

# The Tower of Babel

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Stefan Martin  
Member of the Boards of appeal  
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# INTRODUCTION

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## LANGUAGE ISSUES

- A non-distinctive mark
- A descriptive mark
- A generic sign
- A sign against public order

But in what language??

## LANGUAGE DIVERSITY IN THE EUROPEAN UNION

- Important Language diversity
- Minorities
- Colonial Past
- Constant migration

# **PART 1: LANGUAGES THAT ARE MANDATORY**

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## THE OFFICIAL LANGUAGES OF THE UNION

- 24 Languages
- 19/09/2002, C-104/00 P,  
Companyline, EU:C:2002:506, § 40
- 19/10/2017, [T-432/16](#), медвѣдь  
(fig.), EU:T:2017:527, § 25

## OFFICIAL LANGUAGES OF THE UNION

- 2 Official languages of the Member States are not official languages of the Union
- Luxembourgish and Turkish
- All official languages must be considered
- 13/06/2012, T-534/10, Hellim, EU:T:2012:292, § 38
- R 2141/2015-5, GUVEN (Trust) for sausages

## THE OFFICIAL LANGUAGES OF THE MEMBER STATES

- Multi-Language MS
- Belgium: DE, FR, NL
- Cyprus: Greek and Turkish
- Italy: IT, French in the Aoste valey and German in South Tyrol, Slovene in Trieste, Gorizia and Udine and Ladin in Trentino
- Austria: DE, HR, SL
- Finland: FI, SV
- Netherlands: Dutch and Frisian (second official language in the Province of Frisian)



## THE OFFICIAL LANGUAGES OF THE MEMBER STATES

- DK: DA, German seems to be recognised as a minority language in South Jutland
- Sweden: SV and Finnish
- Portugal: PT and Mirandese in North-eastern Portugal ( a romance language) officially recognised by law in 1999.
- Luxembourg: FR, DE, Luxembourgish
- Slovenia: SL, German, Italian, Romani, Hungarian

## THE OFFICIAL LANGUAGES OF THE MEMBER STATES

- Croatia: CR, some local protection [Czech](#), [Hungarian](#), [Italian](#), [Ruthenian](#), [Serbian](#) and [Slovakian](#)
- UK: EN, [Welsh](#), [Irish](#), [Scottish Gaelic](#) and [Cornish](#) as minority languages

## DIALECTS

- It's a regional variety of language distinguished by features of vocabulary, grammar, and pronunciation from other regional varieties and constituting together with them a single language

## DIALECTS

- Will be considered if they are known to a reasonable amount of persons
  - ✓ Cancellation decision of 3 October 2013 Case No. 7007. Par.27
- ‘Griass Dich’

## AMERICAN ENGLISH, FRENCH-CANADIAN

- Presumption that they are known
- 19/05/2010, T-108/09, Memory,  
EU:T:2010:213, § 33

## AMERICAN ENGLISH, FRENCH-CANADIAN

- Philadelphia an Ice cream made without eggs
- DECISION OF 22 JULY 2013 – R 1505/2012-1 – PHILADELPHIA
- Slot a Gambling Machine
- 04/04/2017, R 2049/2016-2, VEGAS SLOTS, par.23.

## AMERICAN ENGLISH, FRENCH-CANADIAN

- Food for thought
  - Decision of 29 November 2006, UK-IPO-O-341-06, par.10.
  - MOO JUICE american word for milk
  - Not known in the UK

- **Brazilian Portuguese**

➤ **DECISION OF 20 MARCH 2012 – R 1178/2011-2 – FRACAS**

**Fracas means mild (goods include soaps)**



- MEDIEVAL ENGLISH, OLD FRENCH, OLD FINNISH

➤ 02/03/2017, R 1856/2016-1, ARNAA, par.32.

‘ARNA’ wild Buffalo from India

Word is obsolete

• MEDIEVAL ENGLISH, OLD FRENCH, OLD FINNISH

- Old Finish??

- DECISION OF 21 JUNE 2011 – R 2102/2010-2 –  
RUUKKI, par. 16.

- RUUKKI means an iron mill
- Obsolete

## SLANG

- Slang: is an informal language used by a group of persons, initially with the aim of not being understood by outsiders
- Louchebem in France a language used by the butchers
- Germany 'Rotwelsh' a mixture of German, Yiddish, Romani was the language of covert.

