

# THE IMPORTANCE OF UNDERSTANDING THE DIFFERENCES IN MEANINGS OF JUDICIAL TERMS

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## 1. INTRODUCTION

Differences between legal systems and, in particular, between the terminology used in each of them, can give rise to a number of problems when analysing, studying or applying laws or when conducting multi-jurisdictional research. This is why understanding the differences in meaning that may exist between judicial terms is so important.

As a first step in our research, we have selected a variety of terms whose meaning we will analyse in the context of the US judicial system, consulting their definition in various sources and considering the differences between each. Therefore, a table containing the following elements is set up:

- As source number 1, the Merriam-Webster Dictionary, the oldest dictionary publisher in the United States.
- As sources number 2, 3 and 4, three free legal dictionaries: the Black's Law Dictionary, the People's Law Dictionary and Wex, the legal dictionary hosted by the Legal Information Institute at the Cornell Law School.
- As source number 5, the US Court's Glossary.
- As source number 6, the Federal Rules of Civil Procedure, which govern civil procedure in the district courts of the United States.
- Lastly, some annotations are provided in order to determine if there is consensus about the term's definition or not.

## 2. PRACTICAL APPROACH

Term	Source 1: Merriam-Webster Dictionary	Source 2: Black’s Law Dictionary	Source 3 People’s Law Dictionary	Source 4: Legal Information Institute at the Cornell Law School	Source 5: US Court’s Glossary	Source 6: Federal Rules of Civil Procedure	Annotations
<b>Arbitration</b>	„The hearing and determination of a disputed case by an arbiter“	„The investigation and determination of a matter or matters of difference between contending parties, by one or more unofficial persons, chosen by the parties, and called “arbitrators,” or “referees”.	„A mini-trial, which may be for a lawsuit ready to go to trial, held in an attempt to avoid a court trial and conducted by a person or a panel of people who are not judges“.	„It refers to an alternative dispute resolution method where the parties in dispute agree to have their case heard by a qualified arbitrator out of court“.	No entry for „arbitration“. Instead, we find an entry for „alternative dispute resolution (ADR)“, which states as follows: „a procedure for settling a dispute outside the courtroom. Most forms of ADR are not binding, and involve referral of the case to a neutral party such as an arbitrator or mediator“.	The FRCP state that 9 U.S.C. provides procedures regarding arbitration.	There is consensus on the meaning of the term, as it is described in all cases as an alternative dispute resolution method in which an impartial third party called an arbitrator is charged with resolving a dispute.
<b>Complaint</b>	„A formal allegation against a party“.	„The first or initiatory pleading on the part of the plaintiff in a civil action“.	„The first document filed with the court (actually with the County Clerk or Clerk of the Court) by a person or entity claiming legal rights against another. The party filing the complaint is usually called the plaintiff and the party against whom the complaint is filed is called the defendant or defendants“.	„The pleading that starts a case. Essentially, a document that sets forth a jurisdictional basis for the court's power, the plaintiff's cause of action, and a demand for judicial relief“.	„A written statement that begins a civil lawsuit, in which the plaintiff details the claims against the defendant“.	Rule 3 ( <i>Commencing an Action</i> ) indicates that „a civil action is commenced by filing a complaint with the court“.	Again, there is a certain degree of unification regarding its meaning, since in all the sources consulted it is described as the first document to be filed in at the court in order to begin a civil lawsuit. However, in this case, it should be noted that the requirements for filing a complaint may vary depending on the location.

