trattato di Diritto Amministrativo Europeo*, vol. II, 2nd ed., Giuffrè Editore, pp. 1067-1112.

Gallas, Tito (2001) "Evaluation in EC Legislation", in *Statute Law Revue*, vol. 22, pp. 83-95.

Gallas, Tito and Manuela Guggeis (2005) "La traduction juridique dans l'expérience des juristes-linguistes du Conseil de l'Union européenne", in Jean-Claude Gémar and Nicholas Kasirer (eds.) *Jurilinguistique: entre langues et droits - Jurilinguistics: Between Law and Language*, Montréal: Les Édition Thémis, Bruxelles: Les Édition juridiques Bruylant, pp. 491-503.

Gallas, Tito (2006) "Understanding EC Law as 'Diplomatic Law' and its Language", in Barabara Pozzo and Valentina Jacometti (eds.) *Multilingualism and the Harmonisation of European Law*, Kluwer Law International, pp. 119-128.

Gazzola, Michele (2002) *Il multilinguismo nell'Unione Europea e i suoi costi*, available at http://www.uemilano.it/multilinguismo/multilinguismo_unione_europea.html, last consulted in September 2004.

Gazzola, Michele (2006) "La gestione del multilinguismo nell'Unione europea", in Augusto Carli (ed.), *Le sfide della politica linguistica di oggi. Fra la valorizzazione del multilinguismo migratorio locale e le istanze del plurilinguismo europeo.* Milano: Franco Angeli, pp. 17-117.

Gehnen, Marianne (1991) "Die Arbeitssprachen in der Kommission der Europäischen Gemeinschaft unter besonderer Berücksichtigung des Französischen", in *Sociolinguistica,* vol. 5, pp. 51-63.

Ginsbergen van, G. (1966) "Enkele opmerkingen over de terminologie van de Nederlandse tekst van het E.E.G. Verdrag", in *Nederlands Juristenblad*.

Goffin, Roger (1990) "L'Europe en neuf langues: champ d'affrontements et ferment d'intégration linguistiques", in *Meta*, vol. XXXV, no1, pp. 13-19.

Goffin, Roger (1994) "L'Eurolecte: oui, jargon communautaire: non", in *Meta*, vol. XXXIX, no 4, pp. 636-642.

Gómez de Enterria, Carmen (1992) "Dans les coulisses du Parlement européen.: neuf langues et trois procedures", in *Revue française d'administration publique*, no 63, janvier-mars, pp. 425-434.

Gozzi, Paolo (2001) "Translation of the *Acquis Communautaire*: Recent Experiences in Countries Preparing for Membership", in Susan Šarčević (ed.) *Legal Translation. Preparation for Accession to the European Union*, Rijeka: Faculty of Law, University of Rijeka, pp. 23-34.

Guggeis, Manuela (2006) "Multilingual Legislation and the Legal-linguistic Revision in the Council of the European Union", in Barabara Pozzo and Valentina Jacometti (eds.) *Multilingualism and the Harmonisation of European Law*, Kluwer Law International, pp. 109-117.

Hakala, Pekka (2006) "Legislative Process from a Parliament Perspective – Past Practice in 11 Languages and Current Challenges in 20", in Barabara Pozzo and Valentina Jacometti (eds.) *Multilingualism and the Harmonisation of European Law*, Kluwer Law International, pp. 147-164.

Hanlon, James (2003) *European Community Law*, London: Sweet & Maxwell.

Hartley, Trevor C. (1996) "Five Forms of Uncertainty in European Community Law", in *Cambridge Law Journal*, vol. 55, no 2, pp. 265-288.

Hartley, Trevor C. (2003) *The foundations of European Community law: an introduction to the constitutional and administrative law of the European Community*, 5th edition, Oxford; New York: Oxford University Press.

Hefferan III, George B. and Joanne Katsantonis (1992) "Movement towards an Internal Market in 1993: An Overview of Current Legal Developments in the European Community", in *Duke Journal of Comparative and International Law*, Fall, 1992, pp. 1-48.

Héraud, Guy (1981) "La Communauté européenne at la question linguistique", in *Revue d'intégration européenne/Journal of European Integration*, vol. 5, no 1, Canada, pp. 5-28.

Heusse, Marie-Pascale (1999) "Le multilinguisme ou le défi cache de l'Union européenne", in *Revue du Marché et de l'Union européenne*, no 426, mars, pp. 202-207.

Heutger, Viola (2003) "Law and Language in the European Union", in *Global Jurist Topics* vol. 3, issue 1, article 3, available at http://www.bepress.com/gj/topics/vol3/iss1/art3, last consulted in September 2006.

Heynold, C. (1995) *A Multilingual Community at Work*, EU Commission Translating Service.

Hicks, Davyth (2005) *Committee of the Regions takes the lead as Basque, Catalan and Galician used in the EU institution* (18 November 2005), Eurolang, available at http://www.eurolang.net/index2.php?option=com_content&do_pdf=1&id=2521, last visited Jamuary 2006.

Huntington, Robert (1991) "European Unity and the Tower of Babel", in *Boston University International Law Journal*, vol. 9, Fall, pp. 321-348.

Jané, Neus Oliveras (2001) *The main concepts in the recognition of linguistic rights in European states*, available at http://www.ciemen.org/mercator/pdf/wp2-def-ang.PDF, last visited January 2006.

Kellermann, Alfred E. (1998) "Report of the Conference on 'The Quality of European and National Legislation and the Internal Market' - Introduction and Reflections", in Alfred E. Kellermann, Giuseppe Ciavarini Azzi, R. Deighton-Smith and Scott H. Jacobs (eds.) *Improving the Quality of Legislation in Europe*, Martinus Nijhoff Publishers, pp. xxvii-xxxvi.

Koch, Harald (1991) "Legal aspects of a language policy for the European Communities: Language risks, equal opportunities, and legislating a language", in Florian Coulmas (ed.) 1991a, pp. 147-161.

Koopmans, Thijmen (1991) "The Birth of European Law at the CrossRoads of Legal Traditions", in *The American Journal of Comparative Law*, vol. 39, no 3, pp. 493-507.

Kraus, Peter A. (2004) "Between Mill and Hallstein. Cultural diversity as a challenge to European integration", in Philippe Van Parijs (ed.), *Cultural diversity versus Economic Solidarity. Is There a Tension ? How Must it be Resolved ?*, Bruxelles: Deboeck University Press, coll. «"Francqui Scientific Library, pp. 299-314.

Kronenthal, Melissa (2003) *The European Union and Minority Languages: Real or Perceived Failure?* Mercator - Working Papers no 13, Barcelona: CIEMEN.

Kurcz, Bartłomiej (2004) *Dyrektywy Wspólnoty Europejskiej i ich implementacja do prawa krajowego* [Directives of the European Community and their implementation in domestic law], Kraków: Wolters Kluwer Polska – OFICYNA.

Laighin, Pádraig Breandán Ó (2004) *Towards the Recognition of Irish as an Official Working Language of the European Union*, Brief presented to the National Forum on Europe, Dublin Castle, January 8, 2004, available at http://www.gaelport.com/downloads/Laighin_English.pdf, last consulted in September 2007.

Labrie, Normand (1993) *La Construction linguistique de la Communauté européenne*, Paris: Honoré Champion Éditeur.

Legrand, Pierre (1996) "European Legal Systems are not converging", in *International and Comparative Law Quarterly*, vol. 45, pp. 52-81.

Lenaerts, Koen (2004) "Interlocking Legal Orders or the European Union Variant of *E Pluribus Unum*", in: Guy Canivet, Mads Andenas, and Duncan Fairgrieve (eds.) *Comparative law before the courts***,** London: British Institute of International and Comparative Law, pp. 99-134.

Lenz, Carl Otto (1989) "The Court of Justice of the European Communities", in *European Law Review*, vol.14, no 3, pp. 127-139.

López-Rodríguez, Ana M. (2004) "Towards a European Civil Code without a Common European Legal Culture? The Link between Law, Language and Culture", in *Brooklyn Journal of International Law*, vol. 29, no 3, pp. 1195-1220.

Lynch, Julia (2002) "Official Community – 6 or 9?", in *Terminologie et traduction*, no 3, pp. 231-232.

Maas, H. H. (1968-1969) "The English Version of the Treaty of Rome", in *Common Market Law Review*, vol. 6, pp. 205-209.

Macdonald, Roderick A. (1997) "Legal Bilingualism", in *McGill Law Journal/Revue de droit de McGill*, vol. 42, pp. 119-168.

Mamadouh, Virginie. (1999) "Le Parlement européen. comme espace plurilingue", in *Géographie et Cultures*, vol. 30, pp. 109-124.

Mamadouh, Virginie (2002) "Dealing with Multilingualism in the European Union: Cultural Theory Rationalities and Language Policies", in *Journal of Comparative Policy Analysis: Research and Practice*, vol. 4, pp. 327-345.

Mancini, Giuseppe Federico and David T. Keeling (1995) "Language, Culture and Politics in the Life of the European Court", in *Columbia Journal of European Law*, vol. 1, Spring/Summer, pp. 397-413.

Manin, P. (1987) “The European Communities and the Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations”, in *Common Market Law Review*, vol. 24, pp. 468-470.

Markensis, B.S. (1994) “Bridging Legal Cultures”, in *Israel Law Review*, vol. 27, pp. 363-382.

Mathijsen, P.S.R.F. (2004) *A guide to European Union law*, London: Sweet & Maxwell.

Mattila, Heikki E. S. (ed.), (2002) *The Development of Legal Language*, Papers from an International Symposium held at the University of Lapland, September 13-15, 2000, Helsinki.

McAuliffe, Karen (2008) “Translation at the Court of Justice of the European Communities” in Frances Olsen and Dieter Stein (eds.) *Forensic Translation*, Houndmills/New York: Palgrave Macmillan, forthcoming 2008.

McCluskey, Brian (2001) *Respecting multilingualism in the enlargement of the European Union - the organisational challenge*, Speech presented for the European Year of Languages, Austrian Academy of Sciences, Vienna, 7 June 2001, available at http://ec.europa.eu/translation/reading/articles/pdf/2001_06_07_vienna_mccluskey.pdf, last consulted in August 2007.

McDonald, M. (1996) “Unity in Diversities: Some Tensions in the Construction of Europe”, in *Social Anthropology*, vol. 4, pp. 47-60.

MERCATOR/Eurolang (2005) *The European Council of Ministers decides on Linguistics Minorities*, MERCATOR, linguistic rights and legislation, available at http://www.ciemen.org/mercator/notis.cfm?lg=, last visited January 2006.

MERCATOR (2006) *The European Parliament Prevents MP from Using Catalan* (January 2006) MERCATOR, linguistic rights and legislation, available at http://www.ciemen.org/mercator/notidetail.cfm?IDA=863&lg=gb, last visited January 2006.

Milian i Massana, Antoni (1995) “Le régime linguistique de l’Union européenne: le régime des institutions et l’incidence du droit communautaire sur la mosaïque linguistique européenne”, in *Rivista di Diritto Europeo*, vol. 35, pp. 485-512.

Milian i Massana, Antoni (2002) “The Principle of Language Equality in European Union Institutions and in Community Law: Myth or Reality?”, in *Revista de Llengua i Dret*, no 38, December, pp. 47-49.

Milian i Massana, Antoni (2004) “Le Régime Juridique du Multilinguisme Dans l'Union Européenne. Le Mythe ou la Réalité du Principe d'Égalité des Langues”, in *Revue Juridique Themis. Droit Linguistique Comparé*, vol. 38, pp. 211-260.

Montserrat, Antoni (1992) “L’aplicació de la resolució del Parlament Europeu sobre la llengua catalana a les institucions europees”, in *Revista de Llengua I Dret*, no 18, pp. 67-93.

Moratinos Johnston, Sofía (2000) "Multilingualism and EU Enlargement", in *Terminologie et traduction*, no 3, pp. 20-70.

Morgan, J.F. (1982) "Multilingual legal drafting in the EEC and the work of Jurist/Linguists", in *Multilingua: Journal of Cross-Cultural and Interlanguage Communication*, vol. 1, no 2, pp. 109-117.

Mori, Laura (2001) "La traduzione interlinguistica dei documenti ufficiali della commissione europea", in *Terminologie et traduction*, no 1, pp. 36-123.

Nartis, Raul (1997) "The Role of Language Cognition in Legal Method", in *Juridica International*, vol. 1, pp. 14-24.

Nugent, Neill (2001) *The European Commission*, Basingstoke; New York: Palgrave Macmillan.

Obrová, Pavlína and Jiří Pelka (2001) "Translation of EC Law into Czech", in *Terminologie et traduction*, no 2, pp. 94-115.

Pescatore, Pierre (1983) "The Doctrine of Direct Effect: An Infant Disease of Community Law", in *European Law Review*, vol. 8, no 3, pp. 155-177.

Phillipson, Robert (2003) *English-Only Europe? Challenging Language Policy*, London and New York: Routledge.

Pieters, Danny (2004) "Vers un régime linguistique diversifié mais cohérent pour l'Union européenne", in Paul Sabourin (ed.) *Langues et Union européenne. Colloque du 6 novembre 2003 á l'Assemblée national française*, Bruxelles: Bruylant, pp. 37-49.

Piris, Jean-Claude (2004a) *The Legal Orders of the European Community and of the Member States: Peculiarities and Influences in Drafting*, the English version of the paper submitted for the Conference "The Sir William Dale Memorial Lecture", London, 8 November 2004.

Piris, Jean-Claude (2004b) *Union européenne: comment rédiger une legislation de qualité dans 20 languages et pour 25 États members?*, the French version of the paper submitted for the Conference "The Sir William Dale Memorial Lecture", London, 8 November 2004.

Piris, Jean-Claude (2005) "Union européenne: comment rédiger une législation de qualité dans 20 langues et pour 25 États membres", in *Revue du Droit Public de la Science Politique en France et à l'Étranger*, no 2 (mars-avril 2005), pp. 475-491.

Pool, Jonathan (1996) "Optimal language regimes for the European Union", in *International Journal of Sociology of Language*, vol. 121, pp. 159-179.

Porzycki, Marek (2004) "Lawina bełkotliwych przekładów" [An Avalanche of Babbling Translations], in *Rzeczpospolita*, 2004, March 26.

Pountain, Christopher J. (2003) *Exploring the Spanish Language*, London: Arnold.

Pujadas, Bernat (2004) “The rules governing the languages of the European Union: which languages and to what extent? A practical guide”, in *Dossier of the Mercator Linguistic Rights and Legislation Centre*, no. 17, available at www.ciemen.org/mercator/butlletins/60-48.htm - 73k; last consulted in January 2006.

Pujolràs, Agusti Pou (2002) *Linguistic Legislation and Normalization Process: The Catalan case in Spain* Mercator - Working Papers no. 9, Barcelona: CIEMEN.

Quell, Carsten. (1997) “Language Choice in Multilingual Institutions: A Case Study at the European Commission with Particular Reference to the Role of English, French and German as Working Languages” , in *Multilingua*, vol. 16, no 1, pp. 57-76.

Reuter, Paul (1953) *La Communauté européenne du charbon et de l’acier*, Paris: Librairie Générale de Droit et de Jurisprudence, R.Pichon et R. Durand-Auzias.

Ricci, Guido (2006) “Controlled Multilingualism in Parliamentary Practice”, in Barabara Pozzo and Valentina Jacometti (eds.) *Multilingualism and the Harmonisation of European Law*, Kluwer Law International, pp. 131-146.

Rivero, J. (1958) “Le problème de l'influence des droits internes sur la Cour de justice de la CECA”, in *Annuaire Francais De Droit International*, pp. 295-310.

Robinson, William (2005) “How the European Commission drafts legislation in 20 languages”, in *Clarity. Journal of the international association promoting plain legal language*, no 53, pp. 4-10.

Rouse, Tamsin (2003) *Language Policy in the Institutions of the EU: Dealing with the lingua fra(n)cas* Paper presented to the 2nd annual New Zealand European Studies Association Conference, 29-30 August, 2003.

Rowe, Robert (2002) “The Use of Languages by the EU Institutions”, in *Terminologie et traduction*, no 2, pp. 5-10.

Rzewuska, Maria (2001a) “Linguistic Preparation of Poland for Accession to the European Union”, in *Terminologie et traduction*, no 2, pp. 82-93.

Rzewuska, Maria (2001b) “Tłumaczenie acquis communautaire”, in: *Biuletyn Analiz UKIE*, No 6, May 2001, pp. 68-74; also available at http://www.biuletyn.ukie.gov.pl/hlp/banal.nsf/ArchiveDocByLocation?Open&Count=-1&Expand=11#id11, last visited January 2007.

Sabino, Amadeu Lopes (1999) “Les langues dans l’Union européenne ejeux, pratiques et perspectives”, in *Revue trimestrielle de droit européen*, vol. 35, no 2, avr.-juin, pp. 160-169.

Šarčević, Susan (ed.) (2001) *Legal Translation. Preparation for Accession to the European Union*, Rijeka: Faculty of Law, University of Rijeka.

Šarčević, Susan (2002) “Problems of interpretation in an enlarged European Union” in: Rodolfo Sacco (ed.) *L'interprétation des textes juridiques rédigés dans plus d'une langue* :

[Colloque organisé à Turin en 2000] / par l'Institut subalpin pour l'analyse et l'enseignement droit des activités transnationales (ISAIDAT), pp. 239-272.

Šarčević, Susan (2003) "General Guidelines for Translating the Acquis Communautaire/ Opće upute za prevođenje pravne stečevine Europske zajednice (prijevod)", in *Priručnik za prevođenje pravnih akata Europske unije*, Zagreb: Ministarstvo za europske integracije Republike Hrvatske, pp. 9-22.

Savidan, Patrick (2004) "Multiculturalism and Economic Solidarity. A Social Democratic Challenge for the European Union. Comments on Kraus and Pagano", in Philippe Van Parijs (ed.) *Cultural diversity versus Economic Solidarity. Is There a Tension ? How Must it be Resolved ?*, Bruxelles: Deboeck University Press, coll. "Francqui Scientific Library ", pp. 331-347, available at http://www.etes.ucl.ac.be/Francqui/Textes/comm.SAVIDAN.pdf, last visited 19 April 2006.

Schlossmacher, Michael (1994) "Die Arbeitssprachen in den Organen der Europäischen Gemeinschaft: Methoden und Ergebnisse einer empirischen Untersuchung", in *Sociolinguistica*, vol. 8, pp. 101-122.

Schur, Wolfgang (2003) "Some Problems of a European Legal Methodology", in Thomas Groß (ed.) *Legal Scholarship in International and Comparative Law*, Peter Lang, Europäischer Verlag der Wissenschaft, Frankfurt am Main, pp. 47-55.

Slynn, Gordon (1984) "The Court of Justice of the European Communities", in *The International and Comparative Law Quarterly*, vol. 33, no. 2 (Apr., 1984), pp. 409-429.

Smits Jan M. (2004) "The Europeanisation of national legal systems: some consequences for legal thinking in civil law countries", in Mark Van Hoecke (ed.), *Epistemology and Methodology of Comparative Law*, Oxford: Hart Publishing, pp. 229-245.

Smyth, Steven (1996) "Colonialism and Language in Canada's North: A Yukon Case Study", in *Arctic*, vol. 49, no 2, pp. 155-161.

Somssich, Réka and Katalin Varga (2001) "Consistency and Terminology in the Translation of Community Legislation in Hungary", in *Terminologie et traduction*, no 2, pp. 58-81.

Stevens, Lisbeth (1967) "The Principle of Linguistic Equality in Judicial Proceedings and in the Interpretation of Plurilingual Legal Instruments: The *Régime Linguistique* in the Court of Justice of the European Community", in *Northwestern University Law Review*, vol. 62, no 5, pp. 701-734.

Szpunar, Maciej (2005) "Bezpośredni skutek prawa wspólnotowego - jego istota i próba uporządkowania terminologii", in *Europejski Przegląd Sądowy*, november, pp. 4-17.

Tabory, Mala (1980) *Multilingualism in International Law and Institutions*, Alphen ann den Rijn: Sijthoff & Noordhoff.

Tanner, Edwin (2004) "Clear, Simple and Precise Legislative Drafting: Australian Guidelines Explicated Using an EC Directive", in *Statute Law Review*, vol. 25, issue 3, pp. 223-250.

Tanner, Edwin (2006) "Clear, Simple, and Precise Legislative Drafting: How Does a European Community Directive Fare?", in *Statute Law Review*, vol. 27, issue 3, pp. 150-175.

Tillotson, John and Nigel Foster (2003) *Text, cases and materials on European Union law*, Fourth Edition, London ; Portland, Or.: Cavendish.

Tosi, Arturo (ed.) (2003) *Crossing Barriers and Bridging Cultures: The Challenges of Multilingual Translation for the European Union*, Clevedon-Buffalo-Toronto-Sydney: Multilingual Matters Ltd.

Towards EU Integration: Financing and Structures (Experience of Eastern European and CIS Countries) Yerevan: AEPLAC available at http://www.aeplac.am/Reports/Books/Volume%20IV/Towards%20EU%20Integration%20Financing%20and%20Structures%20(eng%20book).pdf; last visited in January 2007.

Truchot, Claude (2001) "Le français langue véhiculaire en Europe", in *Sociolinguistica*, vol. 15, pp. 18-31.

