TRANSLATION OF EC COURT'S DECISIONS TO SERBIAN

ABSTRACT
Presude i mišljenja Suda EZ predstavljaju deo pravnog nasleda Evropske zajednice. Obaveza države da harmonizuje svoje pravo sa pravom Zajednice obuhvata i obavezu harmonizacije njene sudske prakse sa odlukama Suda EZ. Da bi se takva harmonizacija mogla postepeno obaviti, neophodno je da presude i mišljenja Suda EZ budu prevedeni na srpski jezik. Uz presudu se često objavljuje i mišljenje opštega pravobranilaca koje je od velikog značaja za pravilno razumevanje i tumačenje presude - u doktrini se preporučuje da se prvo pročita to mišljenje, a zatim presuda. Stoga bi bilo preporučljivo da se pored presude na srpski prevode i mišljenja opštega pravobranilaca.

Prevođenje presuda i mišljenja Suda EZ je ozbiljan i dugotrajan zadatak u kome bi trebalo da što vise da učestvuju domaći pravinci koji poznaju francuski jezik kao jezik na kome je presuda suda doneta. Ono je od značaja ne samo za harmonizaciju domaćeg prava sa pravom EZ, već i za obučavanje mladog naraštaja koji bez čitanja odluka Suda EZ i mišljenja opštih pravobranilaca ne može zaista razumeti osnovni načela pravnog sistema Zajednice. Osnovni problem koji se javlja u prevođenju presuda jeste veliki obim presuda (češto i po više desetina stranica) i veoma težak stil kojim se Sud EZ izražava. Veoma je važno, takođe, da prevedene odluke budu široko dostupne domaćem pravosuđu, što se može postići složenjem u elektronske baze podataka. Stručna javnost bi mogla da doprinese da se ovaj zadatak što uspešnije i efikasnije obavi, tako što bi, oslanjajući se na stranu literaturu o pravu EZ, vršila odabir bitnih odluka i bitnih delova odluka i mišljenja i tako donekle skratila potrebno vreme za unošenje ovog elementa prava Zajednice u domaći pravni sistem.

Key words: legal translation, case law, Court of Justice of the European Communities, EU law

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This paper was prepared as a part of authors engagement at project "Harmonization of Legal System of the Republic of Serbia and the European Union".
The topic I am going to speak about today is a kind of a mission. It requires a lot of energy and stamina, both collective and individual. It is the mission of translating the main body of case law of the Court of Justice of the European Communities to the Serbian language. First, I will indicate the main purposes of such an endeavor. This will be followed by a rough indication of the main problems that anyone striving to accomplish that task will have to face. I will finish with proposing possible solutions to some of those problems.

1. Purpose of translation

There are at least three good reasons to undertake the translation of the ECJ's judgments to Serbian: a) to increase the awareness of European legal ideas in the Serbian judiciary, b) to enable qualified and quality instruction of EU law in domestic law schools, and c) to fulfill the obligation of Serbia pursuant to the Stabilization and Association Agreement.

Undoubtedly, domestic courts and legal doctrine could benefit from knowledge of the EC Court's case-law. There are certain principles and doctrines applied by the Court that may provide inspiration and guidance in resolving domestic cases, either related or unrelated to the EU. Let's take as an example the principle of proportionality. This is one of the general principles of Community law, and a yardstick that the Court applies when assessing the legality of acts and measures adopted by Community institutions. The principle has been originally developed in the practice of the Court, under the influence of German law, but and is now included in the EC Treaty. Basically, in a proportionality inquiry the Court examines whether the Community measure was suitable and necessary to achieve the desired end, and whether it imposed a burden on the individual that was excessive in relation to the objective sought to be achieved. Recently, a judgment by the Supreme Court of Serbia has come to my attention, in which the Supreme Court assessed the conduct of criminal proceedings by the Serbian authorities against the defendant, a German citizen, as contrary to the principle of proportionality. The defendant's passport was seized during the criminal proceedings initiated because of a traffic accident, and he was unable to leave the country for two and a half years, despite the fact that he offered to pay security on several occasions. The defendant was owner of a restaurant in Germany and he suffered substantial damages due to absence from his business. The Supreme Court accordingly held that he was entitled to damages from the Serbian State. Since the principle of proportionality is not expressly mentioned

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in the Serbian Constitution or legislation, it inevitably occurs to me that the Supreme Court might have been inspired by the comparative law (possibly EU law) influences in rendering this judgment.

