**Law and Language at the European Court of Justice:**

**The LLECJ Project**

**The Panel**

The European Research Council funded project ‘Law and Language at the European Court of Justice’ (the LLECJ project) aims to elaborate a new understanding of the development of EU law by examining the process behind the production of the multilingual jurisprudence of the Court of Justice of the European Union (ECJ). Achieving that goal involves bringing together research fields which traditionally pay little attention to each other - linguistic theories, anthropological research methods and law. This panel sets out how the LLECJ project uses methodological tools borrowed from fields outside of law in order to analyse the relationship between law, language and translation in the jurisprudence of the ECJ, and by so-doing aims to introduce a new facet to the current thinking on the development of the EU legal order.

Project website: [www.llecj.karenmcauliffe.com](http://www.llecj.karenmcauliffe.com)

**Paper 1:**

**‘Law and Language at the European Court of Justice’**

*Karen McAuliffe, University of Birmingham*

This paper explores the aims, research design and empirical strategy employed in the ERC-funded research project ‘Law and Language at the European Court of Justice’ (the LLECJ project).

The LLECJ project aims to develop a deeper understanding of the development of the case law of the European Court of Justice (ECJ) and by so doing elaborate a new understanding of the development of EU ‘constitutional law’ by examining the process behind the production of the multilingual jurisprudence of the ECJ. Based on the theoretical assumption that a linguistically ‘hybrid’ community, such as that of the ECJ, functions primarily through language interplays, negotiations and exchanges (Bellier 2002), and that the ‘process’ within any institution will necessarily affect its ‘output’ (Bellier, 1997; Abélès 1993), the aims of the LLECJ project are approached through the lenses of sociology of law, linguistic theories and translation theories. The project is divided into three subprojects:

1. investigation of the limitations of a multilingual legal system by analysing the process behind the production of the ECJ’s multilingual jurisprudence
2. analysis of the development of a *de facto* precedent in ECJ judgments
3. exploration of the significance of the linguistic aspect of the role of the Advocate General

This paper focuses primarily on the aims and research questions of the third subproject - relating to the role of the Advocate General at the ECJ - and sets out the strategies chosen to address those research questions ‑ namely interviews, observation and corpus linguistic analysis of opinions. One of the reasons for such a range of approaches is to ensure robust triangulation of data analysis, which is also aided by systematic approaches to relevant literature reviews and the use of specialised qualitative research software (NVivo). The paper sets the stage for more detailed analysis of the research to be presented in the following two papers:

1. Analysis of the role that language may play in the ‘value’ of Advocates Generals’ Opinions and whether Advocates General may be limited by (their) language - in *The Role of the Advocate General at the ECJ: A Linguistic Aspect?*
2. Analysis of empirical research investigating the drafting process of the Advocates Generals’ opinions, the role of the different actors involved in this process, and the effects of the ECJ language system on these opinions ‑ in *The Role of Language in the Advocate General’s Opinions: Consequences on the ECJ Case Law?*

**Paper 2:**

**‘The Role of the Advocate General at the ECJ: A Linguistic Aspect?’**

*Ewelina Tylec, University of Birmingham*

One of the most distinctive features of the ECJ is its language regime, which permeates into all levels of the Court’s functioning- from référendaires through lawyer linguists to judges. This paper will focus on whether and, if yes, how the ECJ language regime influences the working methods and the role of Advocates General (AGs) at that Court. The situation of AGs is particularly interesting because of the 2004 language reform stemming directly from the enlargement which doubled the number of EU member states and constituted a language test for the Union’s institutions and bodies. At the ECJ that reform formally introduced a system of pivot translation to expediate the translation of documents and to ensure coverage of all 24 official EU languages. Furthermore, in order to secure continuity and smooth processing of cases, since 2004 non-permanent AGs have been requested to draft their opinions in one of the Court’s *‘pivot’* languages. This convention also provides a solution to the problem of building up translation capacities in languages that may not be needed once the non-permanent AG leaves at the expiry of their 6-year term of office. That change, which meant that certain AGs depart from using their mother tongues, is said to have not only challenged those AGs in the way that they prepare their opinions, but also influenced substantially the form of their submissions which risk becoming more synthetic in content and construction as compared to those drafted in an AG’s mother tongue.

This paper will elaborate on the findings of the literature review conducted as part of the LLECJ project. It will, firstly, focus on the *‘value’* of the AGs’ opinions insofar as it influences decision-making by the ECJ and contributes to indicating directions of development of the EU law (*droit prospectif*). Secondly, it will reflect on the role the language plays in this *‘value’*. Specifically, it will attempt to indicate whether the use of language other than mother tongue limits AGs when formulating their opinions and whether the Court’s rules and conventions on the use of language have an impact on timeliness and quality of these submissions.

**Paper 3:**

**The Role of Language in the Advocate General’s Opinions: Consequences for ECJ Case Law?**

*Liana Muntean, University of Birmingham*

This paper uses empirical research data ‑ specifically qualitative research interviews and observational data - to explore the role of Advocates General (AG) in the production and development of the European Court of Justice (ECJ) case law. The paper identifies all of the different actors involved in the drafting process of AGs’ opinions and determines their role in the process of creating and developing EU case law.

Although opinions are attributed to a single author ‑ the AG him/herself ‑ there are in fact a number of actors who contribute to the drafting process. Besides AGs and référendaires, who draft a substantive part of the final opinion, there are also hidden actors involved in the drafting process. Although substantive contributions from their part may be frowned upon, lawyer linguists and freelancers play an essential role in ensuring that AGs’ opinions are clear and unambiguous. The final texts, rather than being akin to academic papers, as is widely assumed, are to a certain extent like the judgments of the ECJ in that they are hybrid texts to which several actors contribute.

The paper also draws on the empirical data to consider whether the use of the “pivot languages” system, introduced after the 2004 enlargement, has had an impact on the working methods of AGs and in what ways it may have affected the AGs’ opinions and the case law of the ECJ.

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

**Paper 4:**

**LLECJ ‑ Preliminary Conclusions**

*Karen McAuliffe, Liana Muntean, Ewelina Tylec, University of Birmingham*

This paper presents some results from the parts of the LLECJ project set out in this panel. The analysis is centred around exploring to what extent language use has had an impact on the usefulness of Advocates Generals’ opinions. Changes to the linguistic aspect of the Advocate General’s role have implications for the construction and consolidation of ECJ jurisprudence and by extension on the general formation and application of EU law.

By approaching questions of EU (case) law in a truly interdisciplinary way, using a range of methods drawn from fields outside of law, we can gain a nuanced and rich understanding of the many layers that come together to produce that case law. That cannot be done through a traditional doctrinal study of that case law itself. This has implications not only for our understanding of the function of the ECJ, but also the development of its case law, and the development of EU law more generally.