Truchot, Claude (2003) "Languages and supranationality in Europe: The linguistic influence of the European Union", in Jacques Maurais and Michael A. Morris (eds.) *Languages in a Globalising World*, Cambridge: University Press, pp. 99-110.

Tuts, Geneviève (2007) *Lisbon Treaty – "Making of" - Interview with Geneviève Tuts from the Legal Service, on the specific type of work to be performed by the lawyers-linguists on the text of the Lisbon Treaty*, European Commission – DG Communication, Audiovisual Service, available at *http://ec.europa.eu/avservices/services/showShotlist.do?out=PDF&lg=En&filmRef=i-055938*, last consulted in December 2007.

Urban, Nikolaus (2000) "One legal language and the maintenance of cultural and linguistic diversity?", in *European Review of Private Law*, vol. 1, pp. 51-57

van Calster, Geert (1997) "The EU's Tower of Babel – The Interpretation by the European Court of Justcie of Equally Authentic Texts Drafted in more than one Official Language" in: A. Barav and D. A. Wyatt (eds.) *Yearbook of European Law*, 17, Clarendon Press: Oxford, pp. 363-393.

Van Els, Theo (2001) "The European Union, its Institutions and its Languages: Some Language Political Observations", in *Current Issues in Language Planning*, vol. 2, no 4, pp. 311-360.

Van Hoecke, Mark (2007) "European Legal Cultures in a Context of Globalisation", in Jerzy Stelmach and Tomasz Gizbert-Studnicki (eds.) *Law and Legal Cultures in the 21st Century. Diversity and Unity*, 23rd IVr World Congress, August 1-6, 2007, Cracow, Poland, Wolters Kluwer Polska, pp. 81-100.

Van Hoecke, Mark and Jan Dhont (2000) "Obstacles and Opportunities for the Harmonisation of Law in Europe: the Case of Privacy", in Mark Van Hoecke and François Ost (eds.) *The Harmonisation of European Private Law*, Oxford: Hart, pp. 107-146.

Verwey, Delano Ruben (2004) *The European Community, the European Union and the International Law of Treaties: A Comparative Legal Analysis of the Community and Union's External Treaty-Making Practice*, The Hague: TMC Asser Press.

Von Bogdandy, Armin (1999) "The Legal Case for Unity: The European Union as a Single Organization with a Single Legal System", in *Common Market Law Review*, vol. 36, pp. 887-910.

Wagner, Emma (2000) *Translation of Multilingual Instruments in the EU*, available at portal 'Europa', Translation and drafting aids in the European Union languages, http://ec.europa.eu/translation/reading/articles/pdf/2000_tp_wagner.pdf, last consulted in January 2006.

Wagner, Emma (2001a) "Eurospeak – Fighting the Disease", available at http://www.cultivate-int.org/issue4/eurospeak.htm, last visited May 2005.

Wagner, Emma (2001b) "Translation of Multilingual Instruments in the European Union", in Susan Šarčević (ed.) *Legal Translation. Preparation for Accession to the European Union*, Rijeka: Faculty of Law, University of Rijeka, pp. 65-74.

Wagner E., Bech, S., Martínez, J. M. (2002) *Translating for the European Union Institution*, Manchester, UK & Northampton, MA: St. Jerome Publishing.

Wainwright, Richard (2002) "Drafting and interpretation of multilingual texts of the European Community", in Rodolfo Sacco (ed.) *L'interprétation des textes juridiques rédigés dans plus d'une langue* : [Colloque organisé à Turin en 2000] / par l'Institut subalpin pour l'analyse et l'enseignement droit des activités transnationales (ISAIDAT), pp. 320-322.

Weenink-Griffiths, Juliet (2005) "The European Central Bank's approach to drafting legislation in 20 languages", in *Clarity. Journal of the international association promoting plain legal language*, no 53, pp. 11-14.

Wilson, Barry (2003) "The Translation Service in the European Parliament", in Arturo Tosi (ed.) *Crossing Barriers and Bridging Cultures. The Challenges of Multilingual Translation for the European Union*, Multilingual Matters Ltd., pp. 1-7.

Winter, J.A. (1972) "Direct Applicability and Direct Effect – Two Distinct and Different Concepts in Community Law", in *Common Market Law Review*, vol. 9, no 4, pp. 425-438.

Wright, Sue (2000) *Community and Communication: The Role of Language in Nation State Building and European Integration*, Clevedon-Buffalo-Toronto-Sydney: Multilingual Matters Ltd.

Yasue, Noriko (1999) "Le multilinguisme dans l'Union européenne et la politique linguistique des états membres", in *Revue du Marché et de l'Union européenne*, no 427, avril, pp. 277-283.

Ziller, Jacques (2005a) *The European Constitution*, The Hague: Kluwer Law International.

Ziller, Jacques (2005b) "National Constitutional Concepts in the New Constitution for Europe", in *European Constitutional Law Review*, vol. 1, issue 2, pp. 247-271.

Ziller, Jacques (2006) *Nowa Konstytucja Europejska* [New European Constitution], Warszawa: Wydawnictwo Naukowe Wydziału Zarządzania Uniwersytetu Warszawskiego.

CANADA

Alikatuktuk, Thomasie (2007) *Proposed Official Languages Bill and Inuit Language Protection Bill*, 18 May 2007, Qikiqtani Inuit Association, available at http://www.qia.ca/apps/UPLOADS/files/language_bill_eng.pdf, last consulted in August 2007.

Association des juristes d'expression française de la Colombie-Britannique (2006*) Recruiting French-Speaking and Bilingual Jurors in British Columbia*, A Study Submitted to the Department of Justice of Canada Access to Justice in Both Official Languages Support Fund, March 2006, revised in October 2006, French version available *Recruter des jurés francophones et bilingues en Colombie-Britannique*, both language versions available at the AJEFCB website http://ajefcb.ca/publications/, last consulted in August 2007.

Auger, Jacques, Albert Bohémier and Roderick A. Macdonald (1999) "The Treatment of Creditors in the *Bankruptcy and Insolvency Act* and Security Mechanisms in the Civil Law of Quebec", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 887-965.

Auger, Jacques (1999) "The Treatment of Creditors in the *Bankruptcy and Insolvency Act* and Security Mechanisms in the Civil Law of Quebec – Summary", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 967-986.

Aunger, Edmund A. (1989) "Language and Law in the Province of Alberta", in Paul Pupier and José Woehrling (eds.), *Language and Law*, Montreal: Wilson & Lafleur, pp. 203-229.

Aunger, Edmund A. (1998) "The Mystery of the French Language Ordinances: An Investigation into Official Bilingualism and the Canadian North-West, 1870 to 1895", in *Canadian Journal of Law and Society*, vol. 13, pp. 89-124.

Aunger, Edmund A. (2001) "Justifying the End of Official Bilingualism: Canada's North-West Assembly and the Dual-Language Question, 1889-1892", in *Canadian Journal of Political Science / Revue canadienne de science politique*, vol. 34, no. 3 (Sep., 2001), pp. 451-486.

Aunger, Edmund A. (2004) "Legislating Language Use in Alberta. A Century of Incidental Provisions for a Fundamental Matter", in *Alberta Law Review*, vol. 42, pp. 464-497.

Banks, Margaret A. (1986) "Defining "Constitution of the province" – The Crux of the Manitoba Language Controversy", in *McGill Law Journal*, vol. 31, pp. 466-479.

Bastarache, Michel (2001) "Bijuralism in Canada" presentation given during Lunch and Learn Workshop on Bijuralism and the Judicial Function in Department of Justice, on February 4, 2000, Ottawa, Ontario, published by Department of Justice in: *Bijuralism and Harmonization: Genesis*, http://canada/justice.gc.ca/en/dept/pub/hfl/fasc1/fascicule_1g.html, last consulted in October 2007, pp. 19-26

Bastarache, Michel (ed.), (2004) *Language Rights in Canada*, 2nd ed., Cowansville, Qc.: Yvon Blais.

Beaudoin, Louis (2002) "Legal Translation in Canada", in Heikki E. S. Mattila (ed.) *The Development of Legal Language*, Papers from an International Symposium held at the University of Lapland, September 13-15, 2000, Helsinki.

Beaudoin, Louis (2006) *Legal Translation in Canada. The Genius of Legal Language(s)*, paper presented at The Language and Law Conference, Düsseldorf, Germany – May 17th-19th, 2006.

Beaupré, Michael (1986) *Interpreting Bilingual Legislation*, 2nd ed., Toronto-Calgary-Vancouver: Carswell.

Beaupré, Michael (1987) "Judicial Review of the Legislative Process: The Case of Manitoba Language Rights", in *Canadian Parliamentary Review*, vol. 10, no 4, available at http://www.parl.gc.ca/infoparl/english/issue.htm?param=123&art=750, last updated: 25.03.2008, last consulted in April 2008.

Bélanger, Claude (1998) "The Language Laws of Quebec", in *Readings in Quebec History*, Department of History, Marianopolis College, available at http://www2.marianopolis.edu/quebechistory/readings/langlaws/htm, last revised on 23 August 2000, last consulted in January 2007.

Bélanger, Claude (1999) "Events, Issues and Concepts of Quebec History Bilingualism", in *Readings in Quebec History*, Department of History, Marianopolis College, available at http://www2.marianopolis.edu/quebechistory/readings/bilingualism, last revised on 23 August 2000, last consulted in January 2007.

Bélanger, Claude (2000) "The Rise of the Language Issue since the Quiet Revolution", in *Readings in Quebec History*, Department of History, Marianopolis College, available at http://www2.marianopolis.edu/quebechistory/readings/llaws.htm, last revised on 23 August 2000, last consulted in January 2007.

Bell, Jim (2007) "QIA wants language laws dumped, re-written", in *Nunatsiaq News*, June 29, 2007, available at http://www.nunatsiaq.com/archives/2007/706/70629/news/nunavut/0629_253.html, last consulted in August 2007.

Bilingualism in Canada Encyclopedia Article, Definition, History, Biography http://www.localcolorart.com/search/encyclopedia/Bilingualism_in_Canada/, last consulted in January 2006.

Bindman, Stephen (2005) "Legal Drafting: More than words on a page", in *Justice Canada* vol. 1, no 3, available at http://www.justice.gc.ca/en/dept/pub/jc/vol1/no3/legal.html, last updated 20 October 2005.

Bloch, Jean-Pierre and Claude Remy, Gaston Deschênes (eds) (1984) *Lexique des termes parlementaires en usage en Belgique, en France et au Québec*, Québec: Bibliothèque de l'Assemblée nationale.

Bohémier, Albert (1999) "Research in Bijuralism: *Bankruptcy and Insolvency Act*", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 841-886.

Bosley, John (1985) "Private Bills versus public bills", in *Canadian Parliamentary Review*, Vol 8 no 2, http://www.parl.gc.ca/infoparl/english/index.htm, last updated: 23.03.2005, last consulted in January 2007.

Bourhis, Richard Y. (1984) *Conflict and Language Planning in Quebec*, Multilingual Matters Ltd.

Brierley, John E. C. (1992) "Bijuralism in Canada", in *Contemporary Law: Canadian Reports to the 1990 International Congress of Comparative Law, Montreal 1990* (Cowansville, Qc., Yvon Blais, pp. 22-43.

Brierley, John E.C. and Nicholas Kasirer (1999a) "Document I – Review of the *Federal Real Property Act/Loi sur les immeubles fédéraux* in Light of the Coming Into Force of the *Civil Code of Québec*", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 773-830.

Brierley, John E.C. and Nicholas Kasirer (1999b) "Document II – Review of Proposals to Amend the *Federal Real Property Act/Loi sur les immeubles fédéraux* in Light of the Bijural and Bilingual Character of Federal Statutory Instruments", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 831-840.

Brisson, Jean-Maurice (1992) "L'impact du Code civil du Québec sur le droit fédéral: une problématique", in *La Revue du Barreau (Quebec)*, vol. 52, no. 2, pp. 345-360.

Brisson, Jean-Maurice and André Morel (1996) "Droit fédéral et droit civil: complémentarité, dissociation", in *Revue du Barreau Canadien*, vol. 75, pp. 297-332.

Brisson, Jean-Maurice and André Morel (1999) "Federal Law and Civil Law: Complementarity, Dissociation", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 215-264.

Chantal de, René (1991) “L’expérience linguistique du Canada peut-elle être utile à la nouvelle Europe?”, in *Terminologie et traduction*, no 2, pp. 197-203.

Chevrier, Marc (1997) *Des lois et des langues au Québec: principes et moyens de la politique linguistique québécoise*, Québec: Gouvernement du Québec, Ministère des relations internationals.

Cohen, Neil B., Claire Kelly, Lawrence M. Solan (2004) “Symposium Creating and Interpreting Law in a Multilingual Environment: Introduction”, in *Brooklyn Journal of International Law* vol. 29, issue 3, pp. 977-984.

Côté, Pierre-André (1999) *Interprétation des lois*, 3rd edition, Montréal: Thémis.

Côté, Pierre-André (2000) *The Interpretation of Legislation in Canada*, 3rd ed., Carswell: Thomson Professional Publishing.

Côté, Pierre-André (2004) “Bilingual Interpretation of Enactments in Canada: Principles v. Practice”, in: *Brooklyn Journal of International Law*, vol. 29, no 3, pp. 1067-1084.

Covacs, Alexandre (1979) “Bilinguisme officiel et double version des lois”, in Meta, vol. XXIV, no 1, pp.103-108.

Covacs, Alexandre (1982) “La réalisation de la version française des lois fédérales du Canada“, in Jean Claude Gémar (ed.) *Langage du droit et traduction. Essais de jurilinguistique./The Language of the Law and Translation. Essays on Jurilinguistics*, Montréal: Linguatech et Conseil de la langue français, pp. 83-100.

Covacs, Alexandre (1983) “The French Jurilinguistics Group of the Department of Justice”, in *Canadian Paliamentary Review*, vol 6, no 1 http://www.parl.gc.ca/infoparl/english/index.htm, last updated 21.12.2004, last consulted in January 2006.

De Mestral, Armand L.C. and William Fraiberg (1966-1967) “Language Guarantees and the Power to Amend the Canadian Constitution”, in *McGill Law Journal*, vol. 12, no 4, pp. 502-519.

Department of Culture, Language, Elders and Youth (2003) *Inuit Qaujimajatuqangit Katimajiit Established*, available at http://www.gov.nu.ca/Nunavut/English/news/2003/sept/sept8a.shtml, last consulted in August 2007.

Department of Culture, Language, Elders and Youth on behalf of the Government of Nunavut (2004) *Next Steps Toward Made-In-Nunavut Language Legislation*. Response to Special Committee to Review the Official Languages Act. Final Report, December 2003, 6th Session, 1st Legislative Assembly, May 2004, available at http://www.gov.nu.ca/cley/home/english/pdf/nextsteps_english.pdf, last consulted in August 2007.

Department of Justice Canada (2005a) *Environmental Scan: Access to Justice in Both Official Languages. Final Report Submitted to Justice Canada by GTA Research*, available at http://www.justicecanada.ca/en/ps/franc/enviro/index.html, last updated 2005-12-05, last consulted in August 2007.

Department of Justice Canada (2005b) *Second Collection of Study in Tax Law. The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism*.

Department of Justice Canada – Association de planification fiscale et financière (2002) *Collection of Study in Tax Law. The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism*, Montreal.

Department of Justice of Canada and Department of Heritage Canada (2000) *Annotated Language Laws of Canada. Constitutional, Federal, Provincial and Territorial Laws*, Second edition – revised, corrected and augmented; available at http://www.pch.gc.ca/progs/lo-ol/perspectives/english/law/law_e.pdf; issued also in French under title: *Lois linguistiques du Canada annotées. Lois constitutionnelles, fédérales, provinciales et territoriales*, available at http://www.pch.gc.ca/progs/lo-ol/perspectives/francais/lois/lois.pdf, last consulted in August 2007.

Devine, Patrick (1977) "Language Rights in Canada and Quebec's Official Language Act", in *University of Toronto Faculty Law Review*, vol. 35, pp. 114-125.

Dion, Mario (2000a) "Harmonization of Federal Law with Quebec Civil Law: Canadian Bijuralism and Its Actualization" presentation given on the 20 October 2000 in the Department of Justice, Canada, Ottawa, Ontario, published by Department of Justice in *Bijuralism and Harmonization: Genesis*, available at http://canada/justice.gc.ca/en/dept/pub/hfl/fasc1/fascicule_1g.html, last consulted in September 2007, pp. 27-32.
Dion, Mario (2000b) "Canadian Bijuralism and Harmonization of the Law" presentation given on the 20 October 2000 in the Department of Justice, Canada, Ottawa, Ontario, published by Department of Justice in *Bijuralism and Harmonization: Genesis*, available at http://canada/justice.gc.ca/en/dept/pub/hfl/fasc1/fascicule_1g.html, last consulted in September 2007, pp. 38-45.

Dion, Mario (2003) "Bijuridisme canadien et harmonisation du droit", in Louis Perret, Alain-François Bisson, Nicola Mariani (eds) *Evolution des systèmes juridiques, bijuridisme et commerce international. The evolution of legal systems, bijuralism and international trade*, Montréal: Wilson & Lafleur, pp. 187-197.

Domenichelli, Luisa (1999) *Constitution et régime linguistique en Belgique et au Canada*, Bruylant, Bruxelles.

Dorais, L.J. (1990a) *Inuit Uqausiqatigiit: Inuit Languages and Dialects*, Arctic College, Nunatta Campus, Iqaluit.

Dorais, Louis-Jacques (1990b) "The Canadian Inuit and their Language", in Dirmid R. F. Collis (ed.) *Arctic Languages. An Awakening*, Unesco, available at http://unesdoc.unesco.org/images/0008/000861/086162e.pdf, last consulted in August 2007, pp. 185-290.

Dorais, Louis-Jacques (1993) *From Magic Words to Word Processing. A History of the Inuit Language*. Iqaluit, N.W.T.: Arctic College, Nunatta Campus.

Dorais, Louis-Jacques (1996) *La parole inuit: langue, culture et société dans l'Arctique nord-américain*, Paris: Peeters.

Duff, David G. (2003) "The Federal Income Tax Act and Private Law in Canada: Complementarity, Dissociation, and Canadian Bijuralism", in *Canadian Tax Journal / Revue fiscale canadienne* vol. 51, no 1, pp. 1-63.

Dukelow, Daphne A. and Betsy Nuse (1995) *The Dictionary of Canadian Law*, Second Edition, Carswell Thomson Professional Publishing.

Dunsmuir, Mollie (2002) *Bill S-41: The Legislative Instruments Re-enactment Act. Legislative Summary*, 23 April 2002, revised 12 June 2002, Parliamentary Research Branch, Library of Parliament – Bibliothèque du Palement.

Gall, Gerald L. (2004) *The Canadian Legal System*, 5th ed., Toronto: Thomson Carswell.

Gaudreault**,** Marie-Claude (2003) "Legislative Bijuralism: Its Foundations and Its Application", in the *Revue de planification fiscale et successorale*, 2003, Vol. 24, No. 3 available at http://www.justice.gc.ca/eng/bijurilex/tax-fisc/gaudr/fo1.html, last consulted in September 2007.

Gervais, Marie-Claude (1999) "Harmonization and Dissonance: Language and Law in Canada and Europe. Program to Harmonize Federal Legislation with the Civil Law of the Province of Quebec, Assumption of Complementarity and Methodological Issues" Introductory Notes presented on 7 May 1999, published by Department of Justice in *Bijuralism and Harmonization: Genesis*, available at http://canada/justice.gc.ca/en/dept/pub/ hfl/fasc1/fascicule _1g.html, last consulted in January 2007, pp. 10-18.

Gervais, Marie-Claude and Marie-France Séguin (2001) "Some Thoughts on Bijuralism in Canada and the World", in *The Harmonization of Federal Legislation with the Civil Law of the Province of Quebec and Canadian Bijuralism*, Second Publication, Ottawa: Department of Justice, pp. 1-20.

Gibson, Dale and Kristin Lercher (1986) "Reliance on Unconstitutional Laws: The Saving Doctrines and Other Protections", in *Manitoba Law Journal*, vol. 15, pp. 305-331.

Glenn, H. Patrick (1995) "The Common Law in Canada" in *La Revue du Barreau Canadien*, vol. 74, pp. 261-292.

Government of Nunavut (2002) *The First Annual Report of the Inuit Qaujimajatuqanginnut (IQ) Task Force*, August 12, 2002, available at http://www.inukshukmanagement.ca/IQ%20Task%20Force%20Report1.pdf, last consulted in August 2007.

Government of Saskatchewan French-Language Services Policy (2007) *2006-2007 Annual Report*, available at http://www.gr.gov.sk.ca/ocaf/ar_2006-07_e.pdf, last consulted in August 2007.

Grimard, Normand (2000) "Bilingualism in the National Capital Region", in *Canadian Parliamentary Review*, vol. 23, no 1, English version available at

http://www.parl.gc.ca/Infoparl/english/issue.htm?param=74&art=161; French version available at http://www.parl.gc.ca/Infoparl/francais/issue.htm?param=74&art=161, last consulted in August 2007.

Gruben, Vanessa (2004) "Bilingualism and the Judicial System", in M. Bastarache, (ed.) *Language Rights in Canada*, 2d ed., Cowansville, Qc.: Yvon Blais, pp. 141-247.

