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Legal Linguistic Knowledge and Creating and Interpreting Law in Multilingual Environments

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LEGAL LINGUISTIC KNOWLEDGE AND CREATING AND INTERPRETING LAW IN MULTILINGUAL ENVIRONMENTS

Tarja Salmi-Tolonen[*]

INTRODUCTION

The last two decades have witnessed what has come to be known as a *linguistic turn* in a number of disciplines. The fact that Brooklyn Law School has a Center for the Study of Law, Language and Cognition is evidence that the importance of language and the need for linguistic knowledge is recognized in law, as particularly proven by Professor Solan in his publications.[1] In this article I attempt to cast light on the interplay between language and law in legal discourse. This I will do basically in the Finnish and European context.

I see law and all legal activity as communication and I call my approach proactive. This designation draws on the approach to preventive law taken by a group of Finnish researchers and legal practitioners known as *proactive law*.[2] The aim is to emphasize the options lawyers have in helping their clients

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1. I would particularly like to mention LAWRENCE M. SOLAN, THE LANGUAGE OF JUDGES (1993); LAWRENCE M. SOLAN, *Ordinary Meaning in Legal Interpretation*, *in* POHJOIS-SUOMEN TUOMARIKOULU [The Judicial Academy of Northern Finland] (2001).

2. *See, e.g.,* ENNAKOIVA SOPIMINEN [Proactive Contracting] (Soile Pohjonen ed., 2002) (an English edition of this book, complemented with new articles by U.S. legal scholars, is in preparation and forthcoming). *See also* SOILI NYSTÉN-HAARALA, LONG-TERM CONTRACTING: CONTRACT LAW AND CONTRACTING (1998); Seminar: *Future Law, Lawyering, and Language: Helping People and Business Succeed* (May 12-13, 2003), organized by the Research Project of the Academy of Finland, The University of Lapland Website, *at* http://www.ulapland.fi/?deptid=13095.

not just to avoid conflicts, but also to enable them to succeed in their undertakings. The first and foremost purpose of legal linguistics is to look forward and see how linguistic methods can help legal professionals at the various stages of their careers.

Although the importance of language and the fact that law and language are intertwined has been acknowledged by legal scientists and practicing lawyers,[3] the benefits that linguistics and linguistic methods offer have not yet been realized to their fullest potential. Research and development of linguistic investigation has mostly been overlooked and is sometimes misunderstood despite the impressive body of research published over the years.[4] Perhaps one reason for this result is an insufficient operationalization of the findings. I will mention some points that I believe to be misconceptions as the paper develops.

It has been said that both law and words are mysterious. We need to demystify them both. Some of the concerns in interpreting statutes in a foreign legal context involve the invisible[5] and opaque[6] parts of the relevant legislation. These concerns are

3. *See generally* H.L.A. HART, THE CONCEPT OF LAW (1961); V.K. Bhatia, *Cognitive Structuring in Legislative Provisions*, *in* LANGUAGE AND THE LAW 136–55 (John Gibbons ed. 1994); F. BOWERS, LINGUISTIC ASPECTS OF LEGISLATIVE EXPRESSION (1989); DENNIS KURZON, IT IS HEREBY PERFORMED...EXPLORATIONS IN LEGAL SPEECH ACTS: PRAGMATICS & BEYOND VII 6 (1986); Tarja Salmi-Tolonen, *On Some Syntactic Features of European Community Law English*, *in* FROM OFFICE TO SCHOOL: SPECIAL LANGUAGE AND INTERNATIONALISATION (C. Lauren & M. Nordman eds., 1989) [hereinafter Salmi-Tolonen, *On Some Syntatic Features*].

4. *See* Salmi-Tolonen, *On Some Syntatic Features*, *supra* note 3.

5. By invisibility I mean the hierarchy of norms in a given legal order, as is demonstrated in the international arbitration context. For instance, it is not visible at the outset that in Finland several norms and provisions have to be taken into consideration while interpreting the Finnish Arbitration Act 1992. *See generally* Statute Book of Finnish Law, *available at* http://www.finlex.fi/.com.

6. An example of opaqueness can be found in the Arbitration Act §10:

> An arbitrator may be challenged by a party, if he would have been *disqualified to handle the matter as a judge, or if circumstances exist that give rise to justifiable doubts as to his impartiality or independence.*

Finnish Arbitration Act 1992 (emphasis added). The implicit reference here is to Section 13 of the Code of Judicial Procedure, which specifies the provisions for disqualifying judges. The *travaux préparatoir* do not enlighten us as to what practical significance this amendment has to arbitrators' disqualification or other circumstances that could cause justifiable doubts as to make them

also closely related to the choice of law and/or language. International arbitration is a good illustration of this relationship.[7] If we presume that invisible and opaque parts in statutes exist, it logically follows that there are also parts of legislation that are transparent and open to interpretation.

The structure of the presentation will be as follows: First, in Section I, I will provide a short description of legal linguistics and detail its potential use in statutory interpretation. In Section II, I will try to cast some light on the situation as it exists in Finland, a bilingual country. I will briefly explain the development, background and context of Finnish legislation, including its judicial and legal language. Section III discusses issues that exist in a supranational setting. Section IV will discuss issues that arise under international law. All these issues will be discussed from both the point of view of legal linguistics and a civil law country and either a bilingual or multilingual legal environment.

I. LEGAL LINGUISTICS

The purpose of legal linguistics is to study the language of the law, in all its forms,[8] and its development and usage in order to create new knowledge of the interplay between language, law and society. This body of knowledge should grow through sys-

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partial or dependent. *See* Tarja Salmi-Tolonen, *Invisibility-Opaqueness-Transparency: Clearing Vision in the Context of Arbitration*, a paper read at the Law and Language in International Arbitration, A GILD-MMC International Conference, October 2-4, 2003, City University of Hong Kong (on file with Author). For a discussion on the hierarchy of laws in Finland, see Pekka Timonen, *Sources of Law and Material on Sources of Law, in* AN INTRODUCTION TO FINNISH LAW (J. Pöyhönen ed., 2002) (on file with Author).

7. Finland has filed declarations under Articles 92 and 94 of the Convention on Contracts for the International Sale of Goods (CISG); therefore, where the Finnish Commercial Code and CISG apply, Finland is not bound by Part II of the Convention (Formation of the Contract). If, however, a Finnish company enters into a contract with, say, a French company and they agree that French law applies, the parties would be bound by Part II of the CISG, since France has made no declarations or reservations. *See* Pace Law School Institute of International Law, CISG Database, *at* http://cisgw3.law.pace.edu/cisg/countries/cntries-Finland.html.

8. *See* Dennis Kurzon, *Language of the Law and Legal Language*, *in* SPECIAL LANGUAGE: FROM HUMANS THINKING TO THINKING MACHINES 283–90 (Christer Laurén & Marianne Nordman eds., 1989) (discussing terminology).

tematic academically approved methods; only then can it proactively serve in legal training and society in general.

