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Legal Translation

Current Issues and Challenges in Research, Methods and Applications

Ingrid Simonnæs / Marita Kristiansen (eds.)

Frank & Timme

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Bergen, February 2019

Ingrid Simonnæs Marita Kristiansen

Introduction

Ingrid Simonnæs and Marita Kristiansen

Legal discourse is by nature complex and vested in culture-bounded norms and practices within the legal system it is established, whether it is in the form of laws, regulations or a contract. Translating legal texts is therefore a recurring challenge, something which makes it demanding how to approach this challenge in teaching as well. In this book, we have invited law scholars, legal linguists and professional translators to discuss what they see as ongoing challenges in legal translation, taking as a point of departure a variety of language combinations and different legal systems.

Ever since mankind has needed to communicate across borders, the skills of translation and interpretation have been essential. Legal translation, as a particular kind of specialised translation, is a communicative activity in the legal domain. In fact, legal translation may be regarded as "an act of communication in the mechanism of the law" (Šarčević 1997: 55). Furthermore, a legal translator may be seen as a transcultural information broker (Obenaus 1995) who needs not only translation skills, but also a certain level of domain expertise. As every kind of translation, legal translation always takes into account its sender and recipient, content, context and particular aim. Relevant, but not only related to translation, these aspects were already known in the 2nd century BC, when Hermagoras of Temnos pointed to the important rhetorical advices *quis, quid, quando, ubi, cur, quem, ad modum quibus adminiculis* (who, what, when, where, why, in what way, by what means). In modern time, Lasswell's communication model, which is applicable to legal translation as well, reflects these questions.

At the same time, modern translation theories developed in the second half of the 20th century from being primarily linguistically based (see for instance Nida 1964; Catford 1965; Reiß & Vermeer 1984) to more cognitively based (e.g. Risku 1998; Halverson 2010a and b, 2014).

An ever-increasing globalisation has created a great demand for cross-border communication, i.e. interlingual translation (Jakobson's 'translation proper' 1959:

233). Legal translation is one kind of interlingual translation which has recently consolidated itself as one of the most prominent and demanded specialisations in the translation market, and also attracting much focus in theoretical translation studies (see e.g. Prieto Ramos & Borja Albi 2013: 1; Kjær 2014). An example of its relevance to the translation market is the recent approval of the Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings with the aim to ensure this right to suspected or accused persons. Without this right, these individuals would not have the same right to a fair trial (Art. 2 and 3).

As argued in Prieto Ramos (2014), legal translation studies is today seen as an interdisciplinary discipline that is concerned with all aspects of translation of legal texts, including processes, products and agents (2014: 261). Recent studies into the interdiciplinary nature of legal translations studies include Felici 2010, Robertson 2012, Pommer 2012, Kjær 2014, Baaijj 2015, 2018 and Engberg 2018. One particular aspect of legal translation is the fact that it has long been considered fundamentally different from other specialised translation such as for instance translation in the subject field of medicine or technology since its subject field is always anchored in a particular domestic legal system (Harvey 2002; Gémar 2006). This causes conceptual incongruity. However, texts from supranational EU law and private international law are exceptions. EU law represents a separate legal system anchored in the TEU (formerly the EEC; Dowrick 1983: 169)[1] whereas private international law - otherwise termed 'law of the conflict of laws' - "comes into play whenever a court is faced with a question that contains a foreign element, or a foreign connection" (Kiestra 2014: 14). It is therefore relevant to ask what kind of theoretical and practical issues and challenges legal translation and legal translation studies in the 21st century are confronted with.

In this anthology, renowned authors approach legal translation and legal translation studies (LTS) both from a theoretical and practical point of view. The authors from about 15 countries worldwide focus on everlasting and recent challenges in legal translation emerging from today's globalisation and internationalisation. The

[1] Dowrick refers to the landmark decision in Case 6/64 *Costa* v *ENEL* (1964) and argues that the EEC Treaty has created its own legal system which, on the entry into force of the treaty, became an integral part of the legal systems of the member states and which their courts are bound to apply.

contributions deal with different legal systems, mostly within a European setting, including civil law systems and common law systems as well as supranational and private international laws, different approaches, and a number of language combinations, including English and Chinese. The texts are written in English, French and German, with English as the dominant *lingua franca*. Finally, legal translation issues are approached both from a theoretical and practical viewpoint.

We hope this collection of articles on legal translation, the challenges and current issues related to both the actual task of translating legal texts and the training of future translators will be inspiring and useful to fellow colleagues.

Short summaries of the research contributions to this book

The book comprises 18 chapters which we have grouped in four thematic parts according to their main focus. In the following, we will briefly summarise the main content of the various chapters.

Part one focuses on legal translation in an EU as well as an international setting with focus of institutional translation in particular. **Łucja Biel** rightly argues that the scale and importance of EU translation until recently has received less focus in research compared with domestic legal translation. At the same time, she refers to the existence of a large, publically available pool of multilingual resources, which can make legal translation in the multilingual EU context an empirically attractive field of research posing numerous theoretical and methodological challenges. By demonstrating the operalisation of different variables, she argues that it should therefore be possible to model EU legal translation in more depth. In her outlook, Biel emphasises that future research into EU legal translation should involve research of less prototypical legal genres than the currently most analysed genres of legislation and judgments. Additionally, she argues for a research design that goes beyond one language pair in order to take into account the EU's multilingualism as a particular methodological challenge. She points to the fact, that only data from such research will enable the scientific community to understand, explain and theorise about EU legal translation with less speculation.

The paper written jointly by **Karin Luttermann** and **Klaus Luttermann**, stresses the challenges caused by the established EU linguistic regime where 'translations'

into, or versions of, currently 24 official languages are considered to be equally authentic. They argue for the reference language model (*Referenzsprachenmodell*) and raise the question whether one may speak of homogeneous legal semantics and communication. The model suggests that European legal documents should be drafted in two reference languages, which must be carefully compared linguistically as well as legally before they are translated into the official languages of the member states. The reference languages are determined according to the democratic majority principle, i.e. English and German, based on statistical data. They argue that this approach promotes more legal certainty and comprehensible communication within a multilingual EU.

In addition, **Barbara Pozzo** analyses how language affects the reception of foreign legal models and discusses the relationship between legal transplants and legal translation. She makes a *tour de force* through legal history from a European perspective from the XI century until present time, and using language as a lens. She gives an overview of the evolution of legal systems through legal language and legal transplants. Pozzo argues that legal languages often are the constructs of the translation of concepts, ideas, schemes of reasoning, and institutions, which have occurred for different reasons. In her overview, Pozzo makes an effort to identify overarching patterns in the development of legal languages, including English in the British Empire. According to her, especially the rise of "global English" has led to a "deterritorialisation of the law" where the language use reflects new meanings arisen in the international context and incorporating different legal models. She concludes that some legal systems, and the languages in which they are expressed, have imposed on other legal systems for reasons of conquest or reasons connected to prestige, or both. Consequently, the study of the history of legal languages enables us to understand the evolution of legal systems.

In their paper, **Fernando Prieto Ramos** and **Albert Morales Moreno** explore the evolution and consistency of the translation of neologisms in the context of institutional legal and administrative genres. They present a lexicometric analysis of selected terminology from English into Spanish by adopting a diachronic and comparative perspective. The data is based on the "LETRINT project" on legal translation in international and EU institutional settings. They investigate patterns of translation of terminology used in international law to investigate terminolo-

gical consistency within and between international institutions such as the UN and the WTO as well as the EU. The results are subsequently compared with the uses found in Spanish general and economic newspapers as relevant indicators of extra-institutional uses more broadly. Their analyses demonstrate a need for harmonization to improve the quality of institutional communication, as well as standardization of target language terminology.

Part two of the book comprises chapters dealing with interdisciplinary approaches to legal translation. The first chapter by **Elena Chiocchetti, Flavia De Camillis**, and **Isabella Stanizzi** uses a micro-comparison as a methodological approach and analyses terminological challenges caused by legislative changes in the domain of family law. The authors rightly argue that legislative changes may affect heavily the terminology of a particular legal domain. Therefore, new concepts may emerge, and designations and existing concepts may evolve and change. To illustrate this, they outline recent reforms in the domain of family law in Italy and Germany and compare subsequently the concept systems and related terminology in the two legal systems. Legal concepts are compared in order to find similarities and differences, which in turn should form the basis for a translator's decisions on correspondence or degree of equivalence. The authors also refer to the usefulness of this approach for language planning by using Italian and German examples from the northern Italian province of South Tyrol with both German and Italian as official languages.

In her chapter, **Rosario Martín Ruano** raises the question of whether legal translation studies should aim for academic agreement rather than critical discussion of paradigms in order to advance as a knowledge area. She argues that although descriptive studies in Legal Translation Studies have marked significant progress in the field, there is a need to explore how a design of integrated research frameworks could provide promising insights into legal translation as a multi-dimensional phenomenon. She argues for a critical perspective on the findings of empirical, data-driven approaches in the domain of legal translation. In her view, using a combination of research methodology on legal translation with critical perspectives stemming from sociological and post-structuralist approaches might contribute to a better understanding of the activity by which legal translation is affected.

The focus in the chapter by **Gianluca Pontrandolfo** is the main discursive constraints legal translators are faced with in their work. The multifaceted framework used in his analysis of one particular legal text genre, i.e. criminal judgments, is based on van Dijk's (1977) categorisation into superstructure, macro-structure and microstructure. This approach allows him to classify the multi-layered discursive constraints in action while translating legal texts, and particularly to detect the main asymmetries between legal cultures, which is the most well-known challenge for legal translation. This challenge is especially prominent when the texts are related to different legal systems, in his analysis England and Wales, Spain and Italy, respectively, belonging to the common law system and the civil law system. When conceptualising the genre as demonstrated in the used framework, he argues that legal translators are able to establish relevant connections between the use of language on the one hand and the purpose of communication on the other. This goes hand in hand with the fact that the purpose of communication largely affects the use of language that all translators have to take into account to make a successful translation.

Part three deals with recently adopted translation training curricula and didactics. In their joint chapter, **Anabel Borja Albi** and **Robert Martínez-Carrasco** make an exploratory study to analyse the future profiles of legal translators. The point of departure for their analysis is their discussion of the current exponential changes in society resulting from globalisation and technological progress. The authors focus on what competences and profiles legal translators are expected to have in the future and outline three particular societal changes: Artificial Intelligence (AI), the increasing power of Big Data and Interconnectedness. The results from their study lead to the conclusion that new educational strategies will need to be incorporated into current legal translation competence models and curricula, and that these strategies must include a stronger focus on technological issues.

Christina Dechamps' chapter is the only one in French in this anthology and discusses collocations, synonymy, parasynonymy and polysemy, all being well-known phenomena and challenges in translation studies in general. Based on a case study on the language combination French-Portuguese with the aim to improving the training of translation students, she discusses the importance of collocation studies on legal translation. She examines one particular type of collocation, i.e. the

combination of verb and noun, and uses two different text types (letters rogatory and proxies) in order to investigate what kind of problems the translation student is encountering. In her conclusion, she emphasises the importance of the terminological verb in contrast to the noun, which in traditional terminology is usually seen as the main bearer of specialised concept(s). In addition, she argues for the inclusion of which verb should be combined with which noun in what kind of legal text in terminological databases.

In her chapter, **Cornelia Griebel** discusses think aloud protocols (TAP) of different small groups of participants, including professional legal translators, legal experts, and students in translation and legal studies, in which she analyses how they comprehend typical structuring markers in French court decisions of the *Cour de cassation* as a particular legal text genre. She bases her approach on the premise that text comprehension is driven by inferences. Especially the elaborative or forward inferences, which are predictive and based on world knowledge and anticipation of the intended meaning of the utterance, are useful for her qualitative case study. The main objective of her study is threefold: to detect (1) whether the typical text structure markers of the court decision trigger the construction of elaborative inferences that control the reading process, (2) whether legal translators show different inference processes than legal experts and finally, (3) whether increasing legal (translation) competence impacts on inference processes.

Central in the chapter by **Juliette Scott** is the notion of overtness/covertness, echoing House's denomination that in ancient time already was known as *ut interpres*, *ut orator* (Cicero). She argues that these levels must be part of a comprehensive translation brief, which takes into account different legal genres and different textual purposes ("fitness-for-purpose"). Whether the translation should be 'overt' or rather 'covert' depends on the addressee of the translation. An overt translation is, with reference to Baaij (2014), for a legal comparatist more likely to preserve the legal effect of the text, whereas this is not necessarily the case for stakeholders from the business world, representing the other group of addressees in Scott's study.

The starting point of the chapter by **Catherine Way** is the recognition that there has been a transition from more academic studies to more professionally focused

studies in research during the last three decades. The central question raised is what is expected of today's legal translator training with respect to market requirements. She analyses how trainees may acquire sufficient competence to enter the market as novice translators. She discusses different translation competence models and presents the findings from her study of a 15-week introductory course on legal translation. The study reported on reveals the participants' positive development of their translation competence as reflected in their comments on their weaknesses and difficulties as perceived by themselves. Finally, she argues strongly for the implementation of a continuous professional development in order to bridge apparent gaps between graduate training at the universities and industry requirements.

Eva Wiesmann investigates in her chapter Italian and German notarial documents with respect to their formulaicity. In contrast to the focus on synchronic target legal corpora, the analysis of formulas in diachronic source language legal corpora is, as she argues, a valuable help in understanding particular expressions in modern legal texts. She demonstrates that the formulas have mostly crystallised within a Notary office, are highly dependent on convention and tradition and are therefore more or less understandable. Since it is commonly accepted that und standing the source text is a prerequisite for an appropriate translation into the target language, consulting diachronic source language corpora, *in casu* containing Italian and German notarial documents, may prevent translation errors. Such corpora are compiled and are accessible at a Moodle site at the Dipartimento di Interpretazione e Traduzione of the University of Bologna.

The chapters in **Part four** deal with specific features of legal language. **Deborah Cao** explores challenges in translating legal terms between English and Chinese. Her starting point is the insight that although people have been translating for thousands of years, legal translation is a relatively recent activity in China since the translation of Western legal texts into Chinese started only in the late 1800s. The early legal translations and legal concepts later formed the basis and building blocks for modern Chinese legal language. Likewise, the early translation of Chinese imperial laws into English and other Western languages helped people in the West better understand the Chinese cultural and legal world. She discusses in depth considerable differences for seemingly basic concepts such as "law", "rights", "justice", and "court" when expressed or understood in Chinese and English,

respectively, and raises the issue of subjectivity in legal translation by addressing the everlasting question of literal or free translation and how much constraint or freedom the translator has in the translation process**.**

Ada Gruntar Jermol compares two particular kinds of normative legal texts, i.e. the German and Slovenian constitutions as well as the German and Slovenian criminal codes with respect to emotional attitudes. Contrary to the assumption that normative legal texts are characterised by non-emotionality, her analysis shows that emotions in these texts are often of low intensity and subtly and implicitly integrated into the text. To detect them therefore requires close reading. Based on her findings, she argues that there is a need for further studies to broaden the comparison to a diachronic comparison, something which could reveal changes in the use of emotionality.

Emilie Lindroos analyses the issue of formulaicity in law as a particular challenge to the translator when (s)he deals with legal language. In her chapter, she discusses a contrastive analysis of legal phrasemes in a corpus of judgments from administrative courts in Germany and Finland, respectively, in the field of asylum law; hence, the corpus name PHRASYL. Her aim is to investigate whether legal phrasemes occur in this text genre and more specifically if it is possible to find functional equivalents in the language combination German-Finnish. The translation of such phrasemes might present potential hurdles to the translator who must first identify the expression as a phraseme and at the same time be aware of the phraseme's dependence on the law (*Gesetzgebundenheit*) of a particular legal system.

Using text analysis, **Michele Mannoni** presents a study of the intrinsic legal and pragmatic meaning of the Chinese phrase *bu zhengdang quanyi* ('improper rights and interests'). This phrase is sometimes used in judgments from Chinese courts although it is not found in Chinese statutes. His analysis shows that the legal meaning of this phrase is yet not settled in Chinese but varies contextually. In Western countries, on the other hand, the concept of 'improper rights and interests' does not exist, neither as a legal concept nor as a general language expression. In his analysis, he uses the language pair of legal English and Chinese to illustrate his findings. Finally, he discusses the challenge of translating Chinese legal phrases such as *bu zhengdang quanyi* that do not have their equivalents in Western

countries and explores the possibility for the phrase to be recognized as a formal legal term in Chinese.

In the final chapter of the book, **Radegundis Stolze** discusses the issue of content and form seen from a legal translator's perspective. She refers to the well-known assumption that understanding appropriately the legal source text is a prerequisite for the translation into whatever legal target language where at least a functional language proficiency is required. Understanding legal source texts implies not only the knowledge of the source legal system based on the knowledge of its essential concepts, i.e. content, but also the awareness of particular linguistic specificities, i.e. form. Translations, being secondary texts, should be transparent to produce the same legal effects in practice. She argues that a translation should not be considered as a cultural transfer where the source text is transferred into the target legal system. In addition, the translator should pay close attention to how particular legal domains appear in different text genres and how procedural elements are reflected in particular stylistic forms. In her chapter, German – English examples from various text genres such as court decisions, contracts and legislative texts are used to demonstrate this issue.

References

Baaij, C.J.W. (Jaap) (2015): "EU Translation and the Burden of Legal Knowledge." In: Šarčević, Susan [ed.] (2015): *Language and Culture in EU Law. Multi-disciplinary Perspectives*. Farnham: Ashgate. 109 – 121.

Catford, John C. (1965): *A linguistic theory of translation. An essay in applied linguistics*. Oxford: Oxford University Press.

Dowrick, F. E. (1983): "A Model of the European Communities' Legal System." In: *Yearbook of European Law*, 3.1, 1 January 1983, 169 – 237, https://doi.org/10.1093/yel/3.1.169.

Engberg, Jan (2018): "Comparative Law and Legal Translation as Partners in Knowledge Communication: Frames as a Descriptive Instrument". In: Prieto Ramos, Fernando [ed.] (2018): *Institutional Translation for International Governance: Trends and Challenges.* Bloomsbury Academic. 37 – 48.

Felici, Annarita (2010b): "Multilingualism in EU Law: How Promulgation Authenticates Equality." In: *Comparative Legilinguistics* 2, 153 – 165.

Gémar, Jean-Claude (2006): "What Legal Translation is and is not - Within or Outside the EU." In: Pozzo, Barbara / Jacometti, Valentina [eds] (2006): *Multilingualism and the Harmonisation of European Law.* Alphen aan den Rijn: Kluwer Law International. 69 – 77.

Halverson, Sandra (2010a): "Towards a Cognitive Theory of Translation." In: Zybatow, Lew [ed.] (2010): *Translationswissenschaft - Stand und Perspektiven*. Frankfurt /M.: Peter Lang. 15-33.

Halverson, Sandra (2010b): "Cognitive translation studies. Developments in theory and method." In: Shreve, Gregory M. / Angelone, Erik [eds] (2010): *Translation and Cognition.* Amsterdam / Philadelphia: Benjamins. 349 – 369.

Halverson, Sandra (2014): "Reorienting Translation Studies: Cognitive Approaches and the Centrality of the Translator." In: House, Juliane [ed.] (2014): *Translation: A Multidisciplinary Approach.* Basingstoke: Palgrave. 116 – 139.

Harvey, Malcolm (2002): "What's so Special about Legal Translation? ". In: *Meta, Journal des traducteurs,* Vol. 47(2). 177 – 185.

Jakobson, Roman (1959): "On Linguistic Aspects of Translation." In: Brower, Reuben A. [ed.] (1959): *On Translation*. Cambridge, Mass: Harvard University Press. 232 – 239.

Kiestra, Louwrens R. (2014): "Introduction to Private International Law". In: Kiestra, Louwrens R. (2014): *The Impact of the European Convention on Human Rights on Private International Law*. Maastricht: T.M.C. Asser Press. 13 – 26. DOI 10.1007/978-94-6265-032-9_2

Kjær, Anne Lise (2014): "New challenges to the theory of legal translation: transnational legal communication and the autonomization of international law." In: *The Translator. Studies in intercultural communication* 20.3, 430 – 436.

Obenaus, Gerhard (1995): "The Legal Translator as Information Broker". In: Morris, Marshall [ed.] (1995): *Translation and the Law*. Amsterdam / Phila-delphia: Benjamins. 247 – 259.

Pommer, Sieglinde E. (2012): "Interpreting Multilingual EU Law: What Role for Legal translation?" In: *European Review of Private Law* 20.5&6, 1241– 1254.

Prieto Ramos, Fernando (2014): "Legal Translation Studies as Interdiscipline: Scope and Evolution." In: *Meta, Translators Journal* 59.2, 260 – 277.

Prieto Ramos, Fernando / Borja Albi, Anabel (2013): "Legal Translation: The State of Affairs." In: Borja Albi, Anabel / Prieto Ramos, Fernando [eds] (2013): *Legal Translation in Context. Professional Issues and Prospects.* (= New Trends in Translation Studies, 4). Oxford etc.: Peter Lang. 1 – 6.

Robertson, Colin (2012): "The Problem of Meaning in Multilingual EU Legal Texts." In: *International Journal of Law, Language & Discourse* 2.1, 1 – 30.

Reiss, Katharina / Vermeer, Hans J. (1991 [1984]): *Grundlegung einer allgemeinen Translationstheorie.* Tübingen: Niemeyer.

Risku, Hanna (1998): *Translatorische Kompetenz: kognitive Grundlagen des Übersetzens als Expertentätigkeit.* Tübingen: Stauffenburg.

Šarčević, Susan (1997): *New Approach to Legal Translation*. The Hague etc.: Kluwer Law International.

Van Dijk, Theo (1977): *Text and Context. Explorations in the Semantics and Pragmatics of Discourse.* London: Longman.

Part I

Legal translation in an EU and international setting

Chapter 1

Theoretical and methodological challenges in researching EU legal translation

Łucja Biel

Abstract
The objective of the paper is, first, to map key theoretical and methodological challenges in researching legal translation in the multilingual EU context, and, secondly, to operationalise variables which may help to model EU legal translation. EU translation is, on the one hand, a theoretically and empirically attractive field of research and, on the other hand, a methodologically complex one. The multitude of factors which affect EU legal translation, including political, procedural and institutional factors makes it difficult to single out relevant variables and control them in research. It is proposed to operationalise EU translation through five interrelated axes: institutional, political, supranational, legal and multilingual ones. Additionally, EU legal translation is operationalised from the perspective of fundamental intertextual relations through the following dimensions: the concordance, the continuity and the fit.

Keywords: legal translation, EU translation, multilingualism, intertextuality

1 EU legal translation as a challenge to Translation Studies

EU legal translation is known to pose challenges to the central concepts of Translation Studies (TS), in particular:

- **the source text/language/culture**: *de facto/de jure* original (Derlén 2015), recycling of content (Koskinen 2001: 293), unstable and non-final source texts (Koskinen 2001, Doczekalska 2009, Hanzl & Beaven 2017), multilingual and multistage processing of draft texts (see sections 2.1.5 and 2.2.1);
- **target text/language/culture**: blurred boundaries between source and target texts (Felici 2010: 105), *de jure* authentic language versions (Derlén 2015), authoritative status (Šarčević 1997: 21), "cultural ambivalence" (Koskinen 2001: 299) (see section 2.2.3);
- **equivalence**: "proclamation" of equivalence (Hermans 2007: 11), "a priori" feature and "existential" equivalence (Koskinen 2000: 49) (see

section 2.2.1), "fidelity to the single instrument" rather than the source text (Šarčević 1997: 112);

- **translation process**: concurrent drafting and translation (Doczekalska 2009: 360), multistage process with varied degrees of institutionalisation, "interlingual text reproduction" rather than translation (Kjær 2007: 7);
- **quality**: uniform interpretation and application of EU law (Šarčević 1997:73), fitness for purpose (DGT 2015: 3), product/process approach to quality (Biel 2017a).

These challenges to the central TS concepts have been acknowledged by a number of TS scholars (Koskinen 2001, Schäffner 2001: 248 - 249, Kjær 2007: 70, 80, Sosoni 2012: 87, Biel 2014). The challenges have been found to be big enough to question the adequacy of translation theories for EU legal translation and to call for developing a theoretical framework which is adequate for researching legal translation and where the key concepts are tested and re-defined. For example, Koskinen calls for the application of postmodern theories even though EU translation "is often regarded as its antithesis (bureaucratic, uncreative and restricted)" (2001: 299) while Sosoni calls for "a hybrid translation theory for EU texts" which would be "a synergy of *prima facie* contradicting theories" (2012: 87). In Koskinen's opinion EU translation will function as a corrective to TS concepts: "a test case to refine the theoretical apparatus of translation theory" (2001: 293). Voices can also be heard from within the field of legal studies that EU legal translation "displaces theories about the relationship between law and language" (Graziadei 2015: 18) and calling for a coherent theory to assist the interpretation of EU multilingual texts and reconcile divergences in translations (Pozzo 2015: 83). An adequate theoretical framework has not been developed yet, neither within TS nor legal studies. This chapter does not aspire do to so, as we still need more input data but it intends to synthesise and operationalise key variables which should be accounted for in any theoretical framework attempting to model EU legal translation.

2 Operationalisation of variables in EU legal translation: challenges and paradoxes

Although EU legal translation is usually taken for granted as a concept, it is, in fact, a fuzzy, diverse, heterogeneous and dynamic category which is difficult to operationalise for research purposes. This is due to the interaction of a number of multiaxial factors conditioning the extra-textual reality of EU translations. It is proposed that it be operationalised through the following five axes, which are to some extent interrelated, determining the context of EU legal translation in a scalar fashion:

- the institutional axis,
- the political axis,
- the supranational axis,
- the legal axis,
- the multilingual axis.

Additionally, EU legal translation will also be operationalised from the perspective of intertextual relations through the following dimensions:

- the concordance,
- the continuity,
- the fit.

2.1 The defining axes of EU legal translation

2.1.1 The institutional axis

EU legal translation can be broadly defined as legal translation rendered by and for EU institutions. The institutional component is one of its defining features (Koskinen 2008: 22, 2014), with institutional norms controlling and standardising translators' behaviour (Koskinen 2000: 50, Felici 2010: 101). If we accept the broad definition proposed in the opening sentence of this paragraph, we must also accept that the degree of institutionalisation varies, first, depending on the institution, and secondly, and more importantly, the translational setting, that is whether translations are rendered in-house by EU institutions themselves (the core of the category) or whether they are rendered for EU institutions by external contractors or national governments (the periphery of the category) with inevitably different levels of institutional control, e.g. through revision. Some genres are more likely to

be translated in-house (e.g. legislation) while documents which are associated with lower risks are more likely to be outsourced. Another interesting borderline case is the translation of EU legal texts by non-EU Member States, e.g. candidate countries which are obliged to translate the *acquis*, potential candidates, and the EEA (European Economic Area) countries,[1] such as Norway and Iceland, to harmonise their national legislation for the purposes of the EU single market. In the case of these countries, institutional control tends to be realised at the national rather than the EU level. This may cause some doubts as to whether the borderline cases should be regarded as EU legal translation.

2.1.2 The political axis

As a political construct, the European Union is strongly affected by political factors. It is a political system which is built on and mediated through translation. EU texts in general and EU legislation specifically are shaped in a specific political context (Sosoni 2012: 81) and are subject to complex negotiations and political compromises between the Member States ("droit diplomatique", Šarčević 2007: 44). Translations also affect the EU's political development (Schäffner 2001: 249) and image. EU translation is thus rightly referred to as political translation (Trosborg 1997: 147). EU texts vary along the political axis: they have different levels of political sensitivity, political visibility and political priorities. These parameters are integrated in the institutions' translation policies where revision levels are correlated with political risks. For example, documents which have very high political visibility include European Council Conclusions (Hanzl and Beaven 2017: 147) and accession treaties.[2] EU legal texts are typically associated with high political risks (DGT 2015: 6) and are marked by the frequent use of strategic ambiguity and deliberate uncertainty (Hartley 1996: 273, Wagner 2001: 268, Prieto Ramos 2014: 321 - 322) reflecting multilateral political compromises.