Guide to Making Federal Acts and Regulations (2nd edition) (2001) table of contents and links to all parts available at website of Privy Council Office http://www.pco-bcp.gc.ca/default.asp?Page=Publications&doc=legislation/lmgtoc_e.htm&Language=E (last modified 02.10.2006); available also in French under the title *Lois et règlements: l'essentiel*, table of contents and links to all parts available at http://www.pco-bcp.gc.ca/default.asp?Page=Publications&doc=legislation/lmgtoc_f.htm&Language=F (last modified 02.10.2006), published by Department of Justice Canada and Privy Council Office.

Harnum, B. (1995) "The Eight Official Languages and Their Importance for Cultural Development", in S. Léger (ed.) *Linguistic Rights in Canada: Collusion or Collisions*, Ottawa: Canadian Centre for Linguistic Rights, pp. 241-246.

Heard, Andrew David (1991) *Canadian Constitutional Conventions: The Marriage of Law and Politics*, Toronto: Oxford University Press.

Henkel, William Q.C. (1988-1989) "A Commentary on French Language Rights in Prosecution of Provincial Offences in Alberta", in *Alberta Law Review*, vol. 27, no 2, pp. 302-308.

Hogg, Peter W. (1982) *Annotation to Canada Act, 1982*, the Carswell Company Limited.

Hogg, Peter W. (1984) "The New Canadian Constitution: Introduction", in *The American Journal of Comparative Law*, vol. 32, no 2, The New Canadian Constitution (Spring, 1984), pp. 221-224.

Hogg, Peter W. (2007) *Constitutional Law of Canada,* 5th edition, Toronto: Carswell.

House of Commons Canada (2003) *Précis of Procedure*, available at http://www.parl.gc.ca/information/ about/process/house/precis.htm, last revised November, 2003, last consulted in Sptember 2007.

Hudon, Marie-Ève (2007) *Language Regimes in the Province and Territories*, 6 February 2007, Parliamentary Information and Research Service, Library of Parliament, available at http://www.parl.gc.ca/information/library/PRBpubs/prb0638-e.pdf, last consulted in August 2007.

Hurtubise-Loranger, Élise (2006) *Official Languages and Parliament*, Parliamentary Information and Research Service, 10 July 2006, Library of Parliament – Bibliothèque du Parlement.

Jourdain, Guy (1995) *Reviving the Bilingual Administration of Justice in the Land of Louis Riel: An Often Grueling Obstacle Course*, Saint-Boniface.

Jourdain, Guy (2002) “La legislation bilingue au Manitoba: le rêve d’une version française faite sur mesure pour son auditore”/”Bilingual Legislation in Manitoba: The Dream of a French Version Tailored to its Audience”, in *Meta*, vol. XLVII, no 2, pp. 244-264.

Jutras, Daniel (1999) “Crown Liability and Proceedings Act” in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 987-1036.

Keating, J. (1995) “La corédaction et l’expérience Néo–Brunswickoise”, in: G. Snow et J. Vanderlinden (eds.) *Français juridique et Science du droit*, Bruxelles: Bruylant, pp. 203-217.

Labelle, André (2000) “La corédaction des lois fédérales au Canada. Vingt ans après: quelques réflexions”, in *Proceedings, Conference on Legal Translation, History, Theory/ies and Practice*, Geneva and Bern: ESTI-ASTTI.

Le Bouthillier, Y. (1992) “La nécessaire enchâssement de la dualité linguistique et des droits des Francophones de l’Ontario”, in *Ottawa Law Review*, vol. 24, pp. 117-162.

Leckey, Robert and André Braën (2004) “Bilingualism and Legislation”, in M. Bastarache, (ed.) *Language Rights in Canada*, 2d ed., Cowansville, Qc.: Yvon Blais, pp. 41-139.

Léger, S. (ed.) (1995) *Les droit linguistiques au Canada: collusions ou collisions?/Linguistic Rights in Canada: Collusions or Collisions?*, Ottawa: Canadian Centre for Linguistic Rights.

Lessard, Adèle (1986) “Parliamentary Book Shelf. Lexique des termes parlementaires en usage en Belgique, en France et au Québec”, in *Canadian Parliamentary Review*, vol. 9, no. 4, English version available at http://www.parl.gc.ca/Infoparl/english/issue.htm?param=119&art=702; French version available at http://www.parl.gc.ca/Infoparl/francais/issue.htm?param=119&art=702; last consulted in September 2006.

Levert, Lionel A. (2000) “The Cohabitation of Bilingualism and Bijuralism in Federal Legislation in Canada: Myth or Reality?”, in *Revue de la common law en français*, vol. 3, pp. 127-136.

Lederman, William R. (1984) “Canadian Constitutional Amending Procedures: 1867-1982”, in *American Journal of Comparative Law*, vol. 32, no 2, The New Canadian Constitution, (Spring, 1984), pp. 339-359.

Macdonald, Roderick and F.R. Scott (1997) “Harmonizing the Concepts and Vocabulary of Federal and Provincial Law: The Unique Situation of Quebec Civil Law”, in André Morel (ed.) *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism/L’harmonisation de la legislation fédérale avec le droit civil et le bijuridisme canadien*, Ottawa: Department of Justice Canada, pp. 29-69.

Magnet, J.E. (1995) *Official Languages of Canada: Perspectives from law, policy and the future*, Cowansville: Yvon Blais.

Mandel, Michael (2002) "*Re Constitution of Canada, 1981*: The Patriation Reference", in Frederick Lee Morton (ed.) *Law Politics and the Judicial Process in Canada*, Third Edition, University of Calgary Press, pp. 48-55.

Marecic, Charles J. (1999-2000) "Nunavut Territory: Aboriginal Governing the Canadian Regime of Governance", in *American Indian Law Review*, vol. 24, no 2, pp. 275-295.

Mathieu, Daniel (1999) *French in the Northwest Territories from Radisson to the Present Day* La Fédération Franco-TéNOise, Yellowknife.

McConnell, W.H. (1989) "Bilingualism on the Prairies: The Constitutional Status of French in Saskatchewan", in *Saskatchewan Law Review*, vol. 53, pp. 143-152.

McWhinney, Edward (1975) "The French Language and the Constitutional Status of French Canadians", in Willem Adrian Veenhoven, Winifred Crum Ewing (eds.) *Case Studies on Human Rights and Fundamental Freedoms: A World Survey*, published for the Foundation for the Study of Plural Societies, BRILL, pp. 483-498.

McWhinney, Edward (1981) "The 'Language' Problem in Québec", in *America Journal of Comparative Law*, vol. 29, pp. 413-427.

McWhinney, Edward (1984) "The Constitutional Patriation Project, 1980-82", in *American Journal of Comparative Law*, vol. 32, no 2, The New Canadian Constitution, (Spring, 1984), pp. 241-267.

Ministerial Conference on Canadian Francophonie (2007) Linguistic Profile - Saskatchewan, available at http://www.afi-ifa.ca/media_uploads/pdf/121.pdf, last consulted in August 2007.

Morel, André (1999a) "Harmonizing Federal Legislation with the *Civil Code Of Québec* : Why and Wherefore?", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 1-26.

Morel, André (1999b) "The Revision of Federal Legislation in Light of the *Civil Code of Québec:* Methodology and Work Plan", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 265-304.

Morel, André (1999c) "Drafting Bilingual Statutes Harmonized with the Civil Law", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 305-346.

Morin, Michel (2003) "La coexistence des systèmes de droit autochtones, de droit civil et de common law au Canada", in Louis Perret, Alain-François Bisson, Nicola Mariani (eds) *Evolution des systèmes juridiques, bijuridisme et commerce international. The evolution of legal systems, bijuralism and international trade*, Montréal: Wilson & Lafleur, pp. 159-185

Munro, Kenneth (1987) "Official Bilingualism in Alberta", in *Prairie Forum*, vol. 12, no 1, pp. 37-47.

Newman, Warren J. (1998) *The Duty to Prepare and Put Forward for Enactment the French-Language Version of Certain Constitutional Instruments: From the Bertrand Case to the Langlois Case*, paper presented at the National Symposium on Canada's Official Languages to mark the 10th anniversary of the *Official Languages Act* of 1988 Ottawa Congress Centre, September 16 to 18, 1998, Panel A3 "Official Languages and Federal Law: The Courts Have Spoken"

Newman, Warren J. (2004) "Understanding Language Rights, Equality and the Charter: Towards a Comprehensive Theory of Constitutional Interpretation", in *National Journal of Constitutional Law*, vol. 15, pp. 363-405.

North America Commission for Environmental Cooperation (2003) *Summary of Environmental Law in Canada* http://www.cec.org/pubs_info_resources/law_treat_agree/summary_enviro_law/publication/ca01.cfm?varlan=english, last update: September 2003, last consulted September 2007.

Okalik, Paul (2003) *The Nunavut Challenge: Working Together*, Speech to the Conference on Governance, Self-Government and Legal Pluralism (April 23, 2003), available at http://www.gov.nu.ca/Nunavut/English/premier/press/cgsglp.shtml, last consulted August 2007.

Pourbaix, Marie-Noëlle (2001) "S-4: A First Harmonization Bill", in *The Harmonization of Federal Legislation with the Civil Law of the Province of Quebec and Canadian Bijuralism. Second Publication*, Booklet 6, Ottawa, Department of Justice Canada.

Reed, David G. (1979) "Problèmes de la traduction juridique au Québec", in Meta, vol XXIV, no 1, pp. 95-102.

Revell, Donald L. (1985) "Private Legislation in Ontario", in *Law Society of Upper Canada Gazette*, vol. 19.

Revell, Donald L. (1998) "Bilingual Legislation: the Ontario Experience", in *Statute Law Review*, vol. 19, no 32, pp. 32-43.

Revell, Donald L. (2001/2004) "Multilingualism and the Authoring of Laws", published in *Revue Internationale de Langues Juridiques et de Droit Comparé*, 2001, vol. 1, pp. 34, republished in *The Loophole Journal of the Commonwealth Association of Legislative Counsel*, 2004, no 1, pp. 36-48.

Revell, Donald L. (2004) "Authoring Bilingual Laws: the Importance of Process", in *Brooklyn Journal of International Law*, vol. 29, no 3, pp. 1085-1105.

Riley, Patrick (1976) "The Official Language Act of Québec", in *Manitoba Law Journal*, vol. 7, no 2, pp. 93-109.

Rosenberg, Morris (2001) "Evolution of Legal Systems, Bijuralism and International Trade published by Department of Justice", in *Bijuralism and Harmonization: Genesis*, http://canada/justice.gc.ca/en/dept/pub/hfl/fasc1/fascicule_1g.html, last consulted in January 2007, pp. 33-37.

Rosmarin, Yvonne W. (1975) "Quebec's Official Language Act", in *Syracuse Journal of International Law and Commerce*, vol. 3, pp. 255-269.

Russel, Peter H. (2004) *Constitutional Odyssey: Can Canadians Become a Sovereign People?*, 3rd edition, Toronto: University of Toronto Press.

Sammons, Susan (1993) "A Structural Overview of Inuktitut", in *Meta*, vol. XXXVIII, no 1, pp. 11-17.

Scassa, Teresa (1994) "Language of Judgement and the Supreme Court of Canada", in *University of New Brunswick Law Journal*, vol. 43, pp. 169-193.

Scott, F. R. (1950) "The British North America (No. 2) Act, 1949", in *The University of Toronto Law Journal*, vol. 8, no 2, pp. 201-207.

Scott, Stephen A. (1982) "The Canadian Constitutional Amendment Process", in *Law and Contemporary Problems*, vol. 45, no 4, Canadian Constitution, 1982 (Autumn, 1982), pp. 249-281.

Sellers, Edward Armour (1986) "Constitutionally Entrenched Linguistic Minority Rights: The *Forest* and *Blaikie* Decisions", in *Manitoba Law Journal*, vol. 15, pp. 257-270.

Stanbury, Robert (2000) *For a Culture of Integrity Review of Conflict of Interest Legislation Applicable to Members of the Legislative Assembly of Nunavut. Report*; November 15, 2000; tabled in the Legislative Assembly on May 22, 2001; available at http://www.integritycom.nu.ca/English/Reports/int_act_con_rep.pdf, last consulted in August 2007.

Sullivan, Ruth (1994) *Driedger on the Construction of Statutes*, 3rd edition, Toronto: Butterworths.

Sullivan, Ruth (1997) *Statutory Interpretation*, Irwin Law.

Sullivan, Ruth (2002) *Sullivan and Driedger on the Construction of Statutes*, 4th edition, Butterworth's Markham, Ont.

Sullivan, Ruth (2004) "The Challenges of Interpreting Multilingual, Multijural Legislation", in *Brooklyn Journal of International Law*, no 29, pp. 986-1066.

Sworden, J. Philip (2006) *Introduction to Canadian Law*, Toronto: Edmond Montgomery Publication Limited.

Šarčević, Susan (2005) "The Quest for Legislative Bilingualism and Multilingualism: Co-drafting in Canada and Switzerland", in J.-C. Gémar and N. Kasirer (eds.) *Jurilinguistique: entre langues et droits - Jurilinguistics: Between Law and Language*, Montréal: Les Édition Thémis, Bruxelles: Les Édition juridiques Bruylant, pp. 277-292.

The Inuit Way. A Guide to Inuit Culture, Ottawa: Pauktuutit Inuit Women of Canada, 2006 http://www.pauktuutit.ca/pdf/publications/pauktuutit/InuitWay_e.pdf, last consulted in August 2007.

Tremblay, Luc B, (1997) *The Rule of Law, Justice, and Interpretation*, McGill-Queen's Press – MQUP.

Vaz, Nicole (2004) "The Principle of Equality of the Official Languages", in M. Bastarache, (ed.) *Language Rights in Canada*, 2d ed., Cowansville, Qc.: Yvon Blais, pp. 601-653.

Walters, Mark D. (2001) "The Common Law Constitution in Canada: Return of *lex non scripta* as Fundamental Law", in *University of Toronto Law Journal*, Spring, 2001, vol. 51, pp. 91-141.

Walton, Frederick P. (1907/1980) *The Scope and Inetrpretation of the Civil Code,* Wilson & Lafleur Ltée (1907), reprint 1980 Butterworths, Toronto.

Webber, Jeremy H.A. (1994) *Reimagining Canada: Language, Culture, Community, and the Canadian Constitution*, McGill-Queen's Press.

Wellington, Louise Maguire (2001) "Bijuralism in Canada: Harmonization Methodology and Terminology", in *The Harmonization of Federal Legislation with the Civil Law of the Province of Quebec and Canadian Bijuralism*, Second publication, Ottawa (On), Minister of Justice and Attorney General of Canada/Ministre de la Justice et procureure générale du Canada, Booklet 4, pp. 1-25.

White, Graham (2006) "Traditional aboriginal values in a Westminster parliament: The legislative assembly of Nunavut", in *The Journal of Legislative Studies*, vol. 12, no 1, pp. 8-31.

Whitley, S. J. (1986) "The Manitoba Language Reference: Judicial Consideration of 'Language Charged with Meaning'", in *Manitoba Law Journal*, vol. 15, pp. 295-304.

Wood, Michael J.B. (1990) "Le bilinguisme législative en Ontario: La situation actuelle", in *Revue générale de droit* (Section de Droit Civil, Universite d'Ottawa), vol. 21, no 1, pp. 139-150.

Wood, Michael J.B. (1996) "Drafting Bilingual Legislation in Canada: Examples of Beneficial Cross-Pollination between the Two Language Versions", in *Statute Law Review*, vol. 17, no 1, pp. 66-77.

Bilingual and multilingual drafting in other settings than the EU and Canada

Balmer, M Gregory (1992) "Does the United States Need an Official Language? The Examples of Belgium and Canada", in *Indiana International and Comparative Law Review*, vol 2, pp. 433-448.

Borja Albi, Anabel (2005) „Legal Language and Linguistic Rights in Twenty-First Century Spain" in: J.-C. Gémar and N. Kasirer (eds.) *Jurilinguistique: entre langues et droits – Jurilinguistics: Between Law and Language*, Montréal: Les Édition Thémis, Bruxelles: Les Édition juridiques Bruylant, pp. 225-243.

Caussignac, G. and D. Kettinger (1991) "Rédaction parallèlle au Canton de Berne/ Koredaktion im Kanton Bern", in: *Gesetzgebung heute / Législation d'aujourd'hui*, vol. 3, 77-87.

Echu, G. (2001) "Official bilingualism and the policy of translation in Cameroon", in M. Thelen and B. Lewandowska-Tomaszczyk (eds.) *Translation and Meaning Part 5*, Maastricht: Hogeschool Maastricht, pp. 335-343.

Nelson, L.D.M. (1986) "The Drafting Committee of the Third United Nations Conference on the Law of the Sea: the Implication of Multilingual Texts", in *The British Yearbook of International Law*, Oxford: Clarendon Press, pp. 169-199.

Rosenne, Shabtai (1983) "The Meaning of "Authentic Text" in Modern Treaty Law", in Rudolf Bernhardt *et al*. (eds.), *Völkerrecht Als Rechtsordnung Internationale Gerichtsbarkeit Menschenrechte: Festschrift für Hermann Mosler*, pp. 759-784.

Sin, K.K. (1989) "Meaning, Translation and Bilingual Legislation: The Case of Hong Kong", in P. Pupier and J. Woehrling (eds.) *Langue et Droit. Language and Law*, Montréal: Wilson & Lafleur, pp. 509-515.

Wagner, Emma (2005) "Producing multilingual legislation in Switzerland", in *Clarity. Journal of the international association promoting plain legal language*, no 53, pp. 18-20.

DICTIONARIES

The American Heritage Dictionary of the English Language, (2000) Houghton Mifflin Company Fourth Edition.

Collin, P.H. and K. Bartnicki (2001) *Słownik Prawa* [Law Dictionary], Wydawnictwo Wilga and Peter Collin Publishing.

Diccionario Espasa Concise: Español-Inglés, English-Spanish (2000) Espasa-Calpe S.A. Madrid.

HarperCollins German Dictionary: German-English/English-German (2000) Harpercollins.

Oxford-Duden German Dictionary: German-English, English-German (2005), contributors: Olaf Thyen, Michael Clark, Werner Scholze-Stubenrecht, John Bradbury Sykes, Dudenredaktion (Bibliographisches Institut), Oxford University Press.

Pieńkos, Jerzy (2002) *Francusko-polski leksykon, prawo, ekonomia, handel* [French-Polish glossary, law, economy, trade], Zakamycze: Kantor Wydawniczy.

Stanisławski, Jan (1990) *Wielki słownik angielsko-polski – The Great English-Polish Dictionary*, Warszawa: Wiedza Powszechna.

Walewski, Stanisław (1990) *Słownik polsko-niemiecki i niemiecko-polski – Wörterbuch der Polnischen und Deutschen Sprache*, vol. I and II, Kraków: Wydawnictwo Aramis.

ALPHABETICAL BIBLIOGRAPHY

Abélès, Marc (1992) *La vie quotidienne au Parlement européen* Paris: Hachette.

Agius, Peter *Aspects of Interpretation of Multilingual Acquis Communautaire*, paper published at the intranet of the Council Legal Service.

Ainsworth, Janet E. (2006) "Linguistics as a Knowledge Domain in the Law", in the Intersection of Law and Science Symposium, *Drake Law Review*, vol. 54, pp. 651-668.

Akehurst, M. (1972) "Preparing the Authentic English Text of the EEC Treaty", in B.A. Wortley (ed.) *An Introduction to the Law of the European Economic Community*, Manchester: Manchester University Press, pp. 20-31.

Alikatuktuk, Thomasie (2007) *Proposed Official Languages Bill and Inuit Language Protection Bill*, 18 May 2007, Qikiqtani Inuit Association, available at http://www.qia.ca/apps/UPLOADS/files/language_bill_eng.pdf, last consulted in August 2007.

The American Heritage Dictionary of the English Language (2000) Houghton Mifflin Company Fourth Edition.

Ammon, Ulrich (1991) "The Status of German and Other Languages in the European Community", in Florian Coulmas (ed.) (1991a) *A Language Policy for the European Union: prospect and quandaries*, (Contributions to the sociology of language; 61), Berlin and New York: Mouton de Gruyter, pp. 241-254.

Ammon, Ulrich (2001) "Deutsch als Lingua franca in Europa", in U. Ammon, K.J. Mattheier, P.H. Nelde (eds), *Sociolinguistica. Verkehrssprachen in Europa - außer English. Lingua francas in Europe - except English. Langues véhiculaires en Europe - sans l'anglais*, Tübingen: Max Niemeyer Verlag, pp. 32-41.

Ammon, Ulrich (2006) "Language Conflicts in the European Union. On Finding a Politically Acceptable and Practicable Solution for EU Institutions that Satisfies Diverging Interests", in *International Journal of Applied Linguistics*, vol. 16, no 39, pp. 319-338.

Ancel, Marc (1971) *Utilité et méthodes de droit comparé*, Paris.

Arnold, D., L. Balkan, R. Lee Humphreys, S. Meijer & L. Sadler (1994) *Machine Translation: An Introductory Guide*, Manchester & Oxford: NCC Blackwell.

Association des juristes d'expression française de la Colombie-Britannique (2006*) Recruiting French-Speaking and Bilingual Jurors in British Columbia*, A Study Submitted to the Department of Justice of Canada Access to Justice in Both Official Languages Support Fund, March 2006, revised in October 2006, French version available *Recruter des jurés francophones et bilingues en Colombie-Britannique*, both language versions available at the AJEFCB website http://ajefcb.ca/publications/, last consulted in August 2007.