<b>Counterclaim</b>	„A claim brought by a defendant against a plaintiff in a legal action“.	„The claim or cause of action against the plaintiff by the defendant“.	„A retaliatory claim by a defendant against a plaintiff in a lawsuit included in the defendant's answer and intending to off-set and/or reduce the amount of the plaintiff's original claim against the defendant“.	„A claim for relief filed against an opposing party after the original claim is filed. Most commonly, a claim by the defendant against the plaintiff“.	No entry for „counterclaim“.	Rule 13 is responsible for regulating counterclaims and crossclaims. According to it, there are different types of counterclaims: compulsory counterclaims, permissive, etc.	As in the previous case, all sources consulted define the term as the claim filed by the defendant against the plaintiff.
<b>Decision</b>	„A report of a conclusion“.	„A judgment or decree pronounced by a court in settlement“.	„A judgment, decree or determination of findings of fact and/or of law by a judge, arbitrator, court, governmental agency or other official tribunal (court)“.	„A judicial determination of parties' rights and obligations reached by a court based on facts and law. A decision can mean either the act of delivering a court's order or the text of the court's opinion on the case and the accompanying court order“. „Decision is often used interchangeably with „judgment“, „ruling“, „opinion“ and „order““.	No entry for „decision“.	The term „decision“ is used interchangeably with other terms such as „judgment“, „ruling“ or „order“ throughout the whole provisions. For example, Rule 54(b) states that „...any order or other decision...that adjudicates fewer than all the claims...“ As another example, Rule 79(b) states that „the clerk must	In this case, there is also consensus on the meaning of a court decision, however, we find that other terms are used synonymously. This should be taken into account when reading or analyzing a legal text, since it may refer to „judgment“ instead of „decision“, for example.

						keep a copy of every final judgment and appealable order...“.	
<b>Default judgment</b>	„A judgment entered by a court after an entry of default against a party for failure to appear, to file a pleading, or to take other required procedural steps“.	„When a defendant in an action at law omits to plead within the time allowed him for that purpose, or fails to appear on the trial, he is said to make default, and the judgment entered in the former case is technically called a judgment by default“.	„If a defendant in a lawsuit fails to respond to a complaint in the time set by law (commonly 20 or 30 days), then the plaintiff (suer) can request that the default (failure) be entered into the court record by the clerk, which gives the plaintiff the right to get a default judgment“.	„A default judgment (also known as judgment by default) is a ruling granted by a judge or court in favor of a plaintiff in the event that the defendant in a legal case fails to respond to a court summons or does not appear in court“.	„A judgment awarding a plaintiff the relief sought in the complaint because the defendant has failed to appear in court or otherwise respond to the complaint“.	Rule 55 states in which cases a default judgment must be entered.	Again, the term is described in all sources in the same way, so there is unanimity as to its definition. A default judgment or judgment by default is a court decision rendered on the basis of the defendant's non-appearance or non-response.
<b>Discovery</b>	„The usually pretrial disclosure of pertinent facts or documents by one or both parties to a legal action or proceeding“.	„The disclosure by the defendant of facts, titles, documents, or other things which are in his exclusive knowledge or possession, and which are necessary to the party seeking the discovery as a part of a cause or action pending or to be brought in another court, or as evidence of his rights or title in such proceeding“.	„The entire efforts of a party to a lawsuit and his/her/its attorneys to obtain information before trial through demands for production of documents, depositions of parties and potential witnesses, written interrogatories (questions and answers written under oath), written requests for admissions of fact, examination of the scene and the petitions and motions employed to enforce discovery rights“.	„In civil actions, the discovery process refers to what parties use during pre-trial to gather information in preparation for trial“.	„Procedures used to obtain disclosure of evidence before trial“.	According to Rule 26(b)(1), „Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense“.	Again, although some sources provide more information than others, all agree that the term „discovery“ refers to the process of gathering documents, facts and information before trial.

