Phraseology, argumentation and identity in Supreme Court of Ireland's judgments on language policy

1. Language policy and bilingualism in Ireland: an overview

In the broad, sensitive area of language and language rights, the Republic of Ireland deserves to be taken as a case in point. Interestingly, there appears to be a somewhat glaring discrepancy between the clarity of the words in the Constitution as well as legislation, and the standpoints taken by the judiciary on such matters. On the one hand, Article 8 of the Constitution of Ireland (*Bunreacht na hÉireann*) states that Irish is "the first official language", whereas English has been accorded the status of "second official language". Similarly, Article 8 of the Official Languages Act 2003 sets out that anyone is entitled to "use either of the official languages in, or in any pleading in or document issuing from, any court". Accordingly, the State's fundamental law along with the provisions of the Statute Book have brought about a situation of *de iure* bilingualism ('bilingualism by law'), whereby the use of either Irish or English is permitted throughout the State "for any one or more official purposes" (Article 8.3, Constitution of Ireland).

On the other hand, the judgments delivered by the Irish courts since independence (1922) have indicated the lack of a univocal position on the country's bilingualism, with particular reference to the Irish language. For instance, the Supreme Court's views have stretched from one that "none of the organs of the State may derogate from the pre-eminent status of [...] Irish" (Kennedy C.J., *Ó Foghludha v. McClean*, 1934) to the opposing stance that applicants "able to speak and understand English [are] not making any natural justice point" by insisting on rules and forms to be made available in Irish (Geoghegan J., *Ó Beoláin v. Fahy*, 2001).

2. Research trends and gaps: what this study is

While due emphasis has been placed on principles of constitutional interpretation from the practitioner's perspective (Doyle 2008), there is still a remarkable lack of groundwork on the overall discursive dimension of, first of all, judicial argumentation at work in cases involving bilingual rights and language policy and, secondly, the underlying constitutional ethos of the Irish judiciary. The latter appears to be intimately tied to the notion of 'constitutional identity' discussed by Besselink (2010). The rather elusive concept of constitutional identity is argued by Besselink (2010: 47) to have been formulated by the German *Bundesverfassungsgericht* ('Constitutional Court') as early as 1986 as a parameter "to demarcate what is acceptable and not acceptable as concerns the constitutional impact of European law on the German constitutional order".

Later on, the notion was incorporated into the EU legal framework in order to refine the more ambiguous term 'national identity' of the 1992 Maastricht Treaty (Besselink 2010: 42). To the extent that constitutional infrastructure can be seen as an expression of complex cultural phenomena, "one of the most intriguing questions" now indeed seems to be "who is to decide on what the constitutional identity of a Member State is" (Besselink 2010: 48).

While this study is neither intended nor suited to provide a definitive answer to the above question, its aim is to make a contribution to filling a gap in the literature, by integrating corpus and discourse methods in the study of the Irish Supreme Court's (henceforward, the SCI) judgments on bilingualism and language policy. In focusing on the Court in its capacity as the ultimate interpreter of the constitutional text, the research combines quantitative analysis and qualitative insights (Baker and McEnery 2015). More specifically, the two-pronged approach pursued here is intended to identify phraseological and argumentative regularities in the construction of texts that forge the Court's own constitutional identity in an area so far overlooked by corpus and discourse studies of judicial argumentation.

To begin with, phraseology was the object of a corpus-based quantitative investigation. As a leading principle of discourse organisation whereby words create meaning through their

combination (Hunston 2008; Groom 2010), phraseology was chosen as a tool for a preliminary mapping of corpus texts shedding light on recurrent form-function correlations. Secondly, resuming the basic corpus linguistics notion that what is frequent is by definition significant (Stubbs 2001), the analysis downsampled from the whole corpus to the texts where the phraseological regularities identified beforehand were most widely attested. In those texts, a descriptive analysis of argumentation was conducted, in the attempt to "define the inferential configuration of arguments, namely to illustrate the structure of the reasoning that underlies the connection between a standpoint and its supporting arguments" (Rigotti and Greco Morasso 2010: 490). The aim was to integrate the study of phraseology with a more in-depth qualitative account of the argumentative tools through which the SCI constructs its reasoning and carves out its niche of expertise *vis-à-vis* the constitutional text on thorny issues of language policy.

The rest of the paper is organised as follows. In Section 3, corpus design criteria are discussed, and the methodological tools are introduced: this will allow for a presentation of the dataset as well as a preliminary review of the procedure(s) through which the corpus was studied. Section 4 then presents the findings of the study, which are eventually discussed in the light of the relevant literature in Section 5.

3. Materials and methods

The study was based on a small corpus of SCI judgments on language policy. These were retrieved from the official website of the Court (www.supremecourt.ie) as of April 2016, when the corpus was compiled. An advanced search was launched, with the aim of retrieving any judgment provided by the website through the search items 'language policy', 'bilingualism' and 'Irish language'. A total of 20 full texts were thus collected in what shall be termed the *SCILang_Corpus*, covering a time span of about ten years (2005-2016) and amounting to 357,321 words altogether.

