

Language and law

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Pays-Bas

LANGUAGE AND LAW

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1. – Introductory Remarks

There are many relationships between language and law. In modern societies, most rules of law are written rules. They are laid down in statutes or can be found in court decisions. It is difficult to imagine a modern society without written legal texts. But even in traditional societies with unwritten, customary law, legal rules need to be formulated : what customary rules there are therefore of necessity have to be formulated. Even in these societies, we can observe a close relationship between law and – in these cases – spoken language. As a consequence, law and language are closely related. Law needs language. Law may even be influenced by language, as is the case with the grammatical interpretation of statutory provisions.

But law has a considerable influence on language as well. In many countries, statutes, and occasionally international treaties, determine the correct spelling of the language (2). Legal rules may prescribe how to draft statutes : which words must be used for certain legal constructions, which words are to be avoided, and so

(1) The author is indebted to Mrs Louise Rayar, who made very useful remarks on an earlier version of this contribution.

(2) See for the spelling of the Dutch language : Act of 14 February 1947 (Wet voorschriftenschriftwijze Nederlandsche taal), *Staatsblad* H 52, amended by Act of 6 February 1997, *Staatsblad* 1997, 63 and Royal Decree 19 June 1996 (Spellingsbesluit), *Staatsblad* 1996, 394.

on (3). Lawyers, more precisely judges, are sometimes called upon to give an authoritative opinion on the use of certain words, for instance, whether the use of certain words constitutes defamation (4).

It is impossible to deal with all these, and other, relationships between language and law in this contribution. It will therefore focus on the topics listed in the questionnaire drawn up by the General Reporter, Professor Jayme of Heidelberg University, according to the outline suggested by him.

2. – Theoretical Part

The very close relationship between language and law has consequences for the discipline of comparative law. In the first place, we must be aware that comparative lawyers need to translate all the time. They must report in their own language on the contents of a foreign legal system; they inform others about their own system in legal languages other than their own and in many cases they must speak and write about the contents of foreign legal systems in legal terms, which are not the language that system uses as its own legal language. For this reason, it is not surprising that various introductions to comparative law deal with the problems of legal translation (5). The translation of legal information is one of the core issues of comparative law.

In the second place, we can observe that translating legal information causes more difficulties than translating other technical matter. These difficulties are caused by the system-bound nature of legal terminology, or – to put it differently – are the result of precisely this very close relationship between language and law. Every state has its own, in principle fully autonomous, legal ter-

(3) See for the Netherlands : Aanwijzingen voor de regelgeving, Circular 18 November 1993, *Staatscourant* 1993, 230, amended by the Circular of 20 December 1995, *Staatscourant* 1995, 251.

(4) See, for example, Netherlands Supreme Court, HR 21 April 1902, W. 7764 on the word «kraai» (crow).

(5) Cf. the following general text books : Marc ANCEL, *Utilité et méthodes de droit comparé*, Paris, 1971, pp. 91, 92; Léontin-Jean CONSTANTINESCO, *Rechtsvergleichung*, vol. II, Tübingen, 1971, pp. 79-81, 164-172; Gerard-René DE GROOT, «Vertaalproblemen», in : D. KOKKINI-IATRIDOU, *Een inleiding tot het rechtsvergelijkende onderzoek*, Deventer 1988, pp.94-102; H.C. GUTTERIDGE, «Chapter IX (The problem of legal terminology)», in : *Comparative Law, An introduction to the comparative method of legal study and research*, Cambridge 1949, pp. 117-126; Rodolfo SACCO, *Introduzione al diritto comparato*, 4th edition, Torino 1990, pp. 27-46.

minology, even if this state uses as its legal language a language also employed as a legal language in another state. There are even states where several legal systems are operative which, in principle, all have autonomous terminologies.

The system-specific nature of legal language is responsible for the fact that frequently within a single language there is not just one single legal language, as there is a single medical, chemical and economic language. A language has as many legal languages as there are systems using that language as a legal language (6). For the Dutch language, this means five legal languages (7), perhaps six, if we count the official Dutch legal language of the European Union as a separate legal language.

The differences between the legal languages within one natural language may entail that the meaning of terms from the one system need to be explained to lawyers trained in the other. In other words, there is a need for intralinguistic translation in some cases (8).