The most important purpose of the translation is education of young lawyers. EC law courses already exist at most law schools in Serbia. At the Novi Sad Faculty of Law, Introduction to EU Law is an obligatory course at undergraduate level. There are some master courses in this field, as well. Several textbooks for these courses have been written in the Serbian language. However, what is missing are course materials in Serbian that would provide the students with texts of judgments in which the EC Court interprets and develops the EC Treaties and legislation. The translated judgments (if well translated) would enable the students to discuss the issues of EU law and to better understand them. Used in combination with the textbook, they would provide a more interesting way of approaching the EU law.

Finally, adopting *acquis communautaire* has become the obligation of the Republic of Serbia pursuant to the Stabilization and Association Agreement under the provision that is applicable upon signature, i.e. even before the entry into force of the Agreement. The case law of the EC Court makes part of the *acquis communautaire*. This is true at least for the so-called "historic case-law judgments", or landmark decisions of the Court that have been selected for translation into languages of the countries that have acceded to the Union in 2004 and 2007. This group includes 948 judgments and decisions of the EC Court and the Court of First Instance that have been delivered between 1956 and April 2004. Systematic translation of these judgments into languages of the new Member States started in 2002. At first 869 decisions, delivered before 2001 and later additional 79 delivered after 2001 have been sent to the official translation centers in the Candidate States. The first translation project covered

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4 Stabilization and Association Agreement, Article 72:

1. The Parties recognize the importance of the approximation of the existing legislation in Serbia to that of the Community and of its effective implementation. Serbia shall endeavor to ensure that its existing laws and future legislation will be gradually made compatible with the Community *acquis*. Serbia shall ensure that existing and future legislation will be properly implemented and enforced.

2. This approximation shall start on the date of signing of this Agreement, and shall gradually extend to all the elements of the Community *acquis* referred to in this Agreement by the end of the transitional period defined in Article 8 of this Agreement.

3. Approximation will, at an early stage, focus on fundamental elements of the Internal Market *acquis*, Justice, Freedom and Security as well as on other trade-related areas. At a further stage, Serbia shall focus on the remaining parts of the *acquis*.

Approximation shall be carried out on the basis of a program to be agreed between the European Commission and Serbia.
Proširenje Evropske unije na Zapadni Balkan

57 selected judgments that can be accessed at the Court's website. The purposes of translating and the revision of translations in these countries is still in progresses.

2. Potential problems

The magnitude of the project makes it reasonably foreseeable that some problems may be encountered. The problems that may be expected are the sheer number and length of judgments, lack of financing, a great potential for non-uniform, incorrect and diverging translations, and difficult access to translations.

The fact that by the year 2004 there were already 948 judgments that were considered "historic", i.e. important enough to be translated, and that a few more have accumulated over the last five years may be discouraging both to potential translators and to sponsors. Furthermore, judgments of the EC Court are extensive. Some of them range between 100 and 200 paragraphs. To this should be added opinions of Advocate General that make a constituent part of the judgment and often present a significant background to the Court’s holding. This brings us to the question whether the full text of the judgment and AG opinion should be translated or only their abbreviated form.

Translation of judgments is costly. Specialized translators who know Serbian and foreign legal terminology are hard to find and usually cost more than regular translators. Furthermore, each translation should be edited by a legal expert - to correct terminology and to single out the relevant authorities and the holding of the Court. Usually, some publication costs are also involved. It is hard to find constant sources of funding for such projects within the State budget.

There is a danger, if the project is carried out unsystematically, that each translated judgment will look differently. Everybody does it "their own way", and every translated judgment looks a little bit different, with respect to title format, citations, etc. Great potential for discrepancy also lies in the terminology used by the Court. Let us take the example of a common term used in the everyday parlance of the Court, such as "direct effect". There are at least four possible translations of this term to Serbian. Whether "direct effect" should be translated as "direktan efekat" or "neposredno dejstvo" or "direktno dejstvo" or "neposredan efekat"? This should by no means be left to the linguistic inspiration or liking of each individual translator, but should be dealt with uniformly.

After the enormous effort has been invested into translating and editing the translated judgments should be readily accessible to users, mostly

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students, judges, and other practicing lawyers. The first translations of EC Court judgments in Serbia were published in specialized legal journals: *Revija za evropsko pravo*, *Evropsko zakonodavstvo*, and *Evropski pravnik*. There are also two short monographs on the Court of Justice that contain translations of extracts of approximately 20 judgments each. These translations are not readily accessible to the general legal public and are therefore of limited use.

As previously mentioned, the first translations of judgments made in the new member states are accessible at the web-site of the EC Court. Serbia being currently far from accession and even from the status of a candidate country, cannot hope to have this portal available to its translations. Yet, the electronic internet accessible text of the translated judgments would be the best solution both for judges and other legal practitioners, and for the students.

**Proposed Solutions**

a) *The number and length of judgments calls for selection and abbreviation*

The selection of the most relevant judgments has already been made for the needs of other countries that have been on this path before Serbia. Still, this list should be amended to include the more recent case-law.