A. Popular Misconceptions

Statues and other subgenres of legal language are often required to comply with standards such as unambiguity, clarity and comprehensibility. These requirements, at least in Finland, are repeated again and again, especially in the guidelines given to drafters.[9] What is harder to find is an attempt to operationalize these requirements. All three – unambiguity, clarity and comprehensibility – are subjective qualities which depend on the given audience. I will discuss each of these requirements in turn and try to cast some light on the issues.

In the 1970s, broad-based criticism resulted in revisions of public and administrative language use in Finland and elsewhere in Scandinavia.[10] Since then, membership in the EU and the general juridification[11] of society, or an elaboration of the substance of law, have brought along new problems.[12] In the case of Community Law, overworked translators often receive the blame for incomprehensible texts.[13] Occasionally this criti-

9. *See*, *e.g.*, DEPARTMENT OF JUSTICE, LAINLAATIJAN OPAS [Guidelines for Legal Draftsmen] (1996).

10. *Cf.* KIELI JA VIRKAKONEISTO, VIRKAKIELIKOMITEAN MIETINTÖ [COMMITTEE MEMORANDUM: LANGUAGE AND PUBLIC OFFICE, MEMORANDUM OF THE LANGUAGE IN PUBLIC OFFICE COMMITTEE] (1981). This committee's assignment was to propose how the comprehensibility of the documents, decisions and other texts given by civil servants to the general public could be improved. *Id*.

11. *See generally* Hanneke van Schooten, *Instrumental Legislation and Communication Theories*, *in* SEMIOTICS AND LEGISLATION: JURISPRUDENTIAL, INSTITUTIONAL AND SOCIOLOGICAL PERSPECTIVES 185–211 (Hanneke van Schooten ed., 1999).

12. A welfare state, even a Nordic welfare state, very open and free in principle, is by definition an "intervention" state. Intervention in this case is both quantitative and qualitative. It has become necessary to regulate areas of people's lives which in a democracy would otherwise be left for self-regulation, for the purposes of executing the distributive law. *Cf. supra* note 11.

13. Aino Piehl, *The Influence of EC Legislation on Finnish Legal Language: How to Assess it?*, *in* THE DEVELOPMENT OF LEGAL LANGUAGE (Heikki Mattila ed., 2002); PIRJO KARVONEN, SUOMI EUROOPPALAISESSA KIELIYHTEISÖSSÄ (1996); KOULUTUS-JA TIEDEPOLITIIKAN LINJAN JULKAISUSARJA NRO 42. OPETUSMINISTERIÖ, HELSINKI [FINLAND IN THE EUROPEAN LANGUAGE COMMUNITY. EDUCATION AND SCIENCE POLICY PUBLICATIONS. NO. 42.].

cism may be justified, but more often than not, the criticism is misdirected for reasons, which to my mind, spring from the lack of understanding of the complex interplay between different sources of knowledge.

The quality of draft bills hit the headlines once again in Finland at the beginning of the year 2003.[14] The President of the Republic, Mrs. Tarja Halonen, had already reopened the discussion in her presidential address at the opening of the 2001 annual session of Parliament on February 2, 2001[15] by pointing out that ambiguously written laws may jeopardize citizens' basic rights. When Parliament[16] was finishing its work before the forthcoming parliamentary election in March 2003, the Parliamentary Spokeswoman, Mrs. Uosukainen,[17] reprimanded the ministries because of the poor quality of legal writing.[18] This resulted in Parliament having to rewrite the texts in its sessions.[19] Mrs. Uosukainen referred in particular to the motor vehicle tax law that was hurriedly passed before Parliament was dissolved.[20]

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14. Martta Nieminen, *Uosukainen: Drafting Laws at the Ministries is of Poor Quality*, HELSINGIN SANOMAT, Jan. 10, 2003, at A6 (explaining that it is unacceptable that Parliament has to rewrite the laws and that Uosukainen demands that the problem be made an issue at the negotiations for the new government).

15. Mrs. Halonen said: "Nevertheless, the increased volume of legislation has justified our asking whether laws give citizens a clear picture of their rights. The Parliamentary Ombudsman has on numerous occasions drawn attention to the obfuscatory text of legislation, something that can easily lead to a loss of entitlements. Especially those laws that apply to us all should be couched in such clear language that they can be taught to young people, even at school." Address by President of the Republic Tarja Halonen at the Opening of the 2001 Annual Session of Parliament on Feb. 2, 2001, *available at* http://www.presidentti.fi/netcomm/news/showarticle.asp?intNWSAID=9590&LAN=ENG&intSubArtID=6243.

16. Parliament is a unicameral body whose main function is to pass legislation. *See* Parliament of Finland Website, Parliament as a Legislative Body, *at* http://www.eduskunta.fi/efakta/esite/englanti/eesit_03.htm. *See also* The Ministry of Justice website, *at* http://www.om.fi/711.htm.

17. Mrs. Uosukainen has a degree in Finnish language and was a teacher of Finnish before she embarked on a political career. *See* Virtual Finland Website, Election 2000, *at* http://virtual.finland.fi/elections/president2000/english/uosukainen.html.

18. *Cf.* Nieminen, *Drafting Laws*, *supra* note 14.

19. *Cf. id.*

20. The New Act was necessary for implementing EC legislation. The issue was the cause of much public discussion because the motor vehicle tax in

The discussion continued and several members of the judiciary took part in it, among them the President of the Supreme Administrative Court.[21] The Ministry of Justice claimed that written laws were ambiguous because the drafters were young, the schedules were tight, and drafting was not taught at the universities.[22] A committee was then set up to make suggestions for improving the quality of drafting.[23] To my mind, no committee can necessarily improve the quality of drafting unless the relationship between language and the law is better understood.[24] In Finland, unlike in Canada, translators or other

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Finland has been very high and consequently purchasing a vehicle is very expensive. For an example of a recent case on the motor vehicle tax, see Case C-101/00, Tulliasiamies v. Siilin (Sept. 19, 2002), *available at* http://curia.eu.int/jurisp/cgi-bin/form.pl?.

21. Teuvo Arolainen, *The President of the Supreme Administrative Court Reprimands Legal Drafters*, HELSINGIN SANOMAT, January 7, 2003.

22. *Id. See also* Jukka Perttu, *Rissanen: Drafting Must be Improved*, HELSINGIN SANOMAT, January 14, 2003, at A6. Mrs. Kirsti Rissanen LL.D., as Permanent Secretary to the Minister of Justice, manages the work at the Ministry. Mrs. Rissanen is annoyed with the criticism directed at legal drafting. She argues for the establishment of a new checking point for the bills drafted and suggests that legal drafting should be taught at law schools. In the author's experience, optional courses are organized and taught by experienced drafters from the ministries. For example, Professor Matti Niemivuo of the University of Lapland has for years worked as a legislative counsel at the Ministry of Justice and has taught courses in legal drafting at the University of Lapland, Faculty of Law. However, even if drafting is learned by apprenticeship, what is true for other skills is true for drafting: without knowledge there is no skill. It should also be noted here that the Finnish basic law degree, the LL.M., at present takes on average six years to complete and provides similar qualifications to all students. Most graduates take a year's trainee period at the district court (the court of first instance); the students can then add training on the Bench after their LL.M. At present, a degree reform, often referred to as the Bologna process, is being planned in all European Union Member States and will bring a two-tier (3-year bachelor's plus 2-year master's) degree to Finnish Universities; this will also include law degrees. *See* Doug Payne, *The Bologna Process: The Slow Path to a European Higher Education Area*, The ELSO Gazette, Issue 17 (December 2003), *at* http://www.the-elso-gazette.org/magazines/issue17/features/features3.asp.