## SLANG

- Decision of 21 February 2017, application no. 015773807: ‘BUD’ means marijuana for cannabis information services
- Decision of 6 February 2017, application no. 015587462: ‘Barbie’ for barbecues
- Decision of 27 January 2017, application no. 15676761: ‘Cha’ for tea
- 21/11/2016, R 3209/2014-5, HP HOLY PREPPY (fig.) / HOLY et al., par. 41: ‘preppy’ for clothing
- 06/10/2016, R 2064/2015-5: ‘Klosterstoff’ for alcoholic beverages since it means ‘alcohol’

## FOREIGN WORDS THAT HAVE ENTERED INTO ONE OF THE OFFICIAL LANGUAGES

- ‘PAI GOW POKER’: a poker game inspired by a chinese domino game
- ✓ DECISION OF 3 APRIL 2009 – R  
1712/2007-4 – FORTUNE PAI GOW  
POKER, par.11.

## THE CO-OFFICIAL LANGUAGES OF CERTAIN MEMBER STATES

Spain: Catalan (including Valencian and Balearic), Galician and Aranese

13/09/2012, T-72/11, Espetec,

EU:T:2012:424

## LANGUAGES WITH SPECIAL STATUS WITHIN THE UNION

- Welsh and Scottish Gaelic
- 2008 and 2009: Decision of the Council

## CREOLE, PIDGIN, KUECHEN DEUTSCH

- From Pidgin to creole
- A simplified version of one language mixed with elements of another language to allow people to communicate
- A million person speak French creole in France  
Ministry of culture and communication, Rapport du Comité consultative pour la promotion des langues régionales et de la pluralité linguistique.



## TRANSLITERATION

- Various languages, various alphabets:  
Latin, Greek, Cyrillic, Hebrew and Arabic scripts  
TM Chroma for inter alia ‘Sinks, bath tubs’  
Chroma is a greek word ‘χρώμα’ (colour)  
✓ 16/12/2010, T-281/09, Chroma,  
EU:T:2010:537, § x)

## TRANSLITERATION

✓ 01/09/2017, R 1177/2017-4, MALKA

Malka means « Small » in Bulgarian  
Descriptive for clothing

✓ 27/07/2017, R 241/2017-4, Aristo

Aristo means 'excellent' in Greek

## SIGN LANGUAGES

- Constitutional recognition in Austria, Finland
- Legal recognition in Slovakia and Spain

## MINORITIES LANGUAGES

- Article 3(3) of the Treaty  
“[The Union] shall respect its rich cultural and linguistic diversity “
- “Article 22 of the European Union Charter of Fundamental Rights: ‘the Union shall respect cultural, religious and linguistic diversity”

## MINORITIES LANGUAGES

- Minorities languages are part of the ‘linguistic diversity’ of the Union

## MINORITIES LANGUAGES

- European Charter for Regional or Minority Languages adopted in 1992 under the auspices of the Council of Europe
- 79 languages are protected used by more than 200 minorities
- Ratified by Austria, Croatia, Cyprus, Czech Republic, Denmark, Finland, Germany, Hungary and the Netherlands

## FRENCH MINORITY LANGUAGES

- Article 75-2 of the French constitution provides that “Regional Languages are part of the heritage of France’
- ❖ According to the census of 1999:
  - 1.2 million French citizens speak Occitan
  - 880000 Alsatian,
  - 800000 Breton,
  - 180000 Corsican,
  - 110000 Catalan and
  - 60000 Basque.

## FRENCH MINORITY LANGUAGES

- DECISION OF 4 JUNE 2012 – R 2427/2011-4 – APPELWIN, par.3.
- Refusal of the TM ‘appelwin’ which designates cider in the Alsatian language



# **PART 2: OTHER LANGUAGES THAT ARE KNOWN IN PART OF THE UNION**

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## OTHER LANGUAGES

- Article 7(2) EUTMR:

*‘Paragraph 1 shall apply notwithstanding that the grounds of non-registrability obtain in only part of the Union’*

## INITIAL POSITION

- Guidelines of 2008: examination limited to the official languages of the Union
- Boards divided:
  - 1<sup>st</sup> and 2<sup>d</sup>: Arabic and Russian should be considered
  - 4<sup>th</sup>: Turkish is not an official language of the Union and should not be included in the examination process

## ACTUAL POSITION

- In all languages understood in at least part of the Union
- ✓ 20/06/2012, T-357/10, Corona, EU:T:2012:312
- ✓ 13/06/2012, T-534/10, Hellim, EU:T:2012:292, § 38-39
- ✓ 13/09/2012, T-72/11, Espetec, EU:T:2012:424, § 36
- ✓ 19/10/2017, [T-432/16](#), медвѣдь (fig.), EU:T:2017:527, § 28

## THE UNION

- The Union includes:
- The MS
- Article 355 of the Treaty

*The provisions of the Treaties shall apply to Guadeloupe, French Guiana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin, the Azores, Madeira and the Canary Islands in accordance with Article 349.*

The provisions of the Treaties shall apply to the European territories for whose external relations a Member State is responsible [Gibraltar]