We need to realize, however, that there are no impenetrable partitions between the legal terminologies of legal systems which share the same language as their legal language. It is conceivable, of course, that legislators unconsciously refer to the meaning of a word in ordinary usage when using the same term (9). Since the ordinary language in the countries involved is in principle the same, consequently, the same content is referred to, leaving aside the fact that, in exceptional cases, the content of a specific term may be different at the colloquial level. Furthermore, because the same language is used, the lawyers of the legal systems involved gain easy access to the literature on the other legal systems. This brings about a certain osmosis of legal terminology. In some cases, legal draftsmen and draftswomen will therefore opt for the same term in order to express rather parallel notions. Nevertheless, the content of such

(6) Peter SANDRINI, *Deskriptive begriffsorientierte Terminologiearbeit im Recht. Problemstellung und Lösungsansätze von Standpunkt des Übersetzers*, dissertation, Innsbruck 1994, p. 12 is therefore right in arguing that : *«Rechtssprache ist vielmehr ein Sammelbegriff für eine Vielfalt nationaler Rechtssprachen, die jeweils inhaltlich und auch formal erhebliche Unterschiede aufweisen.»*

(7) I.e. the legal systems of the Netherlands, the Netherlands Antilles, Aruba, Belgium and Surinam.

(8) Compare Giovanni Emilio BUZZELLI, *General problems in scientific and technical translation*, Babel 1970, p. 141.

(9) On the relationship between legal language and colloquial language, see SANDRINI, *o.c.*, pp.11-12.

terms may still differ in detail, because the two legal systems are disparate after all. This implies a different legal embedding of the term in the respective systems.

The system-bound character of legal terminology has direct consequences for the translation of legal information. It is of primary importance to establish that one legal language must be translated into another legal language. This proposition may sound self-evident. It must therefore be stressed that, in practice, often even legal documents are simply translated from language into language, rather than from one legal language into another. In my view, this is not correct. One should not translate from a legal language into the ordinary words of the target language, but into the legal terminology of the target language. If the target language is used in several legal systems as the language of the law, a conscious choice must be made for the terminology of one of the possible target legal languages (10). One target-language legal system must be chosen, that is to say, a single legal system which uses the target language as its legal language. The choice for a particular target-language legal system is contingent on the potential users (11) of the translation. Subsequently, the information contained in the terminology of the source-language legal system must be represented by the terminology of the target-language legal system. Jean Kerby (12) is therefore right in claiming :

«La traduction (juridique) comporte non seulement le passage d'une langue à une autre, mais encore la transposition d'un système de droit à un autre (13).»

As regards «world languages», such as English, French or Spanish, the choice for a particular target-language legal system is often a difficult one. In many cases, the translator does not know who the receiver of the translation is, or even worse, he or she knows that the receiver could be any lawyer capable of reading the target language. However, even in the latter case, one cannot avoid having to choose a particular target-language legal system. If the English language is the target language, this will often mean the

(10) SANDRINI, *o.c.*, p. 12.

(11) SANDRINI, *o.c.*, p. 13 mentions in this respect the «*intendierte Rezipient*», roughly translated as : the intended user.

(12) Cf. Jean KERBY, «La traduction juridique, un cas d'espèce», in : Jean Claude GEMAR (Ed.), *Langage du droit et traduction (The language of the law and translation)*, *Essais de jurilinguistique (Essays on Jurilinguistics)*, Montréal 1982, especially p. 5.

(13) See also S.A. ADELO, «Legal translators and translations», in : *Case and Comment*, 70, no. 6, the Lawyers Cooperative Publ. Co, Rochester, N.Y. 1965.

legal language of England and Wales or that of one of the federal states of the US.

Once the translator has opted, where necessary, for a particular target-language legal system (14), he or she can get to work. The meaning of source-language legal terms (15) to be translated must be studied, after which a term with the same content must be sought in the target-language legal system. In other words : for the terms of the source-language legal system equivalents must be found in the target-language legal system.

If no acceptable equivalents can be uncovered in the target-language legal system, subsidiary solutions (16) must be sought. Basically, three subsidiary solutions may be distinguished :

- a) no translation takes place and the source term or its transcribed version is used (17).
- b) a paraphrase is used to describe the source-language term;
- c) a neologism is created, i.e. a term is used in the target language that does not form part of the terminology of the target-language legal systems, if necessary, in combination with an explanatory footnote.