23. PAREMPAAN LAINVALMISTELUN SUUNNITTELUUN JA JOHTAMISEEN, KANSLIAPÄÄLLIKKÖTYÖRYHMÄN KEHITTÄMISEHDOTUKSET, VALTIONEUVOSTON KANSLIAN JULKAISUSARJA, AUG. 2003 [TOWARDS BETTER PLANNING AND MANAGING OF DRAFTING BILLS, HEADS OF DEPARTMENTS' PROPOSALS, PRIME MINISTER'S OFFICE'S PUBLICATIONS AUG. 2003], *available at* http://www.vnk.fi/.

24. According to Markku Tyynilä, Head of Office at the Ministry of Justice, improving the quality of draft bills is an ongoing project. A committee estab-

language experts are not invited to join in at any stages of the drafting process.[25] This means that the linguistic expertise of the ministries is neither recognized nor put to use in its full capacity. In other words, even in a bilingual country the co-drafting principle is not observed.[26]

Clear, unambiguous, comprehensible statutory writing is the ideal often mentioned. The qualities required are qualities of language. However, if language is seen as separate from the content of the provisions, a finishing coat of polish to be added afterwards, we do not have much hope in the near future. Revision alone does not guarantee lucid laws.

Proactive work is needed in order to clarify and demystify language and law. However, this clarification is possible only if we understand that the connection between language and legal reality is epistemic. In order to understand and ask relevant questions about this common epistemological ground, it is necessary to cross traditional boundaries between disciplines. David Mellinkoff's seminal work,[27] first published in 1956, lists the features that allegedly cause comprehension difficulties in English statutory language.[28] Those features are well known to the readership and I will not go into them in detail, but will discuss some that I consider more or less universal in the Western legal languages.

1. Long Sentences

Long sentences imply complex syntactic structure with several main and subsidiary clauses. It is true that sentences in legal texts are longer than in other text types.[29] However, the

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lished on Oct. 26, 2001, chaired by Tyynilä, handed in new guidelines for ministries for drafting government proposals. *See* The HELO Committee Report on Sept. 15, 2003, *available at* http://www.om.fi/21716.htm.

25. A legislative counsel at the Ministry of Justice confirms this result. *See* Sten Palmgren, *Legal Swedish and Legal Finnish*, *in* THE DEVELOPMENT OF LEGAL LANGUAGE: PAPERS FROM AN INTERNATIONAL SYMPOSIUM HELD AT THE UNIVERSITY OF LAPLAND, 153–63 (Heikki Mattila ed., 2000).

26. *Cf.* SUSAN ŠAR EVI , NEW APPROACH TO LEGAL TRANSLATION (1997).

27. *See generally* DAVID MELLINKOFF, THE LANGUAGE OF THE LAW (1963).

28. *See id.* at 399–454.

29. *See* C.L. Barber, *Some Measurable Characteristics of Modern Scientific Prose*, *in* CONTRIBUTIONS TO ENGLISH SYNTAX AND PHILOLOGY 21–43 (Frank Behre ed., 1981). *See also* Marita Gustafsson, *Some Syntactic Properties of*

length of statutory sentences serve certain purposes.[30] There are rhetorical and functional reasons for the structure of the sentences.[31] Despite these justifications for longer sentences in legal texts, one must inquire whether shorter sentences may be more beneficial. However, a number of studies[32] have shown that a syntactically simple structure is always connected to complex semantic content and high lexical density and therefore may support the argument of the necessity of the long sentence.[33] High lexical density refers to a large number of content words and terms of art, denoting specialized concepts.[34] Consequently, there is very little redundancy in the text which makes the meaning hard to process. Form and function are inseparable and therefore legislative texts cannot be improved merely by decreasing the number of words per sentence.

Professor Gunnarsson conducted an interesting experiment of a kind which, as far as I know, has not been repeated since.[35] To give a brief summary of her study, she gave a rather complex piece of legislation, the Act on the Joint Regulation of Working Life, to a test group first to read and then to act upon. She found that the text surface did not affect the functional comprehensibility. The results showed that the variable that most affected the results was not the complexity of the text but the

English Law Language, in PUBLICATIONS OF THE DEPARTMENT OF ENGLISH, THE UNIVERSITY OF TURKU No. 4 (1975).

30. For instance, sentences are autosemantic minitexts that are coherent and thus help the reader to connect related provisions. *See* Salmi-Tolonen, *On Some Syntatic Features*, *supra* note 3. For a discussion on the concept of minitexts, see J.E. GRIMES, THREAD OF DISCOURSE (1975).

31. *See, e.g.,* V.K. BHATIA, AN APPLIED DISCOURSE ANALYSIS OF ENGLISH LEGISLATIVE WRITING 26–32 (1983).

32. *See, e.g.,* M.A.K. HALLIDAY & RUQAIYA HASAN, LANGUAGE, CONTEXT, AND TEXT: ASPECTS OF LANGUAGE IN A SOCIAL-SEMIOTIC PERSPECTIVE (Oxford 1989) (1985).

33. *See generally* M.A.K. HALLIDAY, AN INTRODUCTION TO FUNCTIONAL GRAMMAR (1985); M.A.K. HALLIDAY & RUQAIYA HASAN, COHESION IN ENGLISH (1976).

34. *See A Brief Introduction to the Work of M.A.K. Halliday and Systemic-Functional Linguistics*, *at* http://language.la.psu.edu/tifle2002/halliday.html ("Lexical density is the ratio of lexical, or content, items to grammatical items in a text; it's a measure of information density. The more words that carry content and terms of art that denote specialized concepts, the higher the lexical density is, and less redundant the text.").

