Lingua Legis
nr 32, 2024, s. 89–99
lingualegis.ils.uw.edu.pl

Emilia Wojtasik-Dziekan
Adam Mickiewicz University, Poznań, Poland

On the interpretation in the law and its language – reviewing Anne Lise Kjær, Joanna Lam (eds.): Language and Legal Interpretation in International Law. New York: Oxford University Press 2022, pp. 346 + xiv. ISBN: 9780190855208, e-ISBN: 9780190855239.

In 2022, a multi-author monograph edited by two renowned researchers, Anne Lise Kjær and Joanna Lam, was published by the prestigious Oxford University Press, aimed at individuals directly or indirectly connected to the law. The editors, who are also authors of some chapters included in this monograph, engage with the relationship between law and language both academically and practically (Kjær holds the position of Professor of Legal Linguistics at the University of Copenhagen, whilst Joanna Lam is a Professor with special responsibilities (WSR) and works at the same University; cf. Kjær and Lam 2022: x). Therefore, both the subject matter and the interdisciplinary scope of the analyzed book, which skillfully balances elements of legal theory with translation studies and the practice of translation, are not surprising. Methodologically, it demonstrates a mixed approach, as the chapters' authors utilize both theoretical and empirical analytical tools (such as case studies or corpora), which positions it well within an inherently international and global context (e.g., the international arbitration mentioned later or the EU law context). The book is demanding in that it is very thoughtfully structured in terms of content, and each chapter compels the reader to reflect on the text and consider certain thoughts on the topic discussed. The issues addressed and the way they are presented encourage contemplation of every word. The text is well-planned, as a proper book should motivate the conscious reader to engage in such reflection. This applies not only to theorists but also to practitioners, for whom semantics and context particularly serve as determinants of action.

It is evident that each of the topics raised can be transferred to the realm of other branches of law and to different methodological frameworks. However, in light of the challenging decisions that the editors had to make regarding the chosen legal and temporal framework, each of these chapters represents a valuable contribution to the existing body of knowledge. Therefore, the review focuses on the potential contained within each of these chapters, created with an awareness of the limitations arising from the leitmotif established by the editors.

The book opens with the editors' introduction (Kjær and Lam 2022: 1–21) to the study of law and its language. The practice of law in specific countries and legal systems requires an understanding of language and its meaning. The researchers skillfully guide the argument by presenting various approaches to legal translation, also addressing the issue of multilingualism in translation and international law, using EU treaties as an example in the light of the Vienna Convention. Finally, they draw attention to the problem of discrepancies in the interpretation of different textual versions of a given law. These developments are also evident in the approach of legal practitioners to interpretation.

The book is structurally divided into three main parts, each containing a different number of chapters. The first part, titled "Theoretical perspectives" comprises six chapters, the second part, "Language and translation in the interpretation of international law" includes four chapters, and the final one, "Interpretation in special areas of international law", also consists of six texts.

Part One is mainly devoted to theoretical perspectives on the interpretation of law. It opens with a chapter by Tomasz Stawecki (2022: 25–49), which sheds light on the importance of skillful interpretation of the law by the judicial community, particularly in international courts. By referring to selected theories that shape judicial decisions, the author leads the reader to examine the extent to which judges' interpretations influence the creation of law. The analysis of selected twentieth-century European concepts of how judges interpret the law underscores the complexity of the subject not only in the Polish legal system but also in the EU legal framework. This historical and contemporary overview of this discourse may prove valuable in understanding the challenges of interpreting judgments rendered by a given court. Adam Dyrda and Tomasz Gizbert-Studnicki (2022: 50–63) also anchor their considerations with regard to arbitration in the specifics of the legal systems concerned. They draw attention to the problem of transferring a given concept of law to another culture and legal principles, adopting an anthropological approach to their assumptions. These "Substantive Multicultural Concepts" are thus embedded within a given legal culture. The chapter draws attention to the importance of linguistic