Athanassiou, Phoebus (2006) *The Application of Multilingualism in the European Union Context*. Legal Working Paper Series, No 2, February 2006, European Central Bank, available at http://www.ecb.int or from the Social Science Research Network electronic library at http://ssrn.com/abstract_id=886048, last consulted in February 2007.

Auger, Jacques (1999) "The Treatment of Creditors in the *Bankruptcy and Insolvency Act* and Security Mechanisms in the Civil Law of Quebec – Summary", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 967-986.

Auger, Jacques, Albert Bohémier and Roderick A. Macdonald (1999) "The Treatment of Creditors in the *Bankruptcy and Insolvency Act* and Security Mechanisms in the Civil Law of Quebec", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 887-965.

Aunger, E. A. (1989) "Language and Law in the Province of Alberta", in Paul Pupier and José Woehrling (eds.), *Language and Law*, Montreal: Wilson & Lafleur, pp. 203-229.

Aunger, Edmund A. (1998) "The Mystery of the French Language Ordinances: An Investigation into Official Bilingualism and the Canadian North-West, 1870 to 1895", in *Canadian Journal of Law and Society*, vol. 13, pp. 89-124.

Aunger, Edmund A. (2001) "Justifying the End of Official Bilingualism: Canada's North-West Assembly and the Dual-Language Question, 1889-1892", in *Canadian Journal of Political Science / Revue canadienne de science politique*, vol. 34, no. 3 (Sep., 2001), pp. 451-486.

Aunger, Edmund A. (2004) "Legislating Language Use in Alberta. A Century of Incidental Provisions for a Fundamental Matter", in *Alberta Law Review*, vol. 42, pp. 464-497.

Austin, John Langshow (1962) *How to Do Things with Words*, Oxford: Oxford University Press.

Aziz, Miriam (2004) "Mainstreaming the Duty of Clarity and Transparency as part of Good Administrative Practice in the EU", in *European Law Journal*, vol. 10, no 3, pp.282-295.

Azoulai, Loïc, Florence Kramer, Dominique Ritleng (2003/2005) "Chronique de jurisprudence de la Cour de Justice des Communautés européennes", in Loïc Azoulai, Florence Kramer, Dominique Ritleng (eds.) *Annuaire de droit européen*, pp. 479-538.

Baes, Henk (2007) *Lisbon Treaty – "Making of" - Interview with Henk Baes from the Council's language service, on the work of the translators in the preparation of the Lisbon Treaty,* European Commission – DG Communication, Audiovisual Service, available at http://ec.europa.eu/avservices/services/showShotlist.do?out=PDF&lg=En&filmRef=i-055938, last consulted in December 2007.

Baker, Mona (ed.) (1997) *The Routledge Encyclopedia of Translation Studies*, London and New York: Routledge.

Balmer, M Gregory (1992) "Does the United States Need an Official Language? The Examples of Belgium and Canada", in *Indiana International and Comparative Law Review*, vol 2, pp. 433-448.

Banakas, Efstathios (2002) "The Contribution of Comparative Law to the Harmonization of European Private Law", in Andrew Harding and Esin Örücü (eds.) *Comparative law in the 21st century*, W.G. Hart Workshop (2000): Institute of Advanced Legal Studies London; The Hague, New York: Kluwer Law International, pp. 179-191.

Banks, Margaret A. (1986) "Defining "Constitution of the province" – The Crux of the Manitoba Language Controversy", in *McGill Law Journal*, vol. 31, pp. 466-479.

Bastarache, Michel (2001) "Bijuralism in Canada" presentation given during Lunch and Learn Workshop on Bijuralism and the Judicial Function in Department of Justice, on February 4, 2000, Ottawa, Ontario, published by Department of Justice in *Bijuralism and Harmonization: Genesis*, http://canada/justice.gc.ca/en/dept/pub/hfl/fasc1/fascicule_1g.html, last consulted in October 2007, pp. 19-26

Bastarache, Michel (ed.), (2004) *Language Rights in Canada*, 2nd ed., Cowansville, Qc.: Yvon Blais.

Bates, Jane D. N. (1989) "The Conversion of EEC Legislation into U.K. Legislation", in *Statute Law Review*, vol. 10, pp. 110-123.

Beaudoin, Louis (2002) "Legal Translation in Canada", in Heikki E. S. Mattila (ed.) *The Development of Legal Language*, Papers from an International Symposium held at the University of Lapland, September 13-15, 2000, Helsinki.

Beaudoin, Louis (2006) *Legal Translation in Canada. The Genius of Legal Language(s)*, paper presented at The Language and Law Conference, Düsseldorf, Germany – May 17th-19th, 2006.

Beaugrande, Robert de (1989) "Special Purpose Language as a Complex System: The Case of Linguistics", in Christer Laurén and Marianne Nordman (eds.) *Special Language. From Human Thinking to Thinking Machines*, Clevedon-Philadelphia: Multilingual Matters Ltd., pp. 3-29.

Beaupré, Michael (1986) *Interpreting Bilingual Legislation*, 2nd ed., Toronto-Calgary-Vancouver: Carswell.

Beaupré, Michael (1987) "Judicial Review of the Legislative Process: The Case of Manitoba Language Rights", in *Canadian Parliamentary Review*, vol. 10, no 4, available at http://www.parl.gc.ca/infoparl/english/issue.htm?param=123&art=750, last updated: 25.03.2008, last consulted in April 2008.

Bélanger, Claude (1998) "The Language Laws of Quebec", in *Readings in Quebec History*, Department of History, Marianopolis College, available at http://www2.marianopolis.edu/quebechistory/readings/langlaws/htm, last revised on 23 August 2000, last consulted in January 2007.

Bélanger, Claude (1999) "Events, Issues and Concepts of Quebec History Bilingualism", in *Readings in Quebec History*, Department of History, Marianopolis College, available at http://www2.marianopolis.edu/quebechistory/readings/bilingualism, last revised on 23 August 2000, last consulted in January 2007.

Bélanger, Claude (2000) "The Rise of the Language Issue since the Quiet Revolution", in *Readings in Quebec History*, Department of History, Marianopolis College, available at http://www2.marianopolis.edu/quebechistory/readings/llaws.htm, last revised on 23 August 2000, last consulted in January 2007.

Bell, Jim (2007) "QIA wants language laws dumped, re-written", in *Nunatsiaq News*, June 29, 2007, available at http://www.nunatsiaq.com/archives/2007/706/70629/news/nunavut/70629_253.html, last consulted in August 2007.

Bell, John (2001) *French Legal Cultures*, London, Edinburgh, Dublin: Butterworths.

Bell, R. T. (1997) "Psycholinguistic/cognitive approaches", in M. Baker (ed.) *The Routledge Encyclopedia of Translation Studies*, London and New York: Routledge, pp. 185-190.

Bellier, Irène (1995) "Moralité, langue et pouvoirs dans les institutions européen", in *Social Anthropology*, vol. 3, no 3, pp. 235-250.

Belvedere, Andrea (1994) "Linguaggio giuridico", in *Digesto IV edizione. Sezione civile*, Torino, UTET, vol. 11, pp. 21-30.

Benda-Peter, Andrea (1999) "Le rôle et la place du français dans la vie des institutions de l'Union européenne: l'exemple du service de traduction", in *Communication à la Table ronde de l'Agence de la francophonie, Expolangues, 30 janvier*.

Berteloot, Pascale (1987) "Babylone à Luxembourg – Jurilinguistique à la Cour de Justice", in *Vorträge, Reden und Berichte aus dem Europa-Institut der Universität des Saarlandes*, Nr 136.

Berteloot, Pascale (1999) "Le droit à la langue de l'Union européenne", in E. Jayme (ed.) *Langue et Droit*, Bruxelles: Bruylant, pp. 345-362.

Berteloot, Pascale (2001) "Language Policy in the European Union", in Susan Šarčević (ed.) *Legal Translation. Preparation for Accession to the European Union*, Rijeka: Faculty of Law, University of Rijeka, pp. 1-10.

Berteloot, Pascale (2002) "Legal French in France and in the European Communities", in Heikki E. S. Mattila (ed.) *The Development of Legal Language*, Papers from an International Symposium held at the University of Lapland, September 13-15, 2000, Helsinki, pp. 81-99.

Biel, Łucja (2005) *Translation of Multilingual EU Legislation as a Sub-Genre of Legal Translation*, unpublished.

Bindman, Stephen (2005) “Legal Drafting: More than words on a page”, in Justice Canada, vol. 1, no 3, available at http://www.justice.gc.ca/en/dept/pub/jc/vol1/no3/legal.html, last updated 20 October 2005.

Bix Brian (1991) “H. L. A. Hart and the "Open Texture" of Language”, in *Law and Philosophy*, vol. 10, no. 1, February, pp. 51-72.

Blankenburg, Erhard *et al.* (2000) *Legal culture in Five Central European Countries, WRR Working Documents, no W111, The Hague.*

Bloch, Jean-Pierre and Claude Remy, Gaston Deschênes (eds) (1984) *Lexique des termes parlementaires en usage en Belgique, en France et au Québec*, Québec: Bibliothèque de l'Assemblée nationale.

Bohémier, Albert (1999) “Research in Bijuralism: *Bankruptcy and Insolvency Act*”, in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 841-886.

Borgsmidt, K. (1988) “The Advocate General at the European Court: A Comparative Study”, in *European Law Review*, vol. 13, no 2, pp. 106-119.

Borja Albi, Anabel (2005) “Legal Language and Linguistic Rights in Twenty-First Century Spain”, in J.-C. Gémar and N. Kasirer (eds.) *Jurilinguistique: entre langues et droits – Jurilinguistics: Between Law and Language*, Montréal: Les Édition Thémis, Bruxelles: Les Édition juridiques Bruylant, pp. 225-243.

Bosley, John (1985) “Private Bills versus public bills”, in *Canadian Parliamentary Review*, Vol 8 no 2, http://www.parl.gc.ca/infoparl/english/index.htm, last updated: 23.03.2005, last consulted in January 2007.

Bourhis, Richard Y. (1984) *Conflict and Language Planning in Quebec*, Multilingual Matters Ltd.

Bowyer, John (1972) “Englishing Community Law”, in *Common Market Law Review*, vol. 9, no 4, pp. 439-455.

Brackeniers, Eduard (1995) “Le multilinguisme dans la Communauté européenne”, in *Terminologie et traduction*, no 1, pp. 91-96.

Brennan, Colleen B. (2001) *Linguistics and the Law*, available at www.csa.com/hottopics/linglaw/oview.html, last consulted in August 2007.

Brent, Richard (1995) “The Binding of Leviathan? – The Changing Role of the European Commission in Competition Cases”, in *International and Comparative Law Quarterly*, vol. 44, pp. 255-279.

Brierley, John E. C. (1992) “Bijuralism in Canada”, in *Contemporary Law: Canadian Reports to the 1990 International Congress of Comparative Law, Montreal 1990* (Cowansville, Qc., Yvon Blais, pp. 22-43.

Brierley, John E.C. and Nicholas Kasirer (1999a) "Document I – Review of the *Federal Real Property Act/Loi sur les immeubles fédéraux* in Light of the Coming Into Force of the *Civil Code of Québec*", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 773-830.

Brierley, John E.C. and Nicholas Kasirer (1999b) "Document II – Review of Proposals to Amend the *Federal Real Property Act/Loi sur les immeubles fédéraux* in Light of the Bijural and Bilingual Character of Federal Statutory Instruments", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 831-840.

Brisson, Jean-Maurice (1992) "L'impact du Code civil du Québec sur le droit fédéral: une problématique", in *La Revue du Barreau (Quebec)*, vol. 52, no. 2, pp. 345-360.

Brisson, Jean-Maurice and André Morel (1996) "Droit fédéral et droit civil: complémentarité, dissociation", in *Revue du Barreau Canadien*, vol. 75, pp. 297-332.

Brisson, Jean-Maurice and André Morel (1999) "Federal Law and Civil Law: Complementarity, Dissociation", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 215-264.

Busuttil, E. (1974) "Malta", in *International Encyclopedia of Comparative Law*, vol. I, "National Reports," sect. "M.", Tübingen, Mohr.

Cabre, T. (1992) *Terminology: Theory, methods and applications*, Amsterdam/Philadelphia; PA: John Benjamins B.V.

Campbell, Alan and Thompson, Dennis (1963) *Common market law: texts and commentaries*, London: Stevens.

Campana, Marie-Jeanne (2000) "Vers un langage juridique commun en Europe?", in *European Review of Private Law*, vol. 1, pp. 33-50.

Cao, Deborah (2007a) *Translating Law*, Clevedon, Buffalo: Multilingual Matters.

Cao, Deborah (2007b) "Inter-lingual uncertainty in bilingual and multilingual law", in *Journal of Pragmatics*, vol 39, pp. 69-83.

Carson, Lorna (ed.) (2003) *Multilingualism in Europe. Case Study*, Madriaga European Foundation.

Caussignac, G. and D. Kettinger (1991) "Rédaction parallèlle au Canton de Berne/ Koredaktion im Kanton Bern", in *Gesetzgebung heute / Législation d'aujourd'hui*, vol. 3, 77-87.

Chalmers, Damian, Christos Hadjiemmanuil, Giorgio Monti and Adam Tomkins (eds) (2006) *European Union Law. Text and Materials*, Cambridge, UK; New York: Cambridge University Press.

Charles, C.A. (1988) "The legal system of Malta", in Kenneth R. Redden (ed.) *Modern Legal Systems Cyclopedia*, vol. 4 (revised), Buffalo, New York, U.S.A.: W.S. Hein.

Chesterman, A. (ed.) (1989) *Readings in Translation Theory*, Helsinki: Finn Lectura.

Chevrier, Marc (1997) *Des lois et des langues au Québec: principes et moyens de la politique linguistique québécoise*, Québec: Gouvernement du Québec, Ministère des relations internationals.

Chodkiewicz, Christine (2004) Review of *La Langue de La Common Law* by Anne Wagner (2002), Paris: l'Harmattan, in *Speech, Language and the Law*, vol. 11, no 1, pp. 150-156.

Clariana, Gregorio Garzón (1998) "The Quality of European and National Legislation. Comments", in Alfred E. Kellermann, Giuseppe Ciavarini Azzi, R. Deighton-Smith and Scott H. Jacobs (eds.) *Improving the Quality of Legislation in Europe*, Martinus Nijhoff Publishers, pp. 60-66.

Climent-Ferrando (2005) *The origins and evolution of language secessionism in Valencia. An analysis from the transition period until today*, Mercator - Working Papers no. 18, Barcelona: CIEMEN.

Cohen, Neil B., Claire Kelly, Lawrence M. Solan (2004) "Symposium Creating and Interpreting Law in a Multilingual Environment: Introduction", in *Brooklyn Journal of International Law*, vol. 29, issue 3, pp. 977-984.

Collin, P.H. and K. Bartnicki (2001) *Słownik Prawa* [Law Dictionary], Wydawnictwo Wilga and Peter Collin Publishing.

Commission of European Communities (1997) *Agenda 2000: For a stronger and wider Europe*, COM(97) 2000, Supplement to the Bulletin of the European Union 5/97, Luxembourg: Office for Official Publications of the European Communities.

Commission of the European Communities (2000a) *Regular Report from the Commission on Bulgaria's Progress Towards Accession*, 8 November 2000, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/bg_en.pdf, last consulted in January 2007.

Commission of the European Communities (2000b) *Regular Report from the Commission on Romania's Progress Towards Accession*, 8 November 2000, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/ro_en.pdf, last consulted in January 2007.

Commission of the European Communities (2001) *Regular Report on Romania's Progress Towards Accession, Brussels*, 13.11.2001, SEC(2001) 1753, last consulted in January 2007.

Commission of the European Communities (2002a) 2002 *Regular Report on Czech Republic's Progress Towards Accession*, Brussels, 9.10.2002, SEC(2002) 1402,COM(2002) 700 final, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/cz_en.pdf, last consulted in January 2007

Commission of the European Communities (2002b) *2002 Regular Report on Estonia's Progress Towards Accession*, Brussels, 9.10.2002, Sec(2002) 1402, Com(2002) 700 Final, available at http://Ec.Europa.Eu/Enlargement/Archives/Pdf/Key_Documents/2002/Ee_En.pdf, last consulted in January 2007.

Commission of the European Communities (2002c) *2002 Regular Report on Malta's Progress Towards Accession*, Brussels, 9.10.2002, SEC(2002) 1407, COM(2002) 700 final, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/ml_en.pdf, last visited in January 2007.

Commission of the European Communities (2002d) *2002 Regular Report on Poland's Progress Towards Accession*, Brussels, 9.10.2002, Sec(2002) 1408, Com(2002) 700 Final, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/pl_en.pdf, last visited in January 2007.

Cornu, Gérard (2005) *Linguistique juridique*, collection « Domat Droit Privé », 3e éd., Paris: Montchrestien.

Correia, R. (2003) "Translation of EU Legal Texts", in: A. Tosi (ed.) *Crossing Barriers and Bridging Cultures. The Challenges of Multilingual Translation for the European Union*, Multilingual Matters Ltd., pp. 38-44.

Côté, Pierre-André (1999) *Interprétation des lois*, 3rd edition, Montréal: Thémis.

Côté, Pierre-André (2000) *The Interpretation of Legislation in Canada*, 3rd ed., Carswell: Thomson Professional Publishing.

Côté, Pierre-André (2004) "Bilingual Interpretation of Enactments in Canada: Principles v. Practice", in: *Brooklyn Journal of International Law*, vol. 29, no 3, pp. 1067-1084.

Cotterrell, Roger (1997) "The Concept of Legal Culure", in David Nelken (ed.) *Comparing Legal Cultures*, Dartmouth Publishing Company Limited.

Coulthard, Malcolm and Janet Cotterill (2005) *Introducing Forensic Linguistics*, Routledge.

Coulmas, Florian (1990) "The status of German: some suggestions for future research", in *International Journal of Sociology of Language* ,vol. 83, pp. 171-185.

Coulmas, Florian (ed.) (1991a) *A Language Policy for the European Union: prospect and quandaries*, (Contributions to the sociology of language; 61), Berlin and New York: Mouton de Gruyter.

Coulmas, Florian (1991b) "European Integration and the idea of the national language. Ideological roots and economic consequences", in Florian Coulmas (ed.) 1991a, pp.1-43.

Council of the European Union (2002) *Manual of precedents for acts established within the Council of the European Union*, Fourth edition, Luxembourg: Office for Official Publications of the European Communities.

Covacs, Alexandre (1979) "Bilinguisme officiel et double version des lois", in Meta, vol. XXIV, no 1, pp.103-108.

Covacs, Alexandre (1982) "La réalisation de la version française des lois fédérales du Canada", in: Jean Claude Gémar (ed.) *Langage du droit et traduction. Essais de jurilinguistique./The Language of the Law and Translation. Essays on Jurilinguistics*, Montréal: Linguatech et Conseil de la langue français, pp. 83-100.

Covacs, Alexandre (1983) "The French Jurilinguistics Group of the Department of Justice" in *Canadian Paliamentary Review* Vol 6, no 1 http://www.parl.gc.ca/infoparl/english/ index.htm, last updated: 21.12.2004, last consulted in January 2006.

Craig, P. and G. de Búrca (2008) *EU Law. Text, Cases and Materials* (4th ed.), Oxford; New York: Oxford University Press.

Cram, Laura; Desmond Dinan and Neill Nugent (eds) (1999) *Developments in the European Union*, New York: St. Martin's Press.

Creech, Richard L. (2005) *Law and Language in the European Union. The Paradox of Babel "United in Diversity"*, Groningen: Europa Law Publishing.

Crystal, D., D. Davy (1969) *Investigating English Style*, Bloomington: Indiana University Press.

Crystal, David (1997) *The Cambridge encyclopedia of language*, 2nd edition, Cambridge, UK: CU Press.

Cunningham, Clark D. (1989) "Tale of Two Clients: Thinking about Law as Language", in *Michigan Law Review*, vol. 87, no 7, pp. 2459-2494.

Cunningham, Clark D. (1991-1992) "The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse", in *Cornell Law Review*, vol. 77, pp. 1298-1387.

Cunningham, Kristina (2001) "Translating for a Larger Union - Can We Cope with More than 11 Languages?", in *Terminologie et traduction*, no 2, pp. 22-33.

Curti Gialdino, C. (1995) "Some Reflections on the *acquis communautaire*",in: *Common Market Law Review*, vol. 32, pp. 1089-1121.

Cutts, Martin (2001) *Clarifying Eurolaw*, Plain Language Commission, available at http://europa.eu.int/comm/translation/en/ftfo, last consulted in April 2008.

Cutts, Martin and Emma Wagner (2002) *Clarifying EC Regulations, Plain Language Commission*, available at http://www.clearest.co.uk/files/ClarifyingECRegulationsCont.pdf, last consulted in April 2008.

Czapliński, Władysław (2002) *Zarys prawa europejskiego*, 2nd edition, Warszawa: Helsińska Fundacja Praw Człowieka.

Chantal de, René (1991) "L'expérience linguistique du Canada peut-elle être utile à la nouvelle Europe?", in *Terminologie et traduction*, no 2, pp. 197-203.

Danet, B. (1980) "Language in the legal process", in *Law and Society Review*, vol. 14, pp. 445-564.

Danet, B. (1985) "Legal Discourse", in Teun A. Van Dijk (ed.) *Handbook of Discourse Analysis* vol. 1, London: Academic Press, Inc., pp. 273-291.