[1] See e.g. *Overview of EU rules applicable to EEA/EFTA countries in financial services, competition and taxation. Briefing Note,* 2008, http://www.europarl.europa.eu/document/Activities/cont/201108/20110818ATT25100/20110818ATT25100EN.pdf.
[2] I owe this example to an anonymous reviewer.

2.1.3 The supranational axis: hybridity

As a supranational organisation, the European Union functions within the supranational framework which goes beyond national contexts. The relation between supranational and national elements is very complex and, to some extent, paradoxical. The supranational component is de-territorialised (Craith 2006: 50) and neutralised (Caliendo 2004: 163) to create a pan-European common ground, but at the same time, it has not emerged from "a *tabula rasa*" (Prieto Ramos 2014: 317), but is rather derived from and synthesises constituent national components. This process is often referred to as hybridisation (Sosoni 2012: 83). It applies in particular to EU law (McAuliffe 2011, Šarčević 2007: 44), which is drafted within the supranational system and exists thanks to its transposition, application and enforcement in national legal systems (Kjær 2007: 79, Prieto Ramos 2014: 313, Graziadei 2015: 28). Mirroring mutual dependencies between EU law and national legal systems (Robertson 2015: 37), similar dependencies are observed for legal terminology, where supposedly neutral EU terms and national terms are in a "constant interaction" (Fischer 2010: 28). Further problems are caused by case law "in fluctuation" (Kjær 2007: 81) and an underdeveloped network of shared uniform concepts, resulting in divergent interpretations of multilingual legislation by national courts (Graziadei 2015: 25). The lack of stability and the double supranational/national coding of legal terminology leads to some classification problems. While Koskinen argues that EU translation tends to be *intra*cultural (2000: 59), Šarčević observes that the EU legal system is not autonomous yet, hence EU translation is largely *inter*systemic rather than intrasystemic (2013: 10).

2.1.4 The legal axis and EU legal genres

The legal axis reflects the scalability of the legal component in EU texts, hierarchy of legal sources, as well as litigation and other legal risks involved in their translation. Legal texts constitute a salient group of EU texts, subsuming a broad range of interrelated genres. In the supranational context, they are linked to three interrelated processes: lawmaking, implementation monitoring and adjudication (Prieto Ramos 2014: 315-316). The prototypical legal genres include primary

legislation in the form of international agreements (treaties), binding[3] secondary legislation (regulations, directives, decisions) and case law (judgments, orders, decisions, opinions). As argued by Robertson, the intensity of factors is highest for the genres of legislation and judgments: "[t]he interplay of factors regarding EU legal texts are possibly at their most intense with respect to two stages in the life of a legal text: first, at its creation, second at its interpretation, in particular when interpreted by the courts in the context of a dispute" (2015: 39).

Even though EU legal translation *sensu stricto*, which covers the prototypical genres, may well constitute a minority of texts translated by and for EU institutions, it covers genres which are critically central and instrumental to the functioning of the European Union as an organisation (Biel 2017a) and which receive a 'premium' translation service with strict quality assurance procedures (full bilingual revision, legal linguistic revision by lawyer-linguists or translation by lawyer-linguists). It is worth noting that the institutional (Directorate-General for Translation (DGT)) understanding of legal texts is much broader, as reflected in Category A – Legal texts in the DGT classification of texts for quality assurance purposes. It covers the core: (1) EU legal acts and (2) Documents used in administrative or legal proceedings and inquiries, including pleadings, letters, legal opinions. The category of legal texts includes also, somewhat surprisingly, (3) Documents for procurement/funding programmes, tenders, grant applications, contracts, and (4) Recruitment notices and EPSO competition notices and tests (DGT 2015). The rationale behind their inclusion in the category of legal texts is that translation errors in these documents may create litigation and financial risks and may disadvantage some parties.

EU legal translation *sensu largo* is a much more diversified category. It covers a range of input administrative texts for legislation and expert-to-lay communication with the general public, mainly semi-legal genres, including summaries of legislation, websites and press releases. These texts are hidden in other categories in the DGT classification. For example, Category B of policy and administrative documents contains accompanying documents not formally part of legal acts and

[3] As opposed to non-binding secondary legislation ('soft law'), i.e. recommendations and opinions (see Fairhurst 2007: 54, 65).

non-binding parts of legislative documents (e.g. explanatory memoranda) (DGT 2015: 10); Category C addressed to the general public – websites (it may be e.g. a Curia website) or press releases (e.g. concerning newly enacted legislation or recent judgments) and category D – "input for EU legislation, policy formulation and administration", which includes Member States' legislation implementing EU legislation (DGT 2015: 15).

Obviously, a broad range of legal genres is not unique to the EU context but is typical of international institutional translation (Prieto Ramos 2014: 315 - 316) and legal translation in general (see e.g. Simonnæs 2013: 92). However, the EU context evokes specific types of translated genres evolving around legislation. From the research perspective, care needs to be taken not to generalise too hastily for all EU legal genres due to considerable differences in their behaviour. The intensity of features typically attributed to EU legal genres depends on how a given genre is positioned along all the axes.

2.1.5 The multilingual axis

The multilingual axis is another distinctive feature of EU legal translation and it is a good case in point to demonstrate how key legal genres may be realised differently in the EU context. The EU's multilingualism policy ensures an equal treatment of all 24 official languages to give citizens access to EU legislation and information in their native languages. Yet owing to budgetary constraints, this political declaration is severely limited in practice (Seidlhofer 2010: 356) to selected legal genres, or rather text categories, most notably the EU-wide legislation (treaties, regulations, directives). Many other genres and documents exist only in the main procedural languages, English and/or French, and are selectively translated into other official languages, a process which is referred to euphemistically by the institutions themselves as "controlled full multilingualism" or "a pragmatic approach to multilingualism" (Biel 2017a for further discussion) and more critically by scholars as "hegemonic multilingualism" (Krzyżanowski and Wodak 2010) and even "unilingualism" (Mattila 2013: 33).

Multilingualism is not a uniform practice and depends on a genre. As rightly observed by Derlén (2015), there are two competing types of multilingualism: the single meaning approach and the single text approach. The single meaning

approach is connected with EU legislation, where all language versions are *de jure* authentic (full multilingualism) even though it is possible to identify a *de facto* original (usually the English version) (2015: 62). This approach is also known as the principle of equal authenticity (Šarčević 1997: 64) since all language versions are presumed to have the same meaning and the same legal validity. The other approach to multilingualism (limited multilingualism), named by Derlén as the single text approach, applies to EU case law where only a judgment in the language of the case is deemed by the Court of Justice to be authentic, that is it is the *de jure* original as opposed to the *de facto* original in French, since judgments are deliberated in this language as the procedural language of the Court (Derlén 2015: 68). This distinction shows fundamental differences between the two core genres in EU legal translation.

To sum up, researchers of EU legal texts are confronted with a multitude of factors which are difficult to single out and control during a study. The five axes (institutional, political, legal, supranational, multilingual) represent key variables and reflect scalable features of EU legal translation. They are an attempt to isolate scales against which the analysis of EU legal translation can be fine-tuned and controlled.

2.2 Dimensions of intertextual relations: concordance, continuity and fit

Let's move from the macro-context of extralinguistic variables to the micro-context of intertextual relations in which EU legal translations are placed. The intertextual relations are far more complex than in the case of national legal translation. A translated text is typically embedded in the relation with the source text (**equivalence** – fidelity, accuracy) and with the non-translated texts of a comparable genre in the target language (TL) (**textual fit** – naturalness) (Chesterman 2004). For the purposes of this section I will combine these two relations with Robertson's notion (2015) of the horizontal dimension between all EU languages and the vertical dimension within a single EU language, to distinguish: concordance, continuity and fit.[4]

[4] See also Prieto Ramos, who distinguishes the following central features of institutional legal translation: accuracy, interlinguistic concordance and consistency (2014: 317).

2.2.1 The concordance

In respect of equivalence, which becomes an "a priori" feature of EU translation (Koskinen 2000: 49), EU texts have relations not only with the source text, but above all with all the other 23 language versions of the single legal instrument. This relation is referred to by the institutions as "**multilingual concordance**" (DGT 2016: 4, emphasis added) and is correlated with the multilingual axis. Robertson calls it the "horizontal dimension" (2015: 44) and uses a colourful metaphor to describe the synchronised relationship between interlinked language versions: it "refer[s] to all the languages taken together in parallel, seen from above, as it were, the image of a line of language 'soldiers' marching in step" (2015: 41). Thus, the horizontal dimension covers the relation between the translation and the other language versions, and/or the source text (ST) if it exists. The concept of the source text is very problematic in EU translation and poses methodological challenges due to the complex multistage (5-10 stages) drafting process intermingled with translation at all the stages, with the constant switching of languages, rewriting and changes to draft documents (see Doczekalska 2009: 360, Koskinen 2001: 293). As a result, the final text may be "dramatically different" from the first draft (Koskinen 2001: 293). Multilingual concordance is of special importance for legislation, since the authentic language versions are presumed to have the same meaning ('legal accuracy', DGT 2016: 6), as well as they enable the uniform interpretation and application of EU law in all the Member States (Šarčević 1997: 72, Pozzo 2012: 1191). Despite this presumption or rather "proclamation of equivalence" (Hermans 2007: 11), divergences between language versions are unavoidable due to the constraints and imperfections of the translation process (Šarčević 2014: 1, 9), which adversely affects the fundamental principle of **legal certainty** (Graziadei 2015: 19). While research into divergences between language versions poses a practical and technical challenge (if we want to compare 24 language versions), affinities between languages and language families are worth exploring in this context. What is also interesting is the mutual impact of language versions on each other, in particular the impact of procedural languages (English[5]/French) on other EU languages.

[5] The *lingua franca* status of English in the EU raises pertinent questions in the context of Brexit.

2.2.2 The continuity

While Robertson's horizontal dimension concerns the relation between language versions, his vertical dimension is placed within a single language "and all the texts that have been, are being or may in the future be created within that language" (2015: 41). In my opinion, the vertical dimension should be split into two parameters to reflect the supranational and national sphere, that is continuity /consistency and fit. **Continuity**, also referred to as consistency (Prieto Ramos 2014: 314, Stefaniak 2017: 116), is connected with the systemic nature of law and its impact on other lower-ranking documents within the system. It requires translators to ensure that translations are "coherent, systematic, consistent" (Robertson 2015: 40) with the earlier body of texts, terminology in higher-ranking acts, in particular the primary legislation and with "the EU legal order" in general (Stefaniak 2017: 116, Robertson 2015: 42). Since it concerns terminological choices translators make during the translation process (cf. Biel 2017), it affects the equivalence relation (concordance). Continuity results in a considerable degree of the recycling of previous translations due to a substantial degree of "repetition and interconnection among texts" (Hanzl and Beaven 2017: 141, 143), assisted by the use of Computer-Assisted Translation (CAT) tools and machine translation engines. Continuity applies mainly to terminology and phraseology, but, in addition to term bases (e.g. IATE), the EU institutions also have their normative memories of repetitive sections of documents[6] and numerous style guides (see Svoboda 2017) which are intended to standardise the translators' choices at various levels of text. Thus, continuity is linked to the institutional axis due to the need to ensure a uniform and consistent voice of the translating institutions. In addition to intertextual continuity between documents within the EU legal system, EU documents have to maintain an internal (intratextual) consistency of terminology and conventions within a single document (cf. Stefaniak 2017: 114, Hanzl & Beaven 2017: 141).

[6] See e.g. the Polish normative memory at https://ec.europa.eu/info/files/polish-resources-normative-memory-tmx-sdltm_en.

2.2.3 The fit

Finally, the **fit** of supranational texts to the national context is the second element covered by Robertson's vertical dimension within the same language. This type of relations goes beyond the supranational sphere and reflects how EU legal translations (target texts – TTs) interact with (i.e. fit) the corresponding non-translated texts of the target language and the national contexts (Biel 2014: 118). TL texts constitute a benchmark and a point of reference. They shape recipients' expectancy norms and determine the reception of EU texts in national contexts. The corresponding TL legal texts are also "the starting point" for EU legal texts (Robertson 2015: 42). This dimension is most closely correlated with the supranational axis, reflecting the distance to the national context. It should be stressed that the national context is a secondary point of reference for EU legal texts: (1) due to the need to maintain continuity and fit the EU legal culture, and (2) due to the unavoidable hybridity and distinctiveness of EU texts, resulting from their intended supranationality and neutrality, complex multilingual multi-stage drafting process (Doczekalska 2009: 36), the resulting intermingling of languages, the frequent involvement of English and French non-native speakers (Wagner et al. 2002: 76), explicit preference for literal translation techniques and exteriorisation (Koskinen 2000: 54, Baaij 2015: 119, Stefaniak 2017: 113), as well as distortions typical of the translation process (Biel 2014). As a result, the EU variants of national languages are "forced into an unnatural format" (Koskinen 2000: 55) and test their "linguistic frontier" (Robertson 2015: 43). Overall, the fit may be expected to be lower for terminological units which are desired to be neutralised as supranational constructs but should be higher for grammatical and stylistic levels. The fit also depends on a legal genre at play. While it may be expected to be low for supranational legislation with translators having limited freedom to localise it to national conventions (DGT 2016: 14), it may be higher for judicial documents which often refer to national contexts (Prieto Ramos 2014: 319), and still even closer for semi-legal genres addressed to citizens. Finally, the larger the fit, the higher the **naturalness** of translation, which may also result in better **readability** and **clarity**.

Overlaps of the dimensions of intertextual relations are summarised in Table 1.

Table 1. Overlap of intertextual relations

Horizontal dimension with all language versions	**Concordance**	Equivalence (ST – TT)
Vertical dimension within a single language	**Continuity**	
	Fit	Textual fit (TT – TL)

To sum up, the concordance concerns the horizontal dimension between all language versions, their equivalence in terms of accuracy of multilingual information transfer and legal effect, which lays foundations for legal certainty. The continuity, which is another aspect of equivalence, is the mandatory vertical consistency with the preceding and higher-ranking texts within the supranational EU domain. The fit is a scalar distance to national contexts, linked to the concept of naturalness and clarity.

3 Conclusions

We still know relatively little about EU legal translation. A certain problem connected with researching EU translation is that there is a large number of general small-scale publications, e.g. discussing multilingualism and language policies in the EU, which tend to be descriptive and repetitive to some extent, and are rarely supported by empirical studies. Recent years have, however, observed a welcome change thanks to the growing number of large-scale, long-term research projects into institutional translation[7], quite a few of them using corpora (Biel 2018: 35), which are likely to bring insightful empirical data. These quantitative projects should be triangulated with qualitative projects (e.g. Koskinen's 2008 ethnographic study). Research into EU legal translation should not only involve mixed methods but also, as all types of legal translation research, it should attempt to be transdisciplinary (to address legal and political axes) and multidimensional, covering the context of production and reception, participants, translation product and process (Biel 2017b: 80), with the latter still being an uncharted area (see early

[7] See Biel (2018: 35) for an overview of corpus projects on institutional translation.

calls in Schäffner 2001: 249, Koskinen 2001: 299). It should also involve less prototypical legal genres, other than legislation and judgments, to explore the scalability of the axes and intertextual relations. Finally, given the importance of the multilingual axis and the concordance, it is especially important to design research which goes beyond one language pair and ideally (though perhaps unrealistically and impracticably) explores EU legal translation at its fullest across 24 language versions, thus reaching 'multilingual concordance' and insight in research as well. This is the greatest methodological challenge we face in the future. Such data will enable us to understand, explain and theorise about EU legal translation with less speculation.

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References

Baaij, C. J. W. (Jaap) (2015): "EU Translation and the Burden of Legal Knowledge." In: Šarčević, [ed.] (2015): 109 – 122.

Baaij, C. J. W. (2018): *Legal Integration and Language Diversity: Rethinking Translation in EU Lawmaking.* Oxford: Oxford University Press. (= Oxford Studies in Language and Law).

Baisa, Vít / Michelfeit, Jan / Medveď, Marek /Jakubíček, Miloš (2016): "European Union Language Resources in Sketch Engine." In: *The Proceedings of tenth International Conference on Language Resources and Evaluation (LREC'16)*. European Language Resources Association (ELRA). Portorož, Slovenia. 2016. http://www.lrec-conf.org/proceedings/lrec2016/pdf/572_Paper.pdf (1 October 2016).

Biel, Łucja (2014): *Lost in the Eurofog. The Textual Fit of Translated Law*. Frankfurt am Main: Peter Lang. (= Studies in Language, Culture and Society, 2).

Biel, Łucja (2017a): "Quality in institutional EU translation: Parameters, policies and practices." In: Svoboda / Biel / Łoboda [eds] (2017): 31 – 57. DOI: 10.5281/zenodo.1048183.

Biel, Łucja (2017b): "Researching Legal Translation: A multi-perspective and mixed-method framework for legal translation." In: *Revista de Llengua i Dret, Journal of Language and Law* 68, 76 – 88. DOI: 10.2436/rld.i68.2017.2967.

Biel, Łucja (2018): "Corpora in Institutional Legal Translation: Small Steps and the Big Picture". In: Prieto Ramos, Fernando [ed.] (2018): *Institutional Translation for International Governance. Enhancing Quality in Multilingual Legal Communication*. London: Bloomsbury. 25 – 36.

Caliendo, Giuditta (2004): "EU Language in Cross-Boundary Communication." In: *Textus* 17, 159 – 178.

Chesterman, Andrew (2004): "Hypotheses about translation universals." In: Hansen, Gyde / Malmkjær, Kirsten / Gile, Daniel [eds] (2004): *Claims, changes and challenges in Translation Studies. Selected contributions from the EST Congress, Copenhagen 2001*. Amsterdam: John Benjamins. 1 – 13.

Craith, Máiréad Nic (2006): *Europe and the politics of language. Citizens, migrants and outsiders.* Basingstoke: Palgrave McMillian.

Derlén, Mattias (2015): "A Single Text or a Single Meaning: Multilingual Interpretation of EU Legislation and CJEU Case Law in National Courts." In: Šarčević [ed.] (2015): 53 – 72.

Directorate-General for Translation (DGT), European Commission. (2015): DGT translation quality guidelines. DGT.IS/IP/DH/GH/th-(2015)5977178, http://ec.europa.eu/ translation /maltese/guidelines/ documents/dgt_translation_quality_guidelines_en.pdf (1 August 2017).

Directorate-General for Translation (DGT), European Commission (2016): Strategic plan 2016-2020. DG Translation. Ref. Ares(2016)1329034 - 16/03/201; https://ec.europa.eu/info/ sites/info/files/strategic-plan-2016-2020-dg-t_march2016_en.pdf (1 August 2017).

Doczekalska, Agnieszka (2009): "Drafting and interpretation of EU law — paradoxes of legal multilingualism." In: Grewendorf, Günther / Rathert, Monika [eds] (2009): *Formal linguistics and law*. Berlin: de Gruyter. 339 – 370.

Felici, Annarita (2010): "Translating EU law: legal issues and multiple dynamics." In: *Perspectives: Studies in Translatology* 18.2, 95 – 108. DOI: 10.1080/ 09076761003668 289.

Hanzl, Jan and John Beaven (2017): "Quality assurance at the Council of the EU's translation service." In: Svoboda / Biel / Łoboda [eds] (2017):139 – 153. DOI: 10.5281/ zenodo.1048196.

Hermans, Theo (2007): *The Conference of the Tongues*. St. Jerome, Manchester.

Graziadei, Michele (2015): "Law, Language and Multilingualism in Europe: The Call for a New Legal Culture." In: Šarčević [ed.] (2015): 17 – 31.

Hartley, Trevor C. (1996): "Five forms of uncertainty in European Community Law." In: *Cambridge Law Journal* 55.2, 265 – 288.

Kjær, Anne Lise (2007): "Legal translation in the European Union: A research field in need of a new approach." In: Kredens, Krzysztof / Goźdź-Roszkowski, Stanisław [eds] (2007): *Language and the Law: International Outlooks.* Frankfurt am Main: Peter Lang. 69 – 95.

Koskinen, Kaisa (2000): "Institutional Illusions. Translating in the EU Commission." In: *The Translator* 6.1, 49 – 65.

Koskinen, Kaisa (2001): "How to research EU translation?" In: *Perspectives: Studies in Translatology* 9.4, 293 – 300.

Koskinen, Kaisa (2008): *Translating institutions: An ethnographic study of EU translation.* Manchester: St. Jerome Publishing.

Kredens, Krzysztof / Goźdź-Roszkowski, Stanisław [eds] (2007): *Language and the law: International outlooks.* Frankfurt am Main: Peter Lang.

Krzyżanowski, Michał / Wodak, Ruth (2011): "Political strategies and language policies: the European Union Lisbon Strategy and its implications for the EU's language and multilingualism policy." In: *Language Policy 10*, 115-136. doi: 10.1007s/10993-011-9196-5.

Mattila, Heikki E. S. (2013): *Comparative legal linguistics. Language of law, Latin and modern lingua francas.* 2nd ed. London: Routledge.

McAuliffe, Karen (2011): "Hybrid Texts and Uniform Law? The Multilingual Case Law of the Court of Justice of the European Union." In: *International Journal for the Semiotics of Law* 24, 97 – 115.

Pozzo, Barbara (2012): "Multilingualism and the Harmonization of European Private Law: Problems and Perspectives." In: *European Review of Private Law* 5/6, 1185 – 1198.

Pozzo, Barbara (2015): "Comparative Law and the New Frontiers of Legal Translation." In: Šarčević [ed.] (2015): 73 – 90.

Prieto Ramos, Fernando (2014): "International and supranational law in translation: from multilingual lawmaking to adjudication." In: *The Translator* 20.3, 313 – 331.

Robertson, Colin (2015): "EU multilingual law: Interfaces of law, language and culture." In: Šarčević [ed.] (2015): 33 – 52.

Šarčević, Susan (1997): *New Approach to Legal Translation*. The Hague: Kluwer Law International.

Šarčević, Susan (2007): "Making multilingualism work in the enlarged European Union." In: Kredens / Goźdź-Roszkowski [eds] (2007): 35 – 56.

Šarčević, Susan (2013): "Multilingual Lawmaking and Legal (Un)Certainty in the European Union." In: International Journal of Law, Language & Discourse 3.1, 1 – 29.

Šarčević, Susan [ed.] (2015): *Language and culture in EU Law. Multidisciplinary perspectives.* Farnham: Ashgate.

Schäffner, Christina (2001): "Translation and the EU – Conditions and consequences." In: Perspectives 9:4, 247 – 261. DOI: 10.1080/0907676X.2001.9961422.

Seidlhofer, Barbara (2010): "Lingua franca English - the European context." In: Kirkpatrick, Andy [ed.] (2010): *The Routledge handbook of World Englishes*. Abingdon: Routledge. 355 – 371.

Simonnæs, Ingrid (2013): "Challenges in legal translation — revisited." In: *LANS - Linguistica Antverpiensia New Series*, 53.2, 91 – 102, DOI: 10.4312/linguistica.53.2.91-102.

Sosoni, Vilelmini (2012): "A hybrid translation theory for EU texts." In: *Vertimo Studijos* 5, 76 – 89.

Stefaniak, Karolina (2017): "Terminology work in the European Commission: Ensuring high-quality translation in a multilingual environment." In: Svoboda / Biel / Łoboda [eds] (2017): 109 – 121. DOI:10.5281/zenodo.1048192.

Svoboda, Tomáš (2017): "Translation manuals and style guides as quality assurance indicators: The case of the European Commission's Directorate-General for Translation." In: Svoboda, Tomáš / Biel, Łucja / Łoboda, Krzysztof [eds] (2017): *Quality Aspects in Institutional Translation*. Berlin: Language Science Press. 75 – 107. DOI:10.5281/zenodo.1048190.

Trosborg, Anna (1997): "Translating hybrid political texts." In: Trosborg, Anna [ed.] (1997): *Text typology and translation.* Amsterdam: Benjamins. (= Benjamins Translation Library, 26). 145 – 158.

Wagner, Emma (2001): "Translation in the EU Machinery." In: *Perspectives* 9.4, 263 – 270.

Wagner, Emma / Bech, Svend / Martínez, Jesús M. (2002): *Translating for the European Union institutions. Translation practices explained.* Manchester: St. Jerome.

Chapter 2

Das Europäische Referenzsprachenmodell: Rechtspraktische Übersetzung, Brexit und europäische Identität

Karin Luttermann und Claus Luttermann

Abstract
Cultural diversity characterizes the European Union, which sees itself as a community of trade and values, respecting human rights and prohibiting discrimination. The official languages are of equal status with the same communicative value (authenticity). Internal communication and in particular outward communication with the European Union citizens requires translation. Currently, 24 official languages make up 552 possible language pairings for translation. After the exit of the United Kingdom, there will still be 506 possible language combinations. At the same time, the Union aims for increasing integration of the European peoples, which seems important also with a view to global competition. A revision of the EU language regime is therefore necessary. Will a uniform legal semantics and communication still be possible? – The topics addressed in this contribution include the identification of problems, the function of legal language comparison in dealing with divergent text versions, as well as the way in which Brexit may also offer the chance of a re-adjustment both in the practical work of the EU institutions and with regard to communication with the EU citizens. We offer a solid solution: the European reference language model.

Keywords: Brexit, multilingualism, language policy, legal linguistics, legal comparison

1 Die Sprache der Macht

Im Anfang war das Wort. Durch Sprache wird die Welt geschaffen, in biblischer Erzählung (Genesis 1) wie in unserer realen Lebenswelt. Wir kommunizieren, konstruieren und ordnen mit Sprache – und streiten um die Sprache. Den alten Römern war schon geläufig, dass vor Gericht nicht um das Recht gestritten wird, sondern um Worte. Menschen feilen an und kramen in Worten, wir sprechen, weil wir – so resümiert José Ortega y Gasset (1983: 37 und 51) – glauben, sagen zu können, was wir denken: Die Sprache als Urwissenschaft.

Wie setzen wir also über den Fluss einer fremden Sprache? – Übersetzung ist Abenteuer und Notwendigkeit in einer mehrsprachigen Welt, die weiter technisch und wirtschaftlich vernetzt wird, für den Dialog der Kulturen und die europäische

Identität (vgl. C. Luttermann 1999b: 771 ff.; K. Luttermann 2014: 70 f.; dazu demnächst C. Luttermann & K. Luttermann). Bemühung ist geboten, dabei aus unserer Sprache heraus in die fremde Sprache einzudringen (vgl. Ortega 1983: 76; erhellend auch Canetti 1981). Für Frieden und Wohlstand durch eine Ordnung, die wir als Recht bezeichnen können, schaffen wir erst durch Rechtsvergleichung eine möglichst tragfähige Basis, die praktisch Sprach- und Kulturvergleich erfordert. Die Erkenntnis leitet, dass Rechtsetzung gerade durch Sprache und Übersetzung elementar ein rechtspolitisches Instrument ist (vgl. C. Luttermann 1998b: 151 ff.): die Macht der Sprache, die Sprache der Macht (vgl. K. Luttermann 2008: 213).

In der Europäischen Union ist das institutionell angelegt durch das Sprachenregime. Danach gelten Rechtstexte in vierundzwanzig Amtssprachen als authentisch (s. 3.1); ein fragwürdiges Unterfangen auch mit dem größten Übersetzungsdienst der Welt. Das gab früh Anlass für einen Reformansatz: das *Europäische Referenzsprachenmodell* (s. 5). Wir stellen dies in den Kontext aktueller Entwicklungen, für die Brexit und Digitalisierung stehen. Nicht als Glasperlenspiel, sondern für realpolitisches Umdenken, das praktisch mit Sprache beginnt, um Zukunft zu sichern für unsere Nachkommen in einer eruptiven Umwelt.

2 Umbrüche: Schicksalsstunden für Europa

2.1 Verständnis durch die Zeiten

Sprachlich geht es um Verständigung, im Grunde also um Verstehen unserer realen Welt in ihrem Wandel. Stefan Zweig, der österreichische Weltbürger deutscher Sprache, beschreibt das Gefühl ratloser Verwirrung in seinem Werk *Triumph und Tragik des Erasmus von Rotterdam* für den epochalen Aufbruch der Menschen in der Renaissance. Damals erweitert sich der europäische Raum mit der Entdeckung anderer Kontinente und Gestirne sowie der kopernikanischen Wende schlagartig ins Welthafte: Binnen einer Generation welkte alles Gewesene dahin „vor dem heißen Atem der neuen Zeit“; der Geist drängt nach Wissen, die alten Autoritäten fallen als „zertrümmerte Götzen der Ehrfurcht“, der Ausblick wird frei (Zweig 1934: 26).