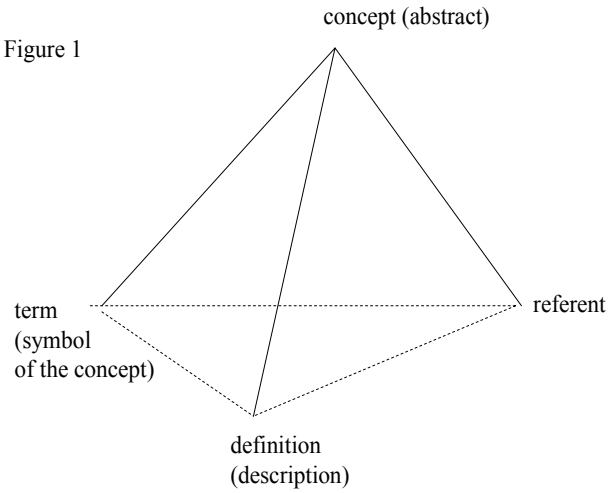
35. B.L. GUNNARSSON, FUNCTIONAL COMPREHENSIBILITY OF LEGISLATIVE TEXTS: EXPERIMENT WITH A SWEDISH ACT OF PARLIAMENT 71–105 (1984).

previous amount of knowledge and experience the test group had.[36] Similar kinds of results have been drawn from testing technical instructions and manuals.[37]

2. Lexical Semantics

Generally, lexical semantics is the study of words and their meanings. In this Article, I will discuss lexical semantics with respect to words in legal texts. It goes without saying that terms of art and linguistic symbols of concepts in a special field have a special meaning, which is clearly defined within the special field in question. A tetrahedral figure used in terminology work, for instance, illustrates and clarifies the arbitrary relationship between an abstract concept, its term or designation, its definition and the external real world object, if any.

Figure 1



The dashed lines indicate that the connections are arbitrary. The connections between the abstract concept which exists only in the mind and the real world referent and the linguistic symbol are arbitrary and are based on agreement or consensus.[38]

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36. *Id.* at 91–99.

37. *See, e.g.,* LEENA SALMI, DOCUMENTS MULTILINGUES POUR LOGICIELS ET UTILISABILITÉ [MULTILINGUAL DOCUMENTS FOR SOFTWARE AND USABILITY] (2003).

38. This concept of the arbitrary relationship between a word and its meaning and referent has been ascribed to Ferdinand de Saussure, a Swiss

What is often forgotten in lexical semantics is that language is not separate from its users and the communicative situations. Meaning is more a consequence of words and phrases than of their inherent quality.[39] Moore and Carling point out that words are not containers, whose contents are transferred unaltered from one person to another.[40] The interpreters do not get information from an expression as such but use the expression in order to have access to information and knowledge they already possess. Thus, the purpose of language is to draw the meaning out of the interpreter. The interpretation and meanings are therefore always to some extent subjective.

An illustrative case in Finland concerned the Supreme Court's decision on the meanings of the words 'tool', 'implement' and 'instrument' (*työkalu* or *työväline* in Finnish).[41] The basic question was whether a motor vehicle was a taxi driver's tool. According to the Execution Act, Chapter 4, Section 5, Subsection 1:3, the debtor's necessary tools shall be exempt from seizure irrespective of their value.[42] Therefore, the question was whether the taxi driver's motor vehicle was such a necessary tool. The Supreme Court repealed the decisions of the District Court and the Court of Appeal who had come to the same conclusion and ordered the vehicle to be returned to the taxi driver. The Supreme Court ruled that a vehicle was indeed a taxi driver's 'tool,' despite the interpretation by the execution officer (who had seized the taxi driver's vehicle due to unpaid taxes). The Supreme Court justified its decision by stating that the amount of back taxes was so excessive that it was not possible for the taxi driver to earn that amount of money even if he had the vehicle. The value of the car was nowhere near the amount of money needed to cover his back taxes, but the decision of the execution officer was to stay in force.

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linguist, and his famous work, COURS DE LINGUISTIQUE GÉNÉRALE, published posthumously in 1916.

39. TERENCE MOORE & CHRISTIE CARLING, LANGUAGE UNDERSTANDING: TOWARDS A POST-CHOMSKYAN LINGUISTICS 11–12 (1982).

40. *Id.*

41. KKO: 2001:100 (Oct. 10, 2001). The Supreme Court is the court of last resort in Finland. *See* CODE OF JUDICIAL PROCEDURE, THE STATUTE BOOK OF FINLAND, *available at* http://www.finlex.fi/lains.

42. *See* Statute Book of Finland, The Execution Act, chpt. 4, §5(1:3), *available at* http://www.finlex.fi/lains.

In a more recent case, *Mikopa Oy and Turvaura Oy vs. Suomen Autokatsastus Oy*,[43] the Supreme Court will have to resolve whether "safety groove"[44] was a general noun or a proper name. If it were a proper name, it would then be a protected trademark.[45] In 2001 in *Suomen Autokatsastus Oy vs. Turvaura Oy* before the Market Court, the respondent, Turvaura Oy who held a patent to the method, had in their marketing campaign referred to the misleading marketing of competitive products and the results of misuse the respondent had obtained in their testing of the product. The advertisement mentioned the product "Prosecur-urat" which is the product Suomen Autokatsastus Oy sells. The government owned company, engaged in statutory motor vehicle inspection and testing,[46] and Turvaura had previously worked in cooperation and Autokatsastus had marketed the product in this manner prior their separation. The Market

43. Mikopa Oy & Turvaura Oy vs. Suomen Autokatsastus Oy, MT:2001:012 (Aug. 6, 2001) , *available at* http:www.oikeus.fi/markkinaoikeus /tulostus/11467.htm. Leave to appeal has been granted by the Supreme Court S2002/841 according to the registrar of the Supreme Court (April 29, 2004).

44. *Turvaura* [safety groove] is a Finnish innovation involving the grinding of grooves three millimetres deep into the glass of a car windscreen, which helps keep the windscreen wipers clean by knocking off snow, ice, and other particles each time the wipers pass over them. *See* Tuomo Pietilainen, *The Supreme Court Will Rule on the Use of the Word Turvaura' (safety groove)*, HELSINGIN SANOMAT, Aug. 19, 2003.

45. *See* Mikopa Oy & Turvaura Oy vs. Suomen Autokatsastus Oy, MT:2001:012 (Aug. 6, 2001), *available at* http:www.oikeus.fi/markkinaoikeus/ tulostus/11467.htm.

46. For a discussion of motor vehicle inspection and testing, see The Statute Book of Finland, Decision of Ministry of Transport and Communications on Licenses for Roadworthiness Tests for Vehicles, 202/1999, Finnish Legislation Online Data Base, *available at* http://www.finlex.fi/lains. The inspection is operated by government-owned Finnish Motor Vehicle Inspection Ltd. and independent licensed operators. Motor Vehicle Act 1090/2002, ch. 6, § 53. The annual vehicle inspection is a regularly performed inspection of registered motor vehicles, in which the general condition of the vehicle and any information recorded in the vehicle registration are examined. The annual inspection date for vehicles and trailers over 3,500 kg in total weight is determined by the date taken into use as recorded in the vehicle registration. *See* The Government Decree on the Roadworthiness Tests for Motor Vehicles 1245/2002, The Finnish Vehicle Administration AKE, *available at* http://www.ake.fi. Vehicle registration is based on the Road Traffic Act 267/1981 (last visited Apr. 2, 2004); Motor Vehicle Registration Act 1100/1998; and Motor Vehicle Registration Decree 1598/1995, *available at* http://www.finlex.fi/lains (last visited Apr. 2, 2004).