David, R. and J. E. C. Brierley (1985) *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*, 3rd edition, London, Stevens.

Davies, K. (2001). *Understanding European Union Law*. London, Sydney: Cavendish Publishing Limited.

De Groot, Gerard-René (1992) "European Education in the 21st Century", in Bruno de Witte and Caroline Forder (eds.) *The Common Law of Europe and the Future of Legal Education/ Le droit de l'Europe et l'avenir de l'enseignement juridique*, Deventer: Kluwer Law & Taxation, pp. 54.

De Groot, Gerard-René (1996) "Law, Legal Language and the Legal System: Reflections on the Problems of Translating Legal Texts", in V. Gessner, A. Hoeland, C. Varga (eds.) *European Legal Cultures*, Dartmouth, pp. 155-160.

De Groot, Gerard-René and L. Rayar (1995) "Bilingual legal dictionaries: criteria for assessment", in M. Thelen and B. Lewandowska-Tomaszczyk (eds.) *Translation and Meaning Part 3*, Maastricht: Hogeschool Maastricht, pp. 204-211.

Dehousse, Renaud (1994) "Comparing National and EC Law: The Problem of the Level of Analysis", in *The American Journal of Comparative Law*, vol. 42, no 4, pp. 761-781.

Delisle, J., H. Lee-Jahnke and M.C. Cormier (eds.) (1999) *Terminologie de la traduction. Translation Terminology. Terminología de la Traducción. Terminologie der Übersetzun,* Amsterdam/Philadelphia: John Benjamins Publishing Company.

De Mestral, Armand L.C. and William Fraiberg (1966-1967) "Language Guarantees and the Power to Amend the Canadian Constitution", in *McGill Law Journal*, vol. 12, no 4, pp. 502-519.

Department of Culture, Language, Elders and Youth (2003) *Inuit Qaujimajatuqangit Katimajiit Established*, available at http://www.gov.nu.ca/Nunavut/English/news/2003/sept/sept8a.shtml, last consulted in August 2007.

Department of Culture, Language, Elders and Youth on behalf of the Government of Nunavut (2004) *Next Steps Toward Made-In-Nunavut Language Legislation*. Response to Special Committee to Review the Official Languages Act. Final Report, December 2003, 6th Session, 1st Legislative Assembly, May 2004, available at

http://www.gov.nu.ca/cley/home/english/pdf/nextsteps_english.pdf, last consulted in August 2007.

Department of Justice Canada (2005a) *Environmental Scan: Access to Justice in Both Official Languages. Final Report Submitted to Justice Canada by GTA Research*, available at http://www.justicecanada.ca/en/ps/franc/enviro/index.html, last updated 2005-12-05, last consulted in August 2007.

Department of Justice Canada (2005b) *Second Collection of Study in Tax Law. The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism*.

Department of Justice Canada – Association de planification fiscale et financière (2002) *Collection of Study in Tax Law. The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism*, Montreal.

Department of Justice of Canada and Department of Heritage Canada (2000) *Annotated Language Laws of Canada. Constitutional, Federal, Provincial and Territorial Laws*, Second edition – revised, corrected and augmented; available at http://www.pch.gc.ca/progs/lo-ol/perspectives/english/law/law_e.pdf; issued also in French under title: *Lois linguistiques du Canada annotées. Lois constitutionnelles, fédérales, provinciales et territoriales*, available at http://www.pch.gc.ca/progs/lo-ol/perspectives/francais/lois/lois.pdf, last consulted in August 2007.

Dessemontet, François and Tuğrul Ansay (1995) *Introduction to Swiss Law*, 2nd edition, The Hague-Boston-London: Kluwer Law International.

De Swaan, Abram (2001) *Words of the World: The Global Language System*, Cambridge: Polity.

Devine, Patrick (1977) "Language Rights in Canada and Quebec's Official Language Act", in *University of Toronto Faculty Law Review*, vol. 35, pp. 114-125.

De Witte, Bruno (2004) "Language Law of the European Union: Protecting or Eroding Linguistic Diversity?", Chapter 7, in Rachael Craufurd Smith (ed.) *Culture and European Union Law*, Oxford: Oxford University Press, pp. 205-241.

De Witte, Bruno and Caroline Forder (eds.) (1992) *The Common Law of Europe and the Future of Legal Education/ Le droit de l'Europe et l'avenir de l'enseignement juridique*, Deventer: Kluwer Law & Taxation.

DGLF (Délégation générale à la langue française) (2000), *Rapport au Parlement sur la langue française dans les institutions internationals*, Paris, Ministère de la culture (http://www.dglf.culture.gouv.fr, last consulted in January 2006.

Diccionario Espasa Concise: Español-Inglés, English-Spanish (2000) Espasa-Calpe S.A. Madrid.

Dickerson, Reed (1986) *The Fundamentals of Legal Drafting*, 2nd edition, Boston, Toronto: Little, Brown and Company.

Dion, Mario (2000a) "Harmonization of Federal Law with Quebec Civil Law: Canadian Bijuralism and Its Actualization" presentation given on the 20 October 2000 in the Department of Justice, Canada, Ottawa, Ontario, published by Department of Justice in *Bijuralism and Harmonization: Genesis*, available at http://canada/justice.gc.ca/en/dept/pub/hfl/fasc1/fascicule_1g.html, last consulted in September 2006, pp. 27-32.

Dion, Mario (2000b) "Canadian Bijuralism and Harmonization of the Law" presentation given on the 20 October 2000 in the Department of Justice, Canada, Ottawa, Ontario, published by Department of Justice in *Bijuralism and Harmonization: Genesis*, available at http://canada/justice.gc.ca/en/dept/pub/hfl/fasc1/fascicule_1g.html, last consulted in September 2007, pp. 38-45.

Dion, Mario (2003) "Bijuridisme canadien et harmonisation du droit", in Louis Perret, Alain-François Bisson, Nicola Mariani (eds) *Evolution des systèmes juridiques, bijuridisme et commerce international. The evolution of legal systems, bijuralism and international trade*, Montréal: Wilson & Lafleur, pp. 187-197.

Directorate-General for Translation of the European Commission (2005) *Translating for a multilingual community*, available at europa.eu.int/comm/dgs/translation/bookshelf/ brochure_en.pdf, last consulted in January 2006.

Directorate-General for Translation, Communication Unit, European Commission (2007) *Translating for a Multilingual Community*, Luxembourg: Office for Official Publications of the European Communities, also available at http://ec.europa.eu/dgs/translation/bookshelf/brochure_en.pdf, last consulted August 2007.

Domenichelli, Luisa (1999) *Constitution et régime linguistique en Belgique et au Canada*, Bruylant, Bruxelles.

Donelan, E. (1997) "The Role of the Office of the Parliamentary Draftsman in the Implementation of European Union Directives in Ireland", in *Statute Law Review*, vol. 19, no 1, pp. 1-20.

Dorais, L.J. (1990a) *Inuit Uqausiqatigiit: Inuit Languages and Dialects*, Arctic College, Nunatta Campus, Iqaluit.

Dorais, Louis-Jacques (1990b) "The Canadian Inuit and their Language", in Dirmid R. F. Collis (ed.) *Arctic Languages. An Awakening*, Unesco, available at http://unesdoc.unesco.org/images/0008/000861/086162e.pdf, last consulted in August 2007, pp. 185-290.

Dorais, Louis-Jacques (1993) *From Magic Words to Word Processing. A History of the Inuit Language*. Iqaluit, N.W.T.: Arctic College, Nunatta Campus.

Dorais, Louis-Jacques (1996) *La parole inuit: langue, culture et société dans l'Arctique nord-américain*, Paris: Peeters.

Douglas-Scott, Sionaidh (2002) *Constitutional law of the European Union: A Constitution for Europe*, Pearson Education.

Dragone, Stefania (2006) "The Quality of Community Legislation and the Role of the European Commission Legal Revisers", in Barabara Pozzo and Valentina Jacometti (eds.) *Multilingualism and the Harmonisation of European Law,* Kluwer Law International, pp. 99-106.

Duff, David G. (2003) "The Federal Income Tax Act and Private Law in Canada: Complementarity, Dissociation, and Canadian Bijuralism", in: *Canadian Tax Journal / Revue fiscale canadienne* vol. 51, no 1, pp. 1-63.

Dukelow, Daphne A. and Betsy Nuse (1995) *The Dictionary of Canadian Law*, Second Edition, Carswell Thomson Professional Publishing.

Dunsmuir, Mollie (2002) *Bill S-41: The Legislative Instruments Re-enactment Act. Legislative Summary*, 23 April 2002, revised 12 June 2002, Parliamentary Research Branch, Library of Parliament – Bibliothèque du Palement.

Echu, G. (2001) "Official bilingualism and the policy of translation in Cameroon", in M. Thelen and B. Lewandowska-Tomaszczyk (eds.) *Translation and Meaning Part 5*, Maastricht: Hogeschool Maastricht, pp. 335-343.

Ehrmann, H. W. (1976) *Comparative Legal Culture*, Prentice-Hall, Inc., Englewood Cliffs, New Jersey.

Eriksen, Lars (2001) "Die juristische Fachsprache", in Felix Mayer (ed.) *Language for Special Purposes: Perspectives for the New Millennium*, vol. 2, Tübingen: Gunter Narr Verlag, pp. 586-593.

Euromosaic (2005a) *The Euromosaic study. Basque in Comunidad Autónoma Vasca (Spain)* http://europa.eu.int/comm/education/policies/lang/languages/langmin/euromosaic/es31_en.html, last updated 04.02.2005, last visited 12.01.2006.

Euromosaic (2005b) *The Euromosaic study. Basque in France* http://europa.eu.int/comm/education/policies/lang/languages/langmin/euromosaic/fr2_en.html
last updated 04.02.2005, last visited 12.01.2006.

Euromosaic (2005c) *The Euromosaic study. Catalan in the Balearic Islands (Spain)*, http://europa.eu.int/comm/education/policies/lang/languages/langmin/euromosaic/es53_en.html, last updated 04.02.2005, last visited 12.01.2006.

Euromosaic (2005d) *The Euromosaic study. Catalan in Catalonia (Spain)* http://europa.eu.int/comm/education/policies/lang/languages/langmin/euromosaic/es51_en.html, last updated 04.02.2005, last visited 12.01.2006.

Euromosaic (2005e) *The Euromosaic study. Catalan in France*, http://europa.eu.int/comm/education/policies/lang/languages/langmin/euromosaic/fr4_en.html, last updated 04.02.2005, last visited 12.01.2006.

Euromosaic (2005f) *The Euromosaic study. Gallician in Spain*, http://europa.eu.int/comm/education/policies/lang/languages/langmin/euromosaic/es6_en.html, last updated 04.02.2005, last visited 12.01.2006.

European Parliament (2001) *Multilingualism in the European Parliament in the run-up to enlargement* – Working document n° 3 for the Podestà report – SG.EL/01- 38/fin.

Evaluation of Phare programmes in support of EU Integration and Law Approximation - 05/1999 - ref. 951483 – Final Reports:
for Estonia available at:
http://www.eu.int/comm/europeaid/evaluation/reports/cards/951483_est.pdf,
for Hungary available at:
http://www.eu.int/comm/europeaid/evaluation/reports/cards/951483_hun.pdf,
for Poland available at:
http://www.eu.int/comm/europeaid/evaluation/reports/cards/951483_pl.pdf, last consulted on August, 30, 2005.

Evans, Andrew (1998) *A textbook on EU law*, Oxford: Hart.

Evans-Jones, Robin (1998) "Receptions of Law, Mixed Legal Systems and the Myth of the Genius of Scots Private Law", in *Law Quarterly Review*, vol. 114, pp. 228-249.

Fedorov, A. (1954) *Vvednie v teoriju perevoda*, Moskva.

Fenet, Alain (2001) "Diversité linguistique et construction européenne", in *Revue trimestrielle de droit européen*, vol. 37, no 2, avr.-juin, pp. 235-269.

Fosty, Anne (1985) *La langue française dans les institutions communautaires de l'Europe* Québec.

Frame, Ian (2005) "Linguistic oddities in European Union Legislation: don't shoot the translator", in *Clarity. Journal of the international association promoting plain legal language*, no 53, pp. 21-24.

Friedman, L. M. (1977) *Law and Society*, Englewood Cliffs, NJ: Prentice- Hall.

Friedman, L. M. (1975) *The Legal System*, New York: Russell Sage Foundation.

Galetta, Diana-Urania and Jacques Ziller (2007) "Il regime linguistico della Cominità", in Mario P. Chiti and Guido Greco (eds.) *Trattato di Diritto Amministrativo Europeo*, vol. II, 2nd ed., Giuffrè Editore, pp. 1067-1112.

Gall, Gerald L. (2004) *The Canadian Legal System*, 5th ed., Toronto: Thomson Carswell.

Gallas, Tito (2001) "Evaluation in EC Legislation", in *Statute Law Revue*, vol. 22, pp. 83-95.

Gallas, Tito and Manuela Guggeis (2005) "La traduction juridique dans l'expérience des juristes-linguistes du Conseil de l'Union européenne", in Jean-Claude Gémar and Nicholas Kasirer (eds.) *Jurilinguistique: entre langues et droits – Jurilinguistics: Between Law and Language*, Montréal: Les Édition Thémis, Bruxelles: Les Édition juridiques Bruylant, pp. 491-503.

Gallas, Tito (2006) "Understanding EC Law as 'Diplomatic Law' and its Language", in Barabara Pozzo and Valentina Jacometti (eds.) *Multilingualism and the Harmonisation of European Law*, Kluwer Law International, pp. 119-128.

Ganado, J. Max (1947) "Maltese Law", in *Journal of Comparative Legislation and International Law*, 3rd ser., vol. 29, no 3/4, pp. 32-39.

Garzone, Giuliana (2000) "Legal Translation and Functional Approaches: a Contradiction in Terms?", in *Actes du Colloque International "La traduction juridique. Histoire, théorie(s) et pratique"*, 17-19.02.2000, Genève, École de Traduction et d'Interprétation - Université de Genève, available at www.tradulex.org/Actes2000/Garzone.pdf, last consulted in August 2007, pp. 395-414.

Gaudreault**,** Marie-Claude (2003) "Legislative Bijuralism: Its Foundations and Its Application", in the *Revue de planification fiscale et successorale*, 2003, Vol. 24, No. 3 available at http://www.justice.gc.ca/eng/bijurilex/tax-fisc/gaudr/fo1.html, last consulted in September 2007.

Gazzola, Michele (2002) *Il multilinguismo nell'Unione Europea e i suoi costi*, available at http://www.uemilano.it/multilinguismo/multilinguismo_unione_europea.html, last consulted in September 2004.

Gazzola, Michele (2006) "La gestione del multilinguismo nell'Unione europea", in Augusto Carli (ed.) *Le sfide della politica linguistica di oggi. Fra la valorizzazione del multilinguismo migratorio locale e le istanze del plurilinguismo europeo.* Milano: Franco Angeli, pp. 17-117.

Gehnen, Marianne (1991) "Die Arbeitssprachen in der Kommission der Europäischen Gemeinschaft unter besonderer Berücksichtigung des Französischen", in *Sociolinguistica*, vol. 5, pp. 51-63.

Gémar, Jean-Claude (1982a) *Langage du droit et traduction. Essais de jurilinguistique./The Language of the Law and Translation. Essays on Jurilinguistics*, Montréal: Linguatech et Conseil de la langue français.

Gémar, Jean-Claude (1982b) "Fonction de la traduction juridique en milieu bilingue et langage du droit au Canada", in Jean-Claude Gémar, (ed.) *Langage du droit et traduction. Essais de jurilinguistique./The Language of the Law and Translation. Essays on Jurilinguistics*, Montréal: Linguatech et Conseil de la langue français, pp. 121-137.

Gémar, Jean-Claude (1990) "Les fondements du langage du droit comme langue de spécialité. Du sens et de la formed u texte juridique", in *Revue générale de droit*, vol. 21, pp. 717-738.

Gémar, Jean-Claude (1995) *Traduire ou l'art d'interpréter. Langue, droit et société: elements de jurilinguistique. Tome 2: Application – Traduire le texte juridique*, Sainte-Foy, Québec: Presses de l'Université du Québec.

Gémar, Jean-Claude (2005) "Langage du droit et (juri)linguistique. États et functions de la jurilinguistique", in Jean-Claude Gémar, and Nicholas Kasirer (eds.) *Jurilinguistique: entre langues et droits – Jurilinguistics: Between Law and Language*, Montréal: Les Édition Thémis, Bruxelles: Les Édition juridiques Bruylant, pp. 5-22.

Gémar, Jean-Claude and Nicholas Kasirer (eds.) (2005) *Jurilinguistique: entre langues et droits – Jurilinguistics: Between Law and Language*, Montréal: Les Édition Thémis, Bruxelles: Les Édition juridiques Bruylant.

Gentzler, E. (1993) *Contemporary Translation Theories*, London and New York: Routledge.

Gervais, Marie-Claude (1999) "Harmonization and Dissonance: Language and Law in Canada and Europe. Program to Harmonize Federal Legislation with the Civil Law of the Province of Quebec, Assumption of Complementarity and Methodological Issues" Introductory Notes presented on 7 May 1999, published by Department of Justice in *Bijuralism and Harmonization: Genesis*, available at http://canada/justice.gc.ca/en/dept/pub/ hfl/fasc1/fascicule _1g.html, last consulted in January 2007, pp. 10-18.

Gervais, Marie-Claude and Marie-France Séguin (2001) "Some Thoughts on Bijuralism in Canada and the World", in *The Harmonization of Federal Legislation with the Civil Law of the Province of Quebec and Canadian Bijuralism*, Second Publication, Ottawa: Department of Justice, pp. 1-20.

Gibbons, J. (2003) *Forensic Linguistics: An Introduction to Language in the Justice System*, Blackwell.

Gibson, Dale and Kristin Lercher (1986) "Reliance on Unconstitutional Laws: The Saving Doctrines and Other Protections", in *Manitoba Law Journal*, vol. 15, pp. 305-331.

Ginsbergen van, G. (1966) "Enkele opmerkingen over de terminologie van de Nederlandse tekst van het E.E.G. Verdrag", in *Nederlands Juristenblad*.

Gizbert-Studnicki, T. (1972) "Język prawny a język prawniczy", in *Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace Prawnicze*, vol. 5, pp. 219-233.

Gizbert-Studnicki, Tomasz (1986) *Język prawny w perspektywie socjologicznej [Legal language in sociological perspective]*, Warszawa – Kraków.

Glenn, H. Patrick (1993) "La civilisation de la *common law*", in: *Revue internationale de droit comparé*, vol. 45, no 3, pp. 509-575.

Glenn, H. Patrick (1995) "The Common Law in Canada" in *La Revue du Barreau Canadien*, vol. 74, pp. 261-292.

Glenn, H. Patrick (2000) *Legal Traditions of the World*, Oxford: Oxford University Press.

Glenn, H. Patrick (2004) "Legal Cultures and Legal Traditions", in Mark Van Hoecke (ed.), *Epistemology and Methodology of Comparative Law*, Oxford: Hart, pp. 7-20.

Glenn, H. Patrick (2007) *On Common Laws*, Oxford University Press.

Goddard, C. (1996) "Can linguists help judges know what they mean? Linguistic semantics in the court-room", in *International Journal of Speech Language and the Law*, vol. 3, no 2, pp. 250-272.

Goffin, Roger (1971) "Pour une formation universitaire 'sui generis' du traducteur: Réflexions sur certain aspects méthodologique et sur la recherche scientifique dans le domaine de la traduction", in *Meta*, vol. 16, pp. 57-68.

Goffin, Roger (1990) "L'Europe en neuf langues: champ d'affrontements et ferment d'intégration linguistiques", in *Meta*, vol. XXXV, no 1, pp. 13-19.

Goffin, Roger (1994) "L'Eurolecte: oui, jargon communautaire: non", in *Meta*, vol. XXXIX, no 4, pp. 636-642.

Gómez de Enterria, Carmen (1992) "Dans les coulisses du Parlement européen.: neuf langues et trois procedures", in *Revue française d'administration publique*, no 63, janvier-mars, pp. 425-434.

Government of Nunavut (2002) *The First Annual Report of the Inuit Qaujimajatuqanginnut (IQ) Task Force*, August 12, 2002, available at http://www.inukshukmanagement.ca/IQ%20Task%20Force%20Report1.pdf, last consulted in August 2007.

Government of Saskatchewan French-Language Services Policy (2007) *2006-2007 Annual Report*, available at http://www.gr.gov.sk.ca/ocaf/ar_2006-07_e.pdf, last consulted in August 2007.

Gozzi, Paolo (2001) "Translation of the *Acquis Communautaire*: Recent Experiences in Countries Preparing for Membership", in Susan Šarčević (ed.) *Legal Translation. Preparation for Accession to the European Union*, Rijeka: Faculty of Law, University of Rijeka, pp. 23-34.

Gretton, George L. (2003) "Reception Without Integration? Floating Charges and Mixed Systems", in *Tulane Law Review*, vol. 78, pp. 307-332.

Grimard, Normand (2000) "Bilingualism in the National Capital Region", in *Canadian Parliamentary Review*, vol. 23, no 1, English version available at http://www.parl.gc.ca/Infoparl/english/issue.htm?param=74&art=161; French version available at http://www.parl.gc.ca/Infoparl/francais/issue.htm?param=74&art=161, last consulted in August 2007.