Wir erleben wohl ähnlich, wie unsere Welt aus den Fugen gerät. Gewaltige Kräfte wirken rund um den Erdball wieder durch Menschenwerk. Maßloses Handeln,

finanzökonomisch von spekulativer Gier getrieben, erschüttert Menschen, Märkte und Gesellschaften im Zuge der Weltschuldenkrise (C. Luttermann 2010b: 444 ff.: „Hyperspekulation“).[1] Geopolitische Verschiebungen mit den USA, Russland und Chinas neuer Führungsmacht, Kriege im Nahen Osten, Flüchtlingsströme und zugleich beispiellose wissenschaftliche und technologische Fortschritte durch Digitalisierung, Gentechnik und Quantenphysik öffnen neue Dimensionen. Die sogenannte Globalisierung erfasst private Unternehmen und Staaten, die Umwelt und überkommene Systeme transkulturell (C. Luttermann & Hummel 2018: 30 ff.).

2.2 Die Ökonomisierung: Denkschablonen statt Vielfalt

Gemeinhin wirkt der Virus „Ökonomische Analyse“, weithin hartnäckig resistent, die allumfassende Ökonomisierung unserer Lebensverhältnisse. Allmächtig wird gemessen, gewogen und geschnitten – wobei, womit und wem auch immer es gefällt – unter Schlagworten wie Evaluation, Standardisierung, Rationalisierung. Damit überlagern, prägen, verbiegen Kontrolle und Profitstreben weithin Vernunft und Denken. Es fehlt der Sinn für Angemessenheit, auf der unsere Verfassung der Freiheit gründet.[2] Dass Sprache und Leben unzertrennliche Begriffe sind, beschreibt Wilhelm von Humboldt (2008: 191 ff.). – Das passt, bis hin zur Alternativlosigkeit („alternativlos“): Welcher Geist weht hinter solcher Rhetorik?

Da klingt der Ausdruck einfältiger Kanzlerschaft,[3] ein Menetekel zerfallender Demokratie. Überhaupt wird Sprache politisch instrumentalisiert. Wer rechnet mit Belastungen im Steuerentlastungsgesetz (z.B. StEntlG 1999/2000/2002)? Entsprechend werden Arbeitnehmer einfach(er) *freigesetzt* (vulgo: *entlassen*). Verbrämt kommt Unheil munter daher; zumindest klingt es freundlicher, wirkt eingängig (Euphemismen). Das gilt für Sprache (national) und Übersetzung (international). Wer segelt nicht gerne in den Vereinten Nationen unter dem Banner der Rechtsstaatlichkeit (*rule of law*):[4] Genauere Betrachtung zeigt gravierende Unterschiede im Verständnis, z.B. die autokratisch-zentralistische Prägung in China

[1] Siehe auch folgende Fußnote 2. Manuskriptschluss 8.8.2018.
[2] Insgesamt zur sog. „Ökonomischen Analyse des Rechts“: C. Luttermann (1998c: 468 ff.) und C. Luttermann (2010a: 1 ff.).
[3] Angela Merkel u.a. für die sog. „Griechenland“-Hilfe, ein sog. „Unwort des Jahres 2010“; dazu: www.welt.de/kultur/article12217696/Alternativlos-ist-das-Unwort-des-Jahres-2010.html.
[4] Siehe United Nations, Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, 30.11.2012 (A/RES/67/1).

(*socialist rule of law*).[5] Macht beginnt bei Begriffen, kapert sie, indem sie diese inhaltlich leise umprägt.

Das betrifft und erfasst uns im Ganzen. Gerade weil die wirtschaftlichen Verhältnisse elementar sind, für jedermann und jede Gemeinschaft. Das sehen wir persönlich wie interkulturell in der Europäischen Union (s. 3). Die Kernfrage ist: Behaupten wir unser humanistisch geprägtes Erbe und Vermögen, die Einheit in Vielfalt (s. 4.2), im weltweiten Wettbewerb? Kreativität, vernünftiges Maß, Pluralismus: Kritischer Geist als Werkzeug des Denkens und Handelns ist einer unserer großen Vorzüge gegenüber Ritualismus und Fundamentalismus von Systemen, die den methodischen Zweifel verbannen (erhellend Le Goff 1994: 9), die Einförmigkeit predigen und erzwingen (dagegen bereits grundlegend Humboldt 1792: 28 ff.).

2.3 Bildung, Sprache und Wohlstand

Sprache und Übersetzung wirken insgesamt elementar, gerade rechtspolitisch (s. 3). Bildung ist gefordert. Das ist kein idealistischer Selbstzweck, sondern die freie Entfaltung der Kräfte des Menschen für allgemeinen Wohlstand. Ihn bilden wir in der Praxis im ganzheitlichen Sinn des Wortes durch unser Vermögen in Freiheit, wie der Moralphilosoph Adam Smith maßvoll auch ökonomisch zeigt (Smith 1789);[6] für uns und die Gemeinschaft, in der sich Menschen staatlich organisieren. – Das sollte uns leiten, denn derzeit entsteht, wie angesprochen, eine neue, multipolare Weltordnung: Können unsere Kinder sich darin frei entwickeln? Oder werden sie fremden Mächten, die Autokratie, Zentralismus und Kontrolle zementieren, tributpflichtig?

Es geht ums Ganze. Das betrifft die europäischen Bürger massiv, den Kern gerade des deutschen Wohlstandsmodells. Wir leben – als Land ohne sonstige nennenswerte Ressourcen – weithin von Bildung für Forschung, Entwicklung und Export: Nachhaltige Innovationskraft, starker unternehmerischer Mittelstand und Freihandel. Entscheidend ist, wer die neue Weltordnung (Standards) prägt. Die Europäisierung des Bildungswesens zeigt Ansätze[7] und Irrwege. Statt angemessener

[5] C. Luttermann (2017: 255 ff.). Vgl. auch C. Luttermann (2016: 90 ff.); Marshall (2014).
[6] Entsprechend auch Humboldt (1792).
[7] Bologna-Prozess (seit 1999), Kopenhagen-Prozess (seit 2002). Zur Übersicht z.B. Odendahl (2011).

Berücksichtigung ökonomischer Belange herrscht nun das einfältige Spardiktat. Bildungsferne Politbürokraten regieren und zerstören damit die Freiheit von Forschung, Lehre und Lernen, betreiben Scheininternationalisierung. Verfassungsrichter gebieten Einhalt (s. 3.2.), und in mittelständischer Wirtschaft reift die Erkenntnis, dass die an den Hochschulen „überhandnehmende Anglophonie“[8] schadet (s. 3.3, 3.4).

Sprache zeigt sich also wieder elementar, im Guten und Bösen. In Deutschland feiert der Wahn zur Anglophonisierung fröhliche Urstände. Die Umstellung auf angelsächsische Muster (Bachelor, Master) hat unser bewährtes, international vorbildliches Bildungssystem ruiniert, Erfolgsmarken wie Dipl.-Ing., Dipl.-Kfm. abgeschafft:[9] Wofür? – Ökonomisierung (Drittmittelfetischismus) und Verschulung sogar an den Universitäten, womit selbst die unter ‚Internationalisierung‘ propagierte Mobilität sank. Das Niveau erodiert, ebenso die Wettbewerbsfähigkeit: Selbstamputation. Die Konkurrenz lacht über diese Intelligenz und etabliert geschäftlich ihre Standards digital als Weltmonopole (s. 3.1).

3 Sprache und Übersetzung als Rechtspolitik

3.1 Recht, Geschäftsmodelle und Digitalisierung

Wer fremde Sprachen nicht kennt, wisse nichts von seiner eigenen, reflektierte unser Goethe (1833: 1015) zeitlos. Das erleben wir in der Europäischen Union. Ihr Binnenmarkt gründet auf einem gemeinsamen Rechtsrahmen, auf der Harmonisierung des Rechts in den Mitgliedstaaten. Dabei gilt ein Sprachenregime von derzeit vierundzwanzig Amtssprachen, die alle gleichermaßen als authentisch gelten (s. 4.2). Die notwendig einhergehenden Übersetzungen bieten erhebliche Spielräume für Rechtspolitik. Sie werden genutzt, was – regelwidrig – gravierende

[8] Ralph Mocikat/Hermann H. Dieter, in: Mittelstand Digital, Heft 07/08-2017, S. 12. Vgl. z.B. www.zeit.de/studium/hochschule/2015-04/bachelor-studie-unternehmen-unzufrieden; www.watson.ch/Wirtschaft/Schweiz/393053247-Kritik-an-Bachelor-Studenten--Hat-die-Schweiz-das-Bologna-System-nicht-verstanden- (18.5.2015).

[9] Zur Kritik z.B.: www.welt.de/politik/deutschland/article159134504/Bologna-Reform-ist-ein-Unfall-mit-Fahrerflucht.html (30.10.2016); www.unicum.de/de/archiv/bologna-reform (21.6.2016); http://www.huffingtonpost.de/anabel-schunke/politik-geisteswissenschaftenbologna_b_7601664.html (18.6.2016); www.faz.net/aktuell/feuilleton/forschung und lehre/die-folgen-der-bologna-reform-in-der-kritik-13639948.html (11.6.2015). Vgl. früher bereits DHV, unter: www.bildungsserver.de/innovationsportal/bildungplus-artikel.html?Artid=672 (2.10.2008).

Unterschiede in der Rechtspraxis der Mitgliedstaaten bringt (s. 4.3); praktisch bis hin etwa zur Haftung (dazu bereits C. Luttermann 1999a: 115 ff.; C. Luttermann 1999c: 401 ff.).

Das Spielfeld ist weltweit gesteckt, gerade wo es mit dem Welthandel transnational um Kommunikation, Verständigung, Rechtsordnung und praktisch um Kapital und Gewinn (Geschäftsmodelle) geht: Sprache und Übersetzung werden instrumentalisiert als – durchaus scharfes – Konkurrenzmittel im Wettbewerb um Geschäfte, Märkte und Wohlstand. Beispiel gibt die Bewertung und Bilanzierung bei Unternehmen. Sogenannte *stille Rücklagen*, die also nicht offen gezeigt werden im Jahresabschluss (*hidden reserves*), werden in den USA gerne verniedlicht als *cookie jar reserves*. Der Sachverhalt ist identisch (Gewinnmanagement, rechtswidrige Manipulation):[10] Wer aber greift nicht gerne in eine Keksdose?

Das Ganze hat System, bringt Vorteile (Gewinn, Boni), wird eben geschäftsmäßig betrieben schon bei der Regelsetzung (Standardisierung). Eine hochspekulative, sprachlich getriebene Katastrophenwirtschaft, die wir seit dem Fall der Investmentbank Lehman Brothers (2008) global im Zuge der Weltfinanzkrise erleben (vgl. C. Luttermann 2010a: 1 ff.; K. Luttermann & Schäble 2016: 420 ff.). Die Digitalisierung durch die Finanzwelt befördert unkontrolliert die Einförmigkeit technisch bis hin zum Weltmonopol (vgl. C. Luttermann 2011: 965 ff.; C. Luttermann / Pöschk 2014: 663 ff.). Das betrifft auch Übersetzungen bis hin zu Übersetzungsprogrammen (Google, Bing). Sprachgefühl, vergleichende Kenntnisse sind gefordert: Es gibt eben nicht nur ein Alphabet menschlichen Denkens (vgl. C. Luttermann & K. Luttermann 2007: 434 ff.; s. 3.4).

3.2 Globalisierung und (Re-)Nationalisierung

Das zeigt gerade die sogenannte Globalisierung, wo kulturelle Identitäten auftreten mit eigenen Kulturmustern und Regeln; z.B. die Politik der *socialist rule of law* in China (s. 2.2.) oder global *Islamic Finance*-Regeln (vgl. C. Luttermann & K. Luttermann 2007: 438 f.; C. Luttermann 2009: 706 ff.). Selbstbestimmung, die sich faktisch in Formen von Zugehörigkeit und zugleich – mehr oder minder – der Ab- und Ausgrenzung ausdrückt. Sprachen wirken dabei offenbar elementar. Das sehen

[10] Insgesamt C. Luttermann (2003: § 264 HGB, Rdnrn. 56 ff., 72-82).

wir selbst in der Europäischen Union. Angeführt seien Konflikte regional (Spanien / Katalonien) und grundsätzlich über Gemeinschaftspolitik etwa bei Flüchtlingen (Ungarn) oder der „Justizreform“ in Polen (Sanktionsverfahren).[11]

Die Bedeutung der Sprache für Kommunikation und Bildung ist bekannt, wird aber offenbar weithin ignoriert. Der Siegeszug des Englischen (besser: was dafür gilt) zeigt sich längst als Danaergeschenk, gerade im Bildungsbereich (Schulen, Universitäten), wo unter dem Schlagwort Internationalisierung dilettiert wird (s. 3.3). Das italienische Verfassungsgericht gebietet Einhalt, denn in Italien sollten Hochschullehrer zwangsweise ganze Studiengänge auf Englisch lehren. Betroffene wehrten sich und bekamen Recht: Die italienische Sprache sei offizielles Organ („*unica lingua ufficiale*“) und primärer Träger von Kultur und Tradition der italienischen Gesellschaft, urteilten sinngemäß die Verfassungsrichter; diese Funktion des Italienischen könne durch Internationalisierung und Erosion der Nationalgrenzen (Globalisierung) unterminiert werden, was die eigene Sprache in eine Randposition dränge.[12]

Bereits früher hat das italienische Verfassungsgericht (Urteil 159/2009 vom 27.5.2009, G.U. 27/05/2009 n. 21) betont, andere Sprachen als die „*unica lingua ufficiale*“ dürften keinesfalls als Alternative zur italienischen Sprache gesetzt werden. Für eine verfassungskonforme Internationalisierung müssten Universitäten die Möglichkeit, Kurse in einer Fremdsprache anzubieten, mit Vernunft, Verhältnismäßigkeit und Angemessenheit nutzen und ein Gesamtangebot gewähren, das den Primat der italienischen Sprache respektiere. Dieser sei nicht nur konstitutionell unzerstörbar, sondern werde noch wichtiger für die weitere Sicherung der historischen Identität. – Das ist eine klare Ansage.

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[11] *Verfahren* nach *Artikel 7* EU-Vertrag wegen Gefährdung von Grundwerten (Bruch der Rechtsstaatlichkeit); dazu z.B. Schuller/Stabenow 2017, Ein letzter Aufruf zum Dialog, FAZ vom 20.12.2017, unter: www.faz.net/aktuell/politik/ausland/eu-leitet-verfahren-gegen-justizreform-in-polen-ein-15352000.html.

[12] Insgesamt: Corte Costituzionale (Italienisches Verfassungsgericht), Sentenza (Urteil) 42/2017 vom 21.2.2017, Gazzetta Ufficiale (G.U.) 01/03/2017 n. 9. Auch zum Umfeld z.B. unter: www.taz.de/!5016245 (19.3.2015). Siehe Art. 6 italienische Verfassung (Minderheitenschutz) und Art. 19, 57 und 58 Sonderstatut für die Region Trentino-Südtirol. Vgl. Art. 8 Abs. 1 österreichische Verfassung, der die deutsche Sprache als „die Staatssprache der Republik“ festschreibt. In Deutschland § 184 Satz 1 Gerichtsverfassungsgesetz: „Die Gerichtssprache ist deutsch“.

3.3 Reduzierung wissenschaftlicher Mehrsprachigkeit

Der Wissenschaftsbetrieb internationalisiert sich im Globalisierungsprozess fortschreitend. Dabei wird Internationalisierung mit Anglisierung gleichgesetzt. Englisch hat eine Monopolstellung, während u.a. Französisch, Italienisch und Deutsch als Wissenschaftssprachen selbst daheim aufgegeben werden. Die sprachliche Unifizierung vollzieht sich nicht nur als natürliche Folge der Globalisierung. Sie wird durch transnational agierende Institutionen, die auf Englisch arbeiten, aktiv gefördert. Hinzu kommt, dass Tagungen verstärkt in englischer Sprache stattfinden und wissenschaftliche Leistungen anhand des anglo-amerikanischen Zitierindex (impact factor) evaluiert werden (vgl. K. Luttermann 2015: 232). Deshalb stellen deutsche Verlage zunehmend auf Englisch um, wovon sie sich erhöhte internationale Sichtbarkeit und Gewinne erhoffen.

Ein europäischer Index zur Förderung der Multilingualität fehlt. Die nationalen Wissenschaftssprachen sind durch den internationalen Stellenwert des Englischen bedroht. Früher war die Situation genau umgekehrt: die Wissenschaften hatten sich nationalisiert. Die Nationalsprachen ersetzten die im Mittelalter und in der frühen Neuzeit vorherrschende universelle Sprache Latein, als die Regionen erstarkten und Laien Zugang zum Wissen forderten, das ihnen durch das lateinische Wissensmonopol vorenthalten blieb (vgl. Roelcke 2015: 95 f.; K. Luttermann 2015: 233 f.). Die Sprachen entwickelten sich über eine bloße Vermittlerfunktion hinaus hin zu eigenständigen Wissenschaftssprachen, die eine „Intensivierung des Wissensgewinnungsprozesses“ (Ehlich 2006: 27) ermöglichten.

Deutsch, Englisch und Französisch (teils auch Italienisch und Spanisch) etablierten sich im 19. und 20. Jahrhundert als Weltwissenschaftssprachen. Durch die Nachkriegssituationen erfolgte ein Bruch der Wissenschaftskultur. Deutsche Wissenschaftler und mit ihnen die deutsche Wissenschaftssprache wurden boykottiert und aus internationalen Organisationen ausgeschlossen (vgl. Reinbothe 2015: 84). Englisch und Französisch gewannen als Sprache der Siegermächte zu Lasten der Wissenschaftssprache Deutsch an Prestige. Heute hat Englisch auch das Französische verdrängt und ist die einzige sogenannte Universalsprache des Wissens. Die Erosion der sprachlichen Pluralität („gigantische Wissensvernichtung“; Trabant 2012: 107) ist besorgniserregend.

3.4 Kulturelle Relevanz der Sprache

„Kommunikation ist (…), dass man, wie immer man es auch versuchen mag, nicht *nicht* kommunizieren kann“ (Watzlawick / Beavin & Jackson 2017: 59). Sprache ist kein bloßes Mittel der Kommunikation, sondern auch Mittel der Erkenntnisgewinnung und der Vermittlung von Wissen. Sie erfüllt eine kognitive Funktion, ist unverzichtbarer Bestandteil innerhalb von Denkprozessen. Denken und Erkenntnis finden nicht in einem sprachfreien Raum statt. Es gibt sprachgebundenes, kein sprachfreies Denken (vgl. Glück 2008: 58). Eine Einzelsprache ist von der Geschichte ihres Kulturraumes geprägt. Übersetzungen können Werten und Normen, die in einer Gesellschaft (Sprachkultur) vorherrschen, nur bedingt gerecht werden, ohne dass es zu semantischen Verschiebungen oder Unschärfen kommt. Nuancen und Differenzierungen gehen beim Transfer vielfach verloren.

Versucht man z.B. *Heimat* ins Englische zu übersetzen, so drücken *home* und *homeland* die Bedeutung, die ein Muttersprachler damit verbindet, nicht vollkommen aus. Zu dem Wort *Volksgemeinschaft*, ein Schlagwort nationalsozialistischer Propaganda, gibt es im Englischen keinen äquivalenten Begriff. Übersetzungsversuche wie *ethnic community* scheitern daran, die Tragweite der geschichtlichen (rassistisch verkürzten) Aufladung aufzugreifen und zum Ausdruck zu bringen. Die Annahme, dass es sich bei englischen Übersetzungen von Werken wie Hegels *Phänomenologie* oder Kleists *Penthesilea* beinahe um andere Schöpfungen handelt, stellt genau auf diese Problematik ab (vgl. Lammert 2012: 24).

In den Wissenschaften ist Englisch internationale Verkehrssprache. Eine Lingua franca, charakterisiert als reduzierte, sachlich-objektive „Nicht-Sprache“ (Trabant 2012: 104) bzw. supranationale Not- oder Hilfssprache, ist sie jedoch nicht.[13] Sie hat eine einzelsprachliche Semantik und ist eine Muttersprache und damit genauso der Weltansicht ihrer Sprecher unterworfen wie alle anderen natürlichen Sprachen auch. Und umgekehrt prägen Sprecher auch die in der Sprache zum Ausdruck kommende Sicht auf die Welt. Generell repräsentieren Wissenschaftssprachen unterschiedliche Wissenskulturen (Konzepte), sind semantisch verschieden organisiert und weichen in der Art, Wirklichkeit wahrzunehmen und auszudrücken,

[13] Die historische Lingua franca bestand aus romanischen, griechischen und arabischen Elementen und diente der einfachen Verständigung zwischen Menschen unterschiedlicher Muttersprachen.

voneinander ab. Die verschiedenen Perspektiven tragen zu einer umfassenden Erkenntnis bei – ein Umstand, den die Wissenschaft eigentlich anstrebt (s. 5.3).

Wissenschaftssprachen befinden sich in einem ständigen Wandel. Die Terminologie entwickelt sich mit ihrer Verwendung. Wenn nun die deutsche Wissenschaftssprache nicht mehr gebraucht wird, besteht die Gefahr, dass über neue Forschungsthemen in dieser Sprache nicht mehr gesprochen werden kann. Die Reduktion auf eine einzige Sprache (*English only* für die Wissenschaften) kann den Verlust der Diversität von Denkmustern der jeweiligen Kulturräume, also eine Verarmung des wissenschaftlichen Diskurses, bedeuten. Mehrsprachigkeit tritt der Einschränkung der Perspektiven entgegen. Das gilt auch für die Kommunikation in den Organen der Europäischen Union und mit den Bürgern Europas.

4 Bedeutung der Mehrsprachigkeit in der Europäischen Union

4.1 Sprachenregime und Brexit

Wer noch über die Bedeutung der Sprache gerade im Kontext von Gesellschaft, Wirtschaft und Recht zweifelt, dem diene dieser Beitrag[14] über Großbritannien als „*standalone economy*“: „Why the English language might be our best weapon in a post-Brexit world – there is one jewel we possess that is often overlooked“. Danach sprechen (benutzen, s. 3.2.) weltweit zwei Milliarden Menschen die englische Sprache, davon etwa 500 Millionen als Muttersprachler (s. 5.3); auch im Internet gilt Englisch als die häufigste Sprache mit angeblich 952 Millionen Nutzern (*user*!), gefolgt von Chinesisch (763 Millionen) und Spanisch (293 Millionen).

Gesprochen wird auch von der Entwicklung eines authentischen europäischen Englisch, „used by members of the EU as a ‘second language’ or (even) a quasi-Outer Circle English, serving the needs of the European Union as the common link language for administration and cooperation between member states.“[15] – Eine Art

[14] Chris Blackhurst, Independent, 11.11.2017, unter: www.independent.co.uk/news/business/comment/english-language-uk-advantage-brexit-leave-eu-trade-talks-deals-world-countries-a8046461.html (11.1.2018). Ein Kommentator (Mahlerous) schreibt dazu „English is dead, corrupted by American English (…)“. Vgl. über „Globish“ Peter Littger, manager-magazin, 5.4.2017, unter: www.manager-magazin.de/lifestyle/stil/brexit-wie-die-englaender-ihr-english-verlieren-a-1141948.html.

[15] Marko Modiano, English in a post-Brexit European Union, Word Englishes (19.9.2017), unter: http://onlinelibrary.wiley.com/doi/10.1111/weng.12264/full.

Lingua franca? – Maßgebend ist: In der Europäischen Union gilt ein Sprachenregime (s. 4.2). Demgemäß ist der Sprachenstatus an die Mitgliedschaft geknüpft (s. Art. 55 EU/ex-Art. 53 EUV und Art. 358 AEUV), die mit dem Brexit entfällt. Englisch gilt zwar offiziell auch in Irland und Malta, doch nur die Briten brachten Englisch offiziell in die Gemeinschaft (1973); die Iren wählten Gälisch (1973), die Malteser Maltesisch (2004). Das Ausscheiden Großbritanniens wirft juristisch und praktisch angesichts der Vertrags-, Amts- und Arbeitssprachen der Union erhebliche Fragen auf – bis hin zur Änderung der Europäischen Verträge.

Die Regelung der Sprachenfrage in den Institutionen wird durch Verordnung getroffen (gemäß Art. 342 AEUV, Sprachenverordnung Nr. 1/58). Dass allseits kräftige politische Aspekte und Motive wirken, war gleich nach dem britischen Austrittsreferendum zu besichtigen. Das Wall Street Journal titelte: „European Commission has moved to focus on using French and German in communications.“[16] Es gab symbolische Akte, namentlich wirkte Kommissionspräsident Jean-Claude Juncker demonstrativ in Französisch und Deutsch.[17] – Jenseits solcher Politiken ist jedenfalls ein vermittelnder, grundlegender Ansatz geboten.

4.2 In Vielfalt geeint?

In Vielfalt geeint ist seit 2000 der Leitspruch der Europäischen Union. Sie will den Reichtum ihrer kulturellen und sprachlichen Vielfalt achten und für den Schutz und die Entwicklung des kulturellen Erbes Europas sorgen; verboten ist jede Form sprachlicher Diskriminierung (Art. 3 Abs. 3 EUV, Art. 21 und 22 GR-Charta). In Wirklichkeit besteht ein Widerspruch zwischen dem Anspruch, die Vielfalt der Kulturen und Sprachen zu wahren, und den Erfordernissen einer effizienten Kommunikation. Zu den tradierten Grundsätzen der Europäischen Union gehört, dass die Amtssprachen (Vertragssprachen, Art. 55 EUV) der Mitgliedstaaten gleichrangig sind und ihnen derselbe kommunikative Wert beigemessen wird (Egalitätsprinzip). Geändert werden kann die Sprachenregelung durch einstimmigen Beschluss des Rates, d.h. durch die Mitgliedstaaten selber.

[16] Gabriele Steinhauser, 5./27.6.2016, unter: www.wsj.com/articles/eu-to-say-au-revoir-tschuss-to-english-language-1467036600.
[17] Dazu z.B. unter: www.dw.com/en/a-brexit-for-english-as-eu-language/a-19362999 (28.6.2016); www.forbes.com/sites/timworstall/2016/06/28/brexit-effects-eu-to-try-to-stop-using-english-it-doesnt-work-that-way-folks-just-doesnt/#68c798f77e52 (28.6.2016).

Der Grundstein für das EU-Sprachenregime wurde mit dem EWG-Vertrag vom 15.4.1958 gelegt (vgl. K. Luttermann 2007: 52 ff.). Danach kann jedes Mitgliedsland für eine seiner Amtssprachen den Status als Amts- und Arbeitssprache beantragen. Luxemburg hat als einziges Land bisher darauf verzichtet. Luxemburgisch ist keine offizielle Sprache. Gälisch ist seit 2007 Amtssprache, also erst über dreißig Jahre nach dem EU-Beitritt Irlands. Bei Vertragsunterzeichnung gab es vier Amtssprachen und sechs Länder. Nach sieben Erweiterungsrunden zählt die Union 24 Sprachen und 28 Mitgliedsländer. Die externe Kommunikation erfolgt in allen Amtssprachen (Art. 4 und 5 VO Nr. 1/58). Rechtstexte (Verträge, Verordnungen, Richtlinien) müssen darin zugänglich sein. Unionsbürgern, die sich an ein EU-Organ wenden, ist auch in ihrer Amtssprache zu antworten.