<p><b>Domicile</b></p>	<p>„A person’s fixed, permanent, and principal home for legal purposes“.</p>	<p>„That place in which a man has voluntarily fixed the habitation of himself and family, not for a mere special or temporary purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home“.</p>	<p>„The place where a person has his/her permanent principal home to which he/she returns or intends to return. This becomes significant in determining in what state a probate of a dead person's estate is filed, what state can assess income or inheritance taxes, where a party can begin divorce proceedings, or whether there is "diversity of citizenship" between two parties which may give federal courts jurisdiction over a lawsuit“.</p>	<p>„Someone's true, principal, and permanent home. In other words, the place where a person has physically lived, regards as home, and intends to return even if currently residing elsewhere. Determining where a party is domiciled is of particular importance in the field of civil procedure“.</p>	<p>No entry for „domicile“.</p>	<p>We just find the term „domicile“ once in the FRCP, more specifically in Rule 17(b)(1), according to which the capacity to sue or be sued is determined according to the law of the individual’s domicile.</p>	<p>There is no difficulty concerning this term, since it is commonly known as the place where an individual permanently resides.</p>
<p><b>Forum non conveniens</b></p>	<p>„A doctrine allowing a court with jurisdiction over a case to dismiss it because the convenience of the parties and the interest of justice would be better served if the case were brought in a court having proper jurisdiction in another venue“.</p>	<p>„A Latin phrase where a court with the authority to try a case decides to turn the matter over to another court“.</p>	<p>„Latin for a forum which is not convenient. This doctrine is employed when the court chosen by the plaintiff (the party suing) is inconvenient for witnesses or poses an undue hardship on the defendants, who must petition the court for an order transferring the case to a more convenient court“.</p>	<p>„A court's discretionary power to decline to exercise its jurisdiction where another court, or forum, may more conveniently hear a case“.</p>	<p>No entry for „forum non conveniens“</p>	<p>We do not find this expression in the FRCP. We just find the word „forum“ in Rule 23(b): „...the desirability or undesirability of concentrating the litigation of the claims in the particular forum...“</p>	<p>In all sources we find a similar definition, considering that <i>forum non conveniens</i> is a latin expression that implies the possibility for a different court to hear a case because it is more convenient. However, we do find a small difference, in this case between source number 3 and the rest of them. While the rest of the definitions state that it is the court itself the one who decides to transfer the case, source number three says that the</p>

							defendants are the ones „who must petition the court for an order transferring the case“.
<b>Forum shopping</b>	„The practice of choosing the court in which to bring an action from among those courts that could properly exercise jurisdiction based on a determination of which court is likely to provide the most favorable outcome“.	No entry for „forum shopping“.	No entry for „forum shopping“	„Forum shopping refers to the practice of pursuing a claim subject to concurrent jurisdiction in the court that will treat the claim most favorably“.	No entry for „forum shopping“.	No reference to „forum shopping“. The FRCP just mention the term „forum“ once, as we have already seen with the term „forum non conveniens“.	In this case, we only found definitions in two of the sources consulted. Both agree in the meaning of the term, as they both define it as the practice of choosing a certain court in which to bring an action because it is the one most likely to rule favorably.
<b>Injunction</b>	„A writ granted by a court of equity whereby one is required to do or to refrain from doing a specified act“.	„A prohibitive writ issued by a court of equity, at the suit of a party complainant, directed to a party defendant in the action, or to a party made a defendant for that purpose, forbidding the latter to do some act, or to permit his servants or agents to do some act, which he is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the	„A writ (order) issued by a court ordering someone to do something or prohibiting some act after a court hearing“.	„A court order requiring a person to do or cease doing a specific action“.	„A court order preventing one or more named parties from taking some action. A preliminary injunction often is issued to allow fact-finding, so a judge can determine whether a permanent injunction is justified“.	Rule 65 regulates the mandatory content and scope of an injunction.	All sources provide a similar definition but with some particularities. For instance, source number 3 specifies that the writ is issued after a court hearing, while other sources don't. Also, sources number 3, 4 and 5 do not say which type of court grants an injunction, while 1 and 2 state it is issued by a court of equity.