knowledge, logical reasoning skills and intercultural-legal competence in the broadest sense. By adopting an anthropological emic-ethical model (cf. Harris 1976) guides the reader through further meanderings of evaluative reasoning, which is valuable especially for future adepts of arbitration. The chapter also includes an attempt to analyze selected legal concepts across various systems, with the aim of showing the de facto incompatibility (and, one might even venture, on multiple levels) of these, which translates into a demonstration of the complexity of the communication under a given law. The third text in this section focuses on the legitimacy of judges' use of justifications produced in foreign languages and foreign cultures in the light of their transfer to a different interpretive ground than originally intended. Marcin Matczak (2022: 64–75) proposes a specific methodological approach, structured around three guiding principles, to analyze this phenomenon. These foreign elements, borrowed from other legal systems, often form part of judicial justification. The fourth chapter by Julian Udich (2022: 76–94) deals with interpretation as a reading of the law in the light of selected articles of the Vienna Convention in an international context. An important element of his discussion is the linguistic character of the norm, which is reflected in its different interpretations depending on the analyzed legal system. The author also draws attention to the members of the community functioning in a given legal system, as the values they profess are reflected in the specifics of that system. Bartosz Wojciechowski (2022: 97–110) devotes his text to judicial discretion, with particular reference to the specifics of the language that judges may use to justify their positions. Hence the frequent occurrence of vague terms, which, from the point of view of the translator (cf. Tryczyńska 2019), constitute one of the potential problems. The author concludes with a remark about the influence of judges' decisions on reality, indicating that they should exercise special care in ensuring the precision of their statements. The last text in this section addresses the issue of reading and correct interpretation of the law through the prism of the language in which it is written (Větrovsky 2022: 111–127). By leading through the meanders of Wittgensteinian views on language, the author illuminates the complexity of the concept of the interpretation, using examples from various textual sources. A careful reader may wish to explore the issues of the philosophy of interpreting legal texts by judges in a specific context, for example, in Lekkas, Merkouris, and Peat (2023: 316–357), Easterbrook (1984: 87–99) or Galdia 2021: 65–120).

As can be stated, this section provides valuable support regarding the conditions of judicial interpretation, highlighting the roles of judges in shaping and enforcing the law, the language they use to justify specific rulings, and the discourse in which they operate, as well as the values that guide them. Cus-

tomary norms also present a terminological and interpretative challenge, representing 'treacherous ground' for translators and legal practitioners. Despite the genuine reflection of the broad coverage of issues addressed in this section, it remains a topic that the Reader can further explore in related literature within the context of informal cultural-legal principles and their globalizing impact on arbitration. Additionally, the aspect of values is worth examining in the context of ethics considered in international law. Since the editors adopted (as evident from the content arrangement of this section) a theoretical approach to judges' interpretation, they, along with the authors, managed to successfully present various methodologies (e.g., anthropological or philosophical) and their influence on potential directions of interpretation (including cultural interpretation) by practitioners of domestic and/or international law.

The second part consists of four chapters and focuses on the problems of translation in international and multilingual settings. Lawrence Solan (2022: 131–151) discusses the principle of multilingualism adopted for European Union law, resulting in the equivalence of all language versions of a given law and, consequently, also in terminological problems. The chapter includes an analysis of selected cases, through which the author concludes that the multilingualism of law has its brightnesses and shadows. The second author in this section, Martina Bajčić (2022: 152–165) examines way meaning is constructed precisely through the prism of legal translation. The researcher emphasizes the relationship between terminology, including that embedded in a given culture and legal system, and translation in the legal domain. Additionally, the researcher explores how courts operate a particular language – also in the light of the already mentioned vague terms (cf. Kaczmarek 2013: 55–59). The third chapter, written by Lucie Pacho Aljanati (2022: 166–188), refers to the areas of freedom, security and justice in the context of multilingual versions of EU law. The author works on a selected corpus of judgments in order to, as a legal interpreter, establish the discrepancies in the language versions and then the steps that were taken to establish meaning (Aljanati 2022: 168). The study refers to the four language versions – German, English, Spanish and French – showing the linguistic and conceptual problems that occur and highlighting areas that, from the translator's perspective, require special attention. The chapter also draws attention to how these discrepancies are addressed by the EU courts. The final chapter in this section, authored by Anne Lise Kjær (2022: 189–219), examines judicial decisions of the European Court of Human Rights that were originally written in English and French and translated into the other languages of the Union. The researcher first discusses the principles of the European Union's language policy in the context of human rights, together with the most important changes to

these principles. The researcher then analyzes the process of translating into multiple languages of relevance at the time. The chapter itself aims to shed light on the importance of translating certain legal documents into the languages of the Union's multilingual framework (and beyond), so that these documents are recognized as legitimate. Readers of this part may wish to deepen their knowledge by referring to relevant areas and topics, examined for example by Šarčević (1997), Cao (2007), or Leung (2019: 183–208).