Beitrittsjahr	**Mitgliedsländer**	**Amtssprachen**	**Sprachkombinationen**	**Alphabet**
1957	Belgien Deutschland Frankreich Italien Luxemburg Niederlande	 Deutsch Französisch Italienisch Niederländisch	12	Lateinisch
1973	Dänemark Großbritannien Irland	Dänisch Englisch	30	Lateinisch
1981	Griechenland	Griechisch	42	Lateinisch Griechisch
1986	Portugal Spanien	Portugiesisch Spanisch	72	Lateinisch Griechisch
1995	Finnland Österreich Schweden	Finnisch Schwedisch	110	Lateinisch Griechisch
2004	Estland Lettland Litauen Malta Polen Slowakei Slowenien Tschechien Ungarn Zypern	Estnisch Lettisch Litauisch Maltesisch Polnisch Slowakisch Slowenisch Tschechisch Ungarisch	380	Lateinisch Griechisch
2007	Bulgarien Rumänien	Bulgarisch Rumänisch Gälisch	506	Lateinisch Griechisch Kyrillisch
2013	Kroatien	Kroatisch	552	Lateinisch Griechisch Kyrillisch

Tab. 1: Mitgliedsländer und Amtssprachen

Die 24 Amtssprachen sind zugleich auch Arbeitssprachen (Art. 1 VO/Nr. 1/58). Sie dienen der Binnenkommunikation, d.h. darin arbeiten die EU-Organe intern und im Verkehr untereinander. Die Bedeutung, die der Verankerung der eigenen Amtssprache als Arbeitssprache im EU-Parlament, im Rechnungshof, im Rat der Europäischen Union, am Europäischen Gerichtshof oder in der EU-Kommission zukommt, liegt auf der Hand. Nationale Regierungen können politische Entscheidungen vorteilhaft positionieren und beeinflussen. Der Arbeitssprachenstatus führt zu vermehrter Nutzung bei der Formulierung der Arbeitspapiere, die als Grundlage für Entscheidungen und Verhandlungen dienen. Insgesamt ist der Einfluss auf innere Abläufe und damit die Durchsetzung eigener Interessen erleichtert.

Die EU-Organe haben in ihren Geschäftsordnungen den Sprachengebrauch nicht eingeschränkt (Art. 6 VO Nr. 1/58). Tatsächlich ist aber eine Reduktion auf wenige Arbeitssprachen bis hin zu einer einzigen eine Selbstverständlichkeit. Die Kommission, die gegenüber dem Rat und dem Parlament das Initiativrecht hat, Gesetze zu entwerfen und einzubringen, arbeitet primär auf Englisch. Es ist die am meisten genutzte Sprache in der Europäischen Union überhaupt (vgl. K. Luttermann 2017: 491 f.; K. Luttermann 2015: 237 f.).[18] Der Europäische Gerichtshof verwendet Französisch für die internen Arbeitsabläufe und die Urteilsberatung. Für Urteile gilt, dass diese zuerst auf Französisch formuliert und anschließend in die vom Kläger bestimmte Verfahrenssprache und die weiteren Amtssprachen übersetzt werden. Rechtsverbindlich ist letztlich nur das in die Verfahrenssprache übersetzte Urteil, nicht die Originalfassung; außer für den Fall, dass Französisch selbst die Verfahrenssprache war.

4.3 Übersetzung und Sprachdivergenzen

Die Europäische Union braucht für die nach außen gerichtete und die interne Kommunikation die Übersetzung. Denn niemand spricht ‚europäisch'. Die Übersetzung hat für die Verständigung der einzelnen Organe mit den Bürgern und für die Harmonisierung der Gemeinschaft eine bedeutende Rolle. Die Dimension ist beachtlich und stellt Übersetzungsdienste vor große Herausforderungen. Derzeit gibt es 552 mögliche Sprachenpaare bei der Übersetzung (nach dem Brexit noch

[18] Zum Übersetzungsaufkommen siehe EU-Kommission (2014: 7 f.); http://ec.europa.eu/dgs/translation/whoweare/translation_figures_de.pdf.

506 Paare). Im Brüsseler Machtapparat und in Luxemburg, dem Sitz des Europäischen Gerichtshofs, hat die Übersetzung den Status, „die Sprache Europas" (Umberto Ecco: Vortrag, Kongress der literarischen Übersetzung am 14.11.1993 in Arles) zu sein. Jedoch markieren auftretende Sprachdivergenzen, dass Übersetzungen einen Schwachpunkt in der Kommunikation bilden und zu Missverständnissen führen können: „The devil is in the translation!" (Koch 2008: 46).

Beispiele geben Fälle vor dem Europäischen Gerichtshof. Seine Aufgabe ist, in der Gemeinschaft einheitliches Recht zu wahren (Art. 19 Abs. 1 S. 2 EUV). Dabei legt er Begriffe europarechtskonform (‚autonom') aus; z.B. *Fische fangen* (vgl. K. Luttermann 2012: 95 f.), *Ehemann – Ehefrau* und *ständiger zweijähriger Mindestaufenthalt* (K. Luttermann 2007: 59 ff.). Besonders wirkt die Generalnorm im Bilanzrecht (Art. 4 Abs. 3 S. 1 Richtlinie 2013/34/EU), die für alle Kapitalgesellschaften unionsweit gilt (sog. „*true and fair view*", vgl. C. Luttermann 1999b: 117 ff.).[19] Der Blick auf Umsetzung und Rechtspraxis zeigt eine bunte Palette. Schon die divergenten Fassungen der beiden deutschsprachigen Länder der Union Deutschland („den tatsächlichen Verhältnissen entsprechendes Bild", § 264 Abs. 2 S. 1 HGB) und Österreich („möglichst getreues Bild", § 222 Abs. 2 öHGB) stimmen nachdenklich. Wenn hier bereits solche Abweichungen auftreten, stellt sich die Frage, inwieweit auch sonst das europäische Recht betroffen ist und der Sinngehalt im Übersetzungsakt übergangen oder verformt wird (vgl. C. Luttermann 1998a: 881 f.).

Fakt ist: EU-Bürger können nicht allein auf die in ihrer Muttersprache veröffentlichte Sprachfassung vertrauen, sondern müssen sämtliche Fassungen abgleichen (s. 5.2). Das Gericht verneint zuweilen die Rechtsauffassung derer, die sich auf den Wortlaut verlassen. Vielmehr misst das Gericht der einzelnen Wortauslegung eine nur untergeordnete Bedeutung zu und bezeichnet es als selbstverständliche Rechtspflicht eines Bürgers, sich mit den fremdsprachigen Fassungen auseinanderzusetzen (vgl. K. Luttermann 2017: 497; K. Luttermann 2008: 217). Dabei vergleichen nicht einmal die deutschen Gerichte systematisch die 24 Amtssprachen, sondern ziehen allenfalls bei Zweifeln an der deutschen Fassung die englische

[19] Für die Anwendung internationaler Standards in der Union gemäß Art. 3 Abs. 2 VO (EG) Nr. 1606/2002.

und/oder französische Sprachfassung zum Abgleich heran (vgl. Schübel-Pfister 2004: 511). Das gebietet ein Umdenken des Sprachenregimes, einen rationalen Politikumgang mit der Sprachenfrage.

4.4 Sprachenmodelle: Mono- und Multilingualismus

Die Europäische Union basiert offiziell auf dem egalitären Prinzip (s. 4.2), wonach jede Amtssprache den gleichen Stellenwert hat. Bevölkerungszahlen, Flächenmaß oder Wirtschaftskraft spielen dabei keine Rolle. Allerdings zeigt die Realität: „Die europäische Vielsprachigkeit zu beschwören, ist eine Sache; sie in die Praxis des politischen Alltags umzusetzen, eine andere“ (Kelz 2002: 10). Die Statusgleichheit der Sprachen krankt an einer entsprechenden Umsetzung. Übersetzungen und Dolmetschen kosten Zeit und Geld und verlangsamen bestimmte Handlungsabläufe. Die EU-Organe sind aus Praktikabilitätsgründen und ohne erkennbare juristische Grundlagen vom Vollsprachenregime abgerückt. Es gibt eine lebhafte Debatte darüber, ob Mehrsprachigkeit erhaltenswert ist oder nicht und welche Lösungen praktikabel sind. Mono- und Multilingualismus sind die grundlegenden Pole der Sprachendebatte in der Union (im Überblick K. Luttermann 2017: 500 ff.).

Einsprachenmodelle sind das Englisch-Modell, das Latein-Modell und das Esperanto-Modell. Sie verwerfen die Pluralität radikal und bauen der Einfachheit halber auf eine Einheitssprache für die Verständigung in den EU-Organen und mit den Unionsbürgern. Die Bürger müssten neben ihrer Muttersprache, so wird argumentiert, nur noch eine Fremdsprache (die offizielle Sprache der Europäischen Union) lernen. Sie wären nicht über- bzw. gefordert, weitere Sprachen zu erwerben, die sie in der Regel nur unvollkommen beherrschen und die die interkulturelle Kommunikation erschweren. Als Vorzug von Latein (historische Sprache) und Esperanto (Plansprache) gilt, dass die Sprachen neutral sind, also kein Bürger sie als Muttersprache spricht. Gegen Englisch wird im unmittelbaren Vergleich mit Latein und Esperanto angeführt, dass es die Sprache der Amerikaner sei und Europa sich – auch sprachlich – von der (anglo-)amerikanischen Weltmacht abgrenzen solle.

Dem stehen die Mehrsprachenmodelle gegenüber: Dreisprachen-Modell, Fünfsprachen-Modell, Sechssprachen-Modell, Dänisches Modell, Spanisches Modell,

Marktmodell, Kernsprachen-Modell. Die Modelle nutzen und selektieren natürliche Sprachen; zudem bietet die Praxis, die schon effizient in diesen Sprachen arbeitet, einen Bezugspunkt für die Sprachenwahl und für die damit verbundenen ökonomischen Vorteile. So führe die Konzentration auf wenige Sprachen zu Zeit- und Kostenersparnis (z.B. schnellere Verfügbarkeit von Rechtsdokumenten und weniger Personal für Dolmetscher und Übersetzer). Die Zustimmung der Mitgliedstaaten, deren Sprachen keine Rolle spielen, ließe sich durch „finanzielle Zuwendungen" (Ammon 2006: 334) erkaufen. Dagegen bleiben – für eine Rechtsgemeinschaft maßgebend – Rechtssicherheit und Verständlichkeit in der Argumentation außen vor.

Notwendig ist allerdings ein Sprachenmodell für Europa, das Rechtseinheit befördert und zugleich die Amtssprachen respektiert. Damit die Unionsbürger ihre Rechte und Pflichten auch verstehen können. Es geht entscheidend um den Wert der Sprachen unter Beachtung effizienten Handelns (Präambel EUV), also darum, das „Neben- und Miteinander der europäischen Sprachen richtig auszubalancieren"[20] im Sinne einer Ethik der Mehrsprachigkeit. Der springende Punkt für eine Lösung in der Sprachenfrage ist, den Begriff *Gleichwertigkeit* rechtslinguistisch so auszugestalten, dass Effizienz und Dialog den Rahmen bilden (s. 5.1, 5.3). Das folgende, längst anerkannte *Referenzsprachenmodell* zeigt einen sinnvollen und gangbaren Ansatz. Es vereinigt im Kontext der aktuellen politischen, wirtschaftlichen und technischen Entwicklungen Argumente für das kritische, politisch unabhängige Herangehen, das EU-Sprachenregime zu reformieren.

5 Das Europäische Referenzsprachenmodell

5.1 Referenz- und Muttersprachen

Das *Europäische Referenzsprachenmodell* ist grundlegend gedacht (vgl. C. Luttermann & K. Luttermann 2004: 1008 ff.). Es ist an der Sprachdemokratie orientiert. Demokratie enthält ein Modell, das „kommunikationsethisch die Möglichkeit für unterschiedliche Identitäten erlaubt und nicht die Homogenisierung als oberste Leitregel durch- und umsetzt" (Ehlich 2002: 53). Die Amts- und Arbeitssprachen

[20] http://www.germanistenverband.de/aktiv/tutzing.html.

stehen in einem dialogischen Austausch, um Recht auszuhandeln. Der Aushandlungsprozess ist ein Teil des sprachkulturellen Dialogs in der Union. Der andere Teil sind die 28 Rechtskulturen (s. 4.2). Vorgeschlagen ist ein Sprachen- und Rechtsvergleich zunächst mit zwei maßgebenden Referenzsprachen. Zwei Sprachen brauchen schon von Anfang an die Übersetzung, die für die Verständigung in der Europäischen Union nötig ist (s. 5.2).

Ein Rechtsakt ist in den beiden Referenzsprachen von Übersetzern, Linguisten und Juristen auszuarbeiten. Dabei sind die Rechts- und Sprachfragen verbindlich und rechtssicher für die Union zwischen den Referenzsprachen vergleichend zu beantworten. Die Referenzsprachen haben den gleichen Stellenwert, sind authentisch und rechtsverbindlich, um das gemeinsame Recht einheitlich auszudrücken. Damit werden die anderen Amtssprachen, die keine Referenzsprachen sind, aber nicht überflüssig oder einfach außen vorgelassen. Vielmehr können letztlich die – europäischen – Referenzsprachen grundsätzlich um weitere offizielle Sprachen, die als Vertrags-, Amts-, Arbeits- und Verfahrenssprachen fungieren, erweitert werden (s. 5.3). Vor allem verantworten die Mitgliedstaaten, die Rechtstexte jeweils für ihre Bürger in die – nationalen – Muttersprachen rechtssicher und verständlich zu übersetzen (vgl. K. Luttermann 2017: 503). Das gewährt eine zweite, praxis- und bürgernahe Prüfungsebene, gegebenenfalls mit Rückmeldung und Prüfung für gebotene Korrekturen.

Für die Eigenverantwortung der Mitgliedsländer und die Nähe zu den Bürgern ist Subsidiarität wesentlich (Art. 5 EUV). Das Subsidiaritätsprinzip bedeutet in Bezug auf den Sprachengebrauch: Allein von den Referenzsprachen darf in die Muttersprachen übersetzt werden, aber nicht umgekehrt. Dadurch können auch die nichtreferenzsprachlichen Fassungen als authentisch gelten. Die Authentizität der Übersetzung ergibt sich aus der Übereinstimmung mit den Referenzsprachen. Zumindest eine Referenzsprache bildet immer den Prüfmaßstab. Wechselseitig können sich die Referenzsprachen (auf supranationaler Ebene) und die Referenz- und Muttersprachen (im Verhältnis zu den Mitgliedstaaten) für Rechtssicherheit und Transparenz prüfen.

Zunehmend wirkt die Erkenntnis, dass Subsidiarität die komplizierte sprachliche Situation lösen kann. Von Vorteil sei, dass alle Sprachen der Union eingebunden

sind und sich die Gefahr von Divergenzen verringere (vgl. Engberg 2009: 190; Messer 2012: 117; Nißl 2011: 272 f.). Das fördert die Rechtssicherheit und damit das Vertrauen der Bürger in die Rechtstexte und Arbeit der EU-Organe sowie ihrer Handlungsträger.

5.2 Rechtssicherheit und Verständlichkeit

Das *Europäische Referenzsprachenmodell* hat zum Ziel, die Kommunikation in den EU-Organen und mit den Unionsbürgern effizient, rechtssicher und verständlich zu machen, ohne dabei den Anspruch auf Sprachenvielfalt preiszugeben. Für mehr Rechtssicherheit – was auch sprachliche Sicherheit umfasst – werden Referenz- und Muttersprachen kombiniert und aneinander gebunden (s. 5.1). Der Aspekt der Rechtssicherheit ist bedeutsam, da die Europäische Union sich ihren Bürgern gegenüber verständlich und vor allem verlässlich zeigen muss. Adressaten müssen ihre Rechte und Pflichten verstehen können. Der Europäische Gerichtshof fordert in seinen Entscheidungen immer wieder Transparenz und Bestimmtheit ein.

Transparenz ermögliche, die Unionsbürger am Entscheidungsprozess zu beteiligen und trage zur Stärkung von Demokratie und Grundrechten bei (EuGH, Urteil vom 12.9.2007, Rs. T-36/04, Rdnr. 3 – Asscociation de la presse internationale ASBL ./. Kommission). Das aus der Rechtssicherheit ableitbare Bestimmtheitsgebot verlangt, dass „gemeinschaftsrechtliche Vorschriften eindeutig und für die Betroffenen vorhersehbar“ (EuGH, Urteil vom 27.9.2007, Rs. T-43/02, Rdnr. 42 – Jungbunzlauer AG ./. Kommission) sind. Die Referenzsprachen sollen Rechtssicherheit garantieren, indem sie inhaltlich übereinstimmen. Gegenwärtig ist die Frage der Rechtssicherheit unzureichend behandelt. Die Generaldirektion Übersetzung der EU-Kommission etwa „translates the EU’s illusion of equality into an illusion of facile translatabilty“ (House 2003: 562). Es besteht lediglich die Illusion leichter Übersetzbarkeit; gemeinsames Verstehen wird idealerweise unterstellt (Fiktion).

Divergenzen und Missverstehen werden letztlich auf die Unionsbürger abgewälzt, die sich vergewissern müssen, ob ihre Sprachfassung mit allen anderen übereinstimmt (s. 4.3). Die Bürger tragen mithin ein erhebliches Risiko bei der Umsetzung des Rechts, gegebenenfalls bei der Rechtsdurchsetzung im Zuge gerichtlicher Klärung (Prozess[kosten]risiko). Auch insofern wäre es vorteilhaft, wenn die Mit-

gliedstaaten selber jeweils die muttersprachliche Fassung mit den Referenzsprachen abgleichen und europäische Bedeutungsinhalte in die nationale Rechtssemantik adressaten- und sachangemessen (Empfängerhorizont) umsetzen würden. Dabei sind bei allen sprachlichen Handlungsspielräumen die Referenzfassungen juristisch für den Rechtssprachenvergleich maßgebend (vgl. C. Luttermann & K. Luttermann 2004: 1004; K. Luttermann 2007: 57 f.). Den Nutzen hat die Europäische Union insgesamt und jeder Bürger, der die Rechtsnormen befolgen muss.

5.3 Sprachenvielfalt, Effizienz und Brexit

Die Referenz- und Muttersprachen sollen einen angemessenen Ausgleich zwischen Sprachenvielfalt und Effizienz zu Gunsten von Verständlichkeit und Rechtssicherheit schaffen (s. 4.4, 5.2). Alle 24 Sprachen werden wertgeschätzt und eingebunden in den interkulturellen Dialog. Das ist Ausdruck europäischer Identität. Im Rechtssprachenvergleich können die Referenz- und Muttersprachen interagieren (s. 5.1). Das *Europäische Referenzsprachenmodell* bestimmt die Referenzsprachen nach dem demokratischen Prinzip der Mehrheit. Der Europäische Gerichtshof hält den Ansatz, die Sprachenwahl auf die „bekanntesten Sprachen" in der Union zu begrenzen, für „sachgerecht und angemessen" (EuGH, Urteil vom 9.9.2003, Rs. C-361/01 P, Rdnr. 94 – Kik ./. Harmonisierungsamt für den Binnenmarkt).

Der größte Anteil an Mutter- und Fremdsprachlern entfällt derzeit auf Englisch und Deutsch.[21] Verfügbare Daten variieren, zeigen aber beachtliche Relationen. Demgemäß sprechen von den Unionsbürgern Deutsch als Muttersprache etwa 16 bis 18 Prozent (ca. 90 Millionen), Englisch 13 Prozent (ca. 61 Millionen); fast gleichauf liegen Italienisch und Französisch. Rund 38 Prozent haben Fremdsprachenkenntnisse in Englisch und 14 Prozent in Deutsch. Insgesamt sind die deutsche Sprache mit 32 Prozent und die englische Sprache mit 51 Prozent benannt.[22] Das Blatt wendet sich, wenn Großbritannien die Gemeinschaft im Jahr 2019 verlässt. Dann rückt Französisch mit einem Gesamtanteil der Sprecher von 26 Prozent,

[21] Eurobarometer Spezial 243 (2006): http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_243_sum_de.pdf; Eurobarometer Spezial 386 (2012): http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_386_de.pdf. Insgesamt Ammon (2015: 771).
[22] Siehe auch Eurobarometer, vorstehende Fußnote. Vgl. die (Zahlen) unter: http://members.chello.at/heinz.pohl/Sprachen_Europas.htm sowie http://www.argador.info/skope/tero/Regioi/Europa/kultur/scpraaxoi/index.html.

davon 12 Prozent Muttersprachler (ca. 62 Millionen) und 14 Prozent Fremdsprachler, an die Stelle von Englisch. Französisch wäre folglich mit Deutsch, dessen Gewicht relativ steigt, Referenzsprache.

Das *Europäische Referenzsprachenmodell* war schon ursprünglich evolutionär gedacht und gestaltbar. Es kann insbesondere um andere Referenzsprachen – in Anlehnung an die EU-Rechtsprechung – erweitert werden (vgl. C. Luttermann & K. Luttermann 2004: 1009); namentlich, wenn Englisch Amtssprache bleibt, z.B. über Irland (Vertragsänderung; s. 4.1). Allerdings tritt maßgeblich hervor: Nach dem Brexit ist Englisch in der Europäischen Union als Rechts- und Wirtschaftsgemeinschaft nur noch für die relativ kleine Zahl von ca. 5 Millionen Bürgern die Muttersprache,[23] vor allem in Irland sowie auch auf Malta und Zypern. Eine Minderheit, vergleichbar etwa der Einwohnerzahl der Slowakei. – Ist damit im demokratischen Gemeinwesen ein faktisches Sprachmonopol wie bisher vereinbar?

Jedenfalls sollten wir auch sprachlich mit dem Brexit sinnvoll umgehen. Er kann als Chance einer sinnvollen, nötigen Reform des EU-Sprachenregimes begriffen werden. Das Konzept des Referenzsprachenmodells bietet Perspektiven, das Bewusstsein für Kommunikation, Sprache und Mehrsprachigkeit (Mutter- und Fremdsprachenkenntnisse) zu bilden; zugleich fördert es auch die Bedeutung sowie Bereitschaft für den Erwerb mehrerer Sprachen. Praktisch alle Bürger sind überzeugt, für die Zukunft ihrer Kinder sei es wichtig, eine andere Sprache zu lernen (Eurobarometer Spezial 386, 2012: 9). Das System aus Mutter- und Referenzsprachen steuert gegen eine Monokultur im Denken (s. 3.3, 3.4). In der Summe gilt es zu beachten, dass Textproduktion und Textrezeption in der Union Multiperspektivität brauchen. Die Vielfalt struktureller und semantisch-konzeptueller Einflüsse ist eine Bereicherung. Das EU-Recht wirkt nicht allein in der Muttersprache, sondern einheitlich abgesichert durch gleichermaßen verbindliche Referenzsprachen.

[23] Vgl. Einwohnerzahl in der Europäischen Union insgesamt etwa 512 Millionen (2017) nach: https://de.statista.com/statistik/daten/studie/14035/umfrage/europaeische-union-bevoelkerung-einwohner (10.2.2017).

6 Fazit und Perspektiven

Die Lebensverhältnisse haben die Sprachenfrage dringlich auf die Agenda gesetzt. Wir stehen mit der Europäischen Union in epochalen Umbrüchen wie Brexit, globale Digitalisierung, transnationale Krisen von Katalonien bis zur Ukraine; autokratischer Zentralismus greift Raum, nicht nur mit China. Es entsteht eine neue Weltordnung. Sprachlos funktioniert keine menschliche Gemeinschaft: Sie entwickelt sich durch Kommunikation und Verständlichkeit. Dazu gehört bei Mehrsprachigkeit die Übersetzung.

Das gilt für die Union und ihren gemeinsamen Binnenmarkt besonders. Als Wertegemeinschaft baut sie auf eine Rechts- und Wirtschaftsordnung. Diese erfordert eine klare Rechtsgrundlage inklusive der Rechtsprechung, damit die Gemeinschaft für die Menschen praktisch funktioniert (Rechtsstaatlichkeit). Das *Europäische Referenzsprachenmodell* bietet dafür eine Basis. Das Europarecht als einheitlicher Standard wird rechtssprachenvergleichend durch grundsätzlich zwei Referenzsprachen gebildet und demgemäß in die Amtssprachen der Mitgliedstaaten übersetzt. Das wahrt den muttersprachlichen Zugriff auf das Gemeinschaftsrecht und stärkt Rechtssicherheit und Effizienz durch Rechtseinheit (grds. C. Luttermann & K. Luttermann 2004: 1008 ff.).

Insgesamt können Gemeinschaft und individuelle Vielfalt in Einklang gebracht werden (Subsidiarität, Art. 5 EUV). Mit dem Sinn für das Europäische Recht, für eine starke Gemeinschaft in der sich dramatisch ändernden Welt: Das ist eine Herausforderung, derzeit für über 500 Millionen Menschen, für eine freiheitliche, humanistische Zukunft unserer Kinder. Damit sie eben nicht tributpflichtig werden gegenüber fremden Mächten, die unsere Werte nicht teilen. Dafür tut eine klare Führung, Identität und Stimme Not: Einheit in Vielfalt!

Literaturverzeichnis

Ammon, Ulrich (2006): "Language conflicts in the European Union. On finding a politically acceptable and practicable solution for EU institutions that satisfies diverging interests." In: *International Journal of Applied Linguistics* 16, 319 – 338.

Ammon, Ulrich (2015): *Die Stellung der deutschen Sprache in der Welt*. Berlin: de Gruyter.

Canetti, Elias (1981): *Das Gewissen der Worte*. Frankfurt am Main: Fischer.

De Groot, Gerard-René / Schulze, Reiner [Hrsg.] (1999): *Recht und Übersetzen*. Baden-Baden: Nomos.

Ehlich, Konrad (2002): “Europa der Sprachen – Mehrsprachigkeit oder Einsprachigkeit?” In: Ehlich / Schubert [Hrsg.] (2002): 33 – 57.
Ehlich, Konrad (2006): “Mehrsprachigkeit in der Wissenschaftskommunikation – Illusion oder Notwendigkeit?”. In: Ehlich / Heller [Hrsg.] (2006): 17 – 38.
Ehlich, Konrad / Heller, Dorothee [Hrsg.] (2006): *Die Wissenschaft und ihre Sprachen*. Bern: Peter Lang. (= Linguistic Insights 52).
Ehlich, Konrad / Schubert, Venanz [Hrsg.] (2002): *Sprachen und Sprachenpolitik in Europa*. Tübingen: Stauffenburg.
Eichhoff-Cyrus, Karin / Antos, Gerd: [Hrsg.] (2008): *Verständlichkeit als Bürgerrecht? Die Rechts- und Verwaltungssprache in der öffentlichen Diskussion*. Mannheim: Dudenverlag. (= Thema Deutsch 9).
Engberg, Jan (2009): “Durchschaubarkeit durch Vielfalt – Vorteile eines mehrsprachigen Rechtssystems und ihre linguistische Beschreibung.” In: *Muttersprache* 3, 181 – 191.
EU-Kommission (2014): *Übersetzung und Mehrsprachigkeit*. Luxemburg: Amt für Veröffentlichungen.
Felder, Ekkehard / Vogel, Friedemann [Hrsg.] (2017): *Handbuch Sprache im Recht*. Berlin: de Gruyter. (= Handbücher Sprachwissen 12).
Glück, Helmut (2008): "Deutsch als Wissenschaftssprache.” In: Redder / Ehlich [Hrsg.] (2008): 55 – 63.
Goethe, Johann Wolfgang von (1833): *Maximen und Reflexionen*. München: C.H. Beck, Hamburger Ausgabe 1981.
Gutsche, Verena / Nate, Richard [Hrsg.] (2014): *Cultural Identities in Europe. Nations and Regions, Migration and Minorities*. Würzburg: Königshausen & Neumann.
Heller, Dorothee / Ehlich, Konrad [Hrsg.] (2007): *Studien zur Rechtskommunikation*. Bern: Peter Lang. (= Linguistic Insights 56).
House, Juliane (2003): “English as a lingua franca: A threat to multilingualism?” In: *Journal of Sociolinguistics* 4, 556 – 578.
Humboldt, Wilhelm von (1792/1967): *Ideen zu einem Versuch, die Grenzen der Wirksamkeit des Staats zu bestimmen*. Stuttgart: Reclam.
Humboldt, Wilhelm von (2008): *Schriften zur Sprache*. Frankfurt am Main: Zweitausendeins.
Hübner, Ulrich / Ebke, Werner [Hrsg.] (1999): *Festschrift für Bernhard Großfeld zum 65. Geburtstag*. Heidelberg: Verlag Recht und Wirtschaft.
Kastens, Inga / Busch, Albert [Hrsg.] (2016): *Handbuch Wirtschaftskommunikation. Interdisziplinäre Zugänge zur Unternehmenskommunikation*. Tübingen: Francke.
Kelz, Heinrich [Hrsg.] (2002): *Die sprachliche Zukunft Europas. Mehrsprachigkeit und Sprachenpolitik.* Baden-Baden: Nomos. (= Schriften des Zentrums für Europäische Integrationsforschung der Universität Bonn 58).
Kelz, Heinrich (2002): “Einführung. Europäische Mehrsprachigkeit – Modelle und Perspektiven.” In: Kelz [Hrsg.] (2002): 7 – 15.
Koch, Henning (2008): “A Legal Mission: The Emergence of a European ‚Rationalized‘ Natural Law.” In: Petersen / Kjær / Krunke / Madsen [Hrsg.] (2008): 45 – 63.
Lammert, Norbert (2012): “Sprache. Und Politik.” In: Oberreuter / Krull / Meyer / Ehlich [Hrsg.] (2012): 19 – 29.
Le Goff, Jacques (1994): *Das alte Europa und die Welt der Moderne*. München: Beck.
Luttermann, Claus (1998a): “Der Sinn für das Europäische Recht. Eine zukunftsträchtige Aufgabe.” In: *Juristenzeitung* 53, 880 – 884.
Luttermann, Claus (1998b): “Juristische Übersetzung als Rechtspolitik im Europa der Sprachen: Eine wirtschaftsrechtlich-linguistische Betrachtung.” In: *Europäische Zeitschrift für Wirtschaftsrecht* 9, 151 – 157.