Court found that Turvaura Oy had not proven that Autokatsastus had advertised in such a manner that would constitute a breach of competition laws and whether it misused the protected trade mark.[47] The Market Court decided in favor of the claimant because the respondent had used allegations in its marketing which were against good business manner.[48]

The owner of the protected trademark also took the case to the District Court of Helsinki and appealed to the Court of Appeals after the District Court's decision that the trademark had deteriorated to the extent that it had become an everyday word instead of a proper name.[49] The Court of Appeals did not change the decision and the owner then applied for and was granted leave to appeal to the Supreme Court.[50] An interesting feature here is that the District Court in its justification relied strongly on the fact that the word "*turvaura*" had been entered into the Finnish Language Basic Dictionary[51] in 1994.[52]

Often, as in this case, it is not a term, not even a legal term, or the linguistic symbol of a special field concept, but a word, the linguistic symbol of a general language concept, that is interpreted by a court. In *Turvaura*, in a manner of speaking, the Supreme Court will have to decide whether the linguistic symbol is a word or a term. As was mentioned above, the answer is in the usage of the symbol. If it is used in a restricted special field context with a strictly defined meaning, it is a term.

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47. Mikopa Oy & Turvaura Oy vs. Suomen Autokatsastus, Oy, MT:2001:012 (Aug. 6, 2001).

48. Market Court rulings in competition and public procurement cases are subject to appeal to the Supreme Administrative Court. In market law cases, the procedure is governed by the provisions of the Act on Certain Proceedings before the Market Court and the Code of Judicial Procedure. Market Court rulings in market law cases may be appealed to the Supreme Court if the latter grants leave to appeal. *See* The Statute Book of Finland, The Market Court Act, *available at* http://www.finlex.fi/lains.

49. *See* Mikopa Oy & Turvaura Oy vs. Suomen Autokatsastus Oy, MT:2001:012 (Aug. 6, 2001).

50. *Id.*

51. SUOMEN KIELEN PERUSSANAKIRJA OSA II (Risto Haarala et al. eds., 1994); KOTIMAISTEN KIELTEN TUTKIMUSKESKUKSEN JULKAISUJA [FINNISH LANGUAGE BASIC DICTIONARY, PUBLICATIONS OF THE RESEARCH CENTRE OF THE DOMESTIC LANGUAGES OF FINLAND].

52. This Finnish case bears similarities to an internationally better known case that *Sony* lost in Austria about *Walkman*.

B. The Audience of Legal Texts

Legislative text, as any kind of legal text, is always dialogic in a very explicit sense and not only in the Bakhtinian[53] implicit sense. The text is clearly addressed to someone and engages in discussion with several other texts and their writers. The audience of legal texts can also be described, in terms suggested by Fleck,[54] as exoteric (outsiders), a group constituted by, for instance, the parties of a particular case who are not legal professionals.[55] The parties, *i.e.* the exoteric groups, are represented in legal contexts by the esoteric group (insiders) who are legal professionals. Tuori has pointed out that there are visitors in the legal field whose conflicts are translated into a language different from their own and the solution of their conflicts is taken out of their hands.[56] This can be taken as criticism in any democracy. In addition, in the case of litigation there are the members of the Court, who naturally belong to the insiders. Furthermore, as in all legal communication, there is the legislator, abstract and impersonal, who is the party who sends the message, i.e., a statute, but who does not necessarily ever actually receive explicitly the message sent in return, but is nevertheless one of the receptors.[57]

The function of the text varies depending on the audience. To those directly involved, whether esoteric or exoteric, a statutory text is informative, expository, and directive. However, to those who are not directly involved, a statutory text is first expository and informative and only secondarily, in case they should in some future occasion or case be acting in a different role, directive. For instance, the international United Nations Commission on International Trade Law ("UNCITRAL") Model Law[58] provides a detailed account of rules and proceedings which

53. *Cf.* MARTINA BJÖRKLUND, MIHAIL BAKHTIN [Handbook of Pragmatics] (Jef Verschueren, Jan-Ola Östman & Jan Blommaert eds., 1995).

54. LUDWIK FLECK, GENESIS AND DEVELOPMENT OF A SCIENTIFIC FACT (1979).

55. *Id. at* 111–12.

56. Kaarlo Tuori, *Law, Power and Critique, in* LAW AND POWER: CRITICAL AND SOCIO-LEGAL ESSAYS 7, 14 (Kaarlo Tuori et al. eds., 1997).

57. *See* Anna Trosborg, *Contracts as Social Action, in* THE CONSTRUCTION OF PROFESSIONAL DISCOURSE 54–57 (B.L. Gunnarsson et al. eds., 1997).

58. UNCITRAL Model Law on International Commercial Arbitration (1985), *available at* http://www.uncitral.org/english/texts/arbitration/ml-arb.htm.

functions to harmonize and improve the national laws; accordingly, its function is descriptive and expository.[59]

According to Kerbrat-Orecchioni,[60] who has categorized communication as involving presence/non-presence and speaking/non-speaking, most written texts are addressed to a non-present and non-speaking audience.[61] Statutory texts have an audience that might fall into any of these four categories, according to the audience's presence or non-presence, and the audience being speaking or non-speaking. Legislation has what might be called a primary audience consisting of the interpreters, e.g., the members of the court and the litigants who can be present and who can reply. There is also the secondary audience to whom the text is addressed, namely the legislator, and in the case of European Community Law, the Commission, and the politicians of the European Parliament.[62] Thirdly, there is the audience which I label onlookers: legal scientists, lawyers, the general public, and politicians who for various reasons are interested in the proceedings and who form the audience Kerbrat-Orecchioni considers typical to written texts in general.[63]

C. Linguistic Knowledge and Legal Knowledge

Creating and interpreting law in a multilingual or monolingual environment is, to my mind, an interplay of multiple sources of knowledge – especially linguistic knowledge and legal knowledge. Next I attempt to characterize linguistic knowledge and legal knowledge as I see them. In a narrow sense, we can say that legal knowledge is knowledge of propositions of law. In a broad sense, as it is understood here, it is the knowledge of legal culture in its broadest sense, including legal systems, legal

59. Tarja Salmi-Tolonen, *Arbitration Law as Action: An Analysis of the Finnish Arbitration Act*, *in* LEGAL DISCOURSE IN MULTILINGUAL AND MULTICULTURAL CONTEXTS: ARBITRATION TEXTS IN EUROPE 313–36 (Vijay Bhatia et al. eds., 2003).

60. CATHERINE KERBRAT-ORECCHIONI, L´ÉNONCIATION DE LA SUBJECTIVITÉ DANS LE LANGUAGE (1980).

61. "Speaking" refers here to any linguistic contribution.

62. *See also* Tarja Salmi-Tolonen, *Persuasion in Judicial Argumentation: The Opinions of the Advocates General at the European Court of Justice*, *in* PERSUASION ACROSS GENRES: A LINGUISTIC APPROACH (Helena Halmari & Tuija Virtanen eds.) (forthcoming 2004).