As regards methodology, the investigation combined two stages. The first was a quantitative investigation of phraseology. The latter's centrality to the study of judicial discourse has been well documented. For instance, Pontrandolfo (2013) adopts a contrastive approach focusing on prepositional phrases across English, Spanish and Italian judicial texts. His comprehensive qualitative and quantitative analysis shows that phraseological mechanisms are very instrumental in expressing crucial conceptual relations in the drafting practices of criminal judgments by courts of last resort in Spain, Italy and England/Wales. For the purposes of this paper, a specific item was chosen as a suitable candidate for phraseological analysis, i.e. lexical bundles (Biber et al. 1999).

Bundles are aptly defined by Breeze (2013: 230) as "multi-word sequences that occur[red] most frequently in particular genres, regardless of whether or not they constitute[d] idioms or structurally complete units". Major significance has been attached to them in recent scholarly research (Goźdź-Roszkowski 2011), whereby the adoption of corpus-driven methods and multi-dimensional analysis pointed to their frequency as evidence of their operative function in communicating key procedural aspects of judicial decisions. And from a cross-generic perspective, Breeze's (2013) analysis of four-word bundles shows major variations in terms of the construction of discourse in each genre. On the one hand, academic legal writing is observed to use relatively little formulaic language limited to specialised terms relating to abstract concepts, while case law uses noun-phrase bundles denoting agents, documents and actions, along with extended prepositional phrases that operate as framing attributes. On the other hand, legislation and documents are rich in noun-phrase bundles, but they also exhibit a number of verb-phrase bundles with a deontic or referential function.

In order to identify bundles here, the linguistic software package *AntConc* (Anthony 2006) was used. More specifically, the on-screen function *Clusters* was launched for the purpose of generating an *n-gram* list. This is a list of the most frequent clusters, from which the top-ten most recurrent lexical bundles were extracted. These were identified on the basis of the following

criteria: first of all, a minimum size of three and a maximum size of six words per bundle; secondly, a minimum frequency of 10 tokens per bundle; finally, a distribution of each bundle across a minimum of 5 texts, in order to ensure an adequate degree of generality to the analysis. The selected bundles were then concordanced (Stubbs 2001) in order to gain insights into the collocational properties (Sinclair 2004) and discourse function(s) of the selected bundles in context.

The second stage of the research lay in a qualitative investigation of argumentation in the two cases where the phraseological patterns retrieved beforehand were most widely attested. This resulted in a manual analysis aimed at identifying two inter-related elements. First of all, emphasis was laid on argument schemes as forms of reasoning that create "a specific justifying relationship between the applied argument or […] the applied arguments and the standpoint at issue" (Van Eemeren et al. 2007: 137). Secondly, evidence was collected of argumentative patterns as sets of "argumentative moves in which, in order to deal with a particular kind of difference of opinion, in defence of a particular type of standpoint a particular argument scheme or combination of argument schemes is used in a particular kind of argumentation structure" (Van Eemeren 2016: 14). Therefore, argument structure was scrutinised as the overall articulation of schemes into multiple or coordinative argumentation supporting the standpoint through which judges convey their own vision on the language issues before them.

4. Results

The findings generated through the multi-layered analysis proposed above are reported in the following two sub-sections. In 4.1, the main forms and functions of lexical bundles are described in detail, whereas in 4.2, recurrent argument schemes and patterns are illustrated.

4.1 Lexical bundles: forms and functions in context

The top-ten most frequent bundles retrieved at the outset of the study are reported in Table 1 below with the respective raw and per 1,000-word frequency:

[Insert Table 1 about here]

The concordance-based analysis of the lexical bundles provided evidence of two main contexts with which their use was detected to be correlated. The first one is the centrality of the Constitution of Ireland as the ultimate benchmark against which to evaluate mutual rights, duties, prohibitions and courses of action. This finding is corroborated by a set of large phraseological sequences outlined in Table 2 that document the collocational patterns of the bundles under analysis.

[Insert Table 2 about here]

To begin with, pattern a) indicates that SCI Justices often refer to appellants' language rights as being intimately tied to the wording of the constitutional text, as illustrated in example (1) below. Moving from rights to duties, secondly, pattern b) shows that judges may draw the attention to either general or specific constitutional obligations incurred by the State. In 9.2% of the 326 occurrences of *of the State* instantiated in (2), the Court therefore stresses the relationship between the language of the *Bunreacht* and the *imperative force* of the State's obligations. As regards prohibitions, in the third place, judges may explicitly cite the *terms* of the Constitution in order to define what constitutes a breach of Irish law (pattern c). Hence, in (3), the imposition on the Irish people of certain restrictions upon freedom of action is established to be a serious infringement of constitutional norms. As of pattern d), finally, we see that in many a passage of their reasoning, SCI Justices qualify a decision or course of action by anchoring it to the Constitution by means of appended clauses introduced by *as* (cf. *as provided in* in 4).