Luttermann, Claus (1998c): *Unternehmen, Kapital und Genußrechte*. Tübingen: J.C.B. Mohr / Siebeck.
Luttermann, Claus (1999a): "Die bilanzrechtliche Generalnorm im europäischen Sprachenspiel. Eine Verlaufsstudie zur Rechtspolitik." In: De Groot / Schulze [Hrsg.] (1999): 115 – 123.
Luttermann, Claus (1999b): "Dialog der Kulturen: Vergleichendes Handels- und Kapitalmarktrecht im Sprachspiegel." In: Hübner / Ebke [Hrsg.] (1999): 771 – 789.
Luttermann, Claus (1999c): "Rechtssprachenvergleich in der Europäischen Union: Ein Lehrbuchfall." In: *Europäische Zeitschrift für Wirtschaftsrecht* 10, 401 – 404.
Luttermann, Claus (2003): "Bilanzrecht der Aktiengesellschaft." In: *Münchener Kommentar zum Aktiengesetz*. 2. Auflage. Band 5/1. München: Beck, 263 – 349, 398 – 468 und 763 – 846.
Luttermann, Claus (2009): "Islamic Finance: Ein Dialog über Recht, Wirtschaft und Religion." In: *Juristenzeitung* 64, 706 – 715.
Luttermann, Claus (2010a): "Juristische Analyse von Ökonomie, Staat und Gesellschaft." In: *Zeitschrift für Rechtspolitik* 43, 1 – 4.
Luttermann, Claus (2010b): "Regulierungsperspektiven: War und ist die Finanzkrise die Folge von Hyperspekulation?" In: *Österreichisches Bank-Archiv* 58, 444 – 448.
Luttermann, Claus (2011): "Europäische Gesellschaften zwischen Weltmonopol (IFRS/XBRL) und Freiheitsverfassung". In: *Juristenzeitung* 66, 965 – 972.
Luttermann, Claus (2016): "German and Russian Direct Investment under the Rule of International Law." In: *Zeitschrift für Internationales Wirtschaftsrecht* 2, 90 – 95.
Luttermann, Claus (2017): "VR China: Neues Foreign Investment Law and Gold Trade Notes." In: *Recht der Internationalen* Wirtschaft 63, 255 – 263.
Luttermann, Claus / Hummel, Detlev (2018): "Interkulturelle Projektfinanzierung: Vertrauenskonzept, eurasische Perspektiven und Rechtspraxis." In: *Recht der Internationalen Wirtschaft* 64, 30 – 39.
Luttermann, Claus / Luttermann, Karin (2004): "Ein Sprachenrecht für die Europäische Union." In: *Juristenzeitung* 59, 1002 – 1010.
Luttermann, Claus / Luttermann, Karin (2007): "IFRS, Kultur und Internet: eine ‚Weltsprache' der Rechnungslegung?" In: *Recht der Internationalen Wirtschaft* 53, 434 – 440.
Luttermann, Claus / Luttermann, Karin (demn.): *Sprachenrecht für die Europäische Union. Wohlstand, Referenzsprachensystem und Rechtslinguistik*.
Luttermann, Claus / Pöschk, Mathias (2014): "Digitale Finanzkommunikation (XBRL/IFRS) für die Rechts- und Wirtschaftspraxis." In: *Wirtschaftswissenschaftliches Studium* 43, 663 – 668.
Luttermann, Karin (2007): "Mehrsprachigkeit am Europäischen Gerichtshof. Das Referenzsprachenmodell für ein EU-Sprachenrecht." In: Heller / Ehlich [Hrsg.] (2007): 47 – 80.
Luttermann, Karin (2008): "Demokratiegebot: Muttersprachen und Europäisches Referenzsprachenmodell." In: Eichhoff-Cyrus / Antos [Hrsg.] (2008): 211 – 229.
Luttermann, Karin (2012): "Vielsprachigkeit in der Rechtskommunikation. Herausforderungen für Linguisten und Juristen." In: Roll / Schilling [Hrsg.] (2012): 85 – 100.
Luttermann, Karin (2014): "Languages in Dialogue for European Identity." In: Gutsche / Nate [Hrsg.] (2014): 69 – 88.
Luttermann, Karin (2015): "Deutsch als Wissenschaftssprache und als Arbeitssprache in der Europäischen Union." In: Szurawitzki / Busch-Lauer / Rössler / Krapp [Hrsg.] (2015): 231 – 244.
Luttermann, Karin (2017): "Multilingualität im europäischen Rechtsdiskurs." In: Felder / Vogel [Hrsg.] (2017): 486 – 505.
Luttermann, Karin / Schäble, Pia (2016): "Wissenstransfer in der Wirtschaftskommunikation. Zum Sprachverständnis der europäischen Finanzkrise aus Experten- und Laiensicht." In: Kastens / Busch [Hrsg.] (2016): 389 – 433.

Marshall, David [Ed.] (2014): *The International Rule of Law Movement: A Crisis of Legitimacy and the Way Forward.* Cambridge: Harvard University Press.

Messer, Jan (2012): *Die Verständlichkeit multilingualer Normen.* Göttingen: Universitätsverlag.

Nißl, Sandra (2011): *Die Sprachenfrage in der Europäischen Union. Möglichkeiten und Grenzen einer Sprachenpolitik für Europa*. München: UTZ. (= Sprach- und Literaturwissenschaften 38).

Oberreuter, Heinrich / Krull, Wilhelm / Meyer, Hans Joachim / Ehlich, Konrad [Hrsg.] (2012): *Deutsch in der Wissenschaft. Ein politischer und wissenschaftlicher Diskurs*. München: OLZOG.

Odendahl, Kerstin [Hrsg.] (2011): *Europäische (Bildungs-)Union? Recht der Jugend und des Bildungswesens.* Berlin: BWV. unter: www.bmbf.de/de/der-bologna-prozess-die europaeische-studienreform-1038.html (8.1.2018).

Ortega y Gasset, José (1983): *Miseria y Esplendor de la Traducción – Glanz und Elend der Übersetzung*. München: dtv.

Petersen, Hanne / Kjær, Anne Lise / Krunke, Helle / Madsen, Mikael [Hrsg.] (2008): *Paradoxes of European Legal Integration*. Aldershot: Ashgate.

Redder, Angelika / Ehlich, Konrad [Hrsg.] (2008): *Mehrsprachigkeit für Europa – sprachen- und bildungspolitische Perspektiven.* (= Osnabrücker Beiträge zur Sprachtheorie 74).

Reinbothe, Roswitha (2015): "Der Rückgang des Deutschen als internationale Wissenschaftssprache." In: Szurawitzki / Busch-Lauer / Rössler / Krapp [Hrsg.] (2015): 81 – 94.

Roelcke, Thorsten (2015): "Deutsche Wissenschaftssprache und internationale *lingua franca* in Aufklärung und Gegenwart." In: Szurawitzki / Busch-Lauer / Rössler / Krapp [Hrsg.] (2015): 95 – 112.

Roll, Heike / Schilling, Andrea [Hrsg.] (2012): *Mehrsprachiges Handeln im Fokus von Linguistik und Didaktik. Wilhelm Grießhaber zum 65. Geburtstag*. Duisburg: UVRR.

Schübel-Pfister, Isabel (2004): *Sprache und Gemeinschaftsrecht. Die Auslegung der mehrsprachig verbindlichen Rechtstexte durch den Europäischen Gerichtshof*. Berlin: Duncker & Humblot.

Smith, Adam (1789): *An Inquiry into the Nature and Causes of Wealth of Nations*. 5th. Edition. London, IDION Verlag München 1976.

Szurawitzki, Michael / Busch-Lauer, Ines / Rössler, Paul / Krapp, Reinhard [Hrsg.] (2015): *Wissenschaftssprache Deutsch. International, interdisziplinär, interkulturell*. Tübingen: Narr.

Trabant, Jürgen (2012): "Über die Lingua franca der Wissenschaft." In: Oberreuter / Krull / Meyer / Ehlich [Hrsg.] (2012): 101 – 107.

Watzlawick, Paul / Beavin, Janet / Jackson, Don (2017): *Menschliche Kommunikation. Formen, Störungen, Paradoxien*. 13. Auflage. Bern: Hogrefe.

Zweig, Stefan (1934/1992): *Triumph und Tragik des Erasmus von Rotterdam*. Frankfurt am Main: Fischer.

Chapter 3

Legal transplant and legal translation: how language impacts on the reception of foreign legal models

Barbara Pozzo

Abstract
Legal languages, as well as legal systems, are the result of an historical evolution, which did not happen on its own, but in constant interchange with other legal languages and legal systems. Legal languages are often the construct of translations of concepts, ideas, schemes of reasoning, institutions, which have taken place for a number of reasons. Trying to identify overarching patterns in these developments will lead us to conclude that some legal systems, and consequently the languages in which they are expressed, have succeeded in imposing them for reasons connected with conquest or for reasons connected to prestige, or both. That is why studying the history of legal languages is like studying the evolution of legal systems.

Keywords: legal languages, legal transplants, comparative law methodology

1 Introduction

Language, as well as law, is not a static, but a dynamic phenomenon (Sacco 1991: 343). Legal languages, as well as legal systems, are the result of an historical evolution, which did not happen on its own, but in constant interchange with other legal languages and legal systems. (Letto-Vanamo (2000: 21).

Legal languages are often the construct of translations of concepts, ideas, schemes of reasoning, institutions, which have taken place for a number of reasons. Trying to identify overarching patterns in these developments will lead us to conclude that some legal systems, and consequently the languages in which they are expressed, have succeeded in imposing them for reasons connected with conquest or for reasons connected to prestige, or both. Along the road of history, in fact, the success of some languages like Latin, French and English is undoubtedly linked with the spreading out of power of the Roman Empire, of the Napoleonic Army and of British Colonialism. In some other cases, it has been the intellectual prestige of a current of thought and its results, that have stimulated the learning of a language,

as in the case of *Pandectists* and the success that the German language achieved, towards the end of the nineteenth century, in Italy, Spain and Portugal.

That is why, studying the history of legal languages is like studying the evolution of legal systems (Arntz 2000: 34). Understanding the origin of concepts in a given legal language implies unveiling the various influences of foreign legal patterns on the language under analysis, sheding light on the reasons why innovation has taken place. That is why the study of legal translations becomes a new way to tell the history of legal transplants.[1]

2 Latin as a lingua franca and the spreading out of vernacular languages

If we look to our past, the translations from Latin to Greek, in particular those of Corpus Iuris of Justinian, have served as a means of spreading Roman law in the East. All Byzantine law, as Roman law developed in the eastern half of the Roman Empire, builds an experience in which translations from Latin into Greek have played a fundamental role. The collection of legal sources promulgated by Emperor Justinian I (527-565) in Latin played a profound influence on Western legal culture. The Roman law codified by Justinian then underwent a second transformation in the East, in the form of translations, summaries and comments intended for a predominantly Greek audience, for practice and teaching. It is after going through these two transformations that Roman law in Greek became Byzantine law and developed independently of Western Roman law.

The Basilicas (ca. 900), the most grandiose monument of the Roman Byzantine law, represent a legal system which, although Greek in its language and Byzantine in its cultural environment, has never detached itself from its Roman roots.

The importance of Latin as a language of a prominent legal system can be analyzed from different points of view. On the one hand, one can study the history of translations from Latin sources as the history of the expansion of Roman law throughout the Empire, acquiring a knowledge of the common origins that many

[1] On the concept of legal transplants compare Graziadei (2009: 723).

legal systems still share today. This approach can help us to understand the common roots and the etymology of legal concepts.

From another point of view, it is important to study the history of legal Latin, as it remained the *lingua franca* for centuries, until in medieval times it began to compete with modern national languages. This approach can help us to understand the different synergies between languages used at local level and languages used at a higher level, as a tool to overcome differences between local languages.

Between the XIth and the XIIth century, Irnerio developed a *studium iuris* in Bologna, which put the reading and interpretation of the *Corpus iuris civilis* of Emperor Justinian at the center of lawyers' education (Padoa Schioppa (2005: 291; Cortese (1995: *passim*; Bellomo (2000); Grossi (1995: 154). This evolution entails a whole series of important consequences for the history of law on the Continent.

Firstly, within this educational system, law began to distinguish itself from the other *artes liberales* to become independent science at universities (Monti 2008: 52). Secondly, Roman law, with its terminology and its classifications, began to play a significant role in the evolution of medieval and modern law, providing the basis for the subsequent evolution of a *jus commune europeum*, still expressed in Latin, that will characterize all the legal systems of continental Europe that were part of the Holy Roman Empire. Thirdly, the university model itself became a model of success, that will be copied across Europe and will serve as one of the characteristic features of the civil law system (Di Renzo Villata 2006).[2]

From the twelfth century onwards, a model spread out in which lawyers were trained at universities, in the language of culture of that time: Latin. This model, that was particular important in those countries that were part of the Holy Roman Empire, was based on the study, interpretation and application of rules and institutes which were discovered in the Roman texts and – subjected to due adaptation to the new circumstances – became current law.[3]

[2] On the use of language at universities during Middle Age compare Weijers (1987) and Feenstra (1988: 72-77.)

[3] On how this adaptation phenomenon took place in particular in the field of property law, see Candian / Gambaro & Pozzo (1994).

From the twelfth century to the late seventeenth century, legal literature - with a few exceptions - used Latin for their publications (Monti 2008: 65). In the face of this linguistic *koiné* which crowned Latin as the language of Roman law, of culture and education and therefore of European law, the vernacular languages gradually took hold.

It was above all at the level of particular statutes, that developed on the basis of ancient customs that were gradually drawn up for members, that Latin was gradually abandoned in favour of vernacular languages. Vernacular languages on the European Continent began to translate from Latin during medieval times: (Fiorelli (2008: 74 – 75); French (Lusignan 1987: 955; Carpi 2008; Mattila (2006: 187); Italian (Caterina & Rossi (2008: 184) and German (Hattenhauer (1987); Jacometti (2008), are all tributary to the terminology invented by the Romans (Lepore 2008: 3) and rediscovered by the School of Bologna (Monti: 2008: 31). This process of translation from Latin to national vernacular languages that began in Medieval times, further developed during the Renaissance by the building of nation states[4] and the concern of local rulers of shaping "their" laws according to "their" languages.[5]

In the Renaissance, Latin gave way to the various vernacular languages, but with different rhythms and times depending on the different local realities. Italy, for example, is known as an outpost where the supremacy of Latin as a language of cultured knowledge has been in crisis since the Middle Ages (Fiorelli (1994: 553-597). In France, a new development took place during the years 1530 – 1540,[6] with

[4] The notion of "nation state" is here referred to the phenomenon that developed in the 15th century as a byproduct of intellectual discoveries in political economy, capitalism, mercantilism, political geography, and geography combined together with cartography and advances in map-making technologies. For the use of this terminology compare: Black (1998); Schulze (1998); Braudel (1986-1987); Sestan (1994).

[5] In France, for example, since 1539 the Ordinance of Villers-Cotterets, still in force today, proclaims that French is the official language of the courts. Compare Sadat Wexler (1996: 285; 368)); Jacob (1990: 43).

[6] Compare Rey / Duval & Siouffi (2007: 360) "*En France, les années 1530-1540 semblent « faire frontière ». L'événement les plus connus est sans doute la promulgation par Françoiss Ier en 1539 d'une ordonnance dite de « Villers-Cotterêts » déclarant que, dorénavant, les actes judiciaires devraient être « prononcez, enregistrez, et delivrez aux parties en langaige maternel françois ». Mais on pourrait tout aussi bien invoquer la création, par ce même roi en 1530, du Collège des lecteurs royaux, ancêtre du Collège de France. La date de 1530 est aussi celle de la première grammaire connue du français, parue significativement à l'étranger…..*"

the promulgation of the Ordinance of Villers-Cotterêts in 1539 by the King Francis I, which allowed the *langue d'oeil* to be used as the language of the law (Carpi 2008: 83; in particular 89). In Germany, the evolution unfolds through different phases: *Althochdeutsch* (750 – 1050) and *Mittelhochdeutsch* (1050 – 1350). Especially in the latter period a literature developed in a language that increasingly reflected the French influences, at the expense of the Latin ones. The most important poets of the time, and in particular the *Minnesänger,*[7] contributed to making the German language more articulate and sophisticated and signaled the beginning of a German literature.

In the same period and especially in the first half of the XIIIth century, the *Rechtsbücher* began to appear: local legal texts that made a significant contribution to the German legal language (Jacometti 2008: 137). This meant, first of all, that within the single legal systems coexisted Latin and vulgar as languages of law, albeit with different relevance. In some realities, especially Italian, this type of "internal" legal multilingualism (or bilinguism) lasted until the eighteenth century (Monti (2008: 31). This is not a typical path only of the Italian language. Indeed in Germany, at least until the seventeenth century, the legal language continued to remain faithful to its dual function of language of the lawyers and language of the profane. For the introduction of new terms binary formulas were used, such as *Consens und Wille, Bestätigung und Approbation, Verwaltung und Administration, exquieren und vollstrecken* (Jacometti 2008: 146).

The problem of the binominal expressions did not arise only in relation to the German legal language. In reality, this is a problem that develops every time different languages, each one characterized by a specific terminology, come to converge or to cohabit in the same legal context. So even in the English legal system, starting from the eleventh century, as a consequence of the merging of Latin and French in a context already characterized by the native language, binomials, trinomials and multinomials developed (Gustafsson 1984: 123; Gustafsson 1975).

[7] Among these Hartmann von Aue, Gottfried von Straßburg, Wolfram von Eschenbach and Walter von der Vogelweide, considered the most important among the Minnesänger. Compare Bosco Coletsos (2003: 128).

3 The language of the codifications: the French *Code civil* (1804) and the Austrian *Allgemeines Bürgerliches Gesetzbuch* (1811)

Starting from the French Revolution, the interest for legal languages is concentrated on the lexicon used by the legislator. This is in part due to the imposition of the French Code of 1804 and the Austrian Code of 1811 in territories subjugated to the French and Austrian powers, for which it was necessary to prepare translations. In this context, legal languages were initially imposed by an act of conquest.

As for the French Code Napoléon, it should be remembered that it is true that it initially circulated under the Napoleonic expansion,[8] while in a second moment it was more appreciated by virtue of the legal prestige that it had assumed (Blanc-Jouvan (2004). The Napoleonic Code became a model for the whole civil law system: it reorganized the sources of law by making a *reductio ad unum*, thus depriving all other sources of law; it unified the language of law and the legal terminology; it imposed a certain style of legal drafting.

The history of the official introduction of the Code Napoléon in Italy is particularly interesting (Gambaro & Sacco 2002). It was decided to publish a trilingual version: in addition to the original French and Italian, a translation of the Code in Latin was prepared as well (Sigismondi 2009: 13). The decision did not find a clear explanation in the sources (Ferrante 2009: 223).

The use of Latin was intended to make the text of the Code "*immune to criticism*" and to legitimize it "*using the language of tradition*" (Cappellini 1989, XI; Chironi 1969: 763). The most accredited opinion was that, beeing the translation aimed to enter in force in Istria and Dalmatia as well, that – at that time – were parts of the Kingdom of Italy since the peace of Pressburg in 1805, and where the linguistic issues appeared very confused, it was worth proposing a version of the Code in the international language of the law (Ferrante 2009: 224; Roberti 1947: 36). This

[8] Dezza (2000: 97); Grimaldi (2003 : 80), where the Author recalls (p. 81): "*L'exportation du Code del 1804 est un phénomène qui revêt de multiples aspects, que l'on considère ses causes, ses modalités et son objet….Tantôt, ce fut la force des armes, la conquête militaire…. (p. 83) Tantôt, ce fut la force de l'esprit, ou celle du cœur, la conquête intellectuelle, parfois aussi sentimentale…. (p. 84) Tantôt, enfin, ce fut à son unicité que le Code civil français dut sa diffusion*".

choice is clearly a sign that at the beginning of the XIXth century the importance of Latin as a vehicular legal language was still very important (Di Renzo Villata 2011: 181, in particular 189).

The Napoleonic Code incorporated, from a linguistic point of view, the ideals of a law at the service of citizens (Gambaro 1988: 442): the language was accessible to everyone, stringent and elegant, while his editors had refused both the claim to want to regulate everything, and the dream of a brief philosophical and comprehensive code (Carpi 2008: 95).

With its 2281 articles the Code allowed to settle satisfactorily all matters of private law escaping the claim of a Code consisting only of general principles: "*The use by the legislature of an expressive level, intermediate between that which characterizes the formulation of general theoretical principles - a task left to the doctrine - and that characterizing the judicial decisions related to a fact of life - entrusted to case-law - became a characteristic feature of the whole Civil law*" (Gambaro & Sacco 2002: 299).

As regards the Austrian *Allgemeines Bürgerliches Gesetzbuch,* this entered into force in a vast European area: in addition to the hereditary dominions of the Habsburgs, also in Croatia, Slovenia, Dalmatia, Slavonia, Transylvania, Transleitania, Galicia, Hungary, in areas of Serbia, of Romania, Poland, and – of course – also in Northern Italy. In particular, the ABGB remained in force in the Lombardy-Veneto for over forty years since 1816, and in other Italian regions, until the end of the First World War, when Trieste and Trento became Italian.

The Austrian ABGB was translated into Italian on the impulse of Emperor Francis I, who published the "Sovereign License" on October 16, 1815 declaring his determination to *"introduce this code"* as soon as possible *"in all the provinces under the Government of Milan":* in practice in Lombardy-Veneto, which had been attributed to the Habsburg Empire by the Congress of Vienna. The Emperor had disposed that, with the promulgation of the ABGB, all previously existing laws were to be considered not in force anymore. However, for a few decades the French *Commercial code* remained in force in Lombardy-Veneto, and as subsidiary sources Roman law and in some matters feudal customs (Gandolfi 2011: 297).

The Austrian Code was translated into Italian and published in 1815 by the *Caesarea Regia Stamperia* of Milan. The Emperor himself had ordered that only the German text had to be considered the only official text, and that the various linguistic versions made in the different languages spoken in the Empire, had to be interpreted according to it.[9]

The fact that the German text was the only original, encouraged scholars to report with particular attention the phrases that could have given rise to doubts about the correct translation of the German terms (Gandolfi 2011: 313).

The Austrian legal language in the ABGB was subsequently influenced and interpreted according the evolution that took place in the German-speaking context, thanks to the movements that developed during the XIXth century in Germany.

4 The language of the Universities: the legal transplant of the German model

If the French model circulated above all thanks to the Code civil and its particular style of legislative drafting, the German model became very prestigious thanks to the doctrinal elaborations that took place during the XIXth century in Germany and that influenced not only the German language, but also those languages that underwent the influence of such doctrinal elaborations (Jacometti 2008: 155).

Unlike France, early XIXth century Germany was not yet unified. No political unity existed, nor a uniform private law or a centralized apparatus of justice (Zweigert & Kötz 1998: 17). With the development of Romanticism, which was aimed at exalting the German national soul against the predominance of French culture, the language underwent an increasingly radical Germanization, which had its impact both in the legal and literary sphere. Regarding the legal language, during the nineteenth century words of foreign origin decreased from 4-5 to 0.5% (Mattila 2006: 169).

[9] In the Introduction to the Code in the italina version published in Milan 1815 by the Cesarea Regia Stamperia, we can read: *"Dichiariamo al tempo stesso il presente testo tedesco del Codice come testo originale, secondo il quale si dovrà giudicare delle versioni che ne saranno fatte nelle diverse lingue proprie alle Nostre provincie".*

On the other hand, in the era of the *national states* there was no longer room for that dualism between the language of the Empire and the territorial language that had survived for centuries in Europea, since in each State there could be only *one* national language. The *Statute on the Judiciary* of 1877 had finally established that the language of all trials had to be German.[10]

Even the style of German legal language changed considerably during the nineteenth century, abandoning the popular character of the Enlightenment period to assume an increasingly abstract character, especially following the establishment of the Historical School and the Pandectists. The linguistic evolution that had first taken place in the legislation, gradually spread out to other areas, with great influences on the terminology and also on the style of the German legal language.

Scholars, even those scholars who were focusing on Roman law, were now teaching and publishing exclusively in German. In all procedural documents and judicial decisions the language used was of a more popular character, from which all Baroque frills were eliminated. The words of foreign origin were replaced with German terms. However, it should be noted that in the public administration this Germanization was less intense and that still today there are terms in use of clearly foreign origin such as *Präsidium, Sektion, Departement.* The same is true for the names of some offices such as *Präsident, Minister, Notar, Kommissar, Rektor, Senator,* etc. (Jacometti 2008: 157).

The syntactic construction and the use of baroque words have endured more tenaciously and even today we still find in the German language extremely long and complex periods, the tendency to resort to widely descriptive phrases, the use of repetitions and superlatives, and the preference for an impersonal style. The Baroque style remained more firmly in the substrates of legal language holders: while most of the ministries and higher jurisdictions usually use good German, at the level of local administrations and municipal offices it is possible to find a bureaucratic language often erroneous and of bad quality (Bartsch 1954).

[10] § 184, Gerichtsverfassungsgesetz (GVG) del 27.1.1877. In 2006 § 184 GVG has been modified in order to allow the use of the Sorbian language in Court: "*Die Gerichtssprache ist deutsch. Das Recht der Sorben, in den Heimatkreisen der sorbischen Bevölkerung vor Gericht sorbisch zu sprechen, ist gewährleistet.*"

The birth of the Historical School of Law, founded by Friedrich Carl von Savigny, needs to be placed exactly in the context of the nationalistic spirit that was spreading out at the beginning of the XIXth century. Von Savigny placed himself in opposition to Friedrich Justus Thibaut, who advocated the introduction of a unitary codification following the model of the French *Code civil* in order to overcome German particularism. Savigny argued that law, like language, was to be considered as an expression of the *esprit* of the people, as part and parcel of national life. He opposed the idea, that law can be arbitrarily imposed on a country irrespective of its history.

Since the law, on the other hand, is characterized by an unavoidable technical component that falls within the competence of lawyers, Savigny believed that it was the task of legal science to proceed with the elaboration and study of the existing legal rules developed in the course of history and in particular Roman law, as this had contributed decisively to the development of national law.

Later on, the Pandectist School developed out from the Historical School, with the task of focusing on the systematic and dogmatic elaboration of the Roman legal materials.[11] This elaboration was based on the logical deduction of concepts from concepts and this presupposed a meticulous analysis of all the elements of a case in such a C as to give each of them an appropriate legal qualification. This had a profound impact on legal language as it generated a conceptual instrument of great precision and clarity. As comparative lawyers have pointed out: *"until then, and still today in the French experience, the legal vocabulary was a specialized technical vocabulary just because it attributed sectoral meanings to a certain number of words. In most cases these were words taken from the common vocabulary, especially from Latin, to which particular meanings were attributed. But until then, scholars had never felt the need to create their own lexicon*" (Gambaro & Sacco 2002: 247).