63. *See also* RUTH AMOSSY, L'ARGUMENTATION DANS LE DISCOURS: DISCOURS POLITIQUE, LITTÉRATURE D'IDÉES, FICTION 34 (2000).

order, legal institutions, history and practices and practitioners. Thus, legal knowledge is

a) language-dependent

b) communal/interactional

c) institutional

Firstly, legal knowledge is dependent on language because law is constituted in language and could not exist without it.[64] Secondly, legal knowledge is communal or interactional in the sense that it is

a) language-related/textual/descriptive/encyclopaedic

b) communal/interactional

c) functional

When we put these two together we can see that according to this line of thinking, legal linguistic knowledge is

a) communal

b) interactional

c) institutional and functional

Therefore, the argument is that language cannot be separated from its users and communicative situations. Meanings are subjective. Therefore, if meanings are not negotiated, even a linguist cannot say exactly what is meant. Linguistic methods can help point out patterns of language use that can give clues to intended meanings.[65] The implications are that we need to

a) raise the level of language awareness

b) increase linguistic knowledge

c) be aware that meanings are subjective and shared meaning has to be negotiated

In the next section I shall briefly discuss the status of the two official languages as legal languages in Finland.

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64. *See* JOHN SEARLE, THE CONSTRUCTION OF SOCIAL REALITY 60–66 (1995).

65. *See, e.g.,* Roger W. Shuy, *To Testify or Not to Testify?, in* LANGUAGE IN THE LEGAL PROCESS 3–18 (Janet Cotterill ed., 2002).

II. NATIONAL – BILINGUAL – FINLAND[66]

Finland is officially bilingual.[67] The official national languages are Finnish and Swedish, the latter is spoken as a first language by about 6% of the population.[68] The official status of Swedish has historical roots in the period when Finland was a part of the Swedish realm.[69] There has been a permanent Swedish speaking population in Finland since the Middle Ages.[70] The Constitution of Finland grants Swedish an official language status, i.e., all government documents are also available in Swedish.[71] The Constitution also grants another minority language Sámi[72] and the speakers of Romany certain rights, but in a slightly more limited form.[73] The number of official languages is always a distributive decision, not just a question of politics or good will.

All Finnish citizens have the right to use their native language in a court of law in a matter pertaining to them.[74] The language proficiency requirements of judges were underlined in the preparatory work done for the recent reform of the courts of law. The new Language Act is currently under revision and discussion in Parliament.[75] The new act will repeal the old Language Act of 1922.[76] Although it has served its purpose, the act has become somewhat obsolete and is in need of modernization and clarification.[77] The purpose of the new act is to ensure that

66. For a more comprehensive survey, see Tarja Salmi-Tolonen, *Finland and the Context of Law, in* MULTILINGUAL AND MULTICULTURAL CONTEXTS OF LEGISLATION 103–27 (V.K. Bhatia, C.N. Candlin, Jan Engberg & Anna Trosborg eds., 2003).

67. FIN. CONST. ch. 2, §17, cl. 1.

68. *See* Tarja Salmi-Tolonen, *Finland and the Context of Law*, *supra* note 66, at 103.

69. *Id.*

70. *Id.*

71. FIN. CONST. ch. 2, §17, cl. 2.

72. A language spoken by the Sámi people of Lapland.

73. FIN. CONST. ch. 2, § 17, cl. 3.

74. *See* Tarja Salmi-Tolonen, *Finland and the Context of Law*, *supra* note 66, at 104.

75. *Id.*

76. *Id.*

77. *Id.*

the linguistic rights referred to in the Constitution will also be realized in practice.[78]

The new language act focuses on our national languages, Finnish and Swedish.[79] Provisions for other languages will be laid down separately.[80] The purpose of the new act is twofold: first, to further equality between the national languages, and second, to promote bilingualism in Finland.[81] The objective of the Language Act is to guarantee the constitutional right of everyone to use their own language, Finnish or Swedish, before courts of law and administrative authorities.[82] A further objective is to ensure that everyone's right to a fair trial and good governance are guaranteed no matter what their language.[83] Moreover, an individual's language rights should be realized without need for specific express reference to the matter.[84] Section 2 of our new Language Act, which came into force on January 1, 2004, reads:

> The Purpose of the Act
>
> (1) The purpose of this Act is to ensure the constitutional right of every person to use his or her own language, either Finnish or Swedish, before courts and other authorities.
>
> (2) The goal is to ensure the right of everyone to a fair trial and good administration, irrespective of language, and to secure the linguistic rights of individual persons without him or her needing specifically to refer to these rights.

78. *Id.*
79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.*
83. *Id.*
84. UUSI KIELILAKI, KIELILAKIKOMITEAN MIETINTÖ 2001:3, [New Language Act, Memorandum of the Language Law Commission 2001:3]. An English summary of the New Language Act can be found at the Finland Ministry of Justice Website, *at* http://www.om.fi/tulostus/20802.htm.

> (3) An authority may provide better linguistic services than what is required in this Act.[85]

If I were to analyze the text from an ideological point of view[86] subsection (3) is extremely interesting. It clearly implies that in Finnish society, civil servants tend to offer the minimum of service unless otherwise stated. Naturally, this says something about our times in general. The public sector was trimmed down in consequence of the recession and services had to be prioritized. Legislation in most countries entitle citizens to "good administration," which includes good services and the ability to obtain advice from public offices, but it is not all that easy to say what constitutes good service and this concept is understood differently in different countries.[87] The fact that this new language was needed in the law does indicate that even if all those who enter civil service, whichever level, have to prove their ability to use both Finnish and Swedish, the reality is that their abilities or willingness to use their second language are less than what is required. The purpose of the new act is to ensure that the linguistic rights referred to in the Constitution will be realized also in practice.

A. Legislation

According to the wording in the Constitution of Finland, the Government and other authorities shall submit the documents necessary for a matter to be taken up for consideration in Parliament in both Finnish and Swedish.[88] As a consequence, all law proposals have to be translated before the Government and the President may present them to Parliament.[89] The Constitu-

85. Language Act 423/2003 §2, Statute Book of Finland, *available at* http://finlex.fi.; unofficial English translation, *available at* http://www.finlex.fi/saadkaan/E003023.pdf.

86. Here ideology refers to the expectations and beliefs in everyday thinking and the construction of social reality in language. *Cf.* ROGER FOWLER, ROBERT HODGE ET AL. EDS., LANGUAGE AND CONTROL 490 (1979); NORMAN FAIRCLOUGH, DISCOURSE AND SOCIAL CHANGE 87 (1992).

87. *See*, *e.g.*, Kirsi Kuusikko, *Advice, Good Administration and Legitimate Expectations: Some Comparative Aspects,* 7 EUR. PUB. L. 455–72 (2001).

88. *See* Constitutional Laws of Finland, Procedure of Parliament § 14, *available at* http://www.om.fi/constitution/3340.htm.