The practice of publishing court judgments in Serbia is very limited. It is the prevailing opinion that only final judgments may be published and even then they are not published in full text like in Switzerland, Great Britain or Germany, but only in the so-called "sentences". This means that a judge is assigned at every court to read the judgments and make excerpts of the most important sentences from the judgments. The full facts of the case and the reasoning of the court are usually not provided, so that it is often difficult to understand some of those sentences. The courts also publish the so-called "stavovi" - opinions adopted by judges at their meetings on certain points of interpretation of law that reoccur in practice. From this perspective, the publication of the full-text judgment of the EC Court including the AG opinion would be highly unusual and unlike the accepted practice.

For that reason, it is to be recommended for translations to be made from an abbreviated version of the judgment; this would accelerate the translation process and provide the necessary materials for the study of EC law much

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6 The complete list of available translations of judgments to Serbian is attached as appendix to this text.

earlier. It would also be somewhat cheaper. The selection of the relevant paragraphs to be translated could be made by domestic experts on the basis of the most reputable casebooks and treatises on EU law. The facts of the case should always be included, even in the abbreviated form, because they enable the reader to understand and remember the judgment. In contrast, certain parts of the judgment should always be omitted from the translation, such as decisions on costs, questions posed by the national courts and tribunals (because the EC court always repeats them in more understandable form in reasoning of the judgment), operative part of the judgment (because it always repeats the holding of the court as outlined in the reasoning), etc.

b) The lack of finance calls for seeking of financial support

The Government should seek financial support from the EU pre-accession funds for this type of activity. Translation of judgments in the countries that joined the EU in 2004 and 2007 was supported by TAIEX. A request for financial support should include fees of translators and legal editors and costs of publication. To reduce the necessary funding, fees should be exempted from payment of taxes and other State contributions in Serbia.

c) The potential lack of uniformity of translations calls for creation of standards and terminology in advance

Certain standards must be adopted before the translation starts. One of the important issues is how to translate the names of the parties. These are often names of companies or individuals, usually written in the language of the country of their origin, but in case of Greek companies, transcribed to their Latin script form in other language versions of the judgment. Official alphabet in Serbia is Cyrillic, and maintaining the Party names in the Latin form would render the translation confusing. To facilitate finding of the original judgment on the website of the court - the number and the original name of the case should be retained in the title of the translation. However, in the body of the judgment, the original name of the parties should not be written in its original spelling, because this would be against Serbian spelling rules. These rules demand that foreign names be spelled in the way they are pronounced in Serbia (the so-called phonetic transcription). The same transcription rule applies even if the text of the translation would be published in the Latin script. Lawyers in Serbia often do not speak foreign languages and they would not know how to pronounce correctly the foreign names appearing in the judgments, especially if they belong to a language that is not widely spoken in Serbia. It is therefore the task of the translator to help them in this by indicating the correct pronunciation. This will also advance the use of these judgments in
the process of legal education. For educational purposes, each case should also be given a "nickname" - short name used for ease of reference - for example "Kasis" in addition to full name of the case (Case no 120/78, Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein). The "nickname" could appear after the title of the translation in brackets. Furthermore, the names of companies should be preceded by the word "company" - (in Serbian: društvo). Otherwise, it would depend on the company name whether the gender of the company in Serbian, and accordingly all the verbs and pronouns accompanying them would be feminine, masculine or neuter.

Some rules should be laid down to ensure that translations are uniform (similar to the rules applied to publication of legislation. E.g. it should be determined in advance whether paragraph numbers should be followed by a full stop or not, whether articles and paragraphs should be cited separately (article 1 paragraph 2, article 1 paragraph 3) or jointly (articles 1(2) and 1(3)), whether article numbers should be followed by a full stop, whether titles should be capitalized, etc. If such technical standards are not defined in the very beginning, later editing of translations will take up as much time as the translation itself.

Special attention should be accorded to standards of citation of other authorities in the translated judgments. This would facilitate establishing relations between legal texts. Judgments often refer to other legal authorities, such as regulations, directives, international treaties and previous judgments. Some of these authorities may not be in force in Serbia, others may already be the part of Serbian law. For example, in the Racke judgment, the EC Court cites Articles 62 and 65 of the Vienna Convention on the Law of the Treaties. This Convention already has an official translation to Serbian. The translator should insert the text of the cited authority in the version that already exists in the Serbian language, to enable the reader to understand and establish the correlation that exists between the two legal instruments - the judgment and the Treaty. This requires from our translator a basic knowledge of legal sources and how to find them.