Gruben, Vanessa (2004) "Bilingualism and the Judicial System", in M. Bastarache, (ed.) *Language Rights in Canada*, 2d ed., Cowansville, Qc.: Yvon Blais, pp. 141-247.

Guide to Making Federal Acts and Regulations (2nd edition) (2001) table of contents and links to all parts available at website of Privy Council Office http://www.pco-bcp.gc.ca/default.asp?Page=Publications&doc=legislation/lmgtoc_e.htm&Language=E (last modified 02.10.2006); available also in French under the title *Lois et règlements: l'essentiel*,

table of contents and links to all parts available at http://www.pco-bcp.gc.ca/default.asp?Page=Publications&doc=legislation/lmgtoc_f.htm&Language=F (last modified 02.10.2006), published by Department of Justice Canada and Privy Council Office.

Guggeis, Manuela (2006) "Multilingual Legislation and the Legal-linguistic Revision in the Council of the European Union", in Barabara Pozzo and Valentina Jacometti (eds.) *Multilingualism and the Harmonisation of European Law*, Kluwer Law International, pp. 109-117.

Gutt, E.-A. (1990) "A theoretical account of translation – Without the translation theory", in *Target*, vol. 2, no 2, pp. 135-164.

Hakala, Pekka (2006) "Legislative Process from a Parliament Perspective – Past Practice in 11 Languages and Current Challenges in 20", in Barabara Pozzo and Valentina Jacometti (eds.) *Multilingualism and the Harmonisation of European Law*, Kluwer Law International, pp. 147-164.

Halliday, M. A. K. (2003) "Appendix: The Functional Basis of Language", in Basil Bernstein (ed.) *Class, Codes and Control*, vol. 2. Applied Studies Towards a Sociology of Language, London: Routledge, pp. 343-366.

Hanlon, James (2003) *European Community Law*, London: Sweet & Maxwell.

Harding, Andrew (2002) "Global Doctrine and Local Knowledge: Law in South East Asia", in *International and Comparative Law Quarterly*, vol. 51(1), pp. 35-53.

Harnum, B. (1995) "The Eight Official Languages and Their Importance for Cultural Development", in S. Léger (ed.) *Linguistic Rights in Canada: Collusion or Collisions*, Ottawa, Canadian Centre for Linguistic Rights, pp. 241-426.

HarperCollins German Dictionary: German-English/English-German (2000) Harpercollins.

Harris, B. (1977) "The Importance of Natural Translation", in *Working Papers on Bilingualism*, vol. 12, pp. 96-114.

Hart, H.L.A. (1962/1994) *The Concept of Law*, Oxford: Clarendon Press; 2nd ed. 1994.

Hartley, Trevor C. (1996) "Five Forms of Uncertainty in European Community Law", in *Cambridge Law Journal*, vol. 55, no 2, pp. 265-288.

Hartley, Trevor C. (2003) *The foundations of European Community law: an introduction to the constitutional and administrative law of the European Community*, 5th edition, Oxford; New York: Oxford University Press.

Harvey, Malcolm (2000) "A Beginner's Course in Legal Translation: the Case of Culture-bound Terms, in *Actes du Colloque International "La traduction juridique. Histoire, théorie(s) et pratique"*, 17-19.02.2000, Genève, École de Traduction et d'Interprétation - Université de Genève, pp. 357-369, available at http://www.tradulex.org/Actes2000/harvey.pdf, last consulted in August 2007.

Havranek, B. (1964) "The Functional Differentiation of the Standard Language", in P. Garvin (ed.) *A Prague School Reader on Esthetics, Literary Structure and Style*, Washington: Georgetown University Press.

Heard, Andrew David (1991) *Canadian Constitutional Conventions: The Marriage of Law and Politics*, Toronto: Oxford University Press.

Hefferan III, George B. and Joanne Katsantonis (1992) "Movement towards an Internal Market in 1993: An Overview of Current Legal Developments in the European Community", in *Duke Journal of Comparative and International Law*, Fall, 1992, pp. 1-48.

Henkel, William Q.C. (1988-1989) "A Commentary on French Language Rights in Prosecution of Provincial Offences in Alberta", in *Alberta Law Review*, vol. 27, no 2, pp. 302-308.

Héraud, Guy (1981) "La Communauté européenne at la question linguistique", in *Revue d'intégration européenne/Journal of European Integration*, vol. 5, no 1, Canada, pp. 5-28.

Heusse, Marie-Pascale (1999) "Le multilinguisme ou le défi cache de l'Union européenne", in *Revue du Marché et de l'Union européenne*, no 426, mars, pp. 202-207.

Heutger, Viola (2003) "Law and Language in the European Union", in *Global Jurist Topics* vol. 3, issue 1, article 3, available at http://www.bepress.com/gj/topics/vol3/iss1/art3, last consulted in September 2006.

Heynold, C. (1995) *A Multilingual Community at Work*, EU Commission Translating Service.

Hicks, Davyth (2005) *Committee of the Regions takes the lead as Basque, Catalan and Galician used in the EU institution* (18 November 2005), Eurolang, available at http://www.eurolang.net/index2.php?option=com_content&do_pdf=1&id=2521, last visited Jamuary 2006.

Hoffman, L. (1985) *Kommunikationsmittel Fachsprache. Eine Einführung*, Tübingen: Gunter Narr Verlag.

Hogg, Peter W. (1982) *Annotation to Canada Act, 1982*, the Carswell Company Limited.

Hogg, Peter W. (1984) "The New Canadian Constitution: Introduction", in *The American Journal of Comparative Law*, vol. 32, no 2, The New Canadian Constitution (Spring, 1984), pp. 221-224.

Hogg, Peter W. (2007) *Constitutional Law of Canada,* 5th edition, Toronto: Carswell.

Holmes, J. S. (1972/1988) "The name and nature of translation studies", Amsterdam: Translation Studies Section, Department of General Studies; reprinted in Gideon Toury (ed.) (1987) *Translation Across Cultures*, New Delhi: Bahri Publications, pp. 9-24; and in Holmes (1988) *Translated! Papers on Literary Translation and Translation Studies*, Amsterdam: Rodopi, pp. 67-80.

Holz-Mänttäri, J. (1984) *Translatorisches Handeln: Theorie und Methode*, Helsinki: Suomalainen Tiedeakatemia/Finnish Academy of Science.

House of Commons Canada (2003) *Précis of Procedure*, available at http://www.parl.gc.ca/information/ about/process/house/precis.htm, last revised November, 2003, last consulted in September 2006.

Hudon, Marie-Ève (2007) *Language Regimes in the Province and Territories*, 6 February 2007, Parliamentary Information and Research Service, Library of Parliament, available at http://www.parl.gc.ca/information/library/PRBpubs/prb0638-e.pdf, last consulted in August 2007.

Huntington, Robert (1991) "European Unity and the Tower of Babel", in *Boston University International Law Journal*, vol. 9, Fall, pp. 321-348.

Hurtubise-Loranger, Élise (2006) *Official Languages and Parliament*, Parliamentary Information and Research Service, 10 July 2006, Library of Parliament – Bibliothèque du Parlement.

Hullen, Werner, Christian Galinski, Lothar Hoffmann, Hartwig Kalverkamper, Herbert Ernst Wiegand (eds.) (1998) *Fachsprachen. Ein Internationales Handbuch Zur Fachsprachenforschung Und Terminologiewissenchaft/Languages for Special Purposes. An International Handbook of Special Languages and Terminology*, Walter de Gruyter Inc.

Husa, Jaakko (2001) "Legal Families and Research in Comparative Law", in *Global Jurist Advances*, vol. 1, Issue 3, Article 4, available at http://www.bepress.com/gj/advances/ vol1/iss3/art4, last visited March 2006.

Husa, Jaakko (2006) "Legal families", in J. M. Smits (ed.) *Edward Elgar Encyclopedia of Comparative Law*, Elgar Publishing, pp. 382-392.

IER and Dennis Glen Patterson (2002) *Nunavut Legal Services Study. Final Report*, Legal Aid Research Series, Department of Justice Canada, 16 October 2002, available at http://www.justice.gc.ca/en/ps/rs/rep/2003/rr03lars-14/rr03lars-14.pdf, last consulted in August 2007.

International Cooperation Group (2002) *National Survey of Legislative Drafting Services*, available at http://www.canada-justice.ca/en/ps/inter/survey/NationalSurvey-EN.pdf, last updated on 20.10.2005, last consulted in February 2008.

Jackson, B. S. (1988) *Law, Fact and Narrative Coherence*, Roby Merseyside: Deborah Charles Publications.

Jané, Neus Oliveras (2001) *The main concepts in the recognition of linguistic rights in European states*, available at http://www.ciemen.org/mercator/pdf/wp2-def-ang.PDF, last visited January 2006.

Jourdain, Guy (1995) *Reviving the Bilingual Administration of Justice in the Land of Louis Riel: An Often Grueling Obstacle Course*, Saint-Boniface.

Jourdain, Guy (2002) “La legislation bilingue au Manitoba: le rêve d’une version française faite sur mesure pour son auditore”/”Bilingual Legislation in Manitoba: The Dream of a French Version Tailored to its Audience”, in *Meta*, vol. XLVII, no 2, pp. 244-264.

Jumpelt, R. W. (1961) *Die Übersetzung naturwissenschaftlicher und technischer Literatur*, Berlin – Schöneberg: Langenscheidt.

Jutras, Daniel (1999) “Crown Liability and Proceedings Act” in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 987-1036.

Keating, J. (1995) “La corédaction et l’expérience Néo–Brunswickoise”, in G. Snow and J. Vanderlinden (eds.) *Français juridique et Science du droit*, Bruxelles: Bruylant, pp. 203-217.

Kellermann, Alfred E. (1998) “Report of the Conference on ‘The Quality of European and National Legislation and the Internal Market’ - Introduction and Reflections”, in Alfred E. Kellermann, Giuseppe Ciavarini Azzi, R. Deighton-Smith and Scott H. Jacobs (eds.) *Improving the Quality of Legislation in Europe*, Martinus Nijhoff Publishers, pp. xxvii-xxxvi

Kielar, B. Z. (1977) *Language of the Law in the Aspect of Translation*, Rozprawy Uniwersytetu Warszawskiego, Warszawa: Wydawnictwa Uniwersytetu Warszawskiego.

Kielar, B. Z. (1996) “Translating statutory texts: in search of meaning and relevance”, in M. Thelen and B. Lewandowska-Tomaszczyk (eds.) *Translation and Meaning Part 4*, Maastricht: Hogeschool Maastricht, pp. 393-398.

Klinck, Dennis R. (1992) *The Word of the Law: Approaches to Legal Discourse*, Ottawa - Canada: Carleton University Press.

Kniffka, H. (1990) (ed). *Texte zu Theorie und Praxis forensischer Linguistik*, Tuebingen: Niemeyer.

Koch, Harald (1991) “Legal aspects of a language policy for the European Communities: Language risks, equal opportunities, and legislating a language”, in Florian Coulmas (ed.) 1991a, pp. 147-161.

Koopmans, Thijmen (1991) “The Birth of European Law at the CrossRoads of Legal Traditions”, in: *The American Journal of Comparative Law*, vol. 39, no 3, pp. 493-507.

Kötz, Hein (2003) “The Value of Mixed Legal Systems”, in *Tulane Law Review*, vol. 78, pp. 435-439.

Kraus, Peter A. (2004) “Between Mill and Hallstein. Cultural diversity as a challenge to European integration”, in Philippe Van Parijs (ed.) *Cultural diversity versus Economic Solidarity. Is There a Tension ? How Must it be Resolved ?*, Bruxelles: Deboeck University Press, coll. “Francqui Scientific Library”, pp. 299-314.

Kroeber and Kluckhohn (1952) “Cultures: A Critical Review of Concepts and Definitions”, in *Harvard University Peabody Museum of American Archeology and Ethnology Papers*, vol. 47, no 1.

Kronenthal, Melissa (2003) *The European Union and Minority Languages: Real or Perceived Failure?* Mercator - Working Papers no. 13, Barcelona: CIEMEN.

Kurcz, Bartłomiej (2004) *Dyrektywy Wspólnoty Europejskiej i ich implementacja do prawa krajowego* [Directives of the European Community and their implementation in domestic law], Kraków: Wolters Kluwer Polska – OFICYNA.

Kurzon, D. (1997) “Legal Language: Varieties, Genres, Registers, Discourses”, in *International Journal of Applied Linguistics*, vol. 7, pp. 119-139.

Labelle, André (2000) “La corédaction des lois fédérales au Canada. Vingt ans après: quelques réflexions”, in *Proceedings, Conference on Legal Translation, History, Theory/ies and Practice*, Geneva and Bern: ESTI-ASTTI.

Labrie, Normand (1993) *La Construction linguistique de la Communauté européenne*, Paris: Honoré Champion Éditeur.

Laighin, Pádraig Breandán Ó (2004) *Towards the Recognition of Irish as an Official Working Language of the European Union*, Brief presented to the National Forum on Europe, Dublin Castle, January 8, 2004, available at http://www.gaelport.com/downloads/Laighin_English.pdf, last consulted in September 2007.

Lando, Ole (2001) “Nordic Countries, a Legal Family? A Diagnosis and a Prognosis”, in *Global Jurist Advances*, vol. 1, issue 2, Article 5, available at http://www.bepress.com/gj/advances/vol1/iss2/art5, last visited March 2006.

Law Drafting Division Department of Justice (2001) *Legislative Drafting in Hong Kong. Crystallization in Definitive Form*, 2nd edition, available at http://www.doj.gov.hk/eng/public/pdf/ldhkv2e.pdf, last consulted September 2005.

Le Bouthillier, Y. (1992) “La nécessaire enchâssement de la dualité linguistique et des droits des Francophones de l’Ontario”, in: *Ottawa Law Review*, vol. 24, pp. 117-162.

Leckey, Robert and André Braën (2004) “Bilingualism and Legislation”, in M. Bastarache, (ed.) *Language Rights in Canada*, 2d ed., Cowansville, Qc.: Yvon Blais, pp. 41-139.

Lederman, William R. (1984) “Canadian Constitutional Amending Procedures: 1867-1982”, in *American Journal of Comparative Law*, vol. 32, no. 2, The New Canadian Constitution, (Spring, 1984), pp. 339-359.

Léger, S. (ed.) (1995) *Les droit linguistiques au Canada: collusions ou collisions?/Linguistic Rights in Canada: Collusions or Collisions?*, Ottawa: Canadian Centre for Linguistic Rights.

Legrand, Pierre (1996) “European Legal Systems are not converging”, in *International and Comparative Law Quarterly*, vol. 45, pp. 52-81.

Lenaerts, Koen (2004) “Interlocking Legal Orders or the European Union Variant of *E Pluribus Unum*”, in: Guy Canivet, Mads Andenas, and Duncan Fairgrieve (eds.) *Comparative law before the courts***,** London: British Institute of International and Comparative Law, pp. 99-134.

Lenz, Carl Otto (1989) “The Court of Justice of the European Communities”, in *European Law Review*, vol.14, no 3, pp. 127-139.

Lessig, Lawrence (1993) “Fidelity in Translation”, in *Texas Law Review*, vol. 71, pp. 1165-1269.

Lessard, Adèle (1986) “Parliamentary Book Shelf. Lexique des termes parlementaires en usage en Belgique, en France et au Québec” in *Canadian Parliamentary Review*, vol. 9, no. 4, English version available at http://www.parl.gc.ca/Infoparl/english/issue.htm?param=119&art=702; French version available at http://www.parl.gc.ca/Infoparl/francais/issue.htm?param=119&art=702; last consulted in September 2006.

Levert, Lionel A. (2000) “The Cohabitation of Bilingualism and Bijuralism in Federal Legislation in Canada: Myth or Reality?”, in *Revue de la common law en français*, vol. 3, pp. 127-136.

Levi, Judith N. and A. G. Walker (eds.) (1990) *Language in the Judicial Process*, New York: Plenum Press.

Levi, Judith N. (1994) “Language as Evidence: The Linguist as Expert Witness in North American Courts”, in *Forensic Linguistics*, vol. 1, no 1, pp. 1-16.

López-Rodríguez, Ana M. (2004) “Towards a European Civil Code without a Common European Legal Culture? The Link between Law, Language and Culture”, in *Brooklyn Journal of International Law*, vol. 29, no 3, pp. 1195-1220.

Lord Rodger of Earlsferry (2003) “‘Say Not the Struggle Naught Availeth’: The Costs and Benefits of Mixed Legal Systems”, in *Tulane Law Review*, vol. 78, pp. 419-434.

Lynch, Julia (2002) “Official Community – 6 or 9?”, in *Terminologie et traduction*, nr 3, pp. 231-232.

Maas, H. H. (1968-1969) “The English Version of the Treaty of Rome”, in *Common Market Law Review*, vol. 6, pp. 205-209.

Macdonald, Roderick A. (1997) ‘Legal Bilingualism’ in *McGill Law Journal/Revue de droit de McGill* vol. 42, pp. 119-168.

Macdonald, Roderick and F.R. Scott (1997) “Harmonizing the Concepts and Vocabulary of Federal and Provincial Law: The Unique Situation of Quebec Civil Law”, in André Morel (ed.) *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism/L’harmonisation de la legislation fédérale avec le droit civil et le bijuridisme canadien*, Ottawa: Department of Justice Canada, pp. 29-69.

Magnet, J.E. (1995) *Official Languages of Canada: Perspectives from law, policy and the future*, Cowansville: Yvon Blais.

Mamadouh, Virginie (1999) "Le Parlement européen comme espace plurilingue", in *Géographie et Cultures*, vol. 30, pp. 109-124.

Mamadouh, Virginie (2002) "Dealing with Multilingualism in the European Union: Cultural Theory Rationalities and Language Policies", in *Journal of Comparative Policy Analysis: Research and Practice*, vol. 4, pp. 327-345.

Mancini, Giuseppe Federico and David T. Keeling (1995) "Language, Culture and Politics in the Life of the European Court", in *Columbia Journal of European Law*, vol. 1, Spring/Summer, pp. 397-413.

Mandel, Michael (2002) "*Re Constitution of Canada, 1981*: The Patriation Reference", in Frederick Lee Morton (ed.) *Law Politics and the Judicial Process in Canada*, Third Edition, University of Calgary Press, pp. 48-55.

Manin, P. (1987) "The European Communities and the Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations", in *Common Market Law Review*, vol. 24, pp. 468-470.

Marecic, Charles J. (1999-2000) "Nunavut Territory: Aboriginal Governing the Canadian Regime of Governance", in *American Indian Law Review*, vol. 24, no 2, pp. 275-295.

Markensis B.S. (1994) "Bridging Legal Cultures", in *Israel Law Review*, vol. 27, pp. 363-382.

Mathieu, Daniel (1999) *French in the Northwest Territories from Radisson to the Present Day*, La Fédération Franco-TéNOise, Yellowknife.

Mathijsen, P.S.R.F. (2004) *A guide to European Union law*, London: Sweet & Maxwell.

Mattila, Heikki E. S. (ed.) (2002) *The Development of Legal Language*, Papers from an International Symposium held at the University of Lapland, September 13-15, 2000, Helsinki.

Mattila, Heikki E.S. (2006) *Comparative Legal Linguistics*, Aldershot, England; Burlington, VT: Ashgate.

Mayer, Felix (ed.) (2001) *Language for Special Purposes: Perspectives for the New Millennium*, vol. 2, Tübingen: Gunter Narr Verlag.

Mazzarese, Tecla (1996) "Legal language and translation: six main sorts of problem", in M. Thelen and B. Lewandowska-Tomaszczyk (eds.) *Translation and Meaning Part 4*, Maastricht: Hogeschool Maastricht, pp. 399-412.

McAuliffe, Karen (2008) "Translation at the Court of Justice of the European Communities" in Frances Olsen and Dieter Stein (eds.) *Forensic Translation*, Houndmills/New York: Palgrave Macmillan, forthcoming 2008.

McCluskey, Brian (2001) *Respecting multilingualism in the enlargement of the European Union - the organisational challenge*, Speech presented for the European Year of Languages, Austrian Academy of Sciences, Vienna, 7 June 2001, available at http://ec.europa.eu/translation/reading/articles/pdf/2001_06_07_vienna_mccluskey.pdf, last consulted in August 2007.

McConnell, W.H. (1989) "Bilingualism on the Prairies: The Constitutional Status of French in Saskatchewan", in *Saskatchewan Law Review*, vol. 53, pp. 143-152.

McDonald, M. (1996) "Unity in Diversities: Some Tensions in the Construction of Europe", in: *Social Anthropology*, vol. 4, pp. 47-60.

McWhinney, Edward (1975) "The French Language and the Constitutional Status of French Canadians" in: Willem Adrian Veenhoven, Winifred Crum Ewing (eds.) *Case Studies on Human Rights and Fundamental Freedoms: A World Survey*, published for the Foundation for the Study of Plural Societies, BRILL pp: 483-498.

McWhinney, Edward (1981) "The 'Language' Problem in Québec", in *America Journal of Comparative Law*, vol. 29, pp. 413-427.

McWhinney, Edward (1984) "The Constitutional Patriation Project, 1980-82", in *American Journal of Comparative Law*, vol. 32, no. 2, The New Canadian Constitution, (Spring, 1984), pp. 241-267.

Mellinkoff, D. (1963) *The Language of Law*, Boston: Little & Brown.