In the context of these reflections on the relationship between language and law, some short remarks should be made on the last-mentioned subsidiary solution : the creation of a neologism, i.e. a term is used in the target language which does not form or no longer forms part of the legal system related to the target language chosen by the translator. It must be emphasized, however, that I

(14) I.e. a legal system, in which the target-language is the legal language or one of the legal languages. Susan SARCEVIC, *Strategiebedingtes Übersetzen aus den kleineren Sprachen im Fachbereich Jura*, Babel 1990, p. 156, calls it «*Zielrechtsordnung*».

(15) I.e. a legal system, in which the source-language of the translation is the legal language or one of the legal languages. SARCEVIC, *o.c.*, Babel 1990, p. 156, calls it «*Ausgangsrechtsordnung*».

(16) SARCEVIC, *o.c.*, Babel 1990, p. 156, calls them «*Ersatzentsprechungen*». Cf. also L. RAVAR, «*Het Vertalen van het Wetboek van Strafrecht; Aanzet tot een methodologie*», in *Recht en Vertalen II*, Deventer 1993, pp. 78-83, on the various subsidiary solutions.

(17) Susan SARCEVIC, «*Bilingual and multilingual legal dictionaries : new standards for the future*», *Revue générale de droit* 1988, p. 970 (also published in : *Mela* 1991, 615-625) calls it «*borrowing*»; SARCEVIC, *o.c.*, Babel 1990 : «*Lexementlehnung*». See also Patricia VANDEN BULCKE, «*Aspecten van de juridische vertaalproblematiek : Verantwoord 'vertalen' bij gebrek aan equivalente begrippen. Enkele voorbeelden Spaans/Nederlands*», *Linguistica Antverpiensia* 1993, p. 226; Martin WESTON, «*The role of translation at the European Court of Human Rights*», in : Franz MATSCHER/Herbert PETZOLD (Eds.), *Protecting Human Rights : The European Dimension, Studies in honour of Gérard J. Wiarda*, Köln etc. 1988, p. 685; Martin WESTON, «*Part I : Theoretical and practical approaches to translation*», in : *An English Reader's Guide to the French Legal System*, New York/Oxford 1990, p. 19.

use the term «neologism» in a very broad sense. I consider each term not belonging to the target-language legal system a neologism. Often, the expression «neologism» is used in a more narrow sense, meaning any term that does not exist in the target language. The broader definition of «neologism», however, is a logical result of the premise discussed earlier that legal information must not be translated from source language into target language, but from the terminology of the source-language legal system into the terminology of the target-language legal system selected by the translator. From this it follows that terms which do not belong to the selected target-language legal system must be qualified as neologisms.

A difficult, but essential question is that of the norms according to which a neologism is chosen. Selection must not be at random. No one will find it acceptable, if I, after having failed to find a French equivalent as translation for a term in a Dutch statute, subsequently render this term in French by the neologism «*blubs*». Such a decision would be absurd. The neologism must be chosen in such a way that the content of the source term «comes through» to some extent, without using a term which is already used in the target-language legal system. Thus, a lawyer from the target-language legal system can get an idea of its meaning (18). Very useful for this purpose are terms which used to have an equivalent meaning in the past. Another possibility is the use of terms which, although they do not function in the target-language legal system as legal terms, do function in another legal system which uses the same language as its legal language. This proposition deserves further explanation.

It has been argued earlier that legal translation proceeds from the legal language of a specific legal system to the legal language of a particular other legal system. If the target language serves as a legal language in several legal systems, a choice must be made for one particular national legal terminology. Translators should not use the terminology of system A at one point and the terminology

(18) Cf. SARCEVIC, *o.c.*, *Revue générale de droit* 1988, p. 974-975, who distinguishes three categories of neologisms: the use of a new word in the target language, giving a new meaning to an existing term in the target-language and reintroducing an archaic term. See VANDEN BULCKE, *o.c.*, p. 228. I disagree on the second category and I do not approve of giving a new meaning to an already existing term of the target-language legal system. It will only lead to misunderstandings. However, Sarcevic uses the concept of «neologism» in a more restricted sense than I do in this publication. The use of a term from a legal system other than the target-language legal system, which uses the same target language as its legal language, may perhaps be counted as belonging to the second category.

of system B at another. When a fundamental choice has been made for the terminology of system A, but some acceptable equivalents are lacking, neologisms, as acceptable equivalents from another legal system, may be employed. In that case, it is necessary to mark such terms as neologisms, for instance, by expressly referring to the legal system from which the neologisms in question were borrowed.