(1)He [the appellant] asserts a language right. This is *a right grounded on Article 8 of the Constitution* and in particular the recognition of the Irish language as the National language and, accordingly, as the first official language of the State. (Ó Maicín v. Ireland et al.)

(2)Thus, it can be said that *the imperative force of the obligation of the State* described by Kennedy C.J. as emanating from Article 4 of the Constitution of Saorstát Éireann is repeated with added emphasis in the language used in Bunreacht na hÉireann. (Ó Maicín v. Ireland et al.)

(3)The foreign policy organ of the State *cannot, within the terms of the Constitution,* agree to impose upon itself, the State or upon the people the contemplated restrictions upon freedom of action. To acquire the power to do so would, in my opinion, require a recourse to the people. (Pringle v. The Government of Ireland et al.)

(4)The primary issue in this case is whether the constitutional protection afforded to the life of the unborn, *as provided in Article 40.3. of the Constitution***,** extends to three fertilised embryos which have been frozen and stored in a clinic. (Roche v. Roche et al.)

Patterns a), c) and d) jointly amount to 9.2% of the whole of the 462 entries of *of the Constitution* in the *SCILang_Corpus*. Such an overall limited frequency is explained by the size of the corpus, which proved a valuable tool in retrieving salient functional properties of the bundles in context. These might as well go unnoticed in a larger corpus where the analyst would end up sorting and dealing with high frequencies less amenable to fine-grained analysis.

Taken at face value, the narrow context of the sequences surrounding *of the Constitution* is likely to leave one wondering what role the official bilingualism of the Irish State plays in such

matters as the Irish people's *freedom of action*, let alone fertilised embryos at a clinic. In these examples as well as in others in the paper, accurate reconstructions of the case at issue were needed and actually performed by reading through a broader co-text than the simple concordance line.

In case *Pringle v. The Government of Ireland et al.*, accordingly, we can appreciate the significance of (3) if we know that the appellant's view – namely, that the State had violated the people's sovereignty and freedom of action by ratifying a new treaty without submitting it to the people's approval in a referendum – rested on the Irish-language version of the Constitution. In Article 1, the key term 'sovereignty' is rendered as *ceannasach*, a word "based on 'cennas' (translated as 'headship, lordship, superiority, precedence'" (Ó Cearúil 1999: 59) denoting a culturally-loaded notion whose fundamental importance in Irish political discourse goes back to the 1916 Proclamation of the Irish Republic.

Similarly, the relevance of language issues to case *Roche v. Roche et al.* can be explained as follows. A married couple trying for children for some time decided to resort to I.V.F (in vitro fertilisation) treatment, which the woman underwent with her husband's consent. Six embryos resulted, three of which were implanted in her uterus, so that she could eventually become pregnant. The remaining three embryos were frozen and placed in storage at a clinic. Soon after the birth of their second child, the couple separated, and years later the woman requested to have the three remaining embryos implanted, which the former husband refused to consent to. As an appellant to the Supreme Court, the woman sought to rely on the Irish-language version of the Constitution, where the term for the English *unborn* is *beo gan breith* – literally 'living being without birth'. On such grounds, she invoked the constitutional protection afforded by Article 40.3. to the *right to life of the unborn*, in order to have the frozen embryos implanted. The critical role played by language issues in such cases cannot be overestimated, particularly since Irish as the national language takes precedence over English in case of conflict between legal texts.

Not surprisingly, therefore, the second main context of use of the bundles was found to be represented by those passages where judges emphasise the primacy of Irish and its constitutional status. This aspect is highlighted by the wide array of phraseological patterns in Table 3 below.

[Insert Table 3 about here]

The whole of patterns e), f) and g) respectively occur 6, 16 and 14 times across the 20 judicial opinions in the corpus. This, however, has less to do to with any inherent formulaic prerogative enjoyed by the patterns themselves than with the fact that they go back to the exact wording of influential precedents quoted by SCI Justices, notably the opinions by Kennedy C.J. in *Ó Foghludha v. McClean* (1934) in (5) as well as (6), and Hardiman J. in *Ó Beoláin v. Fahy* (2001) in (7):

(5)In my view the Irish language, which is the national language and, at the same time *the first official language of the State*, *cannot* (at least in the absence of a law of the sort envisaged by Article 8.3) *be excluded from any part of the public discourse of the nation or the official business of the State or any of its emanations*. Nor can it be treated less favourably in these contexts than the second official language. (Ó Murchú v. An Taoiseach et al.)