As can be observed, the second part focuses on the issues of legal translation within the EU and at the level of EU law, also drawing attention to the linguistic discrepancies between the various official versions of a given legal act, which can lead to divergences and even interpretative conflicts. In this context, the awareness of clarity in communication and its impact on the interpretation of law is also significant. This part is particularly important for practitioners of legal translation. Perhaps a slightly greater emphasis could be placed on local cultural context along with the concepts defining individual values that influence local legal traditions, which strongly affect the interpretation of a given notion. However, the attentive reader will see that the current content structure fully aligns with the technical and substantive assumptions of the editors. Currently, this part provides the recipient with a solid dose of knowledge about the linguistic, technical, and cultural challenges faced by translators of legal texts in the Union.

Selected areas of international law and issues revolving around the appropriate reading of law are addressed in the final part of the book, which contains six interrelated chapters. The first chapter, by Lo Chang-fa (2022: 223–235), is based on the reading and the treaties and pays particular attention to considering not only the linguistic layer, but also the context, potential differences and sign relations, and especially the way the values and symbols reflected in the treaties are understood. The author supports his findings with an analysis of the various values contained in WTO treaties, such as internal values or external values, highlighting how semantic factors influence the perception of the treaty provisions (cf. on WTO for example Van Damme 2009). The author of the second chapter, Joanna Lam (2022: 236–255) examines the semiotic process of meaning-making through the reading of a given law. To this end, she cites selected approaches to the theory of legal interpretation on the basis of which new legal realities are created. Additionally, the researcher draws attention to potential differences between arbitral jurisprudence and national courts. Thus, the author takes on three main manifestations, i.e. "Lex mercatoria, amiable composition, and decision-making based on ordre public (in particular ordre public transnational)" (Lam 2022: 237), which served as examples of the potential pos-

sibilities for interpretation of the rules (one may want to read Jemielniak 2014 for this topic). The third chapter is provided by Izabela Skoczeń (2022: 256–270) who examines potential approaches to the interpretation of contracts (i.e., pragmatic or literal). By referring to the speech act principles of Paul Grice (1975 in Skoczeń 2022: 256–258), she applies them to selected legal acts. She then seeks the relationship between content and its connotation, emphasizing the need for caution in the interpretative approach to the linguistic schemes of legal provisions (cf. Pirker and Skoczeń 2022). The next chapter, authored by Güneş Ünüvar (2022: 271–292), focuses on the phenomenon of ambiguity in selected legal issues and terms, which are then subjected to analysis in selected legal acts and contexts. The author provides an overview of the phrase 'fair and equitable treatment' in international investment agreements and analyzes changes in the arbitral interpretation of this expression in selected texts over time (for this topic one may want to read a book by Kläger 2011, mentioned also in this chapter). The fifth chapter in this section, written by Ezgi Yildiz (2022: 295–314), focuses on changes in the interpretation of established norms and their reflection in the documents of rulings of institutions based in Strasbourg. The author presents a socio-political approach to the transformations of selected norms, while also attempting to establish the boundaries of these transformations in an international, institutional, and discursive context, doing so based on materials derived from rulings concerning human rights, and particularly torture (cf. Cakal 2023), which form the historical framework for comparative research illustrating these changes. The final chapter refers to the previous theme. Karolina Ristova-Aasterud (2022: 315–333) examines crimes committed against women in the context of international humanitarian law, which currently insufficiently protects women's rights. The author provides a historical analysis and reviews the most significant examples of cases of sexual crimes, committed, among others, in wartime conditions, and proposes changes in a broader conceptual and terminological scope reflected in the interpretation of international law (for this topic one may want to read e.g. Alison 2007).

The final section focusing on selected areas of international law achieves its goal of demonstrating the application of interpretative theories in specific fields such as trade and human rights. Highlighting the evolution of norms regarding the protection of women, the use of semiotics in arbitration interpretation, the interpretation of values in commercial law, and ambiguities in investment agreements, all these issues are framed within the methodology chosen by the authors. It would be beneficial to strengthen this grounding by referencing the context of political and social changes combined with the potential for rapid responses from tribunals to these changes. Since this concluding part of the

project was not intended to focus on the issues of translation, the question of attempts to translate concepts of individual human rights in significantly different legal systems was not addressed, which is itself an interesting interpretative problem. Further research potential can also be observed in the impact of institutional policies, whether European or global, on court rulings in light of the unequal distribution of influence among individual countries. However, this section is coherent, well-thought-out, and constitutes a valuable contribution to the development of this area of research.