		plaintiff, and not such as can be adequately redressed by an action fit law“.					
<b>Jurisdiction</b>	„The power, right, or authority to interpret and apply the law“.	„The power and authority constitutionally conferred upon (or constitutionally recognized as existing in) a court or judge to pronounce the sentence of the law, or to award the remedies provided by law, upon a state of facts, proved or admitted, referred to the tribunal for decision, and authorized by law to be the subject of investigation or action by that tribunal, and in favor of or against persons (or a res) who present themselves, or who are brought, before the court in some manner sanctioned by law as proper and sufficient“.	„The authority given by law to a court to try cases and rule on legal matters within a particular geographic area and/or over certain types of legal cases“.	„Power of a court to adjudicate cases and issue orders“ or „territory within which a court or government agency may properly exercise its power“.	„The legal authority of a court to hear and decide a certain type of case. It also is used as a synonym for venue, meaning the geographic area over which the court has territorial jurisdiction to decide cases“.	We find this term throughout the whole document, as for example in Rule 23.1 ( <i>Derivative Actions</i> ), which states that „the complaint must [...] allege that the action is not collusive one to confer jurisdiction that the court would otherwise lack...“	In this case there is a unified definition of the term, as in all cases it is defined as the power of the judge to rule on a given case.
<b>Legal representation</b>	Legal representative: „one who represents or stands in the place of another under authority recognized	There is no entry for the term in the same sense as in the other sources. Instead, we find out that, in contracts,	„Acting as an attorney for a client“.	Represent: „to serve as one’s attorney. An attorney can represent a client in litigation proceedings, settlement	No entry for „legal representation“ nor for the term „representation“ alone.	We only find the term „legal representative“ in Rule 60(b), which says that	In this case, the question arises as to whether by "legal representative" we mean the lawyer who represents his client or

	by law especially with respect to other's property or interests".	„representation“ means „a statement made by one of two contracting parties to the other [...] in regard to some fact, circumstance or state of facts pertinent to the contract, which is influential in bringing about the agreement“. There are also other definitions related with different legal fields.		negotiations, or in transactional negotiations“.		„on motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding...“ In other cases, we find out that the FRCP just mention the term „representative“, as for instance in Rule 17(c), according to which it is the person who may sue or defend on behalf of a minor or incompetent person.	whether, on the contrary, we are talking about the person who represents a minor or incapacitated person, i.e. his general guardian, conservator, etc. On the other hand, the term should also not be confused when its meaning is that set out in source number 2, relating to contracts.
<b>Mediation</b>	„A means of resolving disputes outside of the judicial system by voluntary participation in negotiations structured by agreement of the parties and usually conducted under the guidance and supervision of a	„Intervention; interposition ; the act of a third person who interferes between two contending parties with a view to reconcile them or persuade them to adjust or settle their dispute“.	„The attempt to settle a legal dispute through active participation of a third party (mediator) who works to find points of agreement and make those in conflict agree on a fair result“.	„Mediation is an alternative dispute resolution method with a neutral person helping the parties find a solution to their dispute“.	No entry for „mediation“. Instead, we find an entry for „alternative dispute resolution (ADR)“, which states as follows: „a procedure for settling a dispute outside the courtroom. Most forms of ADR are not binding, and involve		As with the term „arbitration“, there is consensus on the definition, since mediation is, in all cases, the alternative method of conflict resolution through a mediator.