## IN “PART” OF THE UNION

- Article 7(2) does not refer to a MS
- Could be a MS, a region, a town
- Or a group of MS
- A region spreading over various MS
- ✓ Cancellation decision of 3 October 2013 Case No. 7007. Par.27 ‘Griass Dich’
- Alp region Italy, Austria, Germany

## IN “PART” OF THE UNION

- What is a part of the Union? A ‘single’ part-  
One location?
- Rejection of the ‘mosaic’ approach
- 22/09/2016, R 1812/2015-4, PLOMBIR, par20.
- Position is questionable in light of the single market approach
- Article 7(2) EUTMR does not refer to ‘a’ part but to ‘part of the Union’

## HOW MANY PERSONS SHOULD SPEAK THE LANGUAGE?

- Determination of the relevant public
- General public or specific segment of the population?
- Professional Public?



## HOW MANY PERSONS SHOULD SPEAK THE LANGUAGE?

- Halal food
  - 25/06/2015, C-147/14, EL BENNA (fig.) / EL BAINA (fig.), EU:C:2015:420, § 22



## HOW MANY PERSONS SHOULD SPEAK THE LANGUAGE?

El Benna means taste  
'El Bnina' 'softness'



## HOW MANY PERSONS SHOULD SPEAK THE LANGUAGE?

- Rice
- ✓ DECISION OF 1 MARCH 2012 – R 1095/2011-5  
– SHARBATI, par. 20

Shabarti for interalia rice

## HOW MANY PERSONS SHOULD SPEAK THE LANGUAGE?

- Hindu philosophy, yoga and medicine
- ✓ 17/09/2008, T-226/07, Pranahaus, EU:T:2008:381, § 35)

Pranahaus for interalia sound recordings

## HOW MANY PERSONS SHOULD SPEAK THE LANGUAGE?

### Chinese medicine and herbs?

- ✓ R889/2016-2, par. 31.
- ✓ 22/03/2011, R 1718/2008-1, LINGLONG / LL (fig.) et al., § 25;
- ✓ 1/11/2010, R 144/2010-2, KUNGFU (fig.) / (fig.) et al., § 48;

## HOW MANY PERSONS SHOULD SPEAK THE LANGUAGE?

- Professional public?
- The knowledge of language of the professional consumer has to be taken into account
- 12/03/2008, T-341/06, Garum, EU:T:2008:70, § 41
- „garum“ designates in Latin a fish sauce
- There is no proof on file that even the professional public (restaurants owner and chefs) know this word

## HOW MANY PERSONS SHOULD SPEAK THE LANGUAGE?

- ✓ 21/09/2011, T-201/09, Scomber mix,  
EU:T:2011:505
- “Scomber” means in Latin ‘mackerel’
- Descriptive for fish
- Not known to the General Public
- But to professionals

## HOW MANY PERSONS SHOULD SPEAK THE LANGUAGE?

- DECISION OF 24 SEPTEMBER 2015 – R 884/2015-4 – CORTICO, par.11.
- Professionals in the health sector
- Know Medical terms in Latin



## HOW MANY PERSONS SHOULD SPEAK THE LANGUAGE?

- For goods and services (for ex. Travel agency) exclusively addressed to specific group of persons is the number of speakers totally irrelevant?

## HOW MANY PERSONS SHOULD SPEAK THE LANGUAGE?

- Goods and services addressed to the general public?
- Article 7(2) does not provide any indication
- Guidelines for Examination in the Office, Part.B, Examination, p. 2. : a ‘significant section of the relevant public
- ✓ DECISION OF 30 SEPTEMBER 2010 – R 935/2009-1 – OTDYKH LEISURE, par. 20: a substantial number of consumers in part of the Union

## HOW MANY PERSONS SHOULD SPEAK THE LANGUAGE?

- For goods and services addressed to the general public?
- Article 7(1)(c) CTMR pursues an objective of public interest
- ✓ 04/05/1999, C-108/97 & C-109/97, Chiemsee, EU:C:1999:230, § 25
- ✓ ‘Significant’ or ‘substantial number’ is too strict
- ✓ 20000 is the size of a medium size town

## PROOF

- The knowledge of a language cannot be presumed must be proven
- ✓ 24 May 2011, Space Beach Club/HABM – Flores Gómez [SpS space of sound], T-144/10, EU:T:2011:243, par. 63
- ✓ 21 May 2015, Nutrexpа/HABM – Kraft Foods Italia Intellectual Property [Cuétara MARÍA ORO], T-271/13, EU:T:2015:308, par. 35

## PROOF

- Burden of proof: The Office
- Means of proof:
  - Well known fact?
  - Census
  - National Studies and reports
  - Academic publications
  - Eurostat
  - Commission report 'Europeans and their Languages' (2012)
  - Guidelines and case law from National Offices or National Courts
  - Observations by third parties after publication

