

The impact of law and language as interactive patterns

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Abstract

Every country has adopted a certain law pattern. This has an impact on the language expression and the relevant adopted terminology. It can be tracked by examining and describing the lexical choices and the use of featuring structures, which form parallelisms in similar systems. Before proceeding with their linguistic description, it is necessary to explain the differences that exist between Greek-, French-, German-, Albanian law systems. It will be evident that they have some points in common, but at the same time they differ at a great extent in the way of conceptualizing the system. I shall use the Constitution as the basic law and a safe reference point for an explicit comparison.

Terminology plays an important role in explaining these systems. The law & language are interactive patterns. We already have a European legal language, but it is time for a more coherent European wide legal language. The linguistic matters have a direct contact with judicial cases. Inside EU the usage of different languages is one of the main obstacles of the integration process. Then again according to EU it creates a specific problem for the European judges, translators and interpreters. So in order to achieve a co-usage of the language we need to develop a curriculum, in order to use a coherent terminology and linguistic patterns. To put a standard for the law language, used in the EU, we should follow a legal harmonization that is achieved through harmonized terminology inside EU. The right usage of the language and its terminology should be understood as a standardization process. Also European Union policy is of great importance because it informs us about language policy and how to deal with it. At last we must know that EU consists of 450 million people from different cultures and backgrounds. In this sense it can be said that EU is truly a multilingual institution that reinforces the ideal of a single community with different languages and different cultures.

Keywords: Law, Albania, language, impact, pattern.

Introduction

The special way of every country to function, enables us to compare legal systems. In this way we distinguish their similarities, but even their differences. These differences are not distinguished only in the concept of state functioning but even in the specific terminology that they use. Law and language had always been and already are interacting partners. In order to express our ideas while using a certain language, terminology helps us a lot and this not just using different vocabulary but creating a curriculum which will enable us to use the specific terminology in a certain field.

The Comparison of Albanian System with the Greek System

In both these systems prevails the principle of division of powers. Therefore, in both systems, we find legislative, executive and judiciary power. Both states are parliamentary republics and the constitution is the fundamental law of the state. The

legislative power in both states is represented by the parliament which consists of one chamber. What distinguishes is the number of lawmakers, respectively 300 seats for the Greek parliament and 140 seats for the Albanian parliament. As far as the executive is concerned in both of them we notice the executive presentation from the government which has political power. The difference is that part of the executive in Greece, is even the President of the Republic, but he doesn't have political power. Regarding legal system, the terminology used is different. Even the role of these courts is different. Respectively:

Greek Courts consist in:

- Administrative matters
- Civil matters
- Criminal matters
- Aierios Pagos –The supreme court for the civil and criminal law. It examines legal matters and not the factual ones. It is the highest degree of the judicial resort.

Albanian Courts consist of:

- The District Court (The court of first instance)
- Court of Appeals
- The supreme Court
- The Administrative Court

The comparison of German system with the French system

In this study we have used the methodology of comparing and contrasting as it is shown in the following. The differences between the German and French system start with the conception of the state. Germany is a Federal Republic, Parliamentary Republic, whereas France is a unique system, half-presidential. Therefore, even the changes between these two states are obvious. For Germany the constitution "Grundgesetz" is the fundamental law of the state, whereas France refers to the constitution as the law that changed the executive authority regarding the parliament. As to legislative power, both states have a parliament comprising of two chambers.

Legislative power in Germany is implemented through:

- Bundestag – where members are elected through direct elections;
- Bundestrat - where members of the state cabinet represent the government of sixteen federations.

Legislative power in France is implemented through:

- The National Assembly, whose members are elected by direct vote for a five year mandate;
- Senate - Senators are elected by the electoral commission for a six year mandate, and the other half is elected through elections every three years.

As for the executive, even here we distinguish differences, taking into consideration that these states have a different governing system. Germany consists of the following powers based to their importance scale:

- Parliament;
- President who is elected by the Bundesversammlung, an institution that includes the members of Bundestag and an equal number of state delegates;

- The President of Bundestag, who is elected by the Bundestag;
- Federal Chancellor, who executes the power of the executive. He/she has leading powers and sets the basic principles of foreign and domestic policy.

On the other hand, France speaks for an executive power which is composed by the President of the Republic with a four year mandate, who is also the head of state, and from the government which is led from the prime minister who is elected by the president.

Regarding the judiciary system, main source of the Criminal Law in Germany is the Criminal Code and criminal responsibility starts with the age of 14 years old.

Judiciary in France is represented by the judicial law and administrative law. In the head of the Judiciary system stands the Supreme Court of Appeal. There is also the Administrative Court in the head of which is the Council of State.

