

THE ADVOCATE GENERAL AT THE CJEU: THE LINGUISTIC ASPECT

14th January 2019, Dun Library, No. 6 Kildare St, Dublin

Abstracts

The Advocate General and EU Law:

Professor Noreen Burrows and Professor Rosa Greaves, University of Glasgow

This Presentation is focussed on a book entitled *The Advocate General and EC Law* which was written by Noreen Burrows and Rosa Greaves and published in 2007 by OUP. The authors will set out the reasons for choosing to study the role and nature of a member of the Court of Justice of the European Union, namely the Advocate General. This will be followed by an outline the methodology chosen, discussing the approach taken, and, with the benefit of hindsight, commenting on other approaches that could have been taken. Finally, the overall findings will be presented.

Advocates General as Constitutional Interlocutors:

Professor Takis Tridimas, Kings College London

The purpose of this presentation is twofold. First, it seeks to provide some reflections on the role of the advocate general in the contemporary judicial system of the EU. Is the function of an advocate general necessary? Has the role of the office changed as the jurisdiction of the ECJ evolved? What are the expectations from the office? Should advocates general address the same audience as the court? Should we view the advocate general as a problem solver, a theorist, or a comparatist? The second objective of the paper is to provide an assessment of the contribution of advocates general in two fields, namely the protection of fundamental rights and CFSP, where lively law has developed. The paper concludes with assessing the role of the advocate general as a facilitator of dialogic constitutionalism.

The 'Italian Style' in the Opinions of the Advocates General:

Professor Fernanda G Nicola, American University

Everything can change, but not the language that we carry inside us, like a world more exclusive and final than one's mother's womb (Italo Calvino The Uses of Literature, Houghton Mifflin Harcourt, 347 (2017).).

The "Italian style" serves as an archetype among civil lawyers to grasp not only the origins of the civil law tradition but also to understand the ability of Italian jurists to navigate between distinct legal traditions. Caught in between the French positivist attitude and the German scholarly ambition, the Italian style has creatively walked a tightrope to reconcile the two. For instance, Italian judicial interpretation is in constant competition with doctrinal and authentic interpretations provided by scholars and the legislature, respectively. Italian judges transpose creative and abstract legal concepts from scholarly writings into judicial opinions. Much like the French language, the Italian language offers some ritual and elegant legal formulas. However, much like the German language, it offers ample room to frame abstract legal concepts that the judge borrows from legal scholarship or la doctrine. Some of these Italian style characteristics emerge vividly in the opinions of the Advocates General (AG) including Alberto Trabucchi in Defrenne and Giuseppe Tesaurio in Simone Leitner. These AG deployed the Italian style to integrate abstract legal concepts and mesh different legal traditions into the pluralistic and multilingual European judicial process. In balancing conceptualism, reasonableness and impeccable linguistic form, the AG's opinions provided, through the Italian style, convincing justifications to influence ECJ decisions without appearing appear excessively political.

Are Certain Advocates General Considered more 'Influential' than Others?:

Ewelina Tylec-Bakalarz, University of Birmingham

The European Court of Justice is a complex structure. This complexity is best reflected in its language operation which involves work of translators, lawyer-linguist and other actors such as judges and Advocates General. My presentation will elaborate on the findings of the literature review conducted as part of the LLECJ project. It will focus on the specific situation of Advocates General. Firstly, it will investigate what is the influence of language on persuasiveness of Advocates' General opinions. Secondly, it will aim to identify who are the most influential Advocates General and what are the factors that that make some more impactful than others. It will, finally, look at the gaps in the existing research.

The Persuasive Force of the Language Used by Advocates General and Non-Legal Terminology:

Professor Laure Clément-Wilz, l'Université Paris-Est Créteil

The influence of the Advocate General lies mainly in his/her Opinion ('reasoned submission'). The Opinion is written to the first benefit of the judges and is the main tool used by the AG to influence the judges on the issue(s) raised in the case. He/she cannot persuade his/her colleagues other ways, as the other judges could do (negotiation, repetition, veto etc.) Advocates General's Opinions are full of methods or techniques used in order to convince the judges. This presentation will focus on non legal arguments (rhetoric, "manipulation", emphasis, etc.).