## MIGRANTS LANGUAGES

- Arabic: large Arabic minorities in the UK, France, Belgium, the Netherlands, Italy and Spain
  - 25/06/2015, C-147/14, EL BENNA (fig.) / EL BAINA (fig.), EU:C:2015:420, § 22
  - 25/11/2015, T-249/14, masafi (fig.) / masafi, EU:T:2015:881, § 34

## MIGRANTS LANGUAGES

- Berbere (kabyle, chleuh, rifain): 2 millions in France alone
- Albanian: 400000 living in Italy
- Vietnamese: 350000 living in France, 85000 in Germany (*Statistisches Jahrbuch der Bundesrepublik Deutschland 2009.*)

## RUSSIAN

- Russian is one of the five most widely spoken foreign languages in the European Union
- Russian is widely known in Lithuania, Estonia and Latvia
- A significant number of Russian citizen or former citizen live in the Union, in particular in Germany
- Russian is still widely taught within the Union



## RUSSIAN

- ✓ DECISION OF 30 SEPTEMBER 2010 – R 935/2009-1 – ОТДЫХ  
LEISURE
- ✓ 20/06/2012, T-357/10, Corona, EU:T:2012:312
- ✓ Decision of 17/05/2016, R 240/2016-1, Медведь, § 16
- ✓ 17/05/2016, R 240/2016-1, Медведь, § 16
- ✓ DECISION OF 21 MAY 2014 <sup>?</sup> R 2108/2013-5 <sup>?</sup> Любим, par.21.
- ✓ 16/02/2017, R 1017/2016-1, Национальный Продукт (fig.),  
par.18.
- ✓ 28/04/2017, R 2066/2016-1, Лидер (fig.)

## CHINESE

- What is chinese?
- 433 000 in the UK alone (Census 2011)
- 145000 in Spain (Instituto Nacional de Estadistica)
- 600 000 in France(INSEE/2008)
- 212000 in Germany (Bundesinstitut für Bevölkerungsforschung, 1. März 2017)
- 321000 in Italy (Report **Direzione centrale delle statistiche socio-demografiche e ambientali cittadini non comunitari regolarmente soggiornanti**)

## LANGUAGES FROM THE INDIAN SUB-CONTINENT

Punjabi: 273000 in the UK alone (Census 2011)

Urdu: 270000 in the UK alone

Bengali: 221000 in the UK alone

Gujarati: 213000 in the UK alone

Tamil: 101000 in the UK alone

## INTERNET JARGON

- Internet shorthand, cyber-slang or netspeak were initially developed to save keystrokes
- Lol, btw, xox, hru
- Emoticons, emojis



## INTERNET JARGON

- DECISION OF 27 FEBRUARY 2014 – R 996/2013-1 – 2 good, decisions of 23 June 2011, R 2202/2010-4, ‘2BRUSH’,
- para.16; of 5 September 2013, R 99/2013-1, ‘TAXI2GO’, para. 12; of
- 25 July 2013, R 1763/2012-1, ‘READY2PROJECT’, para. 20; and of
- 22 July 2013, ‘MACHINE2CLOUD’, para.15
- DECISION OF 4 OCTOBER 2013 – R 788/2013-4 – REPRESENTATION OF A SMILEY, par.12.

## DEAD LANGUAGES

Latin: a 'dead' language?

The Courts website is called 'Curia'

The European Court of auditors crest includes the words 'curia rationum' (Court of accounts)

'Societas Europaea' is used by the legislator to designate a European public limited-liability company

Latin is the third foreign language taught in Germany (740 000 Students)

Latin words are used in the field of medicine and pharma

## DEAD LANGUAGES

- Pharmacists and doctors are presumed to be familiar with medical terms in Latin which are commonly used to describe pathologies
- ✓ 03/11/2016, R 2506/2015-1, curatio;  
24/09/2015, R 884/2015-4, cortico, § 11
- same applies to veterinarians
- ✓ 24/05/2016, R 323/2016-4, BOSWELIA

## DEAD LANGUAGES

- Lawyers also know a few Latin expressions
  - ✓ 11/05/2004 – R 537/2003-2 – LEX MERCATORIA, par.16.



## UNIVERSAL LANGUAGES

- ESPERANTO
- ✓ Decision of 20 December 2016 Cancellation  
**No 11 776 C, p.6. : NOT RELEVANT**
- Debatable: in Hungary it is widely taught and spoken

## UNIVERSAL LANGUAGES

- BRAILLE and Tactile Marks
- 
- Means 'LUCK'
- DECISION OF 23 SEPTEMBER 2015 – R 883/2015-4 – FIGURATIVE MARK.