(6)The failure to provide a tribunal such as is mentioned above for the trial of this citizen who wishes to defend himself in the National and first official language is a breach of the principle, also established in that case: "…that *the State is bound to do everything within its sphere of action to establish and maintain the Irish language in its status as the National language* […]".(Ó Maicín v. Ireland et al.)

(7)This judgment of Kennedy C.J. appears particularly relevant in what it has to say about the significance of the designation of the Irish language as a National language:

"[…] There is no doubt in my mind, but that the term 'National' in the Article is wider than, but includes, 'official', in which respect only the English language is accorded constitutional equality. *None of the organs of the State legislative executive or judicial may derogate from the pre-eminent status of the Irish language as the National language of the State without offending against the constitutional provision of Article 4*." (Ó Maicín v. Ireland et al.)

Patterns h) and i) jointly amount to 21.9% of the corpus entries of the bundle *the Irish language*, and it is apparent that they are both highly instrumental in securing the privileged position of Irish under national law. The former is illustrated in (8), where the judge focuses on the teleological substance of the Official Languages Act 2003, designed to firmly entrench the use of Irish in the provision of services to the public along with the work of public bodies. With i), moreover, the SCI defines the primacy of the language in either positive terms – cf. *establish the pre-eminent status of* – or in negative terms such as in (9). In this passage, Hardiman J. states that it is in principle inconceivable for the State to *qualify or downgrade* the status of Irish in that that would amount to derogating from a mandatory constitutional requirement.

(8)The general purpose of the Act of 2003, as proclaimed in its long title, is *to promote the use of the Irish language* for official purposes in the State and, more specifically, "to provide for the use of both official languages of the state in communicating with or providing services to the public and in carrying out the work of public bodies". (Central Applications Office v. The Minister for Community, Rural and Gaeltacht Affairs et al.)

(9)The State does not deny or seek to *qualify or downgrade the status of the Irish language* as the National and first official language. Nor does it adopt the view that the consequences of that recognition are trumped by the practical needs of the administration of justice. (Ó Maicín v. Ireland et al.)

Examples (1)-(9) indicate the prominence of *Ó Maicín v. Ireland et al.* [292/2010] in exhibiting the phraseological patterns dealt with so far. In addition to it, the case where the patterns were most widely attested was *Ó Murchú v. An Taoiseach et al.* [91/2005]. In keeping with the methodological approach developed in Section 3, accordingly, these were the two cases on which the argumentation analysis was carried out. The findings of the study of recurrent argument schemes and patterns are reported in the next sub-section.

4.2 Argumentation analysis: schemes and patterns at work

As a result of the careful scrutiny of the judicial opinions in *Ó Maicín v. Ireland et al.* and *Ó Murchú v. An Taoiseach et al.*, three main argument schemes were identified, i.e. causal argumentation, argument by analogy and pragmatic argumentation. The latter are illustrated here, where evidence is provided of both the argument structure they underlie and the variety of positions taken by the Supreme Court on the exercise of bilingual rights.

First of all, a scheme whose occurrence was pinpointed across the two cases was causal argumentation, whereby "the argument is presented as if what is stated in the argumentation is a means to, a way to, an instrument for or some other kind of causative factor for the standpoint or *vice versa*" (Van Eemeren and Grootendorst 1992: 97). In order to explain how the scheme unfolds, reference can be made to Hardiman J.'s opinion in *Ó Maicín v. Ireland et al*. The facts of the case were briefly as follows. The appellant, Peadar Ó Maicín, was an Irish citizen who lived in Galway, in the heart of the *Gaeltacht*, i.e. the largely Irish-speaking area of the Republic of Ireland. As he

got involved in a fight, he produced a broken whiskey bottle to intimidate a person, whereupon he was subsequently charged with two offences in the nature of assault. Because this is no minor offence under Irish law, trials for it must take place before a jury. The core element in the dispute quickly turned out to be language, since Mr Ó Maicín asserted a right that the trial should take place before a judge and jury capable of understanding him directly in Irish as his native language. In the Supreme Court, Hardiman J.'s opinion ultimately came down to the passage reported in (10) below:

(10) That is part of what is implied by the constitution of this State as a bilingual State, by Article 8 of the Constitution. If that is impractical, or really cannot be done for reasons of resources, or for any other reason, then the position may be addressed by the Oireachtas, pursuant to Article 8.3. But, absent such action by the Oireachtas, the bilingual nature of the State requires that the Tribunal of Fact understand the evidence as it is given. I believe that in any other State that proposition would be regarded as axiomatic, as it clearly is in Canada, on the basis of the information summarised elsewhere in this judgment. (Ó Maicín v. Ireland et al.)