[11] The Pandectists school derives its name from the Justinian's Pandects. The subsequent doctrine in criticizing its methodology call it, in a derogatory sense, *Begriffsjurisprudenz* (Jurisprudence of concepts).

5 French and German transplants in Italy

In the nineteenth century, the Italian legal system was influenced by the French model first and then by the German one, and – especially – by the Pandect-science. More specifically, the French model and the German model were both received in Italy, albeit with different methods and motivations behind.

If the French model initially circulated under Napoleonic expansion – in Italy as in other European countries (Cachard: 2005) – it was later appreciated by virtue of the legal and institutional prestige. While the main channel for the transplant of the French model was the translation of important pieces of legislation, such as the Code Napoléon (Grimaldi 2003: 80), the German model was introduced in Italy through the writings of legal scholars, which were read in the original German language, but also translated.[12]

The French legal language marks the development of the Italian legal language in the course of the nineteenth century: the Italian, both of the legislative texts and of the doctrine and of the practice of law, receive from the French terms and concepts, which leave a profound mark. This influence passes through the adoption of bilingual legislative texts in the Napoleonic age; through the imitation of French legislative models in the following decades; through the circulation in Italy of French legal scolarly writings, which has also resulted in an important series of translations.

However, the methodology offered by German Pandectists became soon very useful to Italian jurists (Furfaro 2012: 55). It should be noticed that the founding fathers of Italian private law were at the same time the most influential Romanistic scholars, who had been trained in Germany by Pandectists. They were therefore eager to emphasize the value of Pandect-science as one of the best tools for the Italian interpreter. To this aim the development of Italian translations of German legal handbooks should be considered as an emblematic component of a general project for the diffusion of German legal culture in Italy (Furfaro 2012: 57). These

[12] Among the most important translations of German scholars we can refer to Savigny, *Sistema del diritto romano attuale*, 8 volumes, published between 1886 and 1892; Gluck, 1888-1909, *Commentario alle Pandette*; Dernburg, 1903-1907, *Pandette*; Windscheid, *Diritto delle Pandette*, 5 volumes published between 1925 and 1926.

changes in the reference model implied an innovation in the Italian legal language too. Let us take the example of Italian contract law.

In the first Italian Civil Code of 1865, which was in great part the translation of the French Code Napoléon,[13] article 1300 considers the category of *nullity* (nullità), which was further differentiated into *relative nullity* and *absolute nullity*, as art. 1304 of the French archetype of 1804 was teaching.

After the reception of the German model at the end of the XIXth century, the Italian legal vocabulary slowly changed, dropping the French terminology in favour of the concepts of *nullity* and *avoidability* (from the German: *Nichtigkeit/Anfechtbarkeit*, into the Italian: *nullità/annullabilità*) of German origin. That explains why nowadays it is easier to translate contract law from German to Italian and *viceversa*, than from French to Italian and viceversa (Pozzo 2003: 754).

6 The language of the common law

The language of the common law has its own history and peculiarities (Mellinkoff 1963; Tiersma 1999 and Wagner 2002), due to the peculiar origins of this legal system in Medieval England, that took an independent path from the evolution of the *jus commune* on the Continent, though mutual influences and interferences went on during the course of history (van Caenegem (1988: 96).

In the common law language we find many latinisms, but these are the result of the working of ecclesiastics inside the *Curia Regis* who were using Latin because it was the language of learned people at that time, and not necessarily because it was the language of Roman legal sources.[14] The influence of Latin as the language of culture and of the *élite,* persisted during the centuries, as the tutor of Queen Elizabeth, Roger Ascham, was able to witness: *"All men covet to have their children speak Latin"*(Greenblatt 2016: 4).

The administration of justice was soon entrusted by William to the ecclesiastics of the Curia Regis, who used Latin as the language of the culture of the time (Baker:

[13] It is important to point out that the Code Napoléon was first translated in 1806. On this topic see Cappellini (1989) and Ferrante 2009: 223.
[14] Even if there were authors, like Bracton, who followed Roman sources, like the Digest (Ferreri (2008): 259)

1979: 84). In an attempt to forge a centralized justice system, administered by the courts of Westminster, the English Crown gradually granted actions available to the population, which were written on parchment by clerics operating in the Curia Regis in Latin: these actions, initially called *brevis*, because they needed to be short as the legal formula had to be written on a precious parchment, were subsequently called writs, from a mispronunciation of the original word in Latin. Latin was therefore used within the Curia Regis in the administration of justice, not because it was the language of the sources of Roman law, but because it was a language known and used by the ecclesiastics (Ferreri 2008: 259).

The English judicial system developed from the bottom, on the basis of a process that will take place without interruption from the Middle Ages to the present day, *from case to case and by analogy*, forging classifications and taxonomies that were alternative to those employed by universities on the Continent. This is also explained by the fact that lawyers' education in England was not entrusted to universities, but to the Inns of Courts, where the lawyers did not study ancient Roman sources, and where the older taught the younger ones on the basis of the cases discussed in court (Ferreri 2008: 271).

Latin remained the language in which the Aristocrats received their education and in which the minutes of the Common Law Courts were written up to 1731, not so much because this was required by tradition, but by express provision of the law and decisions could be challenged solely because the English language had been used in the minutes (Baker 1998: 10). It is therefore not surprising that even today, many Latinisms are found in the language of the common law. From the principle *stare decisis et non quieta movere*, which translates as *to stand by decisions and not to disturb settled matters* and constitutes the founding principle for the doctrine of binding precedent, to *habeas corpus*, which ensures that no one can be imprisoned unlawfully.

After the Norman Conquest, the evolution of a common law language was also profoundly indebted to *Law French,* that was introduced in the courtrooms following the rise to power of William the Conqueror. The Norman aristocracy brought with it the language not only to the Court of the King, but also to the administration of justice which was considered a royal prerogative (Baker 1998: 5;

Baker 1984: 544). As J. H. Baker recalls: *"French, of a kind, was the principal language of the common law from the thirteen century until the seventeenth*" (Baker 1998: 5).

Latin as the *language of culture* and French as the *language of the power* profoundly influenced – especially in the field of law – the English language, that was the mother tongue of all Englishmen after the twelth century (Baker 1998: 7). The confluence of these three languages: Latin, French and English into the language of the common law, together with the autonomous evolution of the common law system from the rest of Europe, render some of its institutions unique and – therefore – untranslatable.

7 English as a global language: the legacy of the British Empire

Due to the colonial past of the British Empire, the common law system and its legal language spread all around the world (Lacoste (2004: 5; Roberts 2006), so that nowadays we face on the one side the existence of various "*World Englishes*" (Bhatt 2001: 527), and on the other side English is gaining the role of a *lingua franca* (Bailey 1992; Crystal 2003). In the new world language order, English is the most widely spoken language in the world after Mandarin (Fishman 26-32, in particular p. 31)) and new phenomena are about to be studied. Recently, an attentive scholar of these issues, Henry Kahane, recalled that: *"English is the great laboratory of today's sociolinguist*" (Kahane 1986: 495).

It is now recognized that there is no longer a single English, but different dialects each with its own characteristics in England, Scotland, Ireland, United States, Canada, Australia, South Africa and India (Crystal 2003; Bolton & Kachru 2006; Bhatt 2001: 527).

English as the language of law is able to play an important role where the colonial period has succeeded in imposing the language, but also a legal system and the institutions for the administration of justice. In *Africa*, where more than 2,000 languages are spoken and linguistic diversity is very high (Sacco 1995: 55), there is a lack of a shared language communication tool. Many Africans speak one or more local (*vernacular* and/or *vehicular*) languages, and – sometimes – an official language as well. The English-speaking and Francophone sectors have maintained

an almost total isolation from each other (even in Cameroon, a *bilingual* and *bijuridical* country, the Francophones hardly speak English and vice versa), while the other realities – Portuguese, Italian, Spanish – have headed for the one or the other of the two great linguistic communities (Mancuso 2014: 39, in particular p. 42).

The link between language and law in Africa takes on a particular connotation as customs still play a very important role in large parts of the Continent (Allott 1974: 124). After decolonization, in some African countries the previously dominant language of European power has become the official language for law (Fardon & Fumiss 1994). In others, even in the absence of a legislative provision in this sense, the choice of teaching English in schools becomes an instrument for the dissemination of the English language (Brock-Utne & Holmarsdottir 2001: 293-322); Webb 2002). The conditions in which one language rather than another are taught may vary from one generation to another (Woods 1994: 19; Laitin 1992). The situation in Africa is therefore all in the making, and multilingualism seems to remain a characterizing phenomenon (Desai 2001; Warnier 1979; Adekunle 1972; Whiteley 1971), even if English tends to play an essential role in the education of future African generations (Barkhuizen & Gough 1996).

In *India*, during the colonial period, the diffusion of the common law was accompanied by the spread of the English language as the language of law. After the independence reached in 1947, India had to face the problem of the official languages and more specifically the language of the law to find a balance, on the one hand, between unity and diversity of the country and, on the other, between continuity and emancipation from the legacy of the colonial period (Francavilla 2010). The 1950 Constitution put in place a transitional and progressive system according to which English would be used in all cases in which it was used prior to the entry into force of the Constitution for a period of fifteen years, after which the role of English needed to be reconsidered (Francavilla 2014: 141).

Sixty years after the Constitution, the English still resists as the language of law, and in particular as the language of the Supreme Court, although in a framework evolving towards a legal multilingualism with a greater role for the Hindi language and other Indian languages. The use of English as a language of law is in turn

closely linked to the fact that the Indian legal system is part of the common law family. Thus, contemporary Indian law is perceived – as a whole – much closer to Western legal systems than other Asian legal systems, especially because it uses a terminology and a fully comprehensible conceptual system for common lawyers.

The current terms of the question can be analyzed through a recent report published by the Indian Law Commission, with the significant title *"Non-feasability of introduction of Hindi as compulsory language in the Supreme Court of India"* (Report 216th), 2008.[15] This Report by the Indian Law Commission follows a proposal to introduce the Hindi language instead of English in the Supreme Court. The Report reviews the constitutional provisions on the matter, and a series of opinions by eminent Indian lawyers, in particular former members of the Supreme Court, lawyers of the higher jurisdictions, and law professors.

The main problems for the adoption of the Hindi language instead of English as the language of law can be briefly summarized. Firstly, the acceptance of Hindi as an official language is not sufficiently widespread and in Southern States such as Tamil Nadu the idea that the Hindi in the Supreme Court holds a prominent position would never be accepted: this would make the knowledge of Hindi mandatory and would constitute a case of imperialism of the language of a part of India over the others. Moreover, not all Indian lawyers speak Hindi and such innovation would inevitably produce dysfunctions in the legal system. It would take at least two generations of lawyers educated in Hindi to allow a regular functioning of the Court.[16] English, moreover, should no longer be considered a foreign language in India. English has become part of the Indian culture, to the point that there is an *Indian English*. In addition, the privileged position of English in India is actually a fortune, since thanks to this, Indians can take part to a global culture that is expressed in English (Shetty 2008: 21). English will therefore continue to play an important role in the development of Indian law.

[15] See http://lawcommissionofindia.nic.in/reports/report216.pdf

[16] *Non-feasability of introduction of Hindi as compulsory language in the Supreme Court of India* (Report 216th), 2008: 20.

8 Global English as a business language

The globalization of recent years has led – above all in the finance, commercial and corporate law sectors – to a strong acceleration of legal transplants, to a tendency towards convergence of principles and to the development of general principles that tend to be uniform due to standardization – on the world market – of companies and financial markets and to the privatization of rules (Montalenti 2015: 159). The fading of national sovereignty has in fact cracked the state monopoly of legal regulation.

From this point of view, at least one mention must be made to the so-called *relocation of economic relationships*, through self-regulating contracts, freed from national laws and subject to the "private" judgment of international arbiters (Montalenti 2015: 161). In recent years, there have been many examples of supra-national private regulation, as in the case of the Unidroit Principles concerning contracts or the Lando Commission Principles (Montalenti 2015: 162).

In corporate and financial matters, the same trend finds notable examples with the Self-Regulation-Codes that have been published in the field of Corporate Governance, as well as with the rules of conduct that have been introduced by private market managers in the field of financial informations (Montalenti 2015: 162). In this period we are witnessing a phenomenon of destatization, privatization and deterritorialization of the law. In this context the space for "contaminated" general clauses between common law and civil law is multiplied (Montalenti 2015:163).

This explains – at least in part – the increasing attention to the English language used in these contexts, which does not always reflect institutions or solutions of English law, but reflects new meanings, which arise in the international context and incorporates different legal models.

References

Adekunle, Mobolaji A. (1972): "Multilingualism and Language Function in Nigeria." In: *African Studies Review* 15.2, 185 – 207.

Allott, Anthony (1974): "Law and Language in Africa." In: *Zeitschrift für vergleichende Rechtswissenschaft einschließlich der ethnologischen Rechtsforschung* 74, 124 – 136.

Arntz, Reiner (2000): "The Roman Heritage in German Legal Language." In: Mattila, Heikki E.S. [ed.] (2000): *The Development of Legal Language*. Helsinki: Kauppakaari. 34 – 54.
Baker, John H. (1979): *An Introduction to English Legal History*. London: Oxford University Press.
Baker, John H. (1998): "The three Languages of the Common Law." In: *McGill Law Journal* 43.3, 5 – 24.
Baker, John H. (1984): "Le Brickbat que narrowly mist." In: *Collected Papers on English Legal History*. Cambridge: Cambridge University Press. 1101 – 1106.
Bartsch, Robert (1954): "Zur Geschichte der deutschen Rechtssprache." In: *Archiv für die civilistische Praxis* 153.5*,* 412 – 424.
Bailey, Richard W. (1992): *Images of English. A Cultural History of the Language*. Cambridge: Cambridge University Press.
Barkhuizen, Gary P. / Gough, David (1996): "Language Curriculum Development in South Africa: What Place for English?" In: *TESOL Quarterly* 30.3, *Language Planning and Policy*, 453 – 471.
Bhatt, Rakesh M. (2001): "World Englishes." In: *Annual Review of Anthropology* 30, 527 – 550.
Bellomo, Manlio (2000): *I fatti e il diritto. Tra le certezze e i dubbi dei giuristi medievali (secoli XIII-XIV).* Roma: Il Cigno Galileo Galilei.
Blanc-Jouvan, Xavier (2004): "L'influence du code civil sur les codifications étrangères récentes." In: *Le Code civil 1804-2004, Livre du Bicentenaire*. Paris: Dalloz-Litec. 477 – 512.
Bolton, Kingsley / Kachru, Braj B. (2006): *World Englishes: Critical Concepts in Linguistics*, London / New York: Routledge.
Bosco Coletsos, Sandra (2003): *Storia della lingua tedesca*. Torino: Rosenberg & Sellier.
Braudel, Fernand (1986-1987): *L'identité de la France*, t. I, *Espace et Histoire*, t. II et III, *Les hommes et les choses*. 3 volumes. Paris: Flammarion.
Brock-Utne, Birgit / Holmarsdottir, Halla B. (2001): "The Choice of English as Medium of Instruction and Its Effects on the African Languages in Namibia." In: *International Review of Education / Internationale Zeitschrift für Erziehungswissenschaft / Revue Internationale de l'Education* 47.3/4, Globalisation, Language and Education, 293 – 322.
Cachard, Olivier (2005): "Translating the French Civil Code: Politics, Linguistics and Legislation." In: *Connecticut Journal of International Law* 21, 41 – 66.
Candian, Albina / Gambaro, Antonio / Pozzo, Barbara (1994): *Property, Propriété, Eigentum*, Padova: Cedam.
Cappellini, Paolo (1989): "Note storiche introduttive." In: Giorgio Cian [ed.]: *Codice di Napoleone il Grande pel regno d'Italia, 1806, anastatic re-edition of the original.* Padova: CEDAM. XI-XVII.
Carpi, Angela (2008): "Il francese giuridico." In: Pozzo, Barbara / Timoteo, Marina [eds] (2008): *Europa e Linguaggi Giuridici.* Milano: Giuffrè. 83 – 121.
Caterina, Raffaele / Rossi, Piercarlo (2008): "L'Italiano giuridico." In: Pozzo, Barbara / Timoteo; Marina [eds]. (2008). *Europa e Linguaggi Giuridici*. Milano: Giuffrè. 185– 189.
Chironi, Gian Piero (1904): « Le Code civil et son influence en Italie. » In: *Le Code civil, 1804-1904, Livre du Centenaire,* publié par la Société d'Etudes Législatives, II, Paris 1904, réimpression anastatique, Paris / Francfort-sur-le-Main, 1969, 763 – 777.
Cortese, Ennio (1995): *Il diritto nella storia d'Europa*, II, *Il Basso Medioevo*. Roma: Il Cigno Galileo Galilei.
Crystal, David (2003) *English as a Global Language*. 2nd ed. Cambridge: Cambridge University Press.
Desai, Zubeida (2001): "Multilingualism in South Africa with Particular Reference to the Role of African Languages in Education." In: *International Review of Education /*

Internationale Zeitschrift für Erziehungswissenschaft / Revue Internationale de l'Education 47.3/4, *Globalisation, Language and Education*, 323 – 339.

Dezza, Ettore (2000): *Lezioni di storia della codificazione civile. Il Code civil (1804) e l'Allgemeines Bürgerliches Gesetzbuch (ABGB, 1812)*. Torino: Giappichelli.

Dernburg, Arrigo (1903-1907): *Pandette*, 4 volumes. Torino: Fratelli Bocca.

Di Renzo Villata, Gigliola Maria (2006): "Università ed Europa: un felice connubio attraverso i secoli (con qualche ombra...)." In: *Annali di storia delle università italian* 10, 9 – 21.

Di Renzo Villata, Gigliola, Maria (2011): "La "métabolisation du droit nouveau en Lombardie entre culture autrichienne et culture française (fine XVIII-début XIX siècle)." In: Coppein, Bart / Stevens, Fred / Waelkens, Laurent [eds] (2011): *Modernisme, Tradition et Acculturation juridique, Actes des Journées internationales de la Société d'Histoire du Droit de l'Homme à Louvain 28 mai – 1 juin 2008*, Bruxelles. 181 – 205.

Fardon, Richard / Fumiss Graham [eds] (1994): *African Languages, Development and the State*. London / New York: Routledge.

Feenstra, Robert (1988): "'Legum doctor', 'legum professor' et 'magister' comme termes pour désigner les juristes au moyen âge." In: Weijers, Olga [ed.] (1988): *Actes du colloque Terminologie de la vie intellectuelle au moyen âge, Leyde-La Haye 20-21 septembre 1985*. Turnhout: Brepols Publishers. 72 – 77.

Ferrante, Riccardo (2009): "Traduzione del codice e tradizione scientifica: la cultura giuridica italiana davanti al Codice napoleone". In: Tavilla, Elio [ed.] (2009): *Giuseppe Luosi, giurista italiano ed europeo. Traduzioni, tradizioni e tradimenti della codificazione. A 200 anni dalla traduzione in italiano del Code Napoléon (1806-20069. Atti del Convegno internazionale di studi (Mirandola-Modena, 19-20 ottobre 2006)*, Carpi (Modena): APM Edizioni. 223 – 237.

Ferreri, Silvia (2008): "Il linguaggio giuridico inglese". In: Pozzo, Barbara / Timoteo, Marina [eds] (2008): *Europa e Linguaggi Giuridici*. Milano: Giuffrè. 259 – 300.

Fiorelli, Piero (2008): *Intorno alle parole del diritto*. Milano: Giuffrè.

Fiorelli, Piero (1994): "La lingua del diritto e dell'amministrazione." In: Serianni, Luca / Trifone, Pietro [eds]: *Storia della lingua italiana*, vol. II, *Scritto e parlato*. Torino: Einaudi. 553 – 597.

Fishman, Joshua A. (Winter 1998-1999): "The New Linguistic Order." In: *Foreign Policy* 113, 26 – 40.

Francavilla, Domenico (2010): *Il diritto nell'India contemporanea. Sistemi tradizionali, modelli occidentali e globalizzazione.* Torino: Giappichelli.

Francavilla, Domenico (2014): "Multilinguismo e lingue del diritto nell'India contemporánea." In: Pozzo, Barbara [ed.]. *Lingua e diritto: Oltre l'Europa*. 141– 174.

Furfaro, Federica (2012): "The Connections between German Pandectist School and Italian Legal Culture at the End of XIX Century." In: *Sources of Law and Legal Protection*, (Triestine Lecture; 1). EUT Edizioni Università di Trieste. 55 – 71.

Gambaro, Antonio (1988): "Codice Civile." In: *Digesto Discipline Privatistiche, Sezione Civile*, Torino: UTET. 442 – 460.

Gambaro, Antonio / Sacco, Rodolfo (2002): *Sistemi giuridici comparati*. Torino: UTET.

Gandolfi, Giuseppe (2011): "Nel secondo centenario del 'Codice Austriaco'". In: *Istituto Lombardo - Accademia di Scienze e Lettere-Rendiconti di Lettere* 145, 297 – 315.

Gluck, Christian Friedrich (1888): *Commentario alle Pandette*. Milano: Vallardi.

Graziadei, Michele (2009): "Legal Transplants and the Frontiers of Legal Knowledge." In: *Theoretical Inquiries in Law* 10.2, 723 – 743.

Graziadei, Michele / Pozzo, Barbara [eds] (2015): *Categorie e terminologie del diritto nella prospettiva della comparazione*. Milano: Giuffrè.

Greenblatt, Stephen (2016): *Will in the World, How Shakespeare became Shakespeare*. W.W. Norton & Company, New York / London.
Grimaldi, Michel (2003): "L'exportation du Code Civil." In: *Le Code civil, Special Issue of Pouvoirs* 107, 80 – 96.
Grossi, Paolo (1995): *L'ordine giuridico medievale*. Bari: Laterza.
Gustafsson**,** Marita (1975): *Binominal Expressions in Present-Day English. A Syntactic and Semantic Study*. Turku: Annales Universitatis Turkuensis.
Gustafsson, Marita (1984): "The syntactic features of binomial expression in legal English." In: *Text* 4.1–3, 123 – 141.
Hattenhauer, Hans (1987): *Zur Geschichte der deutschen Rechts- und Gesetzessprache.* Hamburg: Joachim Jungius-Gesellschaft für die Wissenschaften.
http://lawcommissionofindia.nic.in/reports/report216.pdf [cited as 'Report 216th'] (20 December 2018).
Jacob, James E. (1990): "Language Policy and Political Development in France." In: Weinstein, Brian [ed.] (1990): *Language Policy and Political Development*. Norwood, NJ: Ablex Publishing Co. 43 – 66.
Jacometti, Valentina (2008): "Il linguaggio giuridico tedesco." In: Pozzo, Barbara / Timoteo, Marina [eds] (2008): *Europa e Linguaggi Giuridici.* Milano: Giuffrè. 123 – 184.
Kahane, Henry (1986): "A Typology of the Prestige Language." In: *Language* 62, 495 – 508.
Lacoste, Yves (2004): "Pour une approche géopolitique de la diffusion de l'anglais." In: *Hérodote* 115, 1 – 5.
Laitin, David D. (1992): *Language Repertoires and State Construction in Africa*. Cambridge: Cambridge University Press.
Lepore, Paolo (2008): "Note minime su alcuni caratteri della lingua del diritto romano." In: Pozzo, Barbara / Timoteo, Marina [eds] (2008): *Europa e Linguaggi Giuridici.* Milano: Giuffrè. 3 – 30.
Letto-Vanamo, Pia (2000): "Legal Systems and Legal Languages. " In: Mattila, Heikki E.S. [ed.] (2000): *The Development of Legal Language*. Helsinki: Kauppakaari. 21 – 30.
Lusignan, Serge (1987): "Le français et le latin aux Xllle-XIVe siècles: pratique des langues et pensée linguistique." In: *Annales, Économies, Sociétés, Civilisations* 4, 955 – 967.
Mancuso, Salvatore (2014): "L'espressione diversa di un diritto diverso: lingua e diritto in Africa." In: Pozzo, Barbara [ed.]. *Lingua e Diritto: Oltre l'Europa*. (2014). Milano: Giuffrè. 39 – 56.
Mattila, Heikki E. S. (2006): *Comparative Legal Linguistics*, translated by Christopher Goddard, Aldershot: Ashgate.
Mellinkoff, David (1963): *The Language of the Law*, Boston: Little, Brown and Company.
Montalenti, Paolo (2015): "Nuove clausole generali nel diritto commerciale tra civil law e common law." In: Graziadei Michele / Pozzo, Barbara [eds] (2015): *Categorie e terminologie del diritto nella prospettiva della comparazione*. Milano: Giuffrè. 159 – 184.
Monti, Annamaria (2008), "Tra latino e volgare: il linguaggio giuridico in età medievale e moderna.". In: Pozzo, Barbara / Timoteo, Marina [eds] (2008): *Europa e Linguaggi Giuridici.* Milano: Giuffrè. 52 – 82.
Padoa Schioppa, Antonio (2005): *Il diritto nella storia d'Europa, Il medioevo*, Parte 1. Padova: CEDAM.
Pozzo, Barbara (2003): "Harmonisation of European Contract Law and the Need of Creating a Common Terminology." In: *European Review for Private Law* 6, 754 – 767.
Rey, Alain / Duval, Frèdéric / Siouffi, Gilles (2007): *Mille ans de langue française, Histoire d'une passion, I. Des origines au français moderne*, Paris: Perrin.
Roberti, Melchiorre (1947): *Milano capitale napoleonica. La formazione di uno Stato moderno (1796-1814)*, vol. II. Milano: Fondazione Treccani degli Alfieri per la storia di Milano.

Roberts, Andrew (2006): *A History of the English-Speaking Peoples since 1900*. London: Weidenfeld & Nicolson.

Sacco, Rodolfo (1991): "Legal Formants, A Dynamic Approach to Comparative Law." *American Journal of Comparative Law* 39.1. Winter 1991, 343 – 401.

Sacco, Rodolfo (1995): "Il diritto africano." In: *Trattato di Diritto Comparato*. Torino: UTET.

Sadat Wexler, Leila (1996): "Official English, Nationalism and Linguistic Terror: A French Lesson." In: *Washington Law Review* 71, 285 – 377.

Savigny, Friedrich Carl von (1886): *Sistema del diritto romano attuale* Torino: Unione Tipografico-Editrice.

Schulze, Hagen (1998): *States, Nations and Nationalism: From the Middle Ages to the Present*. [Translated from the German by William E. Yuill]. Oxford: Blackwell.

Sestan, Ernesto (1994) *Stato e nazione nell'alto Medioevo: ricerche sulle origini nazionali in Francia, Italia, Germania.* Napoli: Edizioni scientifiche italiane.

Sigismondi, Francesca Laura (2009): "Giuseppe Luosi: saggio di una biografia." In: Tavilla, Elio [ed.] (2009): *Giuseppe Luosi, giurista italiano ed europeo. Traduzioni, tradizioni e tradimenti della codificazione. A 200 anni dalla traduzione in italiano del Code Napoléon (1806-20069. Atti del Convegno internazionale di studi (Mirandola-Modena, 19-20 ottobre 2006)*, Carpi (Modena): APM Edizioni. 13 – 34.

Tiersma, Peter (1999): *Legal Language*. Chicago: University of Chicago Press.

Van Caenegem, Raoul (1988[2]): *The Birth of the English Common Law*. Cambridge: Cambridge Paperback Library.

Wagner, Anne (2002): *La langue de la common law*. Paris: L'Harmattan.

Warnier, Jean-Pierre (1979): "Noun-Classes, Lexical Stocks, Multilingualism, and the History of the Cameroon Grassfields." In: *Language in Society* 8.3, 409 – 423.

Webb, Victor N. (2002): *Language in South Africa. The role of language in national transformation, reconstruction and development, Impact: Studies in language and society.* Vol. 14. Amsterdam / Philadelphia: John Benjamins Publishing Co.

Weijers, Olga (1987): *Terminologie des universités au XIIIe siècle*. Roma: Edizioni dell'Ateneo.