Merryman, J.H. (1985) *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America*, 2nd edition, Stanford University Press.

MERCATOR/Eurolang (2005) *The European Council of Ministers decides on Linguistics Minorities*, MERCATOR, linguistic rights and legislation www. http://www.ciemen.org/mercator/notis.cfm?lg=

MERCATOR (2006) *The European Parliament Prevents MP from Using Catalan* (January 2006) MERCATOR, linguistic rights and legislation, available at: http://www.ciemen.org/mercator/notidetail.cfm?IDA=863&lg=gb, last visited January 2006.

Milian i Massana, Antoni (1995) "Le régime linguistique de l'Union européenne: le régime des institutions et l'incidence du droit communautaire sur la mosaïque linguistique européenne" in: *Rivista di Diritto Europeo*, 35, pp. 485-512.

Milian i Massana, Antoni (2002) *The Principle of Language Equality in European Union Institutions and in Community Law: Myth or Reality?* Revista de Llengua i Dret, No. 38, December.

Milian i Massana, Antoni (2004) "Le Régime Juridique du Multilinguisme Dans l'Union Européenne. Le Mythe ou la Réalité du Principe d'Égalité des Langues", in *Revue Juridique Themis. Droit Linguistique Comparé*, vol. 38, pp. 211-260.

Milo, Michael and Jan Smits (2000) "Trusts in Mixed Legal Systems: A Challenge to Comparative Trust Law", in: *European Review of Private Law* vol. 3, pp. 421-426.

Mill, John Stuart (1861/1972) "Consideration on Representative Government", in: H.C. Acton (ed.) *John Stuart Mill: Utilitarianism. Liberty. Representative Government*, London: Dent, pp. 187-428.

Ministerial Conference on Canadian Francophonie (2007) Linguistic Profile – Saskatchewan, available at http://www.afi-ifa.ca/media_uploads/pdf/121.pdf, last consulted in August 2007.

Montserrat, Antoni (1992) "L'aplicació de la resolució del Parlament Europeu sobre la llengua catalana a les institucions europees", in *Revista de Llengua I Dret*, no 18, pp. 67-93.

Moratinos Johnston, Sofía (2000) "Multilingualism and EU Enlargement", in: *Terminologie et traduction*, nr 3, pp. 20- 70.

Morel, André (1999a) "Harmonizing Federal Legislation with the *Civil Code Of Québec* : Why and Wherefore?", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 1-26.

Morel, André (1999b) "The Revision of Federal Legislation in Light of the *Civil Code of Québec:* Methodology and Work Plan", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 265-304.

Morel, André (1999c) "Drafting Bilingual Statutes Harmonized with the Civil Law", in *The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism - Collection of Studies*, Department Of Justice Canada, pp. 305-346.

Morgan, J.F. (1982) "Multilingual legal drafting in the EEC and the work of Jurist/Linguists", in *Multilingua: Journal of Cross-Cultural and Interlanguage Communication*, vol. 1, no 2, pp. 109-117.

Mori, Laura (2001) "La traduzione interlinguistica dei documenti ufficiali della commissione europea", in *Terminologie et traduction*, no 1, pp. 36-123.

Morin, Michel (2003) "La coexistence des systèmes de droit autochtones, de droit civil et de common law au Canada", in Louis Perret, Alain-François Bisson, Nicola Mariani (eds) *Evolution des systèmes juridiques, bijuridisme et commerce international. The evolution of legal systems, bijuralism and international trade*, Montréal: Wilson & Lafleur, pp. 159-185

Morrison, M. J. (1989/1993) "Excursion into the Nature of Legal Language", in *Cleveland State Law Review*, 37 (1989), pp. 271-336; 2nd edition in Frederick Schauer (ed.) *Law and Language* Aldershot, Dartmouth, 1993, pp. 3-68.

Mounin, G. (1974) "La linguistique comme science auxiliare dans les disciplines juridiques" in *Archives dePphilosophie du Droit,,* Paris, vol. 19, pp. 7-18.

Munday, Jeremy (2001) *Introducing Translation Studies. Theories and applications*, London and New York: Routledge.

Munro, Kenneth (1987) "Official Bilingualism in Alberta", in *Prairie Forum*, vol. 12(1), pp. 37-47.

Nartis, Raul (1997) "The Role of Language Cognition in Legal Method", in *Juridica International*, vol. 1, pp. 14-24.

Nelson, L.D.M. (1986) "The Drafting Committee of the Third United Nations Conference on the Law of the Sea: the Implication of Multilingual Texts", in *The British Yearbook of International Law*, Oxford: Clarendon Press, pp. 169-199.

Newman, Warren J. (1998) *The Duty to Prepare and Put Forward for Enactment the French-Language Version of Certain Constitutional Instruments: From the Bertrand Case to the Langlois Case*, paper presented at the National Symposium on Canada's Official Languages to mark the 10th anniversary of the *Official Languages Act* of 1988 Ottawa Congress Centre, September 16 to 18, 1998, Panel A3 "Official Languages and Federal Law: The Courts Have Spoken"

Newman, Warren J. (2004) "Understanding Language Rights, Equality and the Charter: Towards a Comprehensive Theory of Constitutional Interpretation", in *National Journal of Constitutional Law* 15, pp. 363-405.

Newmark, P. (1981) *Approaches to translation*, Oxford: Pergamon Press.

Newmark, P. (1988) *A Textbook of Translation*, London: Prentice Hall International.

Nelken, David (1995) "Disclosig/Invoking Legal Culture: An Introduction", in *Social and Legal Studies*, vol. 4, pp. 435-452.

Nelken, David (2006) "Legal Culture", in J. M. Smits (ed.) *Edward Elgar Encyclopedia of Comparative Law*, Elgar Publishing, pp. 372-381.

Nida, E. A. (1964) *Toward a Science of Translating*, Leiden: E. J. Brill.

Nida, E. A. (1964/2000) "Principles of correspondence", in L. Venuti *The Translation Studies Reader*, London and New York: Routledge, pp. 126-140.

Nida, Eugene A, and Charles R. Taber (1969/1982) *The Theory and Practice of Translation*, Leiden: E.J. Brill.

Nugent, Neill (2001) *The European Commission*, Basingstoke; New York: Palgrave Macmillan.

Obrová, Pavlína and Jiří Pelka (2001) "Translation of EC Law into Czech", in *Terminologie et traduction*, no 2, pp. 94-115.

Okalik, Paul (2003) *The Nunavut Challenge: Working Together*, Speech to the Conference on Governance, Self-Government and Legal Pluralism (April 23, 2003), available at

http://www.gov.nu.ca/Nunavut/English/premier/press/cgsglp.shtml, last consulted August 2007.

Olsson, John (2004) *Forensic Linguistics: An introduction to Language, Crime and the Law*, London: Continuum.

Olsson, John (2005) "Suicide notes: can we distinguish the genuine from the simulated?" the paper presented at the conference 'Language and the Law 2005: East meets West', Łódź.

Olsson, John (2007) *What is Forensic Linguistics?*, available at http://www.thetext.co.uk/docs/what_is.doc, last visited in August 2007.

Ostrower, Alexander (1965) *Language, Law and Diplomacy: A Study of Linguistic Diversity in Official International Relations and International Law*, 2 vols., Philadelphia: University of Pennsylvania Press.

Örücü, Esin (1996) "Mixed and Mixing Systems: A Conceptual Search", in Örücü, Atwood and Coyle (eds.) *Studies in Legal Systems: Mixed and Mixing*, Kluwer Law International, pp. 335-344.

Örücü, Esin (2001) "Public Law in Mixed Legal Systems and Public Law as a 'Mixed System'", in *Electronic Journal of Comparative Law*, vol. 5.2., available at http://www.ejcl.org/52/art52-2.html, last consulted in December 2007.

Örücü, Esin (2002) "*Unde Venit*, *Quo Tendit* Comparative Law?", in Andrew Harding and Esin Örücü (eds.) *Comparative law in the 21st century*, W.G. Hart Workshop (2000): Institute of Advanced Legal Studies London; The Hague, New York: Kluwer Law International, pp. 1-18.

Örücü, Esin (2004) *The Enigma of Comparative Law. Variations on a Theme for the Twenty-first Century*, Leiden/Boston: Martinus Nijhoff Publishers.

Örücü, Esin (2008) "What is a Mixed Legal System: Exclusion or Expansion?", in *Electronic Journal of Comparative Law*, vol. 12.1 (May 2008), pp.1-18, available at http://www.ejcl.org.

Oxford-Duden German Dictionary: German-English, English-German (2005), contributors: Olaf Thyen, Michael Clark, Werner Scholze-Stubenrecht, John Bradbury Sykes, Dudenredaktion (Bibliographisches Institut), Oxford University Press.

Paasiletho, Satu (1999) "Legal Cultural Obstacles to the Harmonisation of European Private Law", in Veijo Heiskanen and Kati Kulovesi (eds.) *Function and future of European law*, University of Helsinki Faculty of Law, pp. 99-105.

Palmer, Vernon Valentine (ed.) (2001) *Mixed Jurisdictions Worldwide: The Third Legal Family*, Cambridge University Press.

Palmer, Vernon Valentine (2008) "Two Rival Theories of Mixed Legal Systems", in *Electronic Journal of Comparative Law*, vol. 12.1 (May 2008), pp. 1-28, available at http://www.ejcl.org, last consulted in May 2008.

Pescatore, Pierre (1983) "The Doctrine of Direct Effect: An Infant Disease of Community Law", in: *European Law Review*, vol. 8, nr 3, pp. 155-177.

Phillipson, Robert (2003) *English-Only Europe? Challenging Language Policy*, London and New York: Routledge.

Pieńkos, Jerzy (2002) *Francusko-polski leksykon, prawo, ekonomia, handel* [French-Polish glossary, law, economy, trade], Zakamycze: Kantor Wydawniczy.

Pieters, Danny (2004) "Vers un régime linguistique diversifié mais cohérent pour l'Union européenne", in Paul Sabourin (ed.) *Langues et Union européenne. Colloque du 6 novembre 2003 á l'Assemblée national française*, Bruxelles: Bruylant, pp. 37-49.

Piris, Jean-Claude (2004a) *The Legal Orders of the European Community and of the Member States: Peculiarities and Influences in Drafting*, the English version of the paper submitted for the Conference "The Sir William Dale Memorial Lecture", London, 8 November 2004.

Piris, Jean-Claude (2004b) *Union européenne: comment rédiger une legislation de qualité dans 20 languages et pour 25 États members?*, the French version of the paper submitted for the Conference "The Sir William Dale Memorial Lecture", London, 8 November 2004.

Piris, Jean-Claude (2005) "Union européenne: comment rédiger une législation de qualité dans 20 langues et pour 25 États membres", in *Revue du Droit Public de la Science Politique en France et à l'Étranger*, No 2 (mars-avril 2005), pp. 475-491.

Pool, Jonathan (1996) "Optimal language regimes for the European Union", in *International Journal of Sociology of Language*, vol. 121, pp.159-179.

Popovič, A. (1976) *Dictionary for the Analysis of Literary Translation*, Edmonton: Department of Comparative Literature, The University of Alberta.

Porzycki, Marek (2004) "Lawina bełkotliwych przekładów" [An Avalanche of Babbling Translations], in *Rzeczpospolita*, 2004, March 26.

Postgate, J. P. (1922) *Translation and Translations: Theory and Practice*, London: G. Bell& Sons, Ltd..

Pourbaix, Marie-Noëlle (2001) "S-4: A First Harmonization Bill", in *The Harmonization of Federal Legislation with the Civil Law of the Province of Quebec and Canadian Bijuralism. Second Publication*, Booklet 6, Ottawa, Department of Justice Canada.

Powell, R. (1993) *Law Today*, Harlow: Longman.

Pujadas, Bernat (2004) "The rules governing the languages of the European Union: which languages and to what extent? A practical guide", in *Dossier of the Mercator Linguistic*

Rights and Legislation Centre, no 17, available at www.ciemen.org/mercator/butlletins/60-48.htm - 73k, last consulted in January 2006.

Pujolràs, Agusti Pou (2002) *Linguistic Legislation and Normalization Process: The Catalan case in Spain* Mercator - Working Papers no. 9, Barcelona: CIEMEN.

Pym, A. (2001a) "Against Praise of Hybridity", *Across Languages and Cultures*, vol. 2, issue 2, pp. 195-206.

Pym, Anthony (2001b) *Translation and International Institutions. Explaining the Diversity Paradox*. Paper presented to the workshop "Translation and Institutions" at the conference Language Study in Europe at the Turn of the Millenium, Societas Linguistica Europea, Katholieka Universiteit Leuven, 28-31 August 2001; available at http://www.fut.es/~apym/on-line/diversity.html, last consulted in October 2006, pp. 28-31.

Quell, Carsten (1997) "Language Choice in Multilingual Institutions: A Case Study at the European Commission with Particular Reference to the Role of English, French and German as Working Languages", in *Multilingua*, 16, no 1, 57-76.

Reed, David G. (1979) "Problèmes de la traduction juridique au Québec", in Meta, vol XXIV, no 1, pp. 95-102.

Reid, Kenneth G.C. (2003) "The Idea of Mixed Legal Systems", in *Tulane Law Review*, vol. 78, pp. 5-40.

Reid, Elspeth and David L.Carey Miller (2005) *A Mixed Legal System in Transition: T. B. Smith and the Progress of Scots Law*, Edinburgh Studies in Law.

Reiss, K. and H. J. Vermeer (1984/1991) *Grundlegung einer allgemeinen Translationtheorie*, 2nd edn, Tübingen: Niemeyer.

Reuter, Paul (1953) *La Communauté européenne du charbon et de l'acier*, Paris: Librairie Générale de Droit et de Jurisprudence, R.Pichon et R. Durand-Auzias.

Revell, Donald L. (1985) "Private Legislation in Ontario", in *Law Society of Upper Canada Gazette*, vol. 19.

Revell, Donald L. (1998) "Bilingual Legislation: the Ontario Experience" in: *Statute Law Review*, vol. 19, no 32, pp. 32-43.

Revell, Donald L. (2001/2004) "Multilingualism and the Authoring of Laws", published in *Revue Internationale de Langues Juridiques et de Droit Comparé*, 2001, vol. 1, pp. 34, republished in *The Loophole Journal of the Commonwealth Association of Legislative Counsel*, 2004, no 1, pp. 36-48.

Revell, Donald L. (2004) "Authoring Bilingual Laws: the Importance of Process", in: *Brooklyn Journal of International Law*, vol. 29, no 3, pp. 1085-1105.

Ricci, Guido (2006) “Controlled Multilingualism in Parliamentary Practice”, in Barabara Pozzo and Valentina Jacometti (eds.) *Multilingualism and the Harmonisation of European Law*, Kluwer Law International, pp. 131-146.

Rieber, R. W. and Stewart, W. A. (1990) *The Language Scientist as Expert in the Legal Setting: Issues in Forensic Linguistics*, New York: The New York Academy of Sciences.

Riley, Patrick (1976) “The Official Language Act of Québec”, in *Manitoba Law Journal*, vol. 7, no 2, pp. 93-109.

Rivero, J. (1958) “Le problème de l'influence des droits internes sur la Cour de justice de la CECA” in: *Annuaire Francais De Droit International*

Robinson, William (2005) “How the European Commission drafts legislation in 20 languages”, in *Clarity. Journal of the international association promoting plain legal language*, no 53, pp. 4-10.

Rosenberg, Morris (2001) “Evolution of Legal Systems, Bijuralism and International Trade published by Department of Justice”, in *Bijuralism and Harmonization: Genesis*, http://canada/justice.gc.ca/en/dept/pub/hfl/fasc1/ fascicule_1g.html, last consulted in January 2007, pp. 33-37.

Rosenne, Shabtai (1983) “The Meaning of "Authentic Text" in Modern Treaty Law”, in Rudolf Bernhardt et al. eds., *Völkerrecht Als Rechtsordnung Internationale Gerichtsbarkeit Menschenrechte: Festschrift für Hermann Mosler*, pp. 759-784.

Rosmarin, Yvonne W. (1975) “Quebec’s Official Language Act”, in *Syracuse Journal of International Law and Commerce*, vol. 3, pp. 255-269.

Roszkowski, S. (1999) “The language of Law as Sublanguage”, in J. Tomaszczyk (ed.) *Aspects of Legal Language and Legal Translation*, Łódź: Wydawnictwo Uniwersytetu Łódzkiego, pp. 7-16.

Rot, Henryk (ed.) (1995) *Główne kultury prawne współczesnego świata* [Main legal cultures in the contemporary world], Wydawnictwo Naukowe PWN: Warszawa.

Rotman, Edgardo (1995) “The Inherent Problems of Legal Translation: Theoretical Aspects”, in *Indiana International and Comparative Law Review*, vol. 6, pp. 187-196.

Rouse, Tamsin (2003) *Language Policy in the Institutions of the EU: Dealing with the lingua fra(n)cas* Paper presented to the 2nd annual New Zealand European Studies Association Conference, 29-30 August, 2003.

Rowe, Robert (2002) “The Use of Languages by the EU Institutions”, in *Terminologie et traduction*, no 2, pp. 5-10.

Russel, Peter H. (2004) *Constitutional Odyssey: Can Canadians Become a Sovereign People?*, 3rd edition, Toronto: University of Toronto Press.

Rzewuska, Maria (2001a) “Linguistic Preparation of Poland for Accession to the European Union”, in *Terminologie et traduction*, nr 2, pp. 82-93.

Rzewuska, Maria (2001b) “Tłumaczenie acquis communautaire”, in *Biuletyn Analiz UKIE*, No 6, May 2001, pp. 68-74; also available at http://www.biuletyn.ukie.gov.pl/hlp/banal.nsf/ArchiveDocByLocation?Open&Count=-1&Expand=11#id11, last visited January 2007.

Sabino, Amadeu Lopes (1999) “Les langues dans l’Union européenne ejeux, pratiques et perspectives”, in *Revue trimestrielle de droit européen*, 35(2), avr.-juin, pp. 160-169.

Sacco, Rodolfo (1990) *Introduzione al diritto comparato*, 4th edition, Torino.

Sager, Dungworth and McDonald (1980) *English special languages: Principles and practice in science and technology*, Wiesbaden: Brandstetter.

Sager, J. C. (1990) *A practical course in terminology processing*, Amsterdam/Philadelphia: Benjamins.

Sammons, Susan (1993) “A Structural Overview of Inuktitut”, in *Meta*, XXXVIII, 1, pp. 11-17.

Santos, Iolanda Galanes (2001) “La qualité linguistique de la langue spécialisée du droit: la cas des langues moins répandues”, in Felix Mayer (ed.) *Language for Special Purposes: Perspectives for the New Millennium*, vol. 2, Tübingen: Gunter Narr Verlag, pp. 728-733.

Sapir, E. (1929) “The status of linguistics as a science”, in *Language*, vol. 5, pp. 207-214.

Savidan, Patrick (2004) “Multiculturalism and Economic Solidarity. A Social Democratic Challenge for the European Union. Comments on Kraus and Pagano”, in Philippe Van Parijs (ed.), *Cultural diversity versus Economic Solidarity. Is There a Tension ? How Must it be Resolved ?*, Bruxelles: Deboeck University Press, coll. “Francqui Scientific Library ”, pp. 331-347, available at http://www.etes.ucl.ac.be/Francqui/Textes/comm.SAVIDAN.pdf, last visited 19 April 2006.

Scassa, Teresa (1994) “Language of Judgement and the Supreme Court of Canada”, in *University of New Brunswick Law Journal*, vol. 43, pp. 169-193.

Schäffner, C. (1997a) “Action. Theory of ‘translatorial action’” in M. Baker (ed.) *The Routledge Encyclopedia of Translation Studies*, London and New York: Routledge, pp. 3-5.

Schäffner, C. (1997b) “Skopos theory” in M. Baker (ed.) *The Routledge Encyclopedia of Translation Studies*, London and New York: Routledge, pp. 235-238.

Schäffner, C. (1998) “Parallel Texts in Translation” in L. Bowker, M. Cronin, D. Kenny and J. Pearson (eds.) *Unity or Diversity? Current trends in Translation Studies*, Saint Jerome Publishing, pp. 83-90.

Schäffner, C. and B. Adab (1997) “Translation as Intercultural Communication – Contact as Conflict”, in M. Snell-Hornby, Z. Jettmarová and K. Kaindl (eds.) *Translation as*

Intercultural Communication. Selected Papers from the EST Congress – Prague 1995, Amsterdam: Benjamins, pp. 325-337.

Schäffner C. and B. Adab (2001) "The Idea of the Hybrid Text in Translation: Contact as Conflict", in *Across Languages and Cultures*, vol. 2, issue 2, pp. 167-180.

Schäffner, C. and U. Wieseman (2001) *Annotated Texts for Translation: English - German. Functionalist Approaches Illustrated*, Clevedon-Buffalo-Toronto-Sydney

Schlossmacher, Michael (1994) "Die Arbeitssprachen in den Organen der Europäischen Gemeinschaft: Methoden und Ergebnisse einer empirischen Untersuchung" in *Sociolinguistica* 8, pp. 101-122.

Schur, Wolfgang (2003) "Some Problems of a European Legal Methodology", in Thomas Groß (ed.) *Legal Scholarship in International and Comparative Law*, Peter Lang, Europäischer Verlag der Wissenschaft, Frankfurt am Main, pp. 47-55.