In (10), an instance of causal argumentation can be noted, whereby the Irish Parliament's [*Oireachtas*] lack of action to change Article 8 of the Constitution is what causes Hardiman J. to believe that they are ultimately happy to stick to the letter of Article 8 and retain its substance. If the *Oireachtas* were unsatisfied with the scope and the implications of that constitutional norm, in other words, they would have changed it surely. To formalise Hardiman J.'s causal argument, Van Eemeren et al.'s (2007: 164) schematisation can be applied as in Figure 1 below:

[Figure 1 about here]

At the end of (10), Hardiman J. mentions Canada as solid proof that his causal reasoning axiomatically applies not just to Ireland, but to bilingual jurisdictions more generally. We may therefore take that as a basis to delve into the second widespread scheme detected in the analysis. That is argument by analogy, where "the argumentation is presented as if there were a resemblance, an agreement, a likeness, a parallel, a correspondence or some other kind of similarity between that which is stated in the argument and that which is stated in the standpoint" (Van Eemeren and Grootendorst 1992: 97). As we began to see above and best realise through (11), the analogy here is between Canada and Ireland, as far as the implementation of language policy is concerned:

(11) Particularly since the adoption of the Canadian Charter of Rights in 1982, Canada is a country very comparable to Ireland in legal terms and the decisions of its courts are increasingly cited to us by litigants including the Irish State itself. […] It is, therefore, more than interesting to consider the remarkable efforts of the Canadian State to be bilingual in practice as well as in theory even in parts of the country where there are very few, or virtually no, French speakers. […] If nothing else, it gives the lie to any suggestion that the convening of an Irish speaking judge would be "impossible". (Ó Maicín v. Ireland et al.)

In (11), the gist of the argument is that both countries are characterized by relatively large portions of the respective territories with only a few (virtually no) speakers of the *de facto* second language. In spite of that, however, Canada has always been successful in implementing bilingual policies. So therefore, by analogy, should Ireland be. By adapting Juthe's (2005: 19) model to this context, we are led to the schematization in Figure 2:

[Figure 2 about here]

The data reviewed so far reveal that every argument scheme develops with a specific structural organisation, as it were. Still, the analysis also indicates that taken together, schemes set argumentative patterns that define the overall structure of the argumentation. As is the case with Hardiman J., the argument structure is often one of multiple argumentation, where each scheme lends independent support to the same standpoint. In such a kind of complex argumentation, the arguments advanced do not need each other to achieve the outcome. Rather, "the only reason for undertaking a new attempt at defending the standpoint is that the previous argument has failed or that the arguer expects that it might fail" (Snoeck Henkemans 2003: 411).

In Hardiman J.'s reasoning, as of (10) and (11), causal argumentation (A1 in Figure 3 below) is advanced in the first place. A counterargument to the view that the *Oireachtas*' inaction copper-fastens the validity of Article 8 of *Bunreacht na hÉireann* may be formulated as follows: "Yes, but how can we expect bilingualism to be a reality in a country with such a lack of proficient speakers of the *de facto* second language?". This is where argumentation by analogy (A2 in Figure 3) steps in and consolidates the judge's own standpoint (S), which clearly is that the appellant is entitled to be tried before a judge and jury who will understand evidence given in Irish directly and without the assistance of an interpreter:

[Figure 3 about here]

Interestingly, the study of argument schemes and patterns suggests that there is a wide range of approaches taken by SCI Justices to bilingual rights. No doubt, the example of Hardiman J. underlies a strictly letter-of-the-law approach. This is consistent with what Byrne et al. (2014: 752) call a literal approach to constitutional interpretation, which prescribes that "courts remain faithful to the text of the material being examined and are thus not open to the criticism that they have

substituted their own personal or subjective judgment for a more objective determination". In brief, because Article 8 prescribes X, we shall do X.

That, however, is by no means the only position adopted by the court on language issues. In fact, no matter how well constructed, Hardiman J.'s opinion was eventually to remain a minority judgment in the *Ó Maicín* case. The opinion with the upper hand in responding to the appellant's claims was that by Clarke J., based on pragmatic argumentation as the third main scheme highlighted by the analysis. As Van Poppel (2012: 97) explains, in pragmatic argumentation "an action is advocated or discouraged, by using argumentation in which the writers refer to advantageous or disadvantageous effects of the action". Within Clarke J.'s opinion, the onset of the scheme is apparent in (12):

(12) If every member of the jury had to be able to understand legal matters in the Irish language without the assistance of an interpreter, most of the people of Ireland would be excluded. That would amount to a violation of Article 38.5 of the Constitution, as the Supreme Court explained it in the case of de Búrca v Attorney General [1976] I.R. 38 and the State (Byrne) v Frawley [1978] I.R. 326. (Ó Maicín v. Ireland et al.)