Whiteley, W[ilfred] H. [ed.] (1971): *Language Use and Social Change: problems of multilingualism with special reference to Eastern Africa*. London: O.U.P. for the International African Institute.

Windscheid, Bernhard (1925): *Diritto delle Pandette*. Torino: Unione Tipografico-Editrice.

Woods, David R. (1994): "Changing Patterns of Language Utilization in the Republic of Congo." In: *African Languages and Cultures* 7.1, 19 – 35.

Zweigert, Konrad / Kötz, Hein (1998): *Introduzione al diritto comparato*. Vol. 1. Principi, Milano: Giuffrè.

Chapter 4

Terminological innovation and harmonization at international organizations: Can too many cooks spoil the broth?

Fernando Prieto Ramos and Albert Morales Moreno

Abstract
This paper examines the role of international organizations as prominent terminological agents in dealing with neologisms from English in their areas of expertise. It focuses on the relationship between the institution's more or less exclusive competence in a field of neological work, the potential authoritativeness and impact of its terminological recommendations in that field, and the evolution of quantitative indicators of intra-, inter- and extra-institutional consistency of uses in the target language. A diachronic and comparative approach is adopted for the analysis of patterns of translation of four terms representative of three areas of international law ("governance", "tariff peak", "tariff escalation" and "hedge fund") and various levels of terminological convergence in three institutional settings (the UN, the WTO and the EU), including publicly-accessible translations and terminological databases. These patterns are compared with the corresponding terms found in the Spanish general and economic press (including *ABC*, *Cinco Días, El Mundo*, *El País* and *Expansión*) and in published books (*Google Books Ngram Viewer*). The findings suggest a correlation between degrees of fragmentation of terminological work, perceived linguistic authoritativeness and levels of harmonization. They accordingly highlight the need for further consistency and coordination in order to improve the quality of institutional communication and, more broadly, the standardization of specialized terminology in the target language.

Keywords: neologism, institutional translation, lexicometric analysis, consistency, harmonization

1 Introduction

Given the predominant use of English for international relations and research dissemination, this language is also the most commonly used to designate new concepts and, subsequently, to transpose them into other languages, i.e. "secondary term formation" as defined by Sager (1990: 80). Of course, translation is required in this process of transferring knowledge into the target languages. As a result, specialized communication in these languages relies to a large extent on translated terminology.

It is thus no surprise either that translators play a critical role in the importation and consolidation of neologisms, most often from English. In the case of institutional

translators, this role is especially instrumental (and potentially more influential) in those areas of expertise and policy-making in which the institutions are considered a linguistic reference point (e.g. international trade law in the case of the World Trade Organization (WTO) or European Union-specific legal terminology in the case of EU institutions). However, when several institutions with overlapping institutional missions address the same themes (e.g. institutions dealing with economic and financial matters), and their translation services are confronted with the same concomitant terminological issues, the risk of inter-institutional lexical divergences increases, particularly at early stages of lexical importation (see Prieto Ramos 2013).

At intergovernmental and supranational organizations, even when multilingual primary term creation is conducted for standardization purposes in the institution's main area of competence (i.e. when establishing terminology for the same concept in all the official languages) the terms tend to originate in the primary language of international negotiation and are then translated into the other languages (Fischer 2010: 26-27, Prieto Ramos 2014: 319-320, *Bratanić* and *Lončar* 2015: 208-209). The translation of new terminology may be more challenging when it is carried out for various national jurisdictions that share the same target language but have divergent traditions and lexical preferences. Precisely for the same reason, terminological work at international organizations emerges as a touchstone for harmonizing terminology, and therefore for supporting standardization and consistency, in international languages. The increasing accessibility of institutional online resources further accentuates the potential influence of their terminological recommendations on translators and language users outside international organizations, especially when term banks, together with text repositories, are made available and systematically managed by language services.

This paper explores the above dynamics by focusing on the evolution and consistency of translations of new terms from English, as reflected in institutional legal and administrative genres. Building on a preliminary study on the management of neologisms at international organizations (Prieto Ramos 2013), it presents a lexicometric analysis of selected terminology (i.e. it empirically quantifies the use of these terms) adopting a diachronic and comparative perspective that includes the United Nations (UN), the WTO and the EU, including

the Court of Justice of the EU (CJEU), as covered by the "LETRINT project" on legal translation in international institutional settings.[1] The study delves into lexical patterns in Spanish as an international target language common to these settings. It focuses on the levels of terminological consistency within and between institutions, and compares them with the uses found in other publications, including the press[2] and, in the case of trade and finance terms, in *Google Books Ngram Viewer*[3] (data from books available in Spanish until 2000) as relevant indicators of extra-institutional uses more broadly.

The aim of this lexicometric analysis is to examine the relationship between (a) the institution's more or less exclusive or shared competence in a field of neological work, (b) the potential authoritativeness and impact of its terminological recommendations in that field, and (c) the evolution of quantitative indicators of intra-, inter- and extra-institutional consistency of uses in the target language since term formation. As mentioned above, both multilingual primary term creation (in the case of institution-specific terminology) and secondary term creation are considered here forms of "terminological innovation" through translation.

The selected terms are representative of various degrees of exclusive or shared competence, and also illustrate the diversity of themes and specialized terminology found in international legal and administrative texts, including international affairs (e.g. "governance"), global trade (e.g. "tariff escalation" and "tariff peak") and finance (e.g. "hedge fund"). The evolution of occurrences of their most common translations in Spanish since their emergence was verified in the relevant online repositories[4] for comparison. This entailed counting all variants of a term (e.g. "hedge fund" in the singular and the plural), as well as manual verifications where

[1] "Legal Translation in International Institutional Settings: Scope, Strategies and Quality Markers", led by the first author and supported by the Swiss National Science Foundation through a Consolidator Grant.

[2] Including selected general newspapers *ABC*, *El Mundo* (EM) and *El País* (EP), and economic newspapers *Cinco Días* (5D) and *Expansión* (EXP). These periodicals use Peninsular Spanish, which can be considered the main reference for specialized terminological uses common to the three institutional settings under scrutiny, as Spain is the only Spanish-speaking Member State of the EU.

[3] https://books.google.com/ngrams (30 November 2018).

[4] These include the UN's Official Document System (ODS) (https://documents.un.org/), the WTO's Documents Online database (https://docs.wto.org/), and the EU's EUR-Lex portal (https://eur-lex.europa.eu/) (30 November 2018).

relevant to confirm the correspondence between the English and the Spanish terms in the case of multilingual texts. In all the instances considered, the language of primary term formation is English, so the language of original texts for term extraction and quantification purposes is ultimately irrelevant (e.g. in the case of original texts in French at the CJEU), as long as the term use in Spanish refers to the original neologism in English. For the diachronic examination of neologisms, it is thus contextualized occurrences in translations (rather than term bank entries) that primarily serve to measure lexical patterns. Nonetheless, the translations recommended for the same terms in the relevant institutional lexicographical resources were also verified to investigate lexical choices over time: UNTERM (the UN's terminology database), the WTO's glossary of key terms,[5] and IATE (the EU's terminology database). Overall, the entire institutional translation services, rather than a specific group of language professionals (translators, revisers or terminologists, whose functions in practice tend to merge into single profiles), are regarded as terminological agents for the purposes of this study.

2 "Governance": a case of rapid convergence

This term emerged in English as a neologism in connection with globalization in the context of multilateral relations in the 1990s. International organizations confronted with this neologism would inevitably turn to the UN as a key reference in this area. According to UNTERM, "governance" has been translated into Spanish as "*gobernanza*", "*gestión pública*", "*gobernabilidad*", "*gestión política y administrativa*", "*gestión de los asuntos públicos*", "*buen gobierno*", "*modo de gobernar*" and "*régimen de gobierno*" in UN documents. IATE recommends the Spanish terms "*gobernanza*" and "*gestión de los asuntos públicos*". This term was found at the UN and the EU during the initial "hesitation" about the Spanish neologism. In fact, many language professionals initially avoided "*gobernanza*" because they perceived it as a potential form of unnecessary imitation of English

[5] Although, as stated in the glossary itself, its definitions "do not constitute authoritative interpretations of the legal texts of the WTO and are presented for illustrative purposes only", this tool can be particularly helpful as "a guide to 'WTO speak'" covering key terms of international trade that are not necessarily included in WTOTERM (the WTO's terminology database). https://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm (30 November 2018).

and target language "contagion" (see additional alternative terms listed by Deferrari 1996 and Solà 2001 during that period). Despite this "hypercorrection" trend, "*gobernanza*" gradually became more widespread in UN texts, and was eventually included in UNTERM. Immediately afterwards, in 2000, in response to a query of the European Commission's Directorate-General for Translation (DGT), the 21st edition of the dictionary of the Royal Academy of the Spanish Language (*DRAE*) endorsed this term by adding a new definition to its entry for "*gobernanza*".[6] Since then, "*gobernanza*" has been widely used in Spanish.

These trends are shown in Figures 1 to 3. In the case of the UN, "*gestión de los asuntos públicos*" was the predominant choice between 1994 and 2003, but its use plummeted since 2000, as "*gobernanza*" consolidated rapidly after its inclusion in UNTERM (see Figure 1).

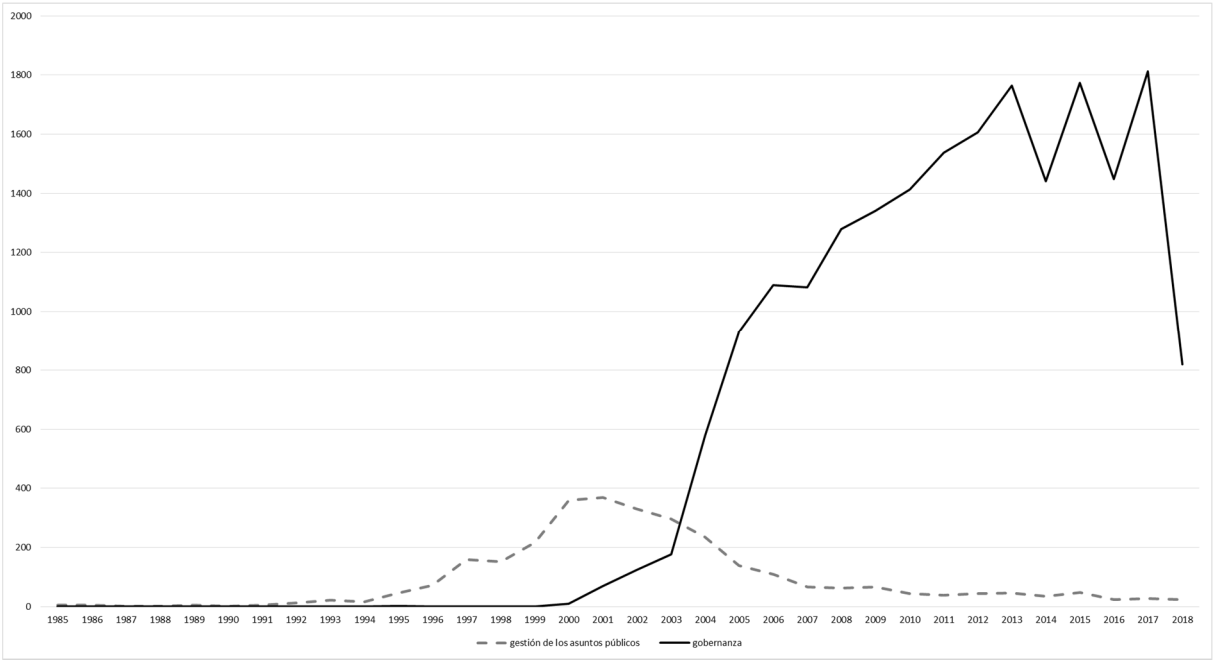

Figure 1. Occurrences of "*gobernanza*" and "*gestión de los asuntos públicos*" in UN texts

[6] "Arte o manera de gobernar que se propone como objetivo el logro de un desarrollo económico, social e institucional duradero, promoviendo un sano equilibrio entre el Estado, la sociedad civil y el mercado de la economía". ["Art or way of governing that aims to achieve lasting economic, social and institutional development, promoting a healthy balance between the State, civil society and the market economy." (our translation)]

A similar pattern is identified in WTO texts (see Figure 2). The neologism "*gobernanza*" came into use at this organization after 2000 and, over the decade, became the predominant translation, while occurrences of "*gestión de los asuntos públicos*", the previously preferred term, declined after 2001 and have remained low since the mid-2000s.

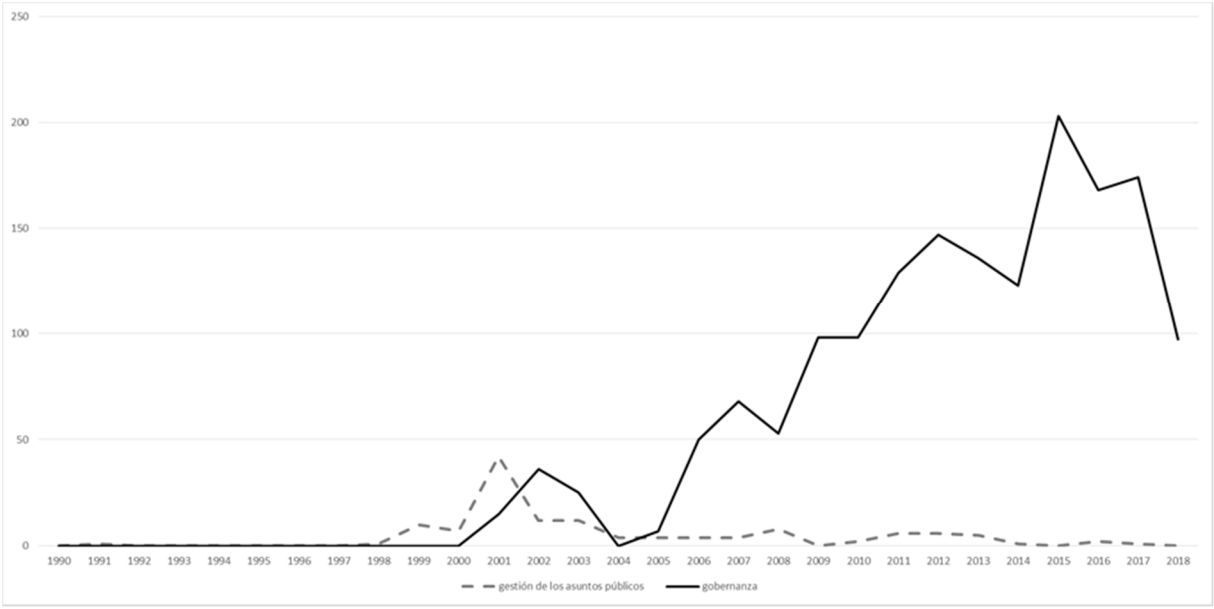

Figure 2. Occurrences of "*gobernanza*" and "*gestión de los asuntos públicos*" in WTO texts[7]

Finally, Figure 3 shows how the use of "*gobernanza*" also grew exponentially in EU texts since 2000. The alternative Spanish translation included in IATE, "*gestión de los asuntos públicos*", was rarely used. It is interesting to note, however, that the same term bank provides a national reference for "*gobernanza*"[8] and a key report of the UN's Secretary-General from 2000 as reference for "*gestión de los asuntos públicos*".[9]

[7] In all graphs, 2018 figures include occurrences until the end of November.
[8] "Navarro Gómez, Carmen, Gobernanza en el ámbito local, Departamento de Ciencia Política y de la Administración de la Universidad Autónoma de Madrid http://unpan1.un.org/intradoc/groups/public/documents/CLAD/clad0043412.pdf."
[9] "Organización de las Naciones Unidas, Informe del Milenio del Secretario General, Kofi A. Annan, Capítulo II, p. 46 http://www.un.org/spanish/milenio/sg/report/full.htm."

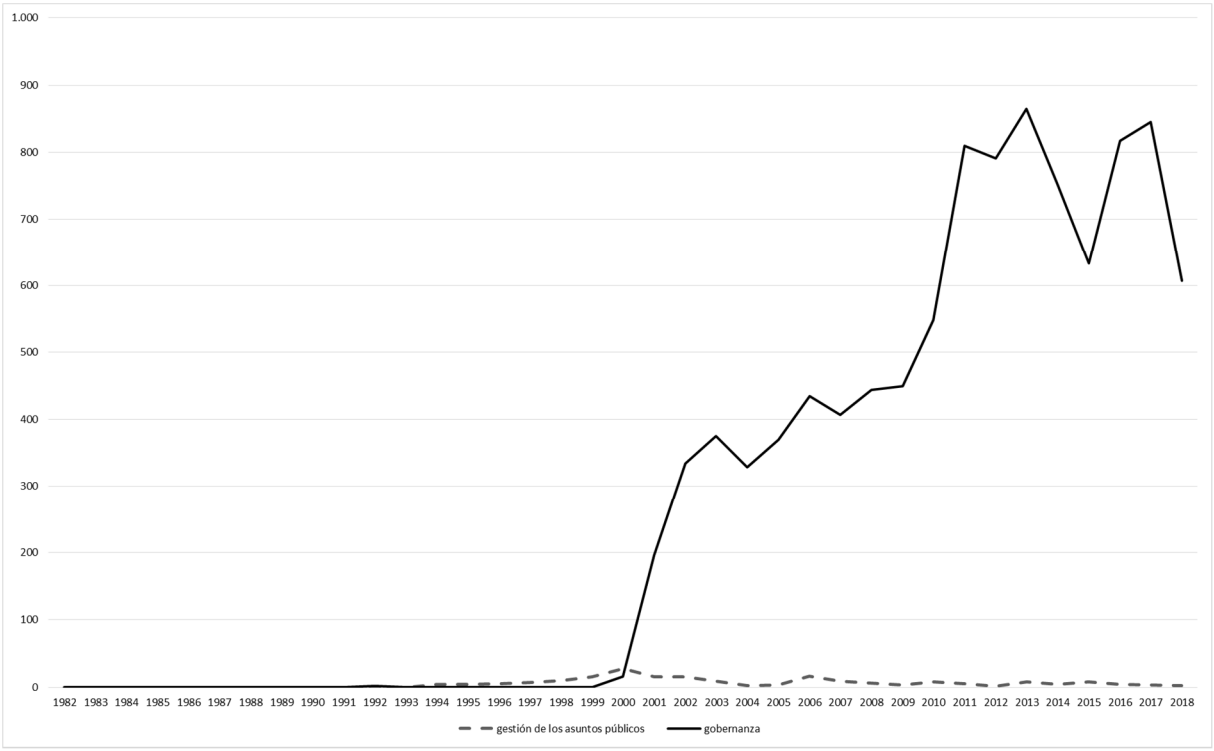

Figure 3. Occurrences of "*gobernanza*" and "*gestión de los asuntos públicos*" in EU texts

These results indicate that the UN's decision to establish "*gobernanza*" as the preferred Spanish term for "governance" led not only other intergovernmental organizations but also the EU institutions to follow this decision, as also reflected in the *DRAE*. Since the early 2000s, "*gobernanza*" has been consolidated as the prevailing term in the three settings and further afield in Spanish (see illustrative patterns in *El Mundo* and *Expansión* in Figure 4).[10]

[10] These newspapers have been chosen for pragmatic reasons, as the yearly breakdown of uses can be retrieved from their repositories. They are considered sufficiently representative of the general and specialized press in this case. Terminological trends for "governance" in Spanish could not be traced in *Google Books Ngram Viewer* because its data set only covers uses through 2000.

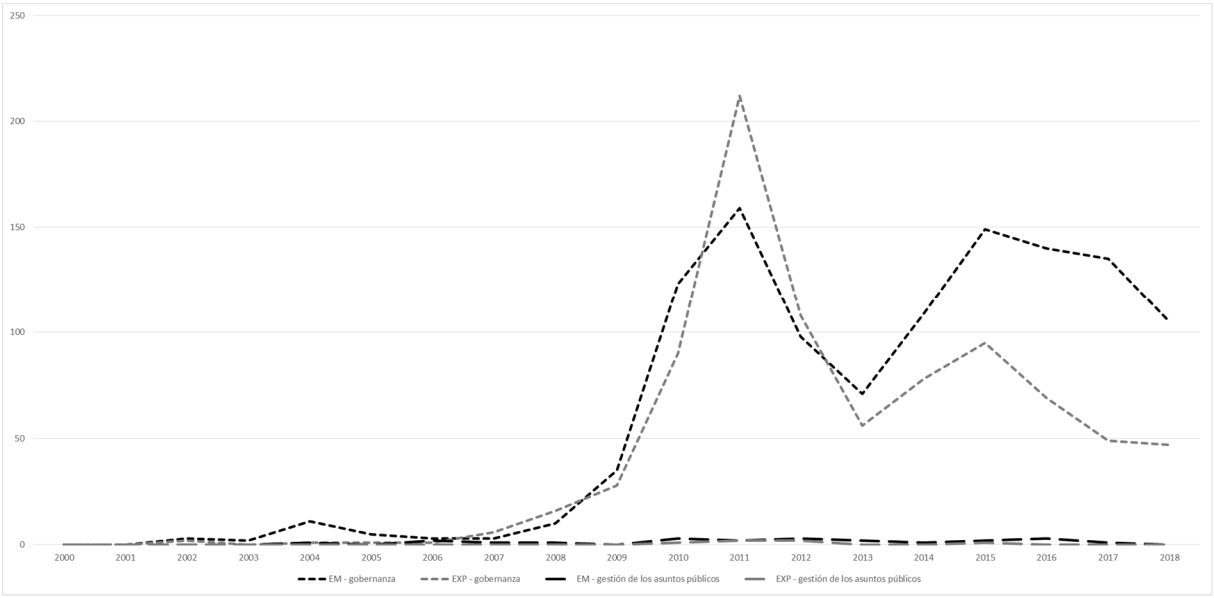

Figure 4. Occurrences of "gobernanza" and "gestión de los asuntos públicos" in *El Mundo* and *Expansión* since 2000

3 "Tariff peak" and "tariff escalation": the gradual impact of standardization

The second pair of terms is related to tariffs, an area in which the WTO is regarded as an authoritative source. According to Nassar et *al*., "until the early 1990s, countries used to apply quantitative restrictions to imports. During the Uruguay Round negotiations, they were required to transform such non-tariff barriers into tariffs through the process of tariffication" (2007: 223). Consequently, concepts such as "tariff peak" and "tariff escalation"[11] began to be used in texts related to international trade. Since its foundation in 1995, the WTO established "*cresta arancelaria*" as the Spanish preferred translation for the English neologism, as coined at the predecessor GATT (General Agreement on Tariffs and Trade) Secretariat in the late 1980s. This term clearly predominates in WTO texts, whereas "*pico arancelario*" appears only occasionally (see Figure 5). In spite of harmonization efforts, this term is sometimes employed by delegates of Spanish-

[11] Defined by the WTO as "relatively high tariffs, usually on 'sensitive' products, amidst generally low tariff levels" ("tariff peak") and "higher import duties on semi-processed products than on raw materials, and higher still on finished products" ("tariff escalation"). https://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm (30 November 2018).

speaking Member States as reflected in most of the 110 documents that included it over the entire period.

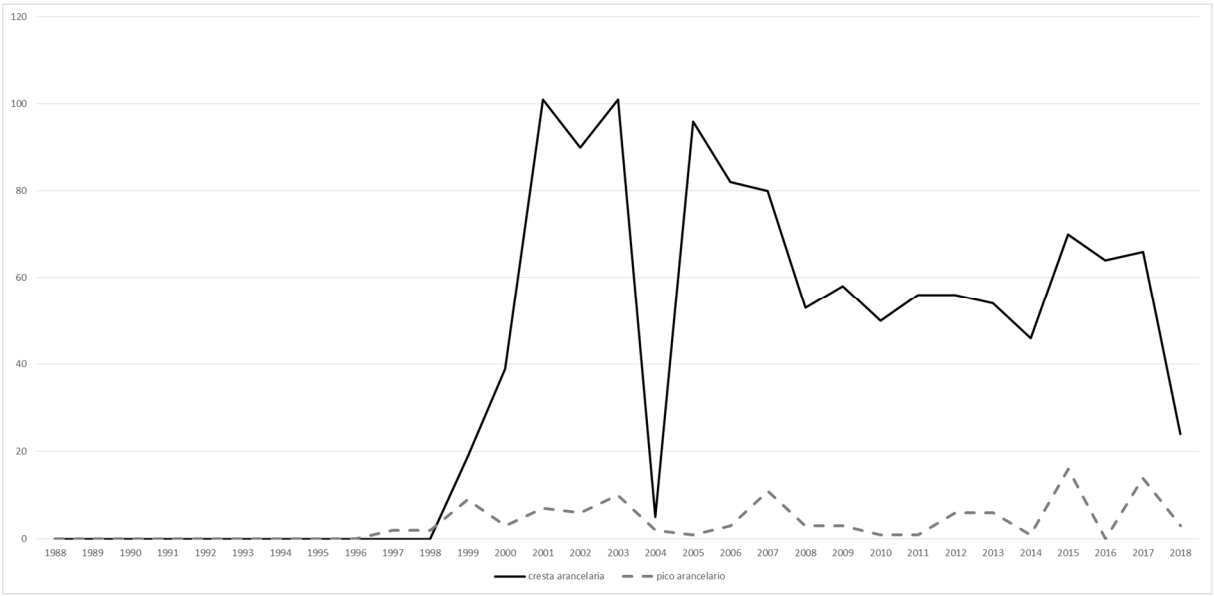

Figure 5. Spanish translations of "tariff peak" in WTO texts

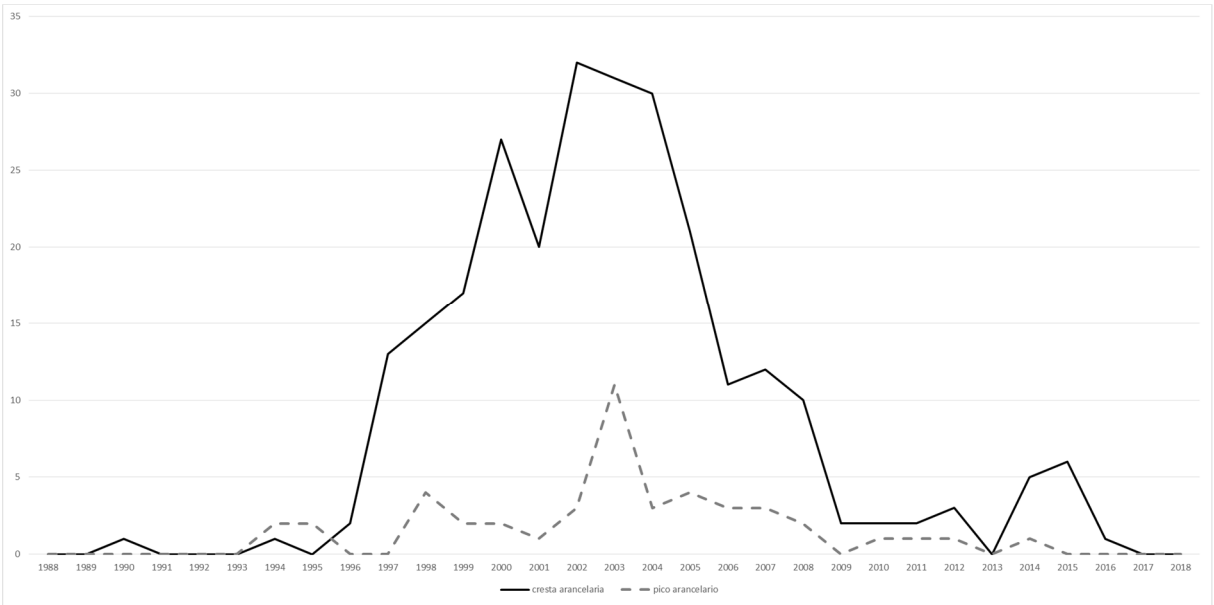

Figure 6. Spanish translations of "tariff peak" in UN texts

The same term also predominated in UN texts since the mid-1990s, in line with the pattern at the WTO. As in the other two institutional settings, it reached a peak in the period leading to the launch of the Doha Round of trade negotiations in 2001. The term "*pico arancelario*", which is included in UNTERM as an additional

equivalent, was also found in a much lower proportion, but a more significant one than at the WTO (see Figure 6).