	trained intermediary“.				referral of the case to a neutral party such as an arbitrator or mediator“.		
<b>Response</b>	As of the term „response“, we find the following definition: „something constituting a reply or a reaction“. If we search for „answer“, it is defined as „a reply to a legal charge or suit“.	„Answers to the plaintiff’s allegations“.	No entry for response. Instead, we find the term „answer“, defined as „a written pleading filed by a defendant to respond to a complaint in a lawsuit filed and served upon that defendant“.	The website leads us directly to the term „answer“, defined as „a defendant’s first formal written statement to a plaintiff’s initial petition or complaint.	Again, the term we find is „answer“, defined as a „formal written statement by a defendant in a civil case that responds to a complaint, articulating the grounds for defense“.		We have found it more difficult to provide a unified definition, since in many cases it does not even appear as an entry in the dictionaries consulted, but refers directly to the term „answer“. Apparently, an answer is „a defendant’s response to a plaintiff’s initial court filing“, while a response is „a written pleading filed by a defendant to respond to a complaint. The most common is an answer, but there are other types of responses possible“.
<b>Third-party intervention</b>	We find a general definition, according to which „intervention“ is „the act of interfering with the outcome or course especially of a condition or process (as to prevent harm or improve functioning)“	„The act by which a third party demands to be received as a party in a suit pending between other persons. The intervention is made either for the purpose of being joined to the plaintiff, and to claim the same thing he does, or some other thing connected with it; or to	Intervention: „the procedure under which a third party may join an on-going lawsuit, providing the facts and the law issues apply to the intervenor as much as to one of the existing contestants“.	Intervention: „a procedural method for a third-party to enter an already existing action“.	No entry for „intervention“	Rule 24 is responsible for regulating intervention. According to this Rule, there are two types of intervention: intervention of right and permissive intervention.	There is consensus on the definition of the term, as all sources agree that it refers to the act of bringing a person as a new party into an existing process.

		join the defendant, and with him to oppose the claim of the plaintiff, which it is his interest to defeat“.					
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As we can see from this first practical analysis of judicial terms, while in many cases there is consensus on their definition, in other cases there are small differences between sources, which can lead to errors or other issues in the use or application of these terms. But, what are these issues?

### **3. ISSUES ARISING FROM LACK OF CONSENSUS ON JUDICIAL TERMS**

#### **3.1. Complication to analyze cases**

Anyone will agree that in order to analyze a case properly it is necessary to understand the terminology. But, beyond understanding the terminology, it is also necessary to understand how the legal system we are analyzing works, and therefore to understand the differences that may exist between different legal figures, whether they are called by the same or different names.

#### **3.2. Undermining the validity of analysis and obtaining erroneous conclusions**

Closely related to the previous problem, the difficulty in analyzing a case may lead to a lack of validity of analysis and to erroneous conclusions. This can become a serious problem if the conclusion we have reached is totally contrary to what actually exists.

#### **3.3. Erroneous interpretations of research findings**

In line with what we have been discussing, a lack of knowledge of terminology can lead to misinterpretations of the research we are carrying out. But not only of terminology, researchers are likely to miss variables such as organization structures, procedures, staffing models or other factors that might not be immediately recognized as important.

#### **3.4. Inconsistent use of terminology**

Understanding the differences in meaning between legal terms is important not only when analyzing a case or a third party report, but also when drafting our own report, paper, project, etc. A lack of knowledge can lead to inconsistent use of terminology in our work.

#### **3.5. Difficulty in classifying cases in the correct category**

As described in *How exactly does it get done here? Conducting cross-jurisdictional research with judges and court staff*, by Paula Hannaford-Agor, “in some states, the term “civil case” refers to any non-criminal case, including domestic relations, probate, mental health, and even traffic cases; in other states, civil is specifically used as a category primarily encompassing tort, contract, and real property cases“. Therefore, understanding the differences between systems is important because „occasionally the researcher will encounter case type descriptions that reference statutory or regulatory claims that are unique to the state“.

#### **4. US APPROACH TO THE ISSUE**

Some actions have been taken in the United States to deal with these differences:

- Creation of the State Court Model Statistical Dictionary in 1980, as a first effort to provide a uniform set of data definitions.
- Creation of the State Court Guide to Statistical Reporting in 2003, which offers guidance and data definitions for case types, manner of disposition, case status, and other characteristics to allow researchers to make more accurate comparisons across jurisdictions.
- Creation of the National Open Court Data Standards (NODS) in 2021 as a detailed resource to make case-level court data available to researchers, policymakers, the media, and the public to provide greater transparency about court operations.
- Set up of the National Center for State Courts' Statistics Project in 2021.