As the text shows, the judge is well aware of the constitutional basis for the appellant's representations. However, he points out, a literal interpretation of Article 8 is acceptable in so far as it does not collide with other norms of the Constitution. In more detail, Clarke J. argues that returning a verdict in favour of Mr Ó Maicín should be seen as a dispreferred course of action, because that would eventually lead to the adverse effect of violating Article 38.5 of the *Bunreacht*. In this article, the principle is laid down that juries ought to be broadly representative, i.e. they are to represent a fair cross-section of the Irish national community. That, Clarke J. contends, simply would not be possible in case of trial proceedings to be held in Irish by virtue of the sheer number

of proficient speakers of the language across the country. Following Van Poppel's (2012: 99-100) schematisation, what we observe in (12) is an instance of "Variant II" pragmatic argumentation, as depicted in Figure 4:

[Figure 4 about here]

The deployment of pragmatic argumentation in Clarke J.'s opinion suggests that a second approach may be implemented by the SCI other than the letter-of-law reading instantiated by Hardiman J., namely the 'harmoniser'. That is in keeping with what Byrne et al. (2014: 757) describe as a harmonious approach, which "requires the courts to interpret a provision in a way that is consistent with the 'general scheme' of the Constitution".

Evidence from the argumentative analysis documented here, finally, suggests that that the use of one or the other of the argument schemes does not invariably coincide with a single approach advocated by SCI Justices in bilingual matters. This is clearly demonstrated by Macken J.'s reasoning in *Ó Murchú v. An Taoiseach et al.*, where the role of causal argumentation within complex argument structures is to voice yet another view on constitutional interpretation, compared to Hardiman J.'s standpoint.

In this case, Pól Ó Murchú, a practising solicitor in Dublin and a fluent speaker of Irish, had among his clients many people who either wished to conduct transactions of a legal nature in Irish, or have a better ability for doing so in Irish. Essentially, he averred that he and his clients felt extremely disadvantaged by the conspicuous absence of legislation in the Irish language over the prior twenty years. Accordingly, he sought with his action an Order of Mandamus directing the appellants, for the future, to issue and provide an official version of all Acts of the *Oireachtas* and Statutory Instruments in the first official language. Alternatively, Mr Ó Murchú demanded at least an official translation on terms no less advantageous than the terms under which the official English

version or the official English translation was issued and provided, or that the same be made available simultaneously.

Macken J.'s opinion draws on the judgments by McGuinness and Hardiman JJ. in *Ó Beoláin v. Fahy*. It thus confirms the conclusion that a constitutional obligation arises for the appellants: that is providing to the respondent, in his capacity as a solicitor, all Acts and Rules of Court in the Irish language so soon as may be practicable – cf. *as soon as may be* in Article 25.4.4. of the Constitution – after they are published in English. Nonetheless, no obligation arises to provide an Irish version of such legal texts *simultaneously*. The key-passage in Macken J.'s judgment is reproduced in (13):

(13) Both judgments make it clear that the obligation to make available Irish versions of Acts of the Oireachtas must be fulfilled within a reasonable period of time, or as soon as may be practicable. No finding, however, is made in either judgment of an obligation to provide a version of an Act "simultaneously" or "at the same time". If it were the intention to do so, I consider it likely this would have been expressly stated. (Ó Murchú v. An Taoiseach et al.)

In (13), the SCI Justice's standpoint rests on two argument schemes. The first (A1 in Figure 5 below) is again causal argumentation: the fact that precedents never expressly state that the Irish-language version of legal documents must be made available at the same time as the English version, is the causative factor for the judge to infer that the Irish texts may be produced within a reasonable period of time.

Secondly (A2), the standpoint is reinforced through argumentation by definition, with a view to determining whether a certain period of time between the English and the Irish draft is 'reasonable' and 'practicable'. As is often pointed out in Irish courts, the latter is an ever thorny issue to be resolved in the light of contextual factors of various sorts, including the economic circumstances in which staff must be hired and high costs have to be incurred to produce the Irish-

language version of legal texts. And ultimately, in Macken J.'s own words summarising the appellants' pleading before the Court, "only the Government has the discretion to measure the rationality of that period" of time which elapses between enactment and translation.

Read in conjunction with each other, the above schemes offer an example of coordinative argumentation because they "constitute a single attempt at defending the standpoint", in so far as A2 is added to A1 "to overcome the doubt or answer the criticism that it is insufficient" (Snoeck Henkemans 2003: 410). In the case of (13), a potential doubt or rejection of causal argumentation might have been paraphrased as follows: "Alright, neither the Constitution nor case law mention 'simultaneity' as a criterion for translation. But does that not water down the State's duty to make such translation available, after all?".

[Figure 5 about here]

The argument structure in Macken J.'s opinion may be said to underlie an approach worth defining as 'the realist'. This reminds us of Morgan's (2001: 101) thoughtful consideration that "the democratic ideal requires that at the stage of selecting a judge [...] it should be asked whether s/he possesses an understanding of, and sympathy for, the needs and values of the wider society on which his judgments will impact". In other words, the State's constitutional duties stand firm, but courts should be sensitive to the socio-economic needs and perceptions of society at large. And in the context of global economic recession and a shrinking economy, that may well include contemplating the feeling that resources are for the time being best allocated otherwise than for providing costly translations of an ever vaster volume of legal norms from English into Irish.