The Advocate General's Opinions and the 2004 Pivot Languages System: Insights from Qualitative Interviews Carried out at the CJEU

Dr Liana Muntean, University of Birmingham

With the enlargement of 2004, the Court of Justice of the European Union (CJEU) introduced 'pivot' languages to make the process of translation more efficient and, for Advocates General (AGs) at the CJEU, this change has meant that they no longer draft their opinions in their mother tongue but are instead encouraged to draft in one of the pivot languages. This paper focuses on how the introduction of the 2004 "pivot" translation system at the CJEU may have affected AGs' opinions and by extension the larger process of creating EU case law. It provides a rare insight and reflection on the individual experience of those involved in the drafting of AGs' opinions by looking at empirical data gathered from in depth qualitative interviews carried out at the CJEU in Luxembourg with Advocates General, AGs' référendaires and lawyer linguists.

The preliminary analysis of these interviews provides important insights into the diversity of workings methods across individual AG cabinets and into the contribution of the various actors involved in the drafting of AG opinions. The role of lawyer linguists is especially noteworthy as the 2004 reform has resulted in them being tasked with providing linguistic assistance to AG cabinets in order to ensure that AG opinions are clear and unambiguous. The empirical data gathered from the interviews thus offers an outlook on these actors' perceptions on whether AG opinions are gradually becoming more synthetic in construction and more constrained by the use of languages other than their mother tongues, and consequently becoming more akin to CJEU judgments.

By drawing on empirical data in this way, the paper thus provides a unique insight into the role of AGs by integrating the individual experience and challenges encountered by the persons directly involved in the production of AGs' opinions with more traditional doctrinal analysis.

Linguistic Consequences of the Pivot Language System in the Court of Justice of the European Union: Impacts on Advocates General's Opinions:

Dr Virginia Mattioli, Pontificia Universidad Católica de Valparaíso

From a linguistic perspective, the importance of the Advocate Generals (AG)'s opinions in EU jurisprudence lies in their stylistic features. Indeed, the influence of AG Opinions on CJEU judgments is often attributed to the way in which those opinions are written – particularly their speculative and persuasive style, usually typical of academic texts (vis-à-vis the more 'legalistic' style of judgments).

In 2004, a system of pivot translation was introduced within the CJEU. At that point, a convention was introduced whereby AGs were 'expected' to write their opinions in one of the CJEU's 5 pivot languages (French, English, German, Spanish and Italian). Up until that time, AGs had written their opinions in their own mother tongues. From 2004, certain AGs were now writing opinions in languages other than their mother tongue. One of the research questions of the LLECJ project considers whether that change in writing language might have had an impact on the style of the opinions produced by AGs writing in non-native languages.

Considering the fundamental role of the AGs' opinions in EU jurisprudence, a corpus-based analysis has been realized in order to determine the influence that the 2004 language policy change may have had on the style of opinions. The main hypothesis claims that writing in a second (or third) language would imply the creation of less complex texts from a stylistic point of view. In order to corroborate it, a three step methodology has been followed.

Firstly, 4 corpora were compiled: EN opinions, FR opinions, EN judgments and FR judgments. Secondly, a corpus linguistics methodology was designed in order to identify the linguistic features representing stylistic complexity in the analysed sets of texts. Thirdly, the adopted methodology was applied to each one of the four corpora and the results are compared to identify: (i) the stylistic characteristics of the analysed opinions and judgments, (ii) the relationship between the two types of texts, and (iii) the diachronic change of opinions before and after the language policy change of 2004.

The results show a gradual simplification in the style of opinions since the introduction of the pivot languages system. A simpler style, implies less eloquence, raising the question of whether there may be a consequent loss of their influence on the development EU Law. This in turn raises questions regarding the ongoing usefulness of opinions themselves.