The translation of legal information is a difficult issue. The methodology of and approach to legal translation should be the subject of further research by both comparative lawyers and linguists. Special attention should be paid to the effect of the system-specific nature of legal terminology on legal translation technique.

Related to the problems of legal translation is the need to develop a real comparative vocabulary to describe the results of comparative legal research. When having to describe the solutions to a certain legal problem in a number of legal systems, one must avoid the typical technical vocabulary of the legal systems involved in order to enhance the comparability of the information. In this respect, some authors on comparative law call for the development of a particular vocabulary for comparative law, more precisely the development of comparative concepts (19). Recently, Coen van Laer paid attention to the problems related to the development of such comparative concepts in a dissertation defended at Maastricht University (20). The author discusses *inter alia* the relation between the problems of comparability, the *tertium comparationis* and the presentation of the research results and comparative concepts.

3. – Practical Part

A. – LANGUAGE AND THE PROTECTION OF CULTURAL IDENTITY

In the Netherlands, Dutch is used as the official legal language. All statutes and delegated legislation are drafted and promulgated in Dutch. Nevertheless, within the European part of the Kingdom,

(19) For example Constantinesco, Drobnig, Eltzbacher, Kokkini-Iatridou, Mineke, Zweigert-Kötz.

(20) C.J.P. VAN LAER, *Het nut van comparatieve begrippen; Een studie omtrent de toepassing van begrippen in de rechtsvergelijking*, Antwerpen (Intersentia) 1997.

the Frisian language is recognised as a second official language, which under certain conditions can be used in contacts with authorities in addition to or even instead of Dutch (21). On the Netherlands Antilles and on Aruba, Papiamentu (22) and English enjoy almost equal status (23).

The Frisian language does not have the same status as the Dutch language. Within the province of Friesland, Frisian can be used in court, in contacts with the authorities and in notarial instruments. Outside of Friesland, the use of the Frisian language in legal matters is very restricted.

Remarkable are the provisions governing naturalization in the Kingdom Act on Netherlands Nationality (*Rijkswet op het Nederlandschap*, Act of 19 December 1984, *Staatsblad* 1984, 628, effective from 1 January 1985). According to Article 8, section 1 (d) a reasonable command of Dutch is required or, if the applicant is living on the Netherlands Antilles or on Aruba, of the language com-

(21) See the statute on the use of the Frisian language in legal matters (Wet gebruik Friese taal in het rechtsverkeer, Act of 11 May 1956, *Staatsblad* 1956, 242, amended by Act of 14 September 1995, *Staatsblad* 1995, 440, effective from 1 January 1997; see also *Staatsblad* 1996, 490). On the use of the Frisian language in contacts with authorities see art. 2.7 to 2.12 General Administrative Law Act (Algemene Wet Bestuursrecht). See Klaas J. VAN DIJK, «Language policy in Fryslân : diverging concepts», in : Durk GORTER (ed.), *The sociology of Frisian, International Journal of the sociology of language*, no. 64, Berlin/New York/Amsterdam 1987, pp. 37-45; Durk GORTER, «Dutch state policy towards the Frisian language», in : *Ethnic Studies Reports*, vol. VIII, no. 1, Colombo (Sri Lanka), January 1989, pp. 36-47; Durk GORTER, «La langue frisonne aux Pays Bas», in : Henri GORDAN, *Les minorités en Europe, Droits linguistiques et Droits de l'Homme*, Paris 1992; Durk GORTER, *The use of Frisian in public administration*, contribution to a seminar on Minority Languages and Public Administration 29/30 September 1997 in Santiago de Compostela (not yet published); Alexander SCHMID, «Die friesische Sprache im Verwaltungsverfahren und vor Gericht, Neuregelungen in den Niederlanden zur Förderung einer Minderheitensprache», *Europa Ethnica* 1997, nos. 1-2, pp. 30-39. Compare also the interesting article on the use of Frisian by public authorities, by R. NIESSEN-COBHEN, in : *Fiscaal Weekblad FED* 1996, 451 and Gosta I. JELLEMA and Alex M.J. RIEMERSMA, «De Friese taal in het bestuurlijk verkeer en het rechtsverkeer», *RegelMaat* 1996, 179-184. Compare furthermore : W.M. WELLINGA, «Nederlandse overheden en het Fries : taal – en cultuurbeleid in Europese context», in : *De Kleine Talen in Europa, Verslag van een symposium gehouden op 18 november 1988 op het Provinsjehûs te Leeuwarden*, Leeuwarden/Ljouwert 1989, pp. 43-54; J.G. VAN RIJN, «Het Fries in het officieel verkeer», in : *De Kleine Talen in Europa, Verslag van een symposium gehouden op 18 november 1988 op het Provinsjehûs te Leeuwarden*, Leeuwarden/Ljouwert 1989, pp. 81-92; D. GORTER, J.G. VAN RIJN and H. DE VRIES (ed.), *Autochtone taalminderheden, Juridische en bestuurlijke verkenningen, Verslag van de studiedag op 17 november 1989 in Leeuwarden*, Leeuwarden/Ljouwert 1990.