The interaction between law and language

Law is linked with the language. The interpretation of legal texts, grammatically seen, is linked with the linguistic methods for the usage of the language as well. The use of language needs a specific terminology in our case it needs a legal terminology. Language is the vehicle of expressing the law (Sacco, 34). Lawyers from the same legal system understand this terminology. But there arises a problem that the same language which is official language in different nations has different meanings in judicial terminology. How to understand this? German is an official language in Austria and Germany, but for the same legal term, we have different meanings in both nations, even if the official language is the same. For example, when a German lawyer speaks of "Besitz" he understands actual possession, while an Austrian lawyer understands it as factual owning involving here even "Animus domini". So even lawyers from Austria and Switzerland do not understand immediately the basic concepts of judicial terminology. A term can give us something completely different in private law than in public law. But in the European level, a totally different concept must stay behind the selected term. So the idea is that it must be a main selected term and then the exceptions. Furthermore, the same term can be used in the translation of a document in another relevance or concept. Finally what we have is a term from which derivate different concepts. The harmonization of the language cannot be reached using the same language. We must understand each other, but to do it, we must be aware of the concepts that we have in our mind. Some of us may say that it exists a solution and this is the vocabulary, but the case is deeper than that and this is a big misunderstanding. An attempt was made with the pan-European language "Esperanto".

To establish a standard for the legal language used in the European Union we need to follow a legal harmonization which is reached towards harmonized terminology inside the EU. There should be concepts, definitions and clear principles. Translation of legal texts from one language to another, often mean the transference of the terms or concepts from one language to the other, but the legal terminology does not require this. It requires an exact and coherent use of language. If we manage to use the exact language, based on a relevant terminology, then we can speak of standardization. To

reach the standardization of a language there are some ways that need to be analyzed: Firstly, this standardization can be achieved through the usage of a common legal language;

Secondly, inside EU it is spoken of a European law, and that law must have common principles of EU member countries. In order for these common principles to be used by all member states, EU must make a draft upon it;

Thirdly, EU should make valid concepts and definitions in the form of a reference. That's to say a common reference frame with all these concepts and definitions for the specific usage.

This situation arises a question. Does a language policy exist in EU? The policy is developed in an "ad hoc" manner in order to escape from conflictual situations before being too late (in order not to have tense situations). There was a lot of debate even upon this part. Even if all other states wanted to be focused in English, the French made it clear that will block any attempt if French would not exist through EU institutions. Here we can speak of discrimination but if we see the policies taken upon the languages in EU, we see that they can be divided into three fronts:

- The institutional rules;
- Education and cultural policies;
- The position taken against "minor languages (small languages).

As discussed above it is no place for discrimination, because language policy is build in such a way that forbids discrimination which is based upon the language, because at least there would be a place that can exercise the right of veto in order to protect his mother language. As for education and cultural policies, we can say that people must be more aware of their European identity and to achieve this there exist different programs, because in order to have a common identity we must even have a common educational program. We can mention here "Erasmus" which student mobility program of the EU. For the moment 1.5% of the students of all universities in the EU take part, but the program continuous to remain a good effort for the expansion of culture, language and different mentalities. The European Union continues to encourage students in the learning of a foreign language. In this sense the opinion of Robert Philipson's should be stated: "English opens some doors and closes some others. It may be used for good and bad reasons, but in this modern world it cannot be ignored."

By all means the language policy made in EU is built upon multilingual and multicultural points. We can take Switzerland as an example. It is the example of peaceful linguistic co-existence into the EU. During the process of the creation of the national identity, language has played an equally central role in keeping its nature, as every element does. Language is the most obvious cultural aspect, and as such it's planning has an important political dimension. It has been exactly EU policies, that some national languages are recognized as official languages. The planning of a language begins with the creation of new forms or with the modification of the old forms, or with the selection of alternative forms of language (this is the technical part of the case)

Today EU is the home of 450 million inhabitants from different ethnical, cultural and different origins. EU is unfliningly a multilingual institution that reinforces the ideal of a single community with different cultures and language.

Conclusions

As we can see from this study there is a difference between Greek, French, German and Albanian system but they have similarities too. Some of the differences mentioned in the study consist in the form of the state. All these four states are based on the independence of the three powers respectively legislative, executive and judicial system. As far as the Legislative system is concerned we distinguish that the parliament in some of these states consists just of one chamber, and in some of them with two chambers. Law and language are interlinked with each other and this relationship leads to a specific terminology. Even if two different countries speak the same language (Germany and Austria) there are different meanings for the same legal institution with the consequence of the need of harmonization.

References

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