

BOOK REVIEW

STEFANIA CAVAGNOLI/ LAURA MORI (eds.), *Gender in Legislative Languages. From EU to National Law in English, French, German, Italian and Spanish*, Frank & Timme, Berlin, 2019, pp. 247.

The relationship between law and language seems to be an almost exclusive domain of linguists. Legal scholars, in general, lack the sophisticated knowledge that is necessary to perceive how instrumental language is in the evolution of law and in its ability to adapt to societal changes. That is the reason why this book review will not be perfectly on point, since this reviewer is neither a linguist nor an expert in EU law, although she is a legal scholar. In spite of these disclaimers, the objective pursued by this reviewer is to persuade readers to give some thought to the topic of linguistic sexism, so as to realise how the issue of gender affects language in general, and legal language in a peculiar way. This is true most of all for the Romance languages that not only have abandoned the neutral gender, but also know different gender-related articles, as well as endings for adjectives, to mention just a couple of examples.

Writing this book review in English is particularly challenging, because it is difficult to explain in this language how other languages (such as Italian, the mother tongue of this reviewer) are moulded by gender, even when a word, by itself, is gender-neutral (or epicene, as linguists say) and equally refers to a woman or a man. For example, take the Italian word “giudice” (judge). What makes the difference is the article, “il” (the, masculine) or “la” (the, feminine). In the common legal jargon, though, the masculine version of the word predominates, and therefore legal texts, judgments, commentaries and the like talk about “il giudice”. Many other examples could be offered, in any branch of law. Procedural law, in particular, is a source of countless words whose gender is masculine by definition. Plaintiff and defendant become in Italian “l’attore” and “il convenuto”, both masculine words, and masculine too is “il testimone” (the witness), “il perito” (the expert) and “il difensore” (the attorney for the party).

The essays collected in *Gender in Legislative Languages. From EU to National Law in English, French, German, Italian and Spanish* concern essentially the problem of gendered language in the national implementation of EU law. Beneath this issue another one lies, the issue of translation. In this regard, one could mention the peculiar feature represented by the equivalence of all the different linguistic versions of EU normative acts, but this feature should be analysed through the lens of EU multilingualism, which is a subject that is not directly addressed by the book. What seems worth emphasising is something different, something that, in this reviewer’s opinion, is the essence of translation and, above all, the essence of legal translation: it is the “negotiation of meanings” as Stefania Cavagnoli clarifies in her introductory chapter. As a matter of fact, this kind of “negotiation” among various options is essential when a plain translation into the language of destination is not possible,

and it is necessary to rely on a functional equivalent of the term to be translated. But “negotiation” is also part of the process by which the translation of EU rules into national languages implies the creation of neologisms brought about by the need to give access to concepts and institutes that up till then were unknown to a given legal system.

Gender in Legislative Languages. From EU to National Law in English, French, German, Italian and Spanish can be better appreciated if read in conjunction with the multilingual guidelines on gender-neutral language issued by the EU Parliament in 2008 and updated in 2018 (Gender-Neutral Language in the European Parliament, available at <http://www.europarl.europa.eu/cmsdata/151780/GNL_Guidelines_EN.pdf>). In this document, a statement stands out for its undisputable truthfulness: “Gender-neutral or gender-inclusive language is more than a matter of political correctness. Language powerfully reflects and influences attitudes, behaviour and perceptions” (p. 4). Another statement worth mentioning is the following: “Bias-free language has more chance of being accepted by users if it is natural and unobtrusive” (p. 9). But to what extent can a gender-neutral language can be “natural and unobtrusive”? This is a serious question most of all for the grammatical gender languages (such as the Romance languages). One possible answer (suggested by the Guidelines) is the so-called feminisation of words (meaning the use of feminine correspondents of masculine terms or the use of both terms), which is widely recommended, but can bring about awkward narrative and unsatisfying results. Another solution could be “replacing the generic masculine with double forms for specific referents (“tutti i consiglieri e tutte le consigliere”)” (p. 5 of the Guidelines) even though such a change could make a text quite “cumbersome”, without solving the problem, for instance, at the level of the gender of adjectives. Furthermore, with reference to legal language any attempts at searching for gender-neutral terms generate the risk of producing normative texts that are difficult to decipher.

In conclusion, it seems that here squaring the circle is, as usual, difficult to achieve. More than that, it is probably utopian to aspire to the complete disappearance of linguistic sexism, both in everyday language and in legal language. The most viable and practical way to proceed is a balanced use of the feminine and masculine genders, always remembering that a change in the language without a change in the attitude of society towards gender bias in every aspect of daily life is meaningless.