(22) A creole language based on Spanish, spoken on the islands of Curaçao, Bonaire and Aruba. Papiamentu also demonstrates the influences of Portuguese and Dutch. Approximately twenty-five per cent of the vocabulary is of Dutch origin.

(23) It is remarkable, however, that the use of both these languages in administrative and legal matters has not as yet been regulated by statute. See Goretti NARAIN, *Taaltalent in ontwikkeling. Een studie naar het papiamentu en het Nederlands in de kleuterperiode op Curaçao en in Nederland*, Tilburg University Press 1995, p. 23.

monly used on the island of residence in addition to Dutch. For some islands, this is English, for others Papiamentu. This exception to the requirement of a reasonable command of the Dutch language underscores the importance of both languages on these Caribbean islands. It is striking, however, that a similar exception was not made for applicants living in the province of Friesland, bearing in mind that the Frisian language can be used in all contacts with the authorities of that province (24).

People who are not able to speak Dutch (or Frisian) can use their own language in court proceedings in administrative matters or in their contacts with authorities, but the court or the authorities may request a translation. Article 4 :5 section 2 of the General Administrative Law Act (*Algemene Wet Bestuursrecht*), for example, provides, with regard to applications :

«If the application or any of the information or documents pertaining to it is written in a language other than Dutch and a translation is needed in order for the application to be assessed or the decision to be prepared, the administrative body may decide not to process the application, provided that the applicant has been given the opportunity within a period to be set by the administrative body to supplement the application with a translation.»

Whether a translation is requested therefore depends to a large degree on the linguistic skills of the officials who have to decide upon the application. A translation is often not requested, if the documents are written in English, French or German and the content of the documents is not too complicated.

A similar rule in respect of the use of foreign languages is laid down in Article 6 :5 section 3 of the General Administrative Law Act in connection with formal notices of objection to a decision taken by an administrative body and appeals :

«If the notice of objection or appeal is written in a foreign language and a translation is necessary in order to properly process the objection or appeal, the person lodging such objection or appeal shall arrange for a translation.»

The most general rule on the use of foreign languages by administrative bodies is laid down in Article 2 :6 General Administrative Law Act : Authorities and government officials have to use the Dutch language, unless otherwise is provided by

(24) See more critical remarks on the fact that applicants residing in the province of Friesland have to show a reasonable command of the Dutch language in order to qualify for naturalisation : Gerard-René DE GROOT, «Nationaliteitswetgeving», in : *Personen- en familierecht*, (loose-leaf edition) Deventer (Kluwer), ad art. 8, no. 6.

law. Another language can be used, if the use of that language is more effective («doelmatiger») and the interests of third persons are not disproportionately («onevenredig») violated by the use of that foreign language.

Remarkable is the fact that it was recently discussed whether at one of the District Courts (*arrondissementsrechtbanken*) a special chamber should be created, where the whole proceedings can take place in English (25).

The very liberal attitude towards the use of foreign languages in legal matters is also manifested by the fact that it is not prohibited to draw up, for example, a notarial instrument in a foreign language, so long as the (civil-law) notary involved is able to read and write that language (26).

The use of one's native language in the course of commercial dealings is not forbidden. Noteworthy is Article 14 section 3 Royal Decree on preserved fruit products of 5 December 1991, *Staatsblad* 1992, 12 (*Warenwetbesluit Verduurzaamde vruchtenprodukten*), effective from 15 March 1992, which provides that although, in principle, the name of the product must be indicated in Dutch, it is also permitted to indicate the name of products in a foreign language (however, in Latin characters, combined with an image of the fruit in question).

In 1996 the Netherlands ratified (27) the Charter of Regional and Minority Languages of 5 November 1992 (28). The Charter entered into force on 1 March 1998 (29). The Netherlands recognised as regional or minority languages in the Netherlands : Frisian, Lower-Saxon, Yiddish, Roma and Limburgian.