5. Discussion and conclusions

The analysis in Section 4 provided a corpus and discourse basis for an adequate understanding of the main approaches taken by the Supreme Court of Ireland in cases centring on bilingualism and language policy. In particular, data showed the rich variety of the positions defended by individual judges (e.g., the minority judgment by Hardiman J. in *Ó Maicín v. Ireland et al.*) or eventually adopted by the whole of the SCI (cf. Clarke J.'s opinion in the same case). From strictly letter-of-the law approaches to highly flexible realist standpoints, one might almost feel tempted to hypothesise that the SCI's line of argument "gives rise to the suspicion that individual judges are willing to rely on any such approach as will offer adventitious support for a conclusion which they have already reached" (Kelly in Morgan 2001: 95). That, however, is the kind of conclusion it is safest to leave to legal scholars to make.

More cautiously, the methodology outlined in Section 3 and the whole of the findings reported above suggest that in the delicate task of investigating the discursive construction of constitutional identity, it is advisable to combine two main features. First of all, because identity may be hard to grasp and not necessarily "grammaticized or otherwise explicitly encoded across the world's languages" (Ochs 1993: 288), it is appropriate to resort to both quantitative corpus analysis and qualitative discourse-based perspectives, a bedrock principle of this work.

Discourse studies are generally preoccupied with whole, individual texts reflecting the social context of their production and reception (Charles et al. 2009). As such, their top-down perspective may only benefit from corpora as valuable exploratory and confirmatory tools. In this research, care was taken in designing a corpus as a flexible tool, where quantitative analysis was not to prevail over but rather be integrated with qualitative interpretation, as has now been fully appreciated in computer-assisted discourse studies (Partington et al. 2013). Their rigour lies in using large amounts of language to perceive patterns of co-occurrence, as was the case with phraseology in Section 4.1. These patterns can in turn be related to significant elements of context, e.g. the constitutional

framing of language issues in the Republic of Ireland, which pointed towards more restricted data sets to be usefully examined with a view to the SCI's reasoning tools.

The unprecedented scope and granularity allowed by corpus-assisted investigations are thus well balanced with the development of techniques helping analysts deal with the complexity of the large amounts of data they may be exposed to. This has been a strong motivation behind the qualitative analysis of argumentation performed by downsampling from the larger corpus, in response to growing pressure from "linguists wanting to adopt a corpus-based approach, but who wish to combine that with a more nuanced study of a smaller number of texts" (Gabrielatos et al. 2012: 171).

The multi-layered study undertaken here indicates that the SCI's constitutional identity as emerging in cases on language policy is indeed a rather sophisticated concept best explained in the light of Van De Mieroop's (2007) framework of identity construction. On the one hand, the recurrent phraseological patterns reviewed in 4.1 point to a shared institutional identity on the part of SCI Justices. That "refers to the social positioning of the speaker as a member of his organization" (Van De Mieroop 2007: 1121). In our case, the institutional identity highlighted by the study of phraseology is unquestionably that of judges as "defenders and exponents of the Constitution", as the late Adrian Hardiman (2010) himself argued in a guest lecture.

On the other hand, the schemes and patterns that variously correlate with each other to define multiple or coordinative argument structures were observed to underlie a plurality of professional identities. In Van De Mieroop's (2007: 1121) terms, professional identity is the one "speakers are constructing by presenting themselves as experts" within a community of practice. As such, it generally emphasises the speaker's thoughts and critical attitudes and in this research, it embeds the wide spectrum of approaches through which SCI Justices interpreted the constitutional text: from rigoristic views on language rights to forms of judicial pragmatism (Ó Conaill 2014) that

contextualise and possibly re-interpret the Constitution's letter with a view to several kinds of socio-economic needs, factors and perceptions (Section 4.2).

The agreed institutional identity and the diverse professional identities are complimentary and it is by taking them together that the SCI's overall constitutional identity may be more comprehensively understood. Whether there is actually a tendency on behalf of some of the judiciary "to err on the side of minimalist pragmatism rather than the strict legalist interpretation offered by Hardiman J." (Ó Conaill 2014) is a matter for jurists to debate. The corpus and discourse findings provided here lead to a broad notion of constitutional identity as a compound of "a plurality of identities" within the territorial space of the Irish jurisdiction (Law 2015: 84). In turn, this seems indicative of the need to revise the whole concept of national legal culture from simplistic monolithic views to a multi-faceted "argument [...] to protect the idea of cultural pluralism" (Comparato 2014: 9) in judicial practice.