89. The Constitution of Finland, ch. 6 Legislation, § 79 Publication and Entry into Force of Acts, *available at* http://www.finlex.fi/saadkaan/E9990731.pdf.

tion does not, however, contain any provisions concerning the reading of the Swedish text in Parliament. The Swedish language text is to be drawn up in the Office of Parliament.[90] Only the Finnish language texts of proposed laws are read in committees and plenary sessions of Parliament.[91] Should there be any uncertainty about the wording of the Swedish language text, the matter is settled in the Speaker's Council.[92] The procedure in Parliament obviously focuses on the Finnish text, but the Swedish text is equally authentic once the law is enacted and comes into force. Both texts are signed by the Speaker and published in the Statute Book of Finland.[93] An act cannot come into force before it is published and publishing is not complete until both Finnish and Swedish language texts are published.[94] However, the ideal of co-drafting is not a reality in Finland even if the enactment guarantees both language versions authenticity. The Swedish language text, even if it is processed as a translation, is authenticated during the enactment procedure.[95]

B. Legal Swedish in Finland and Legal Swedish in Sweden

Finland and Sweden have a long socio-political history together. For about 600 years they were part of the same realm, the Kingdom of Sweden. Finnish legal language began when the Great Codification of 1734[96] was translated into Finnish presumably around 1740.[97] Since Finland started its development as a sovereign state, legal Swedish in Finland has di-

90. The Constitution of Finland, Ch. 2 Basic Rights and Liberties, § 17 Right to One's Language and Culture. This is also made clear in Government Bill No 1/1991, 131.

91. *See* Parliament as a Legislative Body, *available at* http://www.edusk unta.fi.

92. *Id.*

93. *Id.*

94. *Id.*

95. *See* KENNETH D. MCRAE, CONFLICT AND COMPROMISE IN MULTILINGUAL SOCIETIES, VOLUME 3, FINLAND 233–46 (1997).

96. *See* PAAVO PAJULA ENSIMMAINEN LAINSUOMENNOS: LISIA SUOMALAISEN LAKIKIELEN VARHAISHISTORIAAN [The First Finnish Law Translation: Additions to the early history of Finnish legal language, Publications of the Association of Finnish Literature] (1955). The translation of the 1734 law in its entirety is available at Agricola, Finnish History Network Website, *at* http:// www.utu.fi/agricola/hist/kktk/lait/1734.

97. *Id.*

verged from the legal Swedish in Sweden. In principle, legal Swedish conforms to the legal Swedish variety used in Sweden, but terminology differs in at least four respects. First, either the terminology is similar but the concept it denotes is different, or the terms' purposes or the consequences are different. One example is *asunto-osakeyhtiö/bostadsaktiebolag*, a housing corporation (condominium), which does not have a conceptual legal equivalent in Sweden. Another example in this category is *osuuskunta,* a cooperative, which has the same legal sense in both countries but different terms are used *ekonomisk förening* (Sweden) *andelslag* (Finland) because *ekonomisk förening* covers a wider semantic field because there are economic organizations (ekonomiska föreningar) in Finland that do not fall under *osuuskunta*. Second, sometimes a Swedish version of a Finnish act is authorized using a different term even if there is no conceptual or functional difference.[98] After authorization it is difficult to change the term. Third, it is said that some terms have grown to be part of the practice. The Swedish term for dismissing a case in Finland is *förkasta,* and in Sweden it is *ogilla*. It has been said that this term, *förkasta*, in particular sounds archaic to Swedish lawyers.[99] Fourth, sometimes legal Swedish terms in Finland are made to comply to the Finnish counterpart so that a compound term is translated to resemble the Finnish, e.g., *avkortning*[100] for installment of a loan, which in Sweden is not a legal term, but belongs to the general language, unlike *amortering* which denotes the same concept but is recognizable as a legal term probably for historical and conventional reasons.

Today, in the European Union ("EU") there is only one version of Swedish used in EU documents for which the Swedish government is responsible, but it was agreed at the time that Finnish officials are given opportunities to be involved.[101] In this respect, there has been a kind of reunion between the two legal Swedish languages.

98. For example, a*vvittring* (Finland) and *bodelning* (Sweden) are the terms used for the division of the property of the spouses.

99. H.E.S. Mattila, *Oikeuslingvistiikka*, *in* OIKEUSJÄRJESTYS [Legal Order 2000] 60–61 (Risto Haavisto ed., 2000).

100. Literally, "shortening" of a loan. *See id.*

101. *See* Sten Palmgren, *Legal Swedish and Legal Finnish*, *supra* note 25.

III. SUPRANATIONAL – THE EU

Accession to the EU in 1995 brought Finland new varieties of legal language, which could be called "legal translation Finnish" and "legal translation Swedish." Insufficient attention has yet been paid to these varieties of legal language. Only recently has it been recognized in general that translation language is a variety of its own; not simply a subordinate version of the original.

I myself have compared national legal English and EC legislation English before Finland joined the EC.[102] My point of view was not terminological, but rather the discursive and pragmatic. I started with syntactic comparison in order to justify my hypothesis that different legal contexts produce different kinds of legal prose.[103] My starting point has always been that since the texts are legally authentic and authorized, they should be treated as such, even if in many cases the EC text probably is a translation (although that is not so often these days). Linguistic evidence shows that legal prose, written in different contexts, even if in the same language, is different.

The multi-functionality of linguistic elements can sometimes cause problems. For example, it has been reported that a mistranslated EC text has caused problems when faced by Finnish courts.[104] The translations of the EU texts have the status of the original, unlike international treaties or other documents.[105] The multi-functionality of linguistic elements such as the conjunction "and" has caused problems. In everyday life we can easily tell whether "and" means "both and" or "either or." In the legal context we cannot always make the right choice based on our general everyday knowledge. The word "and" has caused some problems in Finnish courts because of a European Com-

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102. *See, e.g.,* Tarja Salmi-Tolonen*, The Linguistic Manifestations of Primary and Secondary Functions of Law in the National and Supranational Contexts,* 7 INT'L J. FOR THE SEMIOTICS OF L. 1, 19–39 (1994).

103. *Id.*

104. *Hannele Tulonen in* HELSINGIN SANOMAT (Jan. 22, 1998).

105. Treaty establishing the European Community, Art. 217, *available at* http://europa.eu.int/abc/obj/treaties; The Amsterdam Treaty, Art. 290, *available at* http://www.europa.eu.int/abc/obj/amst/en; Act on Judicial Procedure Ch. 17, § 3, *available at* http://www.finlex.fi/lains; Vienna Convention Part III, Sec. 3, Art. 32, Art. 31, Art. 33, *available at* http://www.unog.ch/achives/vienna/vien_69.htm.

munities Court of Justice (ECJ)[106] preliminary ruling. The case itself was German,[107] but as the working language of the ECJ is French, the judgment was first given in French.[108] The case was about employees' rights in the event of transfer of undertakings. Following a tender procedure, a German company had lost its service contract and laid off employees and one of them brought the case to a German Labour Court which then referred the case to the ECJ for a preliminary ruling as to whether Directive 77/187 shall apply to the transfer of an undertaking, business or part of a business to another employer as a result.[109] The German "und" (and) had been translated in Finnish as "tai" (or) and apparently the translation was similar in English.[110] This was a serious but understandable error. Today, English is very often the best-known foreign language in Finland. Moreover, Finnish legal professionals also turn to the English translation if they suspect some discrepancy. The legal profession is now wondering if a preliminary ruling is given in a Greek case, should they learn Greek first. This of course is not necessary.