(25) As to the desirability and feasibility of such an English-speaking chamber a symposium organized by the Forum Internationale Foundation (Stichting Forum Internationale) and the Netherlands Association of Comparative Law (Nederlandse Vereniging voor Rechtsvergelijking) was devoted to this subject on 24 April 1998 in Rotterdam.

(26) Art. 29 Civil-law Notaries Act (*Wet op het notarisambt*), Act of 9 July 1842, *Staatsblad* 1842, 20, amended by Act of 28 December 1989, *Staatsblad* 1989, 616 in conjunction with *Staatsblad* 1991, 606 (effective from 1 January 1992 : «*De akten kunnen worden verleden in de taal, welke partijen verkiezen, mits de notaris dezelve versta.*» (The acts may be drawn up in the parties' language of choice providing the notary [civil-law notary] understands it.)

(27) See Act of 26 January 1996, *Staatsblad* 1996, 136.

(28) *Tractatenblad* 1993, nr. 1 and 199.

(29) After the ratification by five states : Finland, Norway, Hungary, Netherlands and Croatia.

B. - THE LANGUAGE
OF (INTERNATIONAL) CONTRACT LAW

It can happen that a person who is not able to understand the language in which a contract is written, nevertheless signs it. Later, he or she is surprised about the details of the contract, for example, about a reference to general conditions of sale or service. This problem was discussed by Hondius (30) twenty years ago within the context of the applicability of general conditions, where the person who entered into the contract, was not aware of the reference to the general conditions, due to the use of a foreign language. It is generally accepted that a reference in a foreign language may be binding (31). Some authors argue that a party is not bound by the general conditions only in those cases in which the language of the reference or of the general conditions themselves differs from the language used in the negotiations between the parties. Hondius underlines that the view that a party can be bound by general conditions formulated in a foreign language is in conformity with the needs of business practice, especially in a country such as the Netherlands where a considerable number of international contracts are drawn up in a foreign language.

Another question is the role of the language of a contract in relation to the determination of applicable law. In the first place, it must be stated that the Netherlands ratified the Rome Convention on the Law applicable to Contractual Obligations (32). This Convention does not list the language of the contract as a connecting factor for the determination of the applicable law. However, the language of the contract can be an element, which could manifest a tacit choice of law within the meaning of Article 3 of the Convention («demonstrated with reasonable certainty by the terms of the contract»). Another opening for the relevancy of the language of the contract for the choice of law procedure is the escape clause of Article 4 para. 5 of the Convention : the language of the contract could be an element, which together with other elements, leads inevitably to the conclusion that the contract is obviously more

(30) Ewoud H. HONDIUS, *Standaardvoorwaarden*, Deventer (Kluwer) 1978, p. 434, 435.

(31) As to the situation where the general conditions are formulated in Dutch, although the other party is not able to read this language, compare E.H. HONDIUS, *Verbindenissenrecht*, looseleaf edition, Kluwer, Deventer, art. 232, para. 7 and art. 233, para. 277.

(32) Rome 19 June 1980, OJ 80/934/EEC.

closely related to a country other than the state whose law is applicable under the rules of Article 4 paras. 1 to 4 («if it appears from the circumstances as a whole that the contract is more closely connected with another country»). Finally, the language of a contract can be an element in determining the (non-)applicability of special mandatory rules within the meaning of Article 7 of the Convention or within the scope of Article 5 (consumer contracts) or Article 6 (employment contracts). In respect of special mandatory rules governing employment contracts, the language of employment contracts is expressly mentioned by Polak (33) as one of the indications for the (non-)applicability of some specific Dutch rules protecting workers.

C. - THE LANGUAGE IN FAMILY LAW

Language may also play a role in family law, especially when decisions have to be made in which the best interests of a child must be taken into account. This is the case, for example, if after a divorce the custody of the children must be arranged. If the parents speak different languages and, up to the divorce, the children have been educated exclusively in one of these languages, the (lack of) command of the language of a parent can be an element, which the judge can take into account. This element will be of less importance in the case of young children, who more readily adjust to a new language, but it may be relevant in determining the best interests of older children, who could have some difficulties in having to learn a new language. It is difficult to imagine, however, that questions of language will play a decisive role.

(33) Compare Maurice V. POLAK, *Arbeidsverhoudingen in het Nederlands internationaal privaatrecht*, Deventer (Kluwer) 1988, p. 100.