#### **5. PROPOSAL TO DEAL WITH SUCH DIFFERENCES**

Differences in the meaning of legal terms exist not only among the different states of the United States, but also, for instance, among the countries of the European Union. That is why it is important to be aware of these differences also at the UE level, if you are faced with the situation of having to analyze a resolution or system from another member state. Some proposals to avoid the problems mentioned in the first section are as follows:

- Creation of a general glossary of terms, reflecting as many legal systems as possible, with the terms presented in their respective languages.
- Creation and/or regular updating of databases.
- Creation of a legal terminology committee.
- Creation of a website where you can consult each term in the different languages with its corresponding meaning.
- At the individual level, conduct a thorough terminology analysis before starting any project, text analysis, research, etc.

Of all the proposals, we will focus on the first, as it is the one that can be most easily implemented.

##### **5.1. Creation of a general glossary of terms**

The creation of a multi-jurisdictional glossary of legal terms, which is public and easily accessible, can be one of the most useful tools for conducting any cross-jurisdictional activity. First of all, it is important

to establish the parameters that the glossary should have in order to be a truly useful tool. As a test, we have established the following classification, taking English as a source language:

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<b>COMPLAINT</b>			
<b>US</b>			
<b>Term</b>	<b>Definition</b>	<b>Source</b>	<b>Url</b>
Complaint	„The pleading that starts a case. Essentially, a document that sets forth a jurisdictional basis for the court's power, the plaintiff's cause of action, and a demand for judicial relief“.	Legal Information Institute at the Cornell Law School	<a href="https://www.law.cornell.edu/wex">https://www.law.cornell.edu/wex</a>
<b>Spain</b>			
<b>Term</b>	<b>Definition</b>	<b>Source</b>	<b>Url</b>
Demanda	„Escrito con el que normalmente se inicia un proceso y en el que, exponiendo los hechos y los fundamentos de derecho que se crean aplicables, se solicita del juez un pronunciamiento favorable a una determinada pretensión“.	Real Academia Española	<a href="https://dle.rae.es/demanda">https://dle.rae.es/demanda</a>
<b>Czech Republic</b>			
<b>Term</b>	<b>Definition</b>	<b>Source</b>	<b>Url</b>
Žaloba	„2. obvinění někoho před soudem: přednést, podat, vést ž-u; ž. jej viní ze zločinu; prohrát ž-u; upustit od ž-y; přen. zastávat ž-u v procesu žalobce, žalující stranu; práv. návrh na zahájení občanského soudního řízení: ž. o náhradu škody, o vydání věci; vzít ž-u zpět; zamítnout ž-u; vyhovět ž-ě; ž. prokurátora; paternitní ž.; (dř.) ž. pro urážku na cti“.	Slovník spisovného jazyka českého (SSJČ)	<a href="https://ssjc.ujc.cas.cz/">https://ssjc.ujc.cas.cz/</a>