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Table 1. Most frequent lexical bundles in the *SCILang_Corpus* and related frequency

Bundle	Freq. (raw)	Freq. (1,000 words)	Bundle	Freq. (raw)	Freq. (1,000-words)
of the Constitution	462	1.29	in relation to	222	0.62
of the State	326	0.92	of the Irish	216	0.61
the Irish language	320	0.89	in respect of	196	0.55
the High Court	298	0.83	of the Act	172	0.48
in this case	252	0.71	the use of the	168	0.47

Table 2. Main phraseological patterns of bundles (I)

Phraseological patterns
a) grounded on …right(s) acknowledged in Article X *of the Constitution* derive from contained in
b) …imperative force of the …deriving from the Constitutional obligation *of the State* …the specific …the general
c) …cannot, within …amount to a violation of the terms *of the Constitution* …inconsistent with
d) …, as required by …, as emanating from …, as expressed in Article X *of the Constitution* …, as provided by …, as found in

Table 3. Main phraseological patterns of bundles (II)

Phraseological patterns			
e)	…the first official language	*of the State*	cannot be excluded from any part of the public discourse of the nation or any of its emanations
f)	…the State is bound to do everything within its sphere of action to establish and maintain	*the Irish language*	in its status as the National language
g)	None of the organs	*of the State*	legislative, executive or judicial may derogate from the pre-eminent status of the Irish language as the National language of the State without offending against the constitutional provision of Article 4.
h)	…primary position …unique and paramount position …primacy …promote the use	of	*the Irish language*
i)	…establish …derived from		

…derogate from	the	pre-eminent (constitutional)	of	*the Irish language*
…qualify		status		
…downgrade				

Y is true of X Where Y: Sticking to the letter of Article 8

because Z is true of X Z:Lack of action to change the wording or

and Z leads to Y the substance of Article 8

X:The *Oireachtas*

Figure 1. Causal argumentation in Hardiman J.'s opinion in *Ó Maicín v. Ireland et al.*

(1)	A has x.	Where A: Canada; B: Ireland;
(2)	B has x.	x: Large portions of territory with few (no)
	Notwithstanding x, A is P.	speakers of the *de facto* second language.
	Therefore, B ought to be P.	P: Successful in implementing bilingualism.

Figure 2. Argumentation by analogy in Hardiman J.'s opinion in *Ó Maicín v. Ireland et al.*

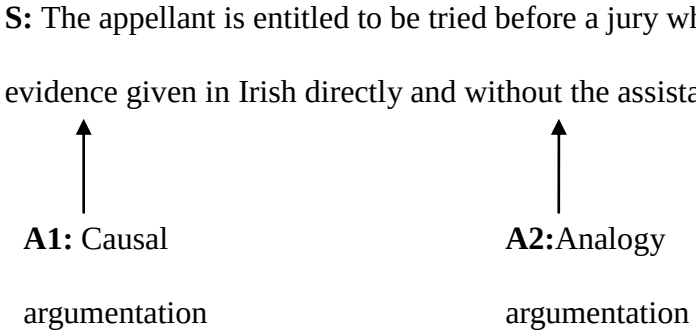


Figure 3. Multiple argumentation in Hardiman J.'s opinion in *Ó Maicín v. Ireland et al.*

1 Action X should not be performed

1.1a Action X leads to Y

1.1b Y is undesirable

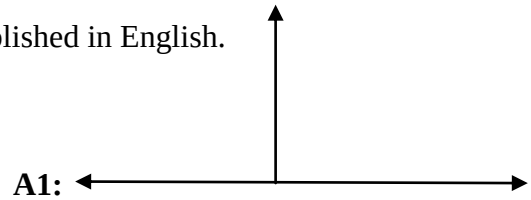
1.1a-1.1b' (If Action X leads to Y and Y is undesirable, then Action X should not be performed),

Where: X: Settling the dispute in favour of the appellant;

Y: Breach of Article 38.5 of the Constitution

Figure 4. Pragmatic argumentation in Clarke J.'s opinion in *Ó Maicín v. Ireland et al.*

S: There is a constitutional obligation to provide to the respondent an Irish-language version of legislation not simultaneously, but so soon as may be reasonable and practicable after they are published in English.



A1: **A2:**

Y is true of X
because Z is true of X
and Z leads to Y

Where Y: No simultaneity is required to make sure the Irish-language version of the law is available;
Z: No mention is made of simultaneous translations;
X: Relevant case law.

[a. It is up to the Government to determine what period of time is Q for P to be available;
[b. In the light of the circumstances of the past few years, the Government determined that P ¬ Q;]
c. P ¬ Q (therefore ¬ R).

Where P: A quicker translation;
Q: 'Reasonable' and 'practicable';
R: Government committing an infringement

Figure 5. Coordinative argumentation in Macken J.'s opinion in *Ó Murchú v. An Taoiseach et al.*