The prerequisite of translators entering the ECJ's translation departments is that they have a basic degree in law. In the case of the Finnish language department the degree is a Master of Laws, since this is the basic law degree recognized in Finland. The remedy to these translation problems can only be to raise the language awareness of legal professionals and the awareness of the close interplay between the knowledge of language and the knowledge of law.

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106. *See, e.g.,* Case C-13/95, Suzen v. Sehnacker Gabaudereinigung GmbH Krankenhausservice, 1997 E.C.R. I-1259 [1997] 1 C.M.L.R. 768 (1997), *available at* http://curia.eu.int/en/actu/activities/act97/9709en.htm.

107. *Id.*

108. *Id.* However, according to the principles of the ECJ, the authentic version is the German translation.

109. Under Article 1(1), Directive 77/187 shall apply to the transfer of an undertaking, business or part of a business to another employer as a result of a legal transfer or merger. *See* Council Directive 98/50/EC of June 29, 1998, amending Directive 77/187, OJ 1998 L 201, 88. The first subparagraph of Article 3(1) of Directive 77/187 provides, "The transferor's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer within the meaning of Article 1(1) shall, by reason of such transfer, be transferred to the transferee." *Id.*

110. Importantly, in the transfer of business, the determination of whether "assets AND employees" or "assets OR employees" are transferred, makes a big difference.

IV. INTERNATIONAL

Finland has distinguished itself from the other Nordic countries by adhering to the school of "dualism." Finland formally incorporates all major international treaties, such as human rights treaties, into its domestic law. Most human rights treaties have been incorporated with the hierarchical rank of an Act of Parliament.

An example may be helpful to illustrate this point. According to the above-mentioned principle of dualism, The UN Treaty on Human Rights was translated into Finnish and published in the code book.[111] Article 9, subsection 4 reads in an authentic English version: "Anyone who is deprived of his liberty by *arrest or detention* shall be entitled to take proceedings before a court …" These two terms "arrest or detention" were translated into Finnish by two terms "*pidättämällä tai vangitsemalla*." However, the two English concepts denoted by arrest or detention also contain "taking into custody," whereas the Finnish concepts do not. In other words, the semantic field is covered in the English version by two expressions whereas in Finnish, at least three terms would be needed to cover this same field. The Finnish judiciary relied only on the Finnish version and thus violated the rights of a foreigner who had been taken into custody by denying him the right to bring his case before a court.[112] The problem in the example above has been attributed to language, [113] but should it be?

Legal translators are usually instructed not to interpret law.[114] Is the above example a translation error or not? In my

111. The Statute Book of Finland I-II, *available at* http://www.finlex.fi/lains.

112. 14.10.1993/3916 KHO: 1993-A-25 (Supreme Administrative Court). After this incident the translation of European Human Rights Convention Article 5, subsection 4, was corrected to read "pidättämällä tai muuten" [arrested or otherwise taken into custody] which is again a more general expression but does not exclude any of the components of the authentic version. *See* Treaty Series of the Statute Book of Finland, *available at* http://www.finlex.fi/sopimukset/index.html.

113. *Heikki Karapuu, Kansainvälisten yleissopimusten ja EY-säädösten autenttiset tekstit kansallisessa lainkäytössä* [The Texts of International Treaties in National Judicatory Usage], *in* OIKEUDEN KIELET [Languages of the Law: Law and Legal Thinking in a Multilingual World] 171–80 (Antero Jyränki ed., 1999).

114. *See* SUSAN ŠARČEVIĆ, NEW APPROACH TO LEGAL TRANSLATION, *supra* note 26.

opinion, this example enforces my argument that the interplay between legal knowledge and linguistic knowledge must be better recognized. In the above case, the legal professionals and the translators would have benefited from such knowledge. Translators, however, need to interpret the texts they translate, because they need to know enough about the legal orders and the legal context in which the text is created; this is found in the meaning of the text they translate. On the other hand, the judiciary should know that the Finnish version is not one of the authentic versions of the Treaty and should not use it as the primary source.

In International Commercial Law we find several examples where national and international laws are not in unison. Some examples are "impossibility of performance and other excuses" in international trade.[115] Another example is "conformity of goods."[116] There are plenty of other concepts that can be used and interpreted differently in different contexts of law such as "warranty" and "surety." These problems are very well known to both civil law and common law professionals. However, the terms used are the same but the contents are different.

Here I once more refer to the implications listed above: we need to raise the general level of language awareness and increase linguistic knowledge among legal professionals and people in public office; in addition, we must be aware that meanings are subjective and that shared meaning must be negotiated.

V. CLOSING REMARKS

Finally, language is often said to be a lawyer's most important tool. However, I wish to challenge this metaphor. To me it says that whoever uses the metaphor sees language as some-

115. For differences in Finnish national laws and international rules, see generally, Tom Southerington, *Impossibility of Performance and Other Excuses in International Trade* (1999) (unpublished LL.M. thesis, University of Turku, Faculty of Law) (on file with Author). *See also Exemptions from Contractual Obligations in International Commercial Law, in* KANSAINVÄLISESTÄ KAUPASTA [On International Trade] 281–303 (Antti Aine & Anne Kumpula eds., 2000).

116. *See*, *e.g.*, Teija Poikela, *Conformity of Goods in the 1980 United Nations Convention of Contracts for the International Sale of Goods*, *in* NORDIC J. OF COM. L. (2003).

thing separate from the law, and if something is not quite right it suffices to sharpen the tool to make the results better. However, I do not accept that our language is somehow defective or insufficient.

In my view, and here I am in accordance with John Searle,[117] social reality, including law, is rooted in language. Therefore, we need to adjust our mental models[118] by acquiring more multidisciplinary knowledge and paying attention to the implications that can be drawn from the scientific study of legal language.

In this paper I have discussed both creating and interpreting law in bilingual, multilingual, national, supranational and international contexts from a legal linguistic point of view. For solving problems at all these levels I propose an *ex ante* approach. The key to this approach is enhancing our understanding and knowledge in both the legal and linguistic arenas.

117. *See generally* JOHN R. SEARLE, THE CONSTRUCTION OF SOCIAL REALITY (1995).

118. A mental model, borrowing from Philip Johnson-Laird's early formulation, is a theoretical construct which represents "objects, states of affaires, sequences, the way the world is …", and whose function is to enable individuals to make inferences and predictions to understand phenomena …" such as texts and actions in general. *See* LANGUAGE, TEXT, AND KNOWLEDGE: MENTAL MODELS OF EXPERT COMMUNICATION (Lita Lundquist & Robert J. Jarvella eds., 2000).