Elisabetta SILVESTRI

International Journal of Procedural Law



Revue internationale de droit processuel
Internationale Zeitschrift für Prozessrecht
Revista Internacional de Derecho Procesal
Rivista Internazionale di Diritto Processuale

VOLUME 9 / 2019 / 01

- 4 International Commercial Courts in the Litigation Market
MARTA REQUEJO ISIDRO
- 50 Dealing with Evidentiary Deficiency in Tort Law
WANNES VANDENBUSSCHE
- 75 Admisibilidad de las pruebas obtenidas por particulares:
Especial referencia a las investigaciones internas empresariales
ANA MARÍA NEIRA PENA
- 97 Access to Justice in Small Claims Procedure: Comparative Study
of Civil Procedure in Lithuania, Poland and Ukraine
RADOŚLAW FLEJSZAR, IRYNA IZAROVA AND VIGITA VĚBRAITĚ
- 118 Tax Enforcement through the Courts in Brazil: Ideas, Tendencies
and Perspectives
MARCO ANTONIO RODRIGUES AND RAFAEL GAIA EDAIS PEPE
- 129 Grandes Décisions / Leading Cases
MICHELE ANGELO LUPOI
- 149 Delivering Justice
CHRISTOPHER HODGES



INTERNATIONAL JOURNAL OF PROCEDURAL LAW
REVUE INTERNATIONALE DE DROIT PROCESSUEL
INTERNATIONALE ZEITSCHRIFT FÜR PROZESSRECHT
REVISTA INTERNACIONAL DE DERECHO PROCESAL
RIVISTA INTERNAZIONALE DI DIRITTO PROCESSUALE

Mission / Mission Statement

La *Revue internationale de droit processuel* vise à offrir une plate-forme internationale pour la recherche dans le domaine du droit processuel. Avec des liens vers tous les continents, la Revue est bien placée pour être un lieu d'échange d'idées et de vues entre chercheurs universitaires et praticiens dans le domaine du droit processuel à la fois européen, asiatique et (latino-)américain des universités et instituts de recherche.

The *International Journal of Procedural Law* aims to offer an international platform for research in the field of procedural law. With links to all continents, the Journal is well-placed to be a place of exchange of ideas and views between academic scholars and practitioners in the field of procedural law from both European, Asian and (Latin) American universities and research institutes.

Conseil scientifique / Advisory Board

Federico Carpi (Italia), Oscar Chase (USA), Masahisa Deguchi (Japon), Yasuhei Taniguchi (Japon), Keith Uff (United Kingdom)

Directeurs de la rédaction / Editors-in-Chief

Loïc Cadet (France, Paris Sorbonne), Burkhard Hess (Luxembourg, Max-Planck-Institute for Procedural Law)

Comité de rédaction / Editorial Board

Neil Andrews (United Kingdom, Cambridge), Remo Caponi (Italia, Firenze), Frédérique Ferrand (France, Lyon), Ulrich Haas (Suisse, Zürich), Daniel Jutras (Canada, Montréal), Eduardo Oteiza (Argentina, La Plata), Rolf Stürner (Deutschland, Freiburg-im-Breisgau), Michele Taruffo (Italia, Pavia), Janet Walker (Canada, Toronto)

Secrétaire général de rédaction / General Assistant-Editor

Fernando Gascón (España, Madrid)

Secrétariat de rédaction / Assistant-Editorship

Jens Adolphsen (Deutschland, Gießen), Samuel P. Baumgartner (Schweiz, Zürich), Scott Dodson (San Francisco, USA), Michele Lupoi (Italia, Bologna), Kamalia Mehtiyeva (France, Paris), Marie Nioche (France, Paris Ouest), Elisabetta Silvestri (Italia, Pavia), John Sorabji (United Kingdom, London), Michael Stürner (Deutschland, Konstanz), Francisco Verbic (Argentina, La Plata)

Citation

La *Revue internationale de droit processuel* peut être citée comme suit : *IJPL-RIDP*, (année), (n°), (n° page initiale).

The *International Journal of Procedural Law* may be cited as follows: (Year) (Number) *IJPL-RIDP* (initial page no.).

© 2019 Intersentia Cambridge – Antwerp – Chicago

All rights reserved — Tous droits réservés — Alle Rechte vorbehalten — Reservados todos los derechos. — Tutti i diritti riservati.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior written permission from the publishers.

ISSN 2034-5275

TABLE DES MATIÈRES / CONTENTS

EDITORIAL

BURKHARD HESS 2

DOCTRINE / STUDIES

International Commercial Courts in the Litigation Market

MARTA REQUEJO ISIDRO 4

Dealing with Evidentiary Deficiency in Tort Law

WANNES VANDENBUSSCHE 50

Admisibilidad de las pruebas obtenidas por particulares: Especial referencia a las investigaciones internas empresariales

ANA MARÍA NEIRA PENA 75

PRATIQUE / PRACTICE

Analyse Comparative / Comparative Perspectives

Access to Justice in Small Claims Procedure: Comparative Study of Civil Procedure in Lithuania, Poland and Ukraine

RADOSEŁAW FLEJSZAR, IRYNA IZAROVA and VIGITA VÉBRAITÉ 97

Tax Enforcement through the Courts in Brazil: Ideas, Tendencies and Perspectives

MARCO ANTONIO RODRIGUES and RAFAEL GAIA EDAIS PEPE 118

Grandes Décisions / Leading Cases

MICHELE ANGELO LUPOI 129

DÉBAT / DEBATE

Delivering Justice

CHRISTOPHER HODGES 149

INFORMATIONS / INFORMATION

I Législation / Legislation

KAMALIA MEHTIYeva and MICHAEL STÜRNER 178

II Bibliographie / Bibliography

ELISABETTA SILVESTRI and JENS ADOLPHSEN 190