As evident from the analysis of individual chapters, the goal set by the editors and contributing authors, namely "to cast light on the workings of language in international legal interpretation in the context of contemporary processes of globalization" (Kjær and Lam 2022: 2), can be fully recognized as achieved. It might seem that the book, due to its chapters relating to legal theory, legal discourse, etc., is mainly dedicated to representatives of the legal world; however, from page to page, the usefulness particularly for a conscious translator of each of the texts forming the individual parts of the book becomes evident. A careful reading reveals the logical and coherent connections between the individual texts due to the dominant themes they address, starting from reflections on legal theory, through a smooth transition to the philosophy of legal language, which connects the first part with the second, focusing on the problems of legal translation in an international context, up to the last part, which examines the process of interpretation of individual legal concepts. The presented comprehensive and fragmentary analysis of the book allows us to notice its undeniable strengths, which certainly include the substantive nature of each text, enriching the existing state of research both nationally and internationally. Therefore, the authors' substantive contribution to the legal and jurisprudential discourse deserves attention (especially the theoretical texts from the first part, such as reflections on semantics, the evolutionary approach to interpretative norms, etc.), the consideration of multilingualism and its impact on the circumstances of legal translation, also in its practical dimension (noticeable in all texts of the second part) as well as the relevance of the presented research and reflections in relation to socio-political conditions (texts of the third part). The decisions of the editors to necessarily narrow the thematic and regional scope are fully understandable, as they translated into a specific effect in the form of the timely publication of this work. The book thus creates potential for further research – for example, on comparative studies within the intentionally omitted branches of law, or more in-depth contrastive analyses within more distantly related legal systems and cultures, not to mention the debate on selected aspects of theoretical legal reflections. An additional aspect of this research could be

a deeper grounding in the context of analyzing the influences of individual ideologies, which would allow for a greater emphasis on the impact of politics on the practical dimension of legal interpretation, as it is precisely the ideological, political, and cultural contexts that shape international legal practice.

This interdisciplinary volume can be considered valuable due to its subject matter and audience – it is aimed at all those who deal with various forms of legal interpretation and the language in which it is realized, as well as connecting practice with theory.

REFERENCES:

Alison M. (2007) "Wartime sexual violence: women's human rights and questions of masculinity". *Review of International Studies 33*(1), 75–90. DOI: https://doi.org/10.1017/S0260210507007310.

Aljanati L.P. (2022) "Multilingual interpretation by the CJEU in the Area of Freedom, Security, and Justice", in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 166–188.

Bajčić M. (2022) "On the conceptualization of meaning in legal interpretation", in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 152–165.

Cakal E. (2023) "Torture and progress, past and promised: problematising torture's evolving interpretation". *International Journal of Law in Context 19*(2), 236–254. DOI: https://doi.org/10.1017/S1744552323000010.

Cao D. (2007) *Translating Law*. Bristol: Multilingual Matters.

Dyrda A., Gizbert-Studnicki T. (2022) "Do legal concepts travel?", in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 50–63.

Easterbrook F. H. (1984) "Legal Interpretation and the Power of the Judiciary". *Harvard Journal of Law and Public Policy 7,* 87–99. https://chicagounbound.uchicago.edu/journal_articles/1152/.

Galdia M. (2021) *Legal Constructs. Reflections on Legal-Linguistic Methodology*. Poznań: Wydawnictwo Rys.

Grice P. (1975) "Logic and Conversation", in: Cole P., Morgan J. (eds.) *Syntax and Semantics*, vol. 3. New York: New York: Academic Press, 22–40.

Harris M. (1976) "History and Significance of the Emic/Etic Distinction". *Annual Review of Anthropology* 5, 329–350.

Jemielniak J. (2014) *Legal Interpretation in International Commercial Arbitration*. Farnham: Ashgate Publishing Ltd..

Kaczmarek K. (2013) „Precyzja i niedookreśloność wyrażeń w przepisach prawnych na przykładzie języka polskiego i węgierskiego". *Comparative Legilinguistics 13*, 51–68. DOI: https://doi.org/10.14746/cl.2013.13.04.