The EC Court also often cites its own judgments. This poses a problem before the translator - whether the citations of earlier judgments should be omitted from the translation or not, and unless they are omitted, whether the titles of cases should be cited in their original language or transcribed to Serbian. There are basically two types of citations - enumerative and extensive. In the former case, an earlier judgment is only mentioned, without any reference to its content. In the latter case, the content of the previous judgment

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8 Case 162/96 A. Racke GmbH & Co. v. Hauptzollamt Mainz, paragraph 18.
9 „Sl. list SFRJ - Međunarodni ugovori i drugi sporazumi“, no. 30/72.
is discussed and analyzed by the Court (confirmed or departed from) in a later judgment. The basic rules should be that the former type of citation can be omitted from the translation while the latter should remain, because it is usually of relevance to the judgment.

Great importance lies in certain early judgments (e.g. *Van gend en Loos*, *Plaumann*), or other landmark judgments (*Brasserie de Pecheur, Cassis de Dijon*) that are extensively referred to in the later practice. These judgments create legal standards making part of the EU law in the particular field. The translator should take special care to compare the translations and use the same terms as are used in the translation of the landmark judgment, when these later references are translated. That also means that the landmark judgments should be translated first, before the judgments that follow them. In other words, the translation should as much as possible be organized chronologically, starting from earlier judgments towards the more recent ones.

As for uniform terminology, the Institute of International Policy and Economics has done a milestone by publishing Eurovoc\(^ {10} \) and making it available in the Serbian language. However, Eurovoc does not solve all problems in translation of judgments. It actually lacks many of the terms habitually used by the Court. Therefore, the creation of a judicial thesaurus is a necessity in the future. Nevertheless, Serbian terminology for translation of judgments should be based as much as possible on the Eurovoc, the existing translation of the Stabilization and Association Agreement, and were none of these two contains the term, on a broad doctrinal consensus. Occasionally, choices will have to be made between the existing translations (e.g. "right of establishment" was translated as "pravo privređivanja" in Eurovoc, and as "pravo poslovnog nastanjivanja" in the Stabilization and Association Agreement).

d) The lack of accessibility of translations calls for publication in an electronic legal database

The solution for the problem of accessibility is already on the way. Last year, one of the private electronic legal database providers, Paragraph company, started its project of building up a database of EU law. Part of this project is translation of case-law. Currently, the database contains translations of twelve judgments of the EC Court, mostly full text versions.

The application software used by this provider enables cross-referencing between documents. For example, the judgment in *Racke* is referenced to the Vienna Convention on the Law of the Treaties, the UN Charter and the EC

\(^{10}\) Rečnik Eurovoc, 4. višejezičko izdanje, srpski, engleski, francuski, nemački, italijanski, španski, gl. urednik: B. Babić, Institut za međunarodnu politiku i privredu, Boogr, 2006.
Treaty - all these documents being also part of the Paragraph database in their Serbian translation. Paragraph deserves full support of the Republic of Serbia in implementing this important project.

**Spisak prevoda i prikaza odluka Suda EZ na srpskom jeziku**

14. Predmeti 83 i 94/76 i br. 4, 15 i 40/77 HNL v. Council and Commission; M. Stanivuković, Pojedinac pred Sudom EZ, str. 161-163; (pasusi 3-8).
28. Predmet 152/84 Marshall v. Southampton and South West Hampshire Area Health Authority; M. Stanivuković, Pojedinac pred Sudom EZ, str. 196-197, pasusi 46-49,
33. Predmeti 46/87 i 227/88 Hoechst AG v Commission of the European Communities, Paragraf. net (sudska praksa - XXI) (u celosti).
34. Predmet C-10/89 SA CNL - Stucal NV Paragraf. net (sudska praksa - XXI) (u celosti).
43. Predmet C-92/93 i C-326/92 Phil Collins v. Imtrat Handelsgesellschaft mbH (C-92/93) and Patricia Im- und Export Verwaltungsgesellschaft mbH v. EMI Electrola GmbH (C-326/92) Paragraf.net (sudska praksa - XXI) (u celosti).


47. Predmeti C-427/93, C-429/93 i C436/93 Bristol-Myers Squibb v Paranova A/S (C-427/93) and C. H. Boehringer Sohn, Boehringer Ingelheim KG and Boehringer Ingelheim A/S v Paranova A/S (C-429/93) and Bayer Aktiengesellschaft and Bayer Danmark A/S v Paranova A/S (C-436/93) Paragraf.net (sudska praksa - XXI) (u celosti).


57. Predmet 126/97 Eco Swiss China Time v. Benetton International NV; Evropski pravnik, br. 3/2008.,


65. Predmet C-112/05 Commission v. Germany Paragraf.net (sudska praksa - XXI) (u celosti).