

Language Implications of Harmonisation and Cross-Border Litigation

An issue of the theme-based peer-reviewed e-journal Erasmus Law Review (free access) dedicated to the topic 'Law and Language; Implications for Harmonisation and Cross-Border Litigation' has just been published. It includes five contributions, preceded by a short introduction.

Simone Glanert, Europe Aporetically: A Common Law Without a Common Discourse.

In response to the European Union's avowed ambition to elaborate a uniform European private law, some critics have maintained that uniformisation is illusory on account of the disparities between the governing legal languages within the different Member States. This objection has, in its turn, given rise to an argument according to which uniformisation could be ensured through the emergence of a common discourse. It has been said that such outcome is possible even in the absence of a common language. For the proponents of this claim, the theory of communicative action developed by Jürgen Habermas offers significant support. By way of reaction to the common-discourse thesis, this paper proposes to explain why it cannot be sustained and why one cannot usefully draw inspiration from Habermas's thinking in order to promote a uniform private law within the European Union.

Astrid Stadler, Practical Obstacles in Cross-Border Litigation and Communication between (EU) Courts.

In cross-border civil litigation the use of different official court languages causes severe problems when - at least one of the parties - is not familiar with the official language of the court, since the parties' constitutional right to a fair trial depends very much on the communication with the court. As a consequence, interpreters must often be used during the trials and hearings and legislatures have to decide to what extent legal documents should be translated. The article takes the position that the European legislature sometimes underestimates the language problem and does not always provide sufficient safeguards for the

parties' right to be heard (in a language they can understand). In particular, the defendant's procedural rights often require a translation of documents in cross-border service of process and must take precedence over procedural economy. European regulations also tend to emphasise the cooperation between courts in different Member States without taking into consideration that there is often no common language and that many judges will not have the language skills to communicate with their colleagues. The use of standard forms available in the 23 official languages is no perfect solution for all situations.

Elena Alina Ontanu & Ekaterina Pannebakker, Tackling Language Obstacles in Cross-Border Litigation: The European Order for Payment and the European Small Claims Procedure Approach.

In cross-border litigation, language differences are one of the main obstacles preventing parties from taking action and defending their rights. The Regulations creating a European Order for Payment Procedure (EOP) and establishing a European Small Claims Procedure (ESCP) have introduced the first EU-wide procedures, the goals of which are to simplify, speed up, and reduce the costs of cross-border litigation; they also include an attempt to reduce language obstacles. However, the simplification they propose must not sacrifice parties' right of access to justice and fair trial. This paper addresses the question as to the way language obstacles in cross-border litigation are tackled by the EOP and the ESCP. It further seeks to determine the extent to which these instruments balance the aim to simplify the procedures by reducing language obstacles and the parties' right to a fair trial and access to justice.

Christoph A. Kern, English a Court Language in Continental Courts.

Most recently, several countries on the European continent have admitted, or are discussing to admit, English as an optional court language. This article provides some information about the background of these recent initiatives, projects and reforms, clarifies the idea on which they are based and explores the purposes they pursue. It then identifies in a theoretical way the various possible degrees of admitting English as a court language and the surrounding questions of practical implementation. These general issues are followed by a presentation of the initiatives, projects and reforms in France, Switzerland and Germany. Not surprisingly, the idea of admitting English as a court language has not only found support, but has also been criticised in legal academia and beyond. Therefore, the

article then attempts to give a structured overview of the debate, followed by some own thoughts on the arguments which are being put forward. It concludes with an appeal not to restrict the arguments in favour of admitting English as a court language to merely economic aspects, but also to give due weight to the fact that admitting English may facilitate access to justice and may result in bringing back cases to the public justice system.

Isabelle Bambust, Albert Kruger & Thalia Kruger, Constitutional and Judicial Language Protection in Multilingual States: A Brief Overview of South Africa and Belgium.

The purpose of this contribution is to provide a very modest comparison of judicial language protection in South Africa and in Belgium. First of all, the authors sketch briefly the historical context and the constitutional status of languages in both countries. It is difficult to argue that one always has a right to use his or her own language. However, the use of language has clear links to constitutional rights such as the right to a fair trial. The authors then consider the rules on the use of languages in court generally and in criminal proceedings particularly. Belgium has strict rules on the use of language, and these rules are based on strong principles of territoriality and monolingualism. South Africa, on the other hand, has 11 official languages, not linked to territories, but in practice these languages do not all enjoy the same protection. The pragmatic approach by the South African courts is indicated with reference to the case law.