Kjær A.L., Lam J. (2022) "Introduction: The dynamics of law and language in the interpretation of international legal sources", in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 1–21.

Kjær A.L. (2022) "Translation of judgments of the European Court of Human Rights into non- official languages: The politics and practice of European multilingualism", in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 189–219.

Kläger R. (2011) '*Fair and Equitable Treatment' in International Investment Law*. New York: Cambridge University Press.

Lam J. (2022) "Legal interpretation and adjudicatory activism in international commercial arbitration", in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 236–255.

Lekkas S., Merkouris P. and Peat D. (2023) "The Interpretative Practice of the International Court of Justice". *Max Planck Yearbook of United Nations Law Online 26*(1), 316–357. DOI: https://doi.org/10.1163/18757413_02601015.

Leung J.H.C. (2019) *Shallow Equality and Symbolic Jurisprudence in Multilingual Legal Orders*. New York: Oxford Academic.

Lo C-F. (2022) "Fundamental values being introduced into the treaty interpretation process under the WTO beyond semantic finding of conveyed meaning" in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 223–235.

Matczak M. (2022) "The semantics of openness. Why references to foreign judicial decisions do not infringe the sovereignty of national legal systems", in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 64–75.

Pirker B., Skoczeń I. (2022) "Pragmatic Inferences and Moral Factors in Treaty Interpretation—Applying Experimental Linguistics to International Law". *German Law Journal 23*(3), 314–332. DOI: https://doi.org/10.1017/glj.2022.22.

Ristova-Aasterud K. (2022) "Crimes against women in armed conflicts: Judicial activism and feminist legal interpretation as key factors in the reconstruction of concepts of international humanitarian law", in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 315–333.

Šarčević S. (1997) *New Approach to Legal Translation*. The Hague-London-Boston: Kluwer Law International B.V.

Skoczeń I. (2022) "Is a legal implicature only in the eye of the beholder? On the interpretation of the CISG convention", in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 256–270.

Solan L.M. (2022) "Interpreting multilingual laws: Some costs and benefits", in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 131–151.

Stawecki T. (2022) "Legal interpretation as a solution to disputes over the validity of laws", in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 25–49.

Tryczyńska K. (2019) „Problemy terminologiczne w przekładzie tekstów prawnych z zakresu prawa pracy na przykładzie języka niderlandzkiego i polskiego". *Applied Linguistics Papers* 26(3), 87–103.

Udich J. (2022) "Who forges the tools? The methods of interpretation between interpretive discourse and positive norms of law", in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 76–94.

Ünüvar G. (2022) "The vague meaning of the Fair and Equitable Treatment principle in investment arbitration and new generation clarifications", in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 271–292.

Van Damme I. (2009) *Treaty Interpretation by the WTO Appellate Body*. Oxford: Oxford University Press.

Větrovsky J. (2022) "Interpretation of international treaties and the role of Articles 31 and 32 of the Vienna Convention on the Law of Treaties: A Wittgensteinian perspective", in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 111–127.

Wojciechowski B. (2022) "Balancing interpretation rules as the element of judicial discretion", in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 97–110.

Yildiz E. (2022) "Interpretative evolution of the norm prohibiting torture and inhuman or degrading treatment under the European Convention", in: Kjær A.L., Lam J. (eds.) *Language and Legal Interpretation in International Law*. New York: Oxford University Press, 295–314.

Emilia Wojtasik-Dziekan *– holds a PhD degree in comparative linguistics, based on her doctoral thesis on the translation of civil law contracts (Korean to Polish / Polish to Korean) (2018). She earned an MA degree in Korean philology from Adam Mickiewicz University (2008) and another MA degree in philology, specializing in Ethnolinguistics with Korean and English as the primary languages in 2005. Her current research interests include Korean for specific purposes, legal and cultural linguistic comparative studies, and specialized translation, particularly in legal contexts. She is an experienced educator, having taught courses at Adam Mickiewicz University, such as Polish-Korean translation, Korean in Use, and Korean culture. She is a researcher, Koreanist, and a linguist, currently employed at the Institute of Oriental Studies, Faculty of Modern Languages and Literatures, Adam Mickiewicz University.*
Email: emilia.wojtasik@amu.edu.pl
ORCID ID: https://orcid.org/0000-0003-1011-1081