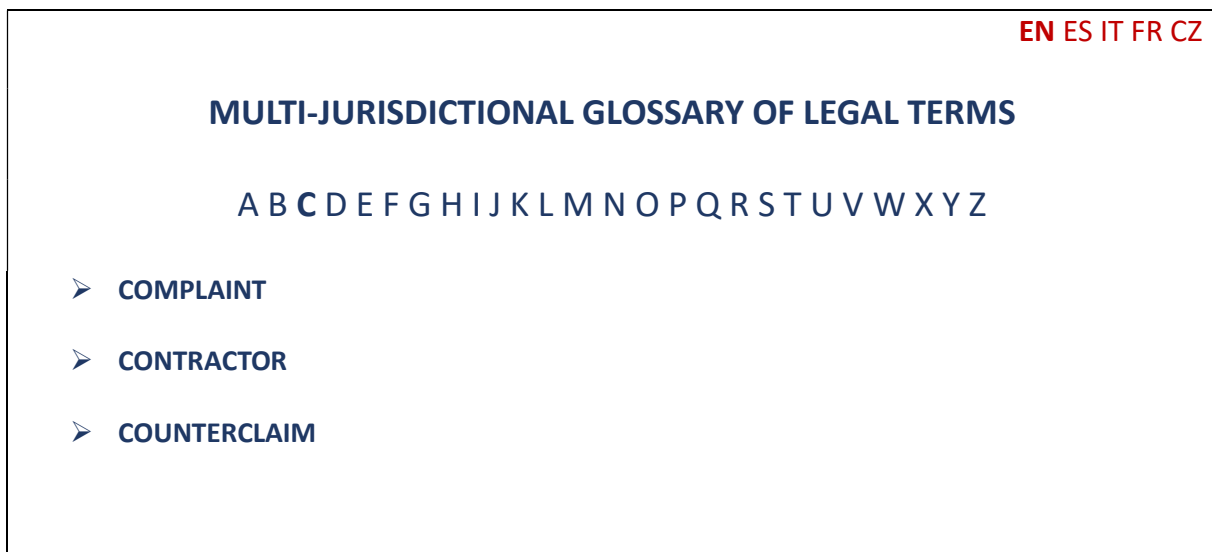
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In our example, the language in which the term entries are in is English (COMPLAINT would be the entry), so all terms would be sorted alphabetically according to their English name. In the case of a simple glossary in word or pdf format and without being interactive, anyone who wanted to look up

the equivalence of a term in other legal systems/countries would simply have to search for it in their language using the search engine.

Now, the ideal proposal would be to transfer this glossary to the format of a web page, where you can choose the language in which you want the glossary to be presented, so that, for example, a Spanish citizen could access the web page, select the Spanish language, and then see all the entries of terms in their language, ordered alphabetically according to that language. He/she would only have to select the term he/she is interested in and then see its equivalents in other countries. The same applies if the citizen is Czech or of any other nationality.

The website could therefore look as follows:



As we can see in the top right corner, the selected language is English (because it is in bold), so the page would appear in English, but we could choose any language. Likewise, in the previous case, the letter selected is the letter "C", so all the entries for terms beginning with this letter would appear. Once we choose the term we want to consult from among all those displayed, the page would look like this:

**EN ES IT FR CZ**

**MULTI-JURISDICTIONAL GLOSSARY OF LEGAL TERMS**

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

- **COMPLAINT**
  - **US**
  - **UK**
  - **Spain**
  - **Czech Republic**

Next, we would choose the country whose legal concept we are interested in, such as the USA or Spain:

**EN ES IT FR CZ**

**MULTI-JURISDICTIONAL GLOSSARY OF LEGAL TERMS**

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

- **COMPLAINT**
  - **US**

Complaint	The pleading that starts a case. (Legal Information Institute at the Cornell Law School) Essentially, a document that sets forth a jurisdictional basis for the court's power, the plaintiff's cause of action, and a demand for judicial relief.
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  - **UK**
  - **Spain**

Demanda	Escrito con el que normalmente se inicia un proceso... (RAE)
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  - **Czech Republic**

We will now see what it would be like if we were to choose, for instance, Czech as the website's main language:

[EN](#) [ES](#) [IT](#) [FR](#) [CZ](#)

## GLOSÁŘ PRÁVNÍCH POJMŮ PRO VÍCE JURISDIKČÍ

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

- **ŽALOBA**
  - **Spojené státy americké**
  - **Spojené království**
  - **Španělsko**

Demanda	Escrito con el que normalmente se inicia un proceso... (RAE)
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  - **Česká republika**

Žaloba	Obvinění někoho před soudem: přednést, podat, vést... (SSJČ)
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### 5.2. Utility in the context of online dispute resolution (ODR)

The creation of such a multi-jurisdictional glossary could be very useful in the context of online dispute resolution in the event of a conflict between nationals of several countries that goes beyond a mere consumer issue. It could be incorporated as a terminology base into the ODR platform being used, so that it could be used for translations within the platform.