Scott, F. R. (1950) "The British North America (No. 2) Act, 1949", in *The University of Toronto Law Journal*, vol. 8, no. 2, pp. 201-207.

Scott, Stephen A. (1982) "The Canadian Constitutional Amendment Process", in *Law and Contemporary Problems*, vol. 45, no. 4, Canadian Constitution, 1982. (Autumn, 1982), pp. 249-281.

Sellers, Edward Armour (1986) "Constitutionally Entrenched Linguistic Minority Rights: The *Forest* and *Blaikie* Decisions", in *Manitoba Law Journal*, vol. 15, pp. 257-270.

Shuttleworth M. and M. Cowie (1997) *Dictionary of Translation Studies*, Manchester: St. Jerome Publishing.

Shuy, Roger W. (2006) *Linguistics in the Courtroom. Practical Guide*, Oxford: Oxford University Press.

Shuy, Roger W. (2005) *Creating Language Crimes: How Law Enforcement Uses (and Misuses) Language*, Oxford: Oxford University Press.

Sin, K.K. (1989) "Meaning, Translation and Bilingual Legislation: The Case of Hong Kong", in: P. Pupier and J. Woehrling (eds.) *Langue et Droit. Language and Law*, Montréal: Wilson & Lafleur, pp. 509-515.

Sistach, Dominique (2000) "Mots, langues, langages et droit. Essai de relecture des concepts juridiques essentials", in Elsa Matzner (ed.) *Droit et langues étrangeres: concepts, problèmes d'application, perspectives*, Presses universitaires de Perpignan.

Slynn, Gordon (1984) "The Court of Justice of the European Communities", in *The International and Comparative Law Quarterly*, vol. 33, no. 2 (Apr., 1984), pp. 409-429.

Smits, Jan (1998) "A European Private Law as a Mixed Legal System", in *Maastricht Journal of European and Comparative Law*, vol. 5, pp. 328-340.

Smits, Jan (ed.) (2001) *The Contribution of Mixed Legal Systems to European Private Law*, Intersentia Uitgevers Antwerpen – Groningen.

Smits, Jan (2002) *The Making of European Private Law: Towards a Ius Commune Europaeum as a Mixed Legal System*, Antwerp – Oxford – New York: Intersentia.

Smits, Jan M. (2003) "Import and Export of Legal Models: The Dutch Experience", in *Transnational Law and Contemporary Problems*, vol. 13, pp. 551-574; updated version of "Systems Mixing and in Transition: Import and Export of Legal Models: The Dutch Experience", in *Netherlands Reports to the Fifteenth International Congress of Comparative Law*, E.H. Hondius ed., 1998, pp. 47-69.

Smits Jan M. (2004) "The Europeanisation of national legal systems: some consequences for legal thinking in civil law countries", in: Mark Van Hoecke (ed.), *Epistemology and Methodology of Comparative Law*, Oxford: Hart Publishing, pp. 229-245.

Smyth, Steven (1996) "Colonialism and Language in Canada's North: A Yukon Case Study", in *Arctic*, vol. 49, no. 2, pp. 155-161.

Snell-Hornby, M. (1988) *Translation Studies. An Integrated Approach*, Amsterdam: Benjamins.

Solan, Lawrence M. (1993) *The Language of Judges*, Chicago: University of Chicago Press.

Somssich, Réka and Katalin Varga (2001) "Consistency and Terminology in the Translation of Community Legislation in Hungary", in *Terminologie et traduction*, nr 2, pp. 58-81.

Stanbury, Robert (2000) *For a Culture of Integrity Review of Conflict of Interest Legislation Applicable to Members of the Legislative Assembly of Nunavut. Report*; November 15, 2000; tabled in the Legislative Assembly on May 22, 2001; available at http://www.integritycom.nu.ca/English/Reports/int_act_con_rep.pdf, last consulted in August 2007.

Stanisławski, Jan (1990) *Wielki słownik angielsko-polski – The Great English-Polish Dictionary*, Warszawa: Wiedza Powszechna.

Stevens, Lisbeth (1967) "The Principle of Linguistic Equality in Judicial Proceedings and in the Interpretation of Plurilingual Legal Instruments: The *Régime Linguistique* in the Court of Justice of the European Community", in *Northwestern University Law Review*, vol. 62, no 5, pp. 701-734.

Steiner, G. (1977) *After Babel*, Oxford: Oxford University Press.

Sullivan, Ruth (1994) *Driedger on the Construction of Statutes*, 3rd edition, Toronto: Butterworths.

Sullivan, Ruth (1997) *Statutory Interpretation*, Irwin Law.

Sullivan, Ruth (2002) *Sullivan and Driedger on the Construction of Statutes*, 4th edition, Butterworth's Markham, Ont.

Sullivan, Ruth (2004) "The Challenges of Interpreting Multilingual, Multijural Legislation", in *Brooklyn Journal of International Law*, nr 29, pp. 986-1066.

Sworden, J. Philip (2006) *Introduction to Canadian Law*, Toronto: Edmond Montgomery Publication Limited.

Symeonides, Symeon C. (2003) "The Mixed Legal System of the Republic of Cyprus", in *Tulane Law Review*, vol. 78, pp. 441-455.

Szpunar, Maciej (2005) "Bezpośredni skutek prawa wspólnotowego - jego istota i próba uporządkowania terminologii", in *Europejski Przegląd Sądowy*, november, pp. 4-17.

Šarčević, Susan (1985) "Translation of culture-bound terms in laws", in *Multilingua: Journal of Cross-Cultural and Interlanguage Communication*, vol. 4 (3), pp. 127-133.

Šarčević, Susan (1994) "Translation and the Law: An Interdisciplinary Approach", in M. Snell-Hornby, F. Pöchhnaker, K. Kaindl (eds.) *Translation Studies, An Interdiscipline*, Amsterdam, Philadelphia: Benjamins, pp. 301-307,

Šarčević, Susan (1998) "Creativity in legal translation: how much is too much?", in A. Chesterman, N. G. San Salvador, Y. Gambier (eds.) *Translation in Context. Selected Contributions from the EST Congress, Granada 1998*, Amsterdam/Philadelphia: John Benjamins Publishing Company, pp. 281-292.

Šarčević, Susan (2000a) *New Approach to Legal Translation*, The Hague: Kluwer Law International.

Šarčević, Susan (2000b) "Legal Translation and Translation Theory: a Receiver-oriented Approach", in *Actes du Colloque International "La traduction juridique. Histoire, théorie(s) et pratique"*, 17-19.02.2000, Genève, École de Traduction et d'Interprétation - Université de Genève, pp. 329-347, available at http://www.tradulex.org/Actes2000/sarcevic.pdf, last consulted in August 2007.

Šarčević, Susan (ed.) (2001) *Legal Translation. Preparation for Accession to the European Union*, Rijeka: Faculty of Law, University of Rijeka.

Šarčević, Susan (2002) "Problems of interpretation in an enlarged European Union" in: Rodolfo Sacco (ed.) *L'interprétation des textes juridiques rédigés dans plus d'une langue* : [Colloque organisé à Turin en 2000] / par l'Institut subalpin pour l'analyse et l'enseignement droit des activités transnationales (ISAIDAT), pp. 239-272.

Šarčević, Susan (2003) "General Guidelines for Translating the Acquis Communautaire/ Opće upute za prevođenje pravne stečevine Europske zajednice (prijevod)", in *Priručnik za prevođenje pravnih akata Europske unije*, Zagreb: Ministarstvo za europske integracije Republike Hrvatske, pp. 9-22.

Šarčević, Susan (2005) "The Quest for Legislative Bilingualism and Multilingualism: Co-drafting in Canada and Switzerland", in J.-C. Gémar and N. Kasirer (eds.) *Jurilinguistique:*

entre langues et droits – Jurilinguistics: Between Law and Language, Montréal: Les Édition Thémis, Bruxelles: Les Édition juridiques Bruylant, pp. 277-292.

Tabory, Mala (1980) *Multilingualism in International Law and Institutions*, Alphen ann den Rijn: Sijthoff & Noordhoff.

Tanner, Edwin (2004) "Clear, Simple and Precise Legislative Drafting: Australian Guidelines Explicated Using an EC Directive", in *Statute Law Review*, vol. 25, issue 3, pp. 223-250.

Tanner, Edwin (2006) "Clear, Simple, and Precise Legislative Drafting: How Does a European Community Directive Fare?", in *Statute Law Review*, vol. 27, issue 3, pp. 150-175.

Terral, Florence (2002) "Les techniques de traduction en traduction juridique", in *Terminologie et traduction*, no 3, pp. 33-57.

Tetley, William (2000) "Mixed Jurisdictions: Common Law v. Civil Law (Codified and Uncodified)", in *Louisiana Law Review*, Spring, vol. 60, pp. 677-738.

Tetley, William (2003) "Mixed Jurisdictions, Language, Legislatures and Courts", in *Tulane Law Review*, vol. 78, pp. 175-218.

The Inuit Way. A Guide to Inuit Culture (2006) Ottawa: Pauktuutit Inuit Women of Canada, http://www.pauktuutit.ca/pdf/publications/pauktuutit/InuitWay_e.pdf, last consulted in August 2007.

Tiersma, Peter (1999) *Legal Language*, Chicago: University of Chicago Press.

Tiersma, Peter and Lawrence M. Solan (2002) "The Linguist on the Witness Stand: Forensic Linguistics in American Courts", in *Language*, vol.78, no 2, pp. 221-239.

Tillotson, John and Nigel Foster (2003) *Text, cases and materials on European Union law*, Fourth Edition, London; Portland, Or.: Cavendish.

Tosi, Arturo (ed.) (2003) *Crossing Barriers and Bridging Cultures: The Challenges of Multilingual Translation for the European Union*, Clevedon-Buffalo-Toronto-Sydney: Multilingual Matters Ltd.

Toury, Gideon (1980) *In Search of a Theory of Translation*, Tel Aviv: The Porter Institute for Poetics and Semiotics.

Toury, Gideon (1995) *Descriptive Translation Studies and Beyond*, Amsterdam & Philadelphia: John Benjamins Publishing Company.

Towards EU Integration: Financing and Structures (Experience of Eastern European and CIS Countries) (2004) Yerevan: AEPLAC available at http://www.aeplac.am/Reports/Books/Volume%20IV/Towards%20EU%20Integration%20Financing%20and%20Structures%20(eng%20book).pdf; last visited in January 2007.

Tremblay, Luc B. (1997) *The Rule of Law, Justice, and Interpretation*, McGill-Queen's Press – MQUP.

Trosborg, A. (1997) "Translating Hybrid Political Texts", in A. Trosborg (ed.) *Text Typology and Translation*, Amsterdam/Philadelphia: John Benjamins Publishing Company, pp. 145-158.

Truchot, Claude (2001) "Le français langue véhiculaire en Europe", in *Sociolinguistica* 15, pp. 18-31.

Truchot, Claude (2003) "Languages and supranationality in Europe: The linguistic influence of the European Union", in Jacques Maurais and Michael A. Morris (eds.) *Languages in a Globalising World*, Cambridge: University Press, pp. 99-110.

Tuts, Geneviève (2007) *Lisbon Treaty – "Making of" - Interview with Geneviève Tuts from the Legal Service, on the specific type of work to be performed by the lawyers-linguists on the text of the Lisbon Treaty*, European Commission – DG Communication, Audiovisual Service, available at http://ec.europa.eu/avservices/services/showShotlist.do?out=PDF&lg=En&filmRef=i-055938, last consulted in December 2007.

Urban, Nikolaus (2000) "One legal language and the maintenance of cultural and linguistic diversity?", in *European Review of Private Law*, vol. 1, pp. 51-57.

van Calster, Geert (1997) "The EU's Tower of Babel – The Interpretation by the European Court of Justcie of Equally Authentic Texts Drafted in more than one Official Language", in A. Barav and D. A. Wyatt (eds.) *Yearbook of European Law*, vol. 17, Oxford: Clarendon Press, pp. 363-393.

Van Els, Theo (2001) "The European Union, its Institutions and its Languages: Some Language Political Observations", in *Current Issues in Language Planning*, vol. 2, no 4, pp. 311-360.

Van Hoecke, Mark and Jan Dhont (2000) "Obstacles and Opportunities for the Harmonisation of Law in Europe: the Case of Privacy", in Mark Van Hoecke and François Ost (eds.) *The Harmonisation of European Private Law*, Oxford: Hart, pp. 107-146.

Van Hoecke, Mark (2007) "European Legal Cultures in a Context of Globalisation", in Jerzy Stelmach and Tomasz Gizbert-Studnicki (eds.) *Law and Legal Cultures in the 21st Century. Diversity and Unity*, 23rd IVr World Congress, August 1-6, 2007, Cracow, Poland, Wolters Kluwer Polska, pp. 81-100.

Vásquez-Ayora, G. (1977) *Introducción a la Traductología*, Washington, DC: Georgetown University Press.

Vaz, Nicole (2004) "The Principle of Equality of the Official Languages", in M. Bastarache, (ed.) *Language Rights in Canada*, 2d ed., Cowansville, Qc.: Yvon Blais, pp. 601-653.

Venuti, Lawrence (1995) *The Translator's Invisibility: A History of Translation*, London and New York: Routledge.

Venuti, Lawrence (1997) “Strategies of translation”, in Mona Baker (ed.) *The Routledge Encyclopedia of Translation Studies*, London and New York: Routledge.

Vermeer, H. J. (1978) “Ein Rahmen für eine allgemaine Translationstheorie”, in *Lebende Sprachen*, vol. 23, no 3, pp. 99-102.

Vermeer, Hans (1986) “Übersetzen als kultureller Transfer”, in: M. Snell-Honby (Hg.) *Übersetzungswissenschaft – eine Neuorientierung*, Tübingen: Francke, pp. 30-53.

Verwey, Delano Ruben (2004) *The European Community, the European Union and the International Law of Treaties: A Comparative Legal Analysis of the Community and Union's External Treaty-Making Practice*, The Hague: TMC Asser Press.

Visser, Daniel (2003) “Cultural Forces in the Making of Mixed Legal Systems”, in *Tulane Law Review*, vol. 78, pp. 41-78.

Von Bogdandy, Armin (1999) “The Legal Case for Unity: The European Union as a Single Organization with a Single Legal System”, in *Common Market Law Review*, vol. 36, pp. 887-910.

Wagner, Emma (2000) *Translation of Multilingual Instruments in the EU*, available at portal ‘Europa’, Translation and drafting aids in the European Union languages, http://ec.europa.eu/translation/reading/articles/pdf/2000_tp_wagner.pdf.

Wagner, Emma (2001a) “Eurospeak – Fighting the Disease”, available at http://www.cultivate-int.org/issue4/eurospeak.htm, last visited May 2005.

Wagner, Emma (2001b) “Translation of Multilingual Instruments in the European Union”, in Susan Šarčević (ed.) *Legal Translation. Preparation for Accession to the European Union*, Rijeka: Faculty of Law, University of Rijeka, pp. 65-74.

Wagner, Anna (2002) *La Langue de La Common Law*, Paris: l’Harmattan.

Wagner, Emma (2005) “Producing multilingual legislation in Switzerland”, in *Clarity. Journal of the international association promoting plain legal language*, no 53, pp. 18-20.

Wagner E., Bech, S., Martínez, J. M. (2002) *Translating for the European Union Institution*, Manchester, UK & Northampton, MA: St. Jerome Publishing.

Wainwright, Richard (2002) “Drafting and interpretation of multilingual texts of the European Community”, in Rodolfo Sacco (ed.) *L'interprétation des textes juridiques rédigés dans plus d'une langue* : [Colloque organisé à Turin en 2000] / par l'Institut subalpin pour l'analyse et l'enseignement droit des activités transnationales (ISAIDAT), pp. 320-322.

Walewski, Stanisław (1990) *Słownik polsko-niemiecki i niemiecko-polski – Wörterbuch der Polnischen und Deutschen Sprache*, vol. I and II, Kraków: Wydawnictwo Aramis.

Walters, Mark D. (2001) “The Common Law Constitution in Canada: Return of *lex non scripta* as Fundamental Law”, in *University of Toronto Law Journal*, Spring, 2001, vol. 51, pp. 91-141.

Walton, Frederick P. (1907/1980) *The Scope and Inetrpretation of the Civil Code,* Wilson & Lafleur Ltée (1907), reprint 1980 Butterworths, Toronto.

Watson, Alan (1983) "Legal Change: Sources of Law and Legal Culture", in *University of Pennsylvania Law Review*, vol. 131, pp. 1121-1157.

Weigend, Thomas (2006) "Criminal law and criminal procedure", in J. M. Smits (ed.) *Edward Elgar Encyclopedia of Comparative Law*, Elgar Publishing, pp. 214-227.

Webber, Jeremy H.A. (1994) *Reimagining Canada: Language, Culture, Community, and the Canadian Constitution*, McGill-Queen's Press.

Weenink-Griffiths, Juliet (2005) "The European Central Bank's approach to drafting legislation in 20 languages", in *Clarity. Journal of the international association promoting plain legal language*, no 53, pp. 11-14.

Wellington, Louise Maguire (2001) "Bijuralism in Canada: Harmonization Methodology and Terminology", in *The Harmonization of Federal Legislation with the Civil Law of the Province of Quebec and Canadian Bijuralism*, Second publication, Ottawa (On), Minister of Justice and Attorney General of Canada/Ministre de la Justice et procureure générale du Canada, Booklet 4, pp. 1-25.

White, Graham (2006) "Traditional aboriginal values in a Westminster parliament: The legislative assembly of Nunavut", in *The Journal of Legislative Studies*, vol. 12, no 1, pp. 8-31.

White, James Boyd (1990) *Justice as Translation: An Essay in Cultural and Legal Criticism*, The University Of Chicago Press.

White, James Boyd (1992) "Translation as a Mode of Thought", in *Cornell Law Review*, vol. 77, pp. 1388-1398.

Whitley, S. J. (1986) "The Manitoba Language Reference: Judicial Consideration of 'Language Charged with Meaning'", in *Manitoba Law Journal*, vol. 15, pp. 295-304.

Wilson, Barry (2003) "The Translation Service in the European Parliament", in Arturo Tosi (ed.) *Crossing Barriers and Bridging Cultures. The Challenges of Multilingual Translation for the European Union*, Multilingual Matters Ltd., pp. 1-7

Winter, J.A. (1972) "Direct Applicability and Direct Effect - Two Distinct and Different Concepts in Community Law", in *Common Market Law Review*, vol. 9, no 4, pp. 425-438.

Witczak, Iwona M. (1996) "Selected issues concerning the legal performative and the language of legislation", in M. Thelen and B. Lewandowska-Tomaszczyk (eds.) *Translation and Meaning Part 4*, Maastricht: Hogeschool Maastricht, pp. 413-418.

Witczak-Plisiecka, Iwona (2007) *Language, law and speech acts pragmatic meaning in English legal texts*, Wyższa Szkoła Studiów Międzynarodowych.

Wright, Sue (2000) *Community and Communication: The Role of Language in Nation State Building and European Integration*, Clevedon-Buffalo-Toronto-Sydney: Multilingual Matters Ltd.

Wróblewski, Bronisław (1948) *Język prawny i prawniczy*, Prace Komisji Prawniczej, no 3, Kraków: Polska Akademia Umiejętności,.

Wróblewski, Jerzy (1963) "Semantic Basis of the Theory of Legal Interpretation", in *Logique et analyse*, 6 (1963), pp. 397-416; reprinted in Jerzy Wróblewski (1983) *Meaning and Truth in Judicial Decision*, Helsinki: A-Tieto Oy, pp. 22-48.

Wróblewski, Jerzy (1986) "Le problème de la traduction juridique", in *Rapports polonais présentés au douzième congrès international de droit comparé*, Warszawa: Ossolineum, pp. 35-43.

Wróblewski, Jerzy (1988) "Les langages juridiques: une typologie", in Le discours juridique. Langage, signification et valeurs, *Droit et société*, no 8, pp.13-27.

Wood, Michael J.B. (1990) "Le bilinguisme législative en Ontario: La situation actuelle", in *Revue générale de droit* (Section de Droit Civil, Universite d'Ottawa), vol. 21, no 1, pp. 139-150.

Wood, Michael J.B. (1996) "Drafting Bilingual Legislation in Canada: Examples of Beneficial Cross-Pollination between the Two Language Versions", in *Statute Law Review*, vol. 17, no 1, pp. 66-77.

Yasue, Noriko (1999) "Le multilinguisme dans l'Union européenne et la politique linguistique des états membres", in *Revue du Marché et de l'Union européenne*, no 427, avril, pp. 277-283.

Ziller, Jacques (2005a) *The European Constitution*, The Hague: Kluwer Law International.

Ziller, Jacques (2005b) "National Constitutional Concepts in the New Constitution for Europe", in European Constitutional Law Review, vol. 1, issue 2, pp: 247–271.

Ziller, Jacques (2006) *Nowa Konstytucja Europejska* [New European Constitution], Warszawa: Wydawnictwo Naukowe Wydziału Zarządzania Uniwersytetu Warszawskiego.

Zimmermann, Reinhard (2001) *Roman Law, Contemporary Law, European Law. The Civilian Tradition Today*, Oxford: Oxford University Press.

Zweigert, K. and U. Drobnig (1981) *International Encyclopaedia of Comparative Law: Installment 13*, Martinus Nijhoff Publishers.

Zweigert, K. and H. Kötz (1998) *An Introduction to Comparative Law*, trans. Weir, 3rd edition, Oxford University Press.