Occurrences of the two Spanish terms are quantitatively more similar in EUR-Lex, although they are not statistically significant (see Figure 7). The first one, "*cresta arancelaria*", is recommended as more reliable than "*máximo arancelario*" by IATE, which refers to the WTO as an authoritative source. The latter translation was found nine times since 2001, while "*tipo máximo*" appeared 13 times as a translation of "tariff peak" in the 2010s, a level comparable to that of "*cresta arancelaria*" and "*pico arancelario*", among a total of 16 different ways of translating the English term retrieved from EUR-Lex.

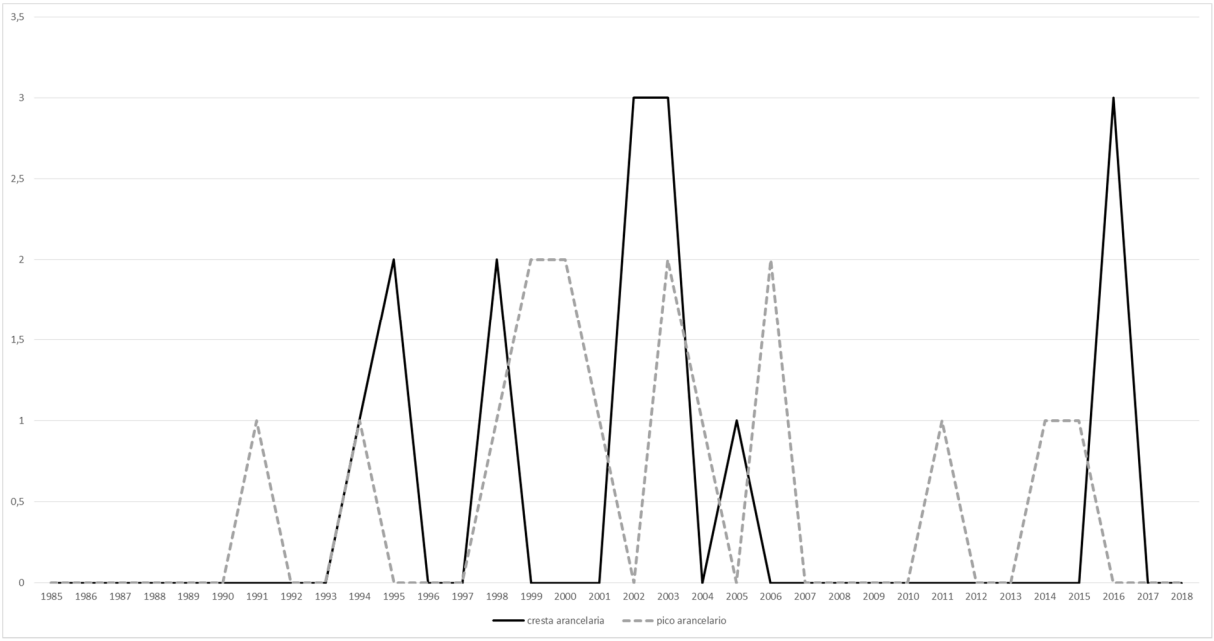

Figure 7. Spanish translations of "tariff peak" in EU texts

As regards extra-institutional frequencies, both "*cresta arancelaria*" and "*pico arancelario*" were rarely found in the newspapers examined,[12] while data retrieved from *Google Books Ngram Viewer* show the increasing use of "*cresta arancelaria*" since the late 1980s and decreasing instances of "*pico arancelario*" in the second

[12] For example, twice in *El Mundo* and once in *Expansión* for "*pico arancelario*". No trend can thus be identified in the Spanish press for this neologism.

half of the 1990s (see Figure 8). This suggests that the established WTO term may have had an impact on specialized drafters.

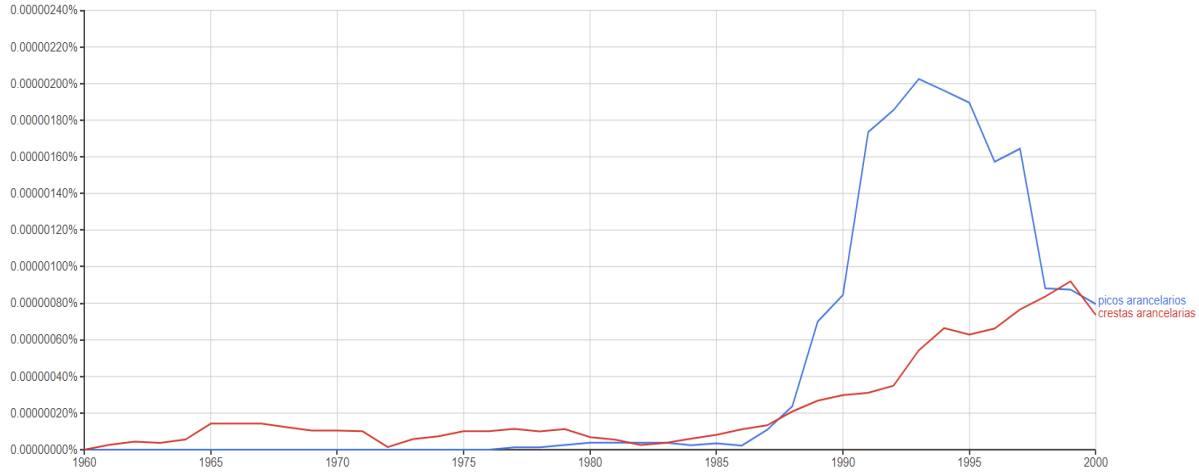

Figure 8. Occurrences of "cresta arancelaria" and "pico arancelario" retrieved from *Google Books Ngram Viewer*

The upward trend of the Spanish term coined for "tariff escalation" by the GATT Secretariat in the late 1980s, "*progresividad arancelaria*", is also very marked at the WTO and the UN (see Figures 9 and 10). Other translations such as "*escalada arancelaria*" and "*progresión arancelaria*" seem exceptional at the WTO and marginal at the UN. Neither of these two terms is included in their respective lexicographical resources. The second alternative, however, features as a less reliable alternative in IATE, but it is the first one, "*escalada arancelaria*", that is found as frequently as "*progresividad arancelaria*" in EU texts (see Figure 11). As noted in the case of "tariff peak" and its translations, they appeared rarely in EU texts, reflecting the limited attention that was devoted to this topic, as opposed to its high significance at the WTO.

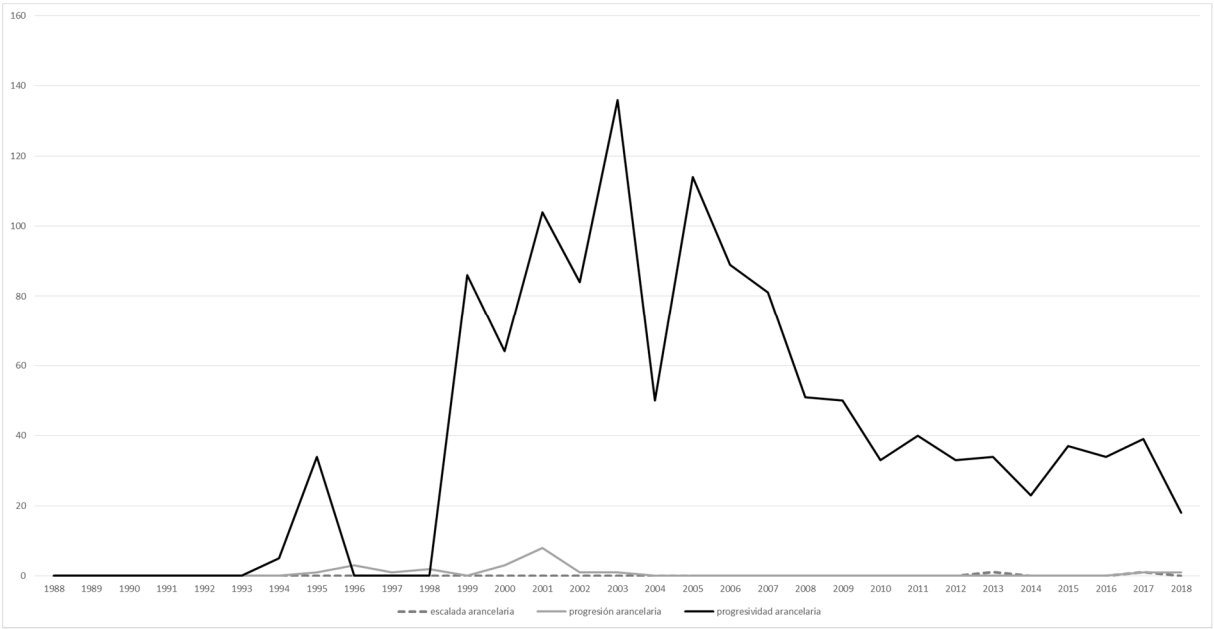

Figure 9. Spanish translations of "tariff escalation" in WTO texts

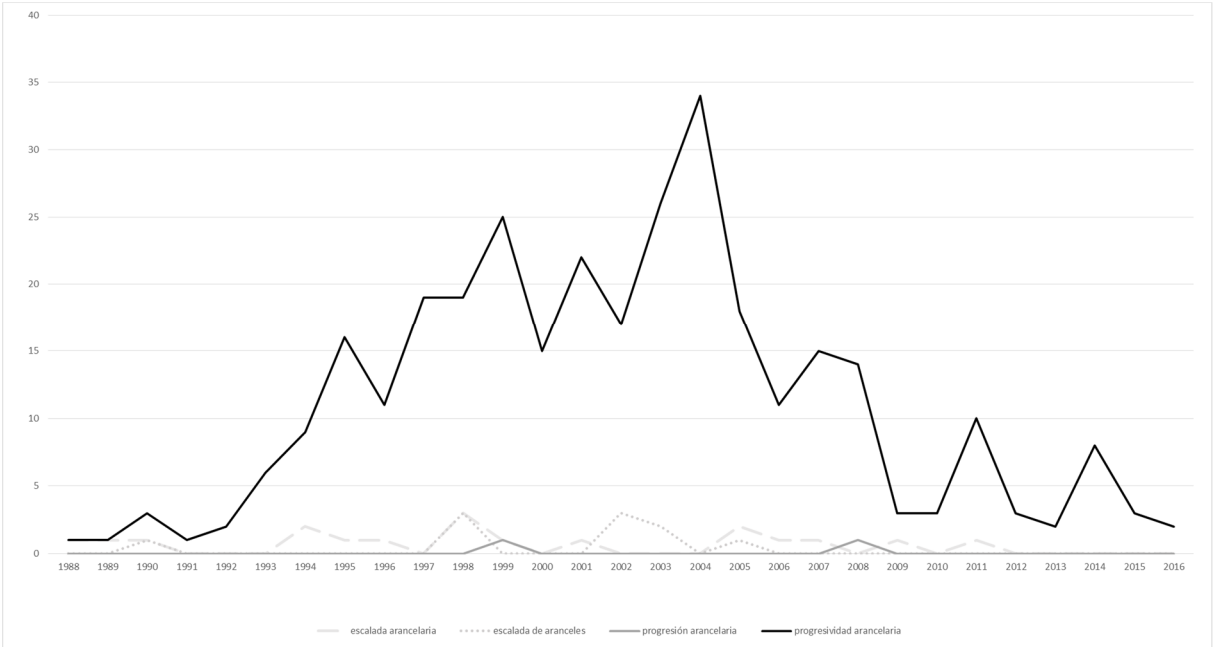

Figure 10. Spanish translations of "tariff escalation" in UN texts

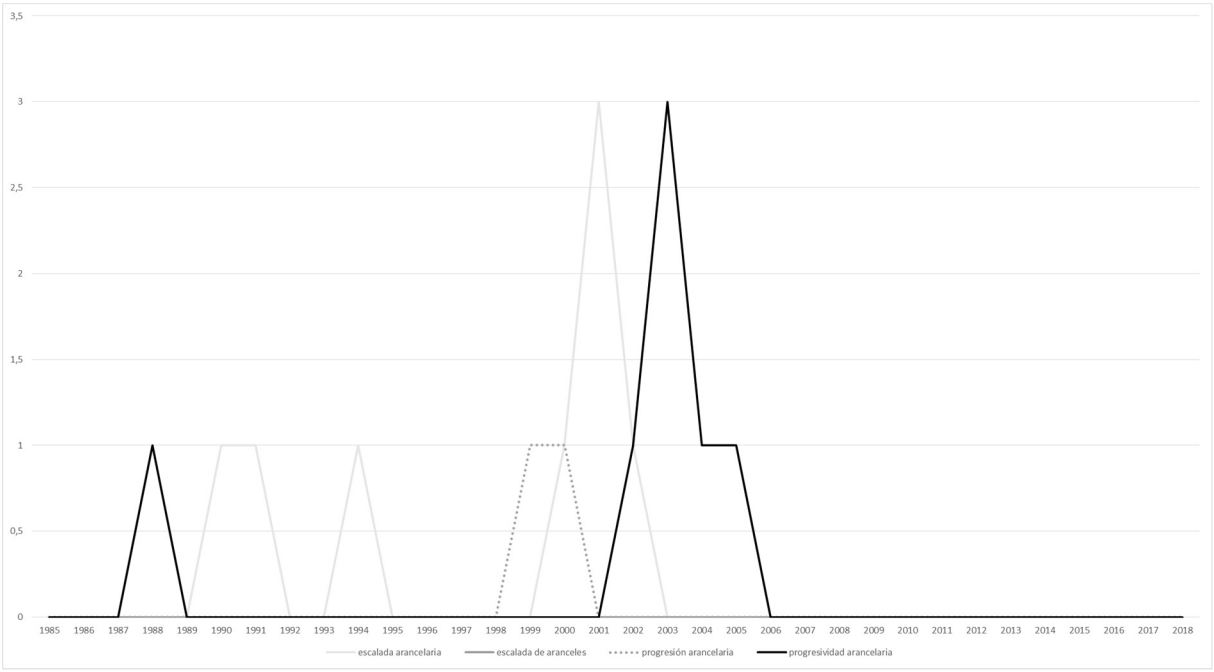

Figure 11. Spanish translations of "tariff escalation" in EU texts

Interestingly, data compiled from *Google Books Ngram Viewer* confirm the emergence of "*progresividad arancelaria*" as preferred term among authors in the 1980s, and its subsequent consolidation in the 1990s (see Figure 12). This trend cannot be verified in the case of the press given the statistical insignificance of occurrences registered for the Spanish neologism.

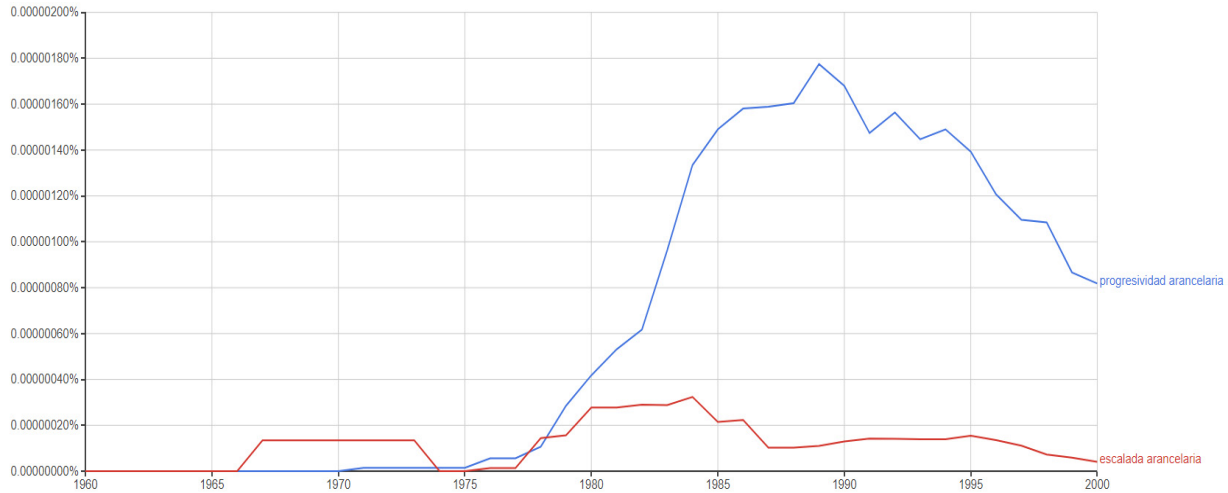

Figure 12. Occurrences of "progresividad arancelaria" and "escalada arancelaria" retrieved from *Google Books Ngram Viewer*

4 "Hedge fund": terminological dispersion in financial markets

This term was chosen to illustrate lexical divergence among translation services in dealing with financial neologisms. The *Oxford Dictionary of Finance & Banking* defines "hedge fund" as "a unit trust that is subject to minimum regulation, typically a partnership or mutual fund that attempts to achieve large gains by exploiting market anomalies. These funds are often high-return and are regarded as speculative" (Law 2018). According to Anson (2006: 36), even though "the first hedge fund was established in 1949 […], many hedge funds were liquidated during the bear market of the early 1970s, and the industry did not regain any interest until the end of the 1980s". These products became very popular in the United States in the 1990s, and subsequently elsewhere. They attracted further attention among national and international institutions, the media and the general public as the global financial crisis unfolded in the late 2000s.

In Spanish, several neologisms have been used for this term since the 1990s, as well as the borrowing from English. These lexical choices have been the subject of heated debate among institutional translators (see e.g. CCT Group 2005 and Del Pozo 2006 in the EU context), and have been regularly revised in the relevant institutional terminological resources. If we focus on the illustrative case of the International Monetary Fund (IMF), which is a key reference for the global financial system, terminological harmonization in Spanish is far from being achieved. On the contrary, as shown in Table 1, the number of translations of "hedge fund" found in the IMF's English-Spanish Glossary has grown since 2010, including the borrowing from English and a new term established by Spanish legislation in 2005: "*fondo de inversión libre*".[13] This term stands out as the single commonality between the institutional term banks examined in this study (except for the WTO, which does not include "hedge fund" in its main glossary). It is currently recommended by UNTERM together with "*fondo de cobertura*", and by IATE together with "*fondo de alto riesgo*".

[13] Real Decreto 1309/2005, por el que se aprueba el Reglamento de la Ley 35/2003, de instituciones de inversión colectiva, y se adapta el régimen tributario de las instituciones de inversión colectiva, art. 3.3 (BOE n.° 267 de 8-11-2005, p. 36505) (on collective investment undertakings).

Terms suggested in 2010[14]	Terms suggested in 2018[15]
hedge fund *fondo de inversión especulativo* *fondo especulativo de cobertura* *fondo de inversión de alto riesgo* [Spain] *fondo de resguardo* [Mexico]	*hedge fund* *fondo de cobertura* *fondo de inversión especulativo* *fondo especulativo de cobertura* *fondo de inversión de alto riesgo* [Spain] *fondo de retorno absoluto* *fondo de inversión libre* [Spanish legislation]

Table 1. Spanish translations of "hedge fund" suggested in the IMF Glossary

Overall, terminological diversity varies from five translations of the term at the WTO (with "*fondo de protección*" as the preferred option and increasing variation since the late 2000s –see Figure 13–), to nine different terms found in UN texts (see Figure 14) and twelve in EU texts (see Figure 15). The most frequent term at the UN is "*fondo de cobertura*", followed by "*fondo especulativo*". While UNTERM currently recommends to avoid the latter (clearly more pejorative) term, this was previously accepted and actually reached a peak between 2013 and 2014, even exceeding occurrences of "*fondo de cobertura*". Variation at the UN was particularly pronounced between 2003 and 2006, and does not show any significant harmonization pattern, but a more even distribution of uses in recent years, including a modest upward trend of "*fondo de capital inversión*" and "*fondo de inversión libre*".

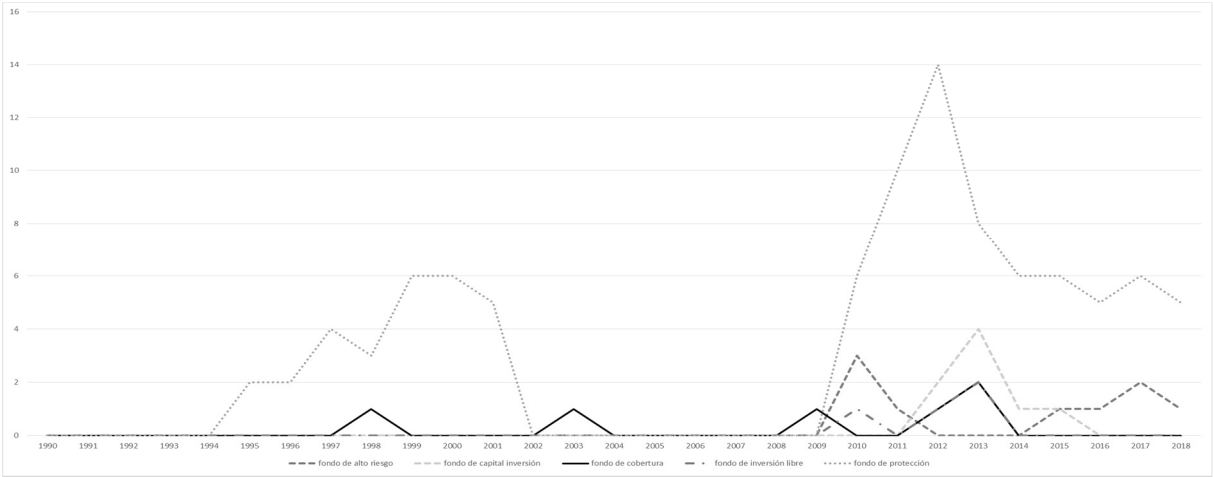

Figure 13. Spanish translations of "hedge fund" in WTO texts

[14] As extracted and listed in Prieto Ramos (2013: 395-396).
[15] International Monetary Fund (2016): *IMF Terminology. A Multilingual Directory. English-Spanish Glossary*. Washington: International Monetary Fund. 2. https://www.imf.Org/external/np/term/esl/pdf/glossarys.pdf (30 November 2018).

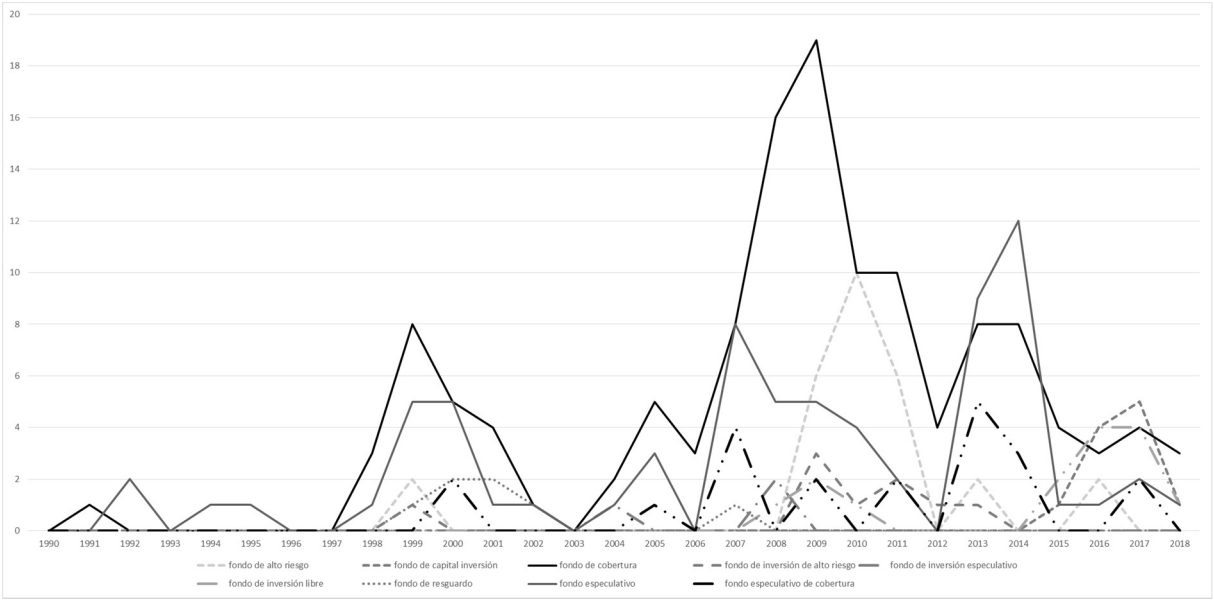

Figure 14. Spanish translations of "hedge fund" in UN texts

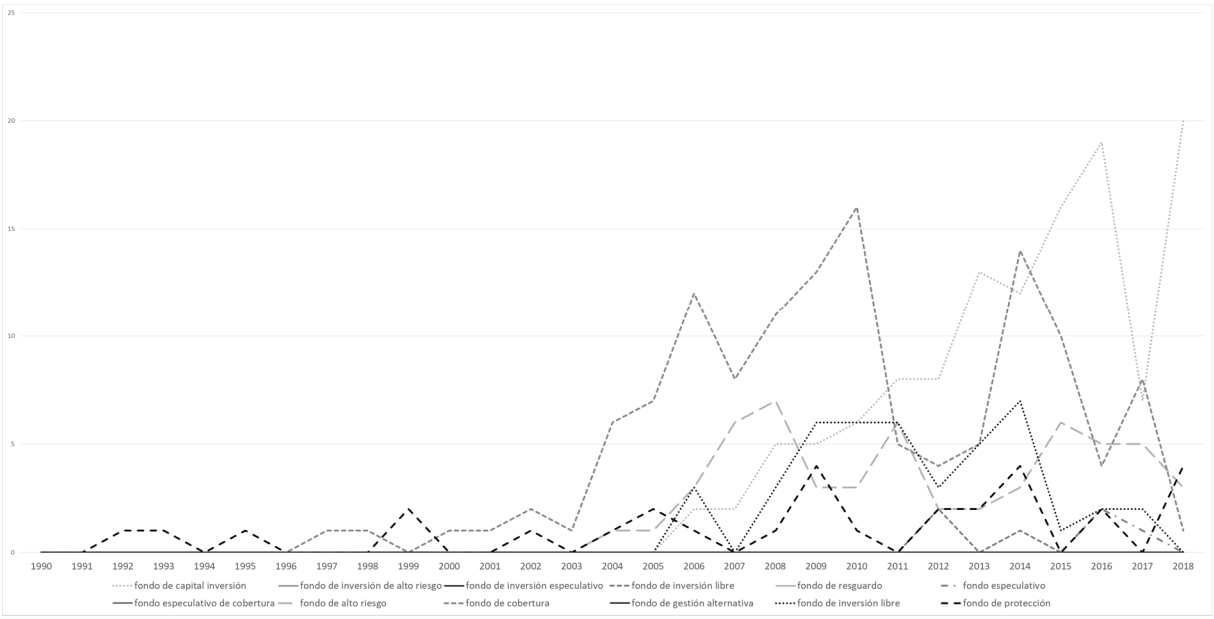

Figure 15. Spanish translations of "hedge fund" in EU texts

In EU texts, the most widespread translation was "*fondo de cobertura*" until the second half of the 2000s and "*fondo de capital inversión*" since 2011 (except for 2014 and 2017, when "*fondo de cobertura*" appeared slightly more frequently). This term has registered a very significant upward pattern in 2018, despite not being included in IATE. Other internal recommendations might have had a more significant bearing on this evolution. In fact, "*fondo de cobertura*", also preferred at the UN through the 2000s, was recommended by the DGT's CCT Group (2005),

while "*fondo de capital inversión*" was advocated by Juan Ramón del Pozo (2006), noting that many economists discouraged the use of "*fondo de cobertura*". Given the closer link between the EU and the Spanish jurisdiction, the term established in the national legislation in 2005 also appeared in EU texts but without any major impact on terminological convergence.

Data from *Google Books Ngram Viewer* available in Spanish until 2000 also show a dramatic increase in the use of "*fondo de cobertura*" in the 1990s (see Figure 16). While this term appeared in previous decades, it can be clearly associated to the emergence of the neologism "hedge fund" in the last part of the 20th century. The borrowing from English was the second most frequent term in books in Spanish. No occurrences of the more recent terms "*fondo de capital inversión*" and "*fondo de inversión libre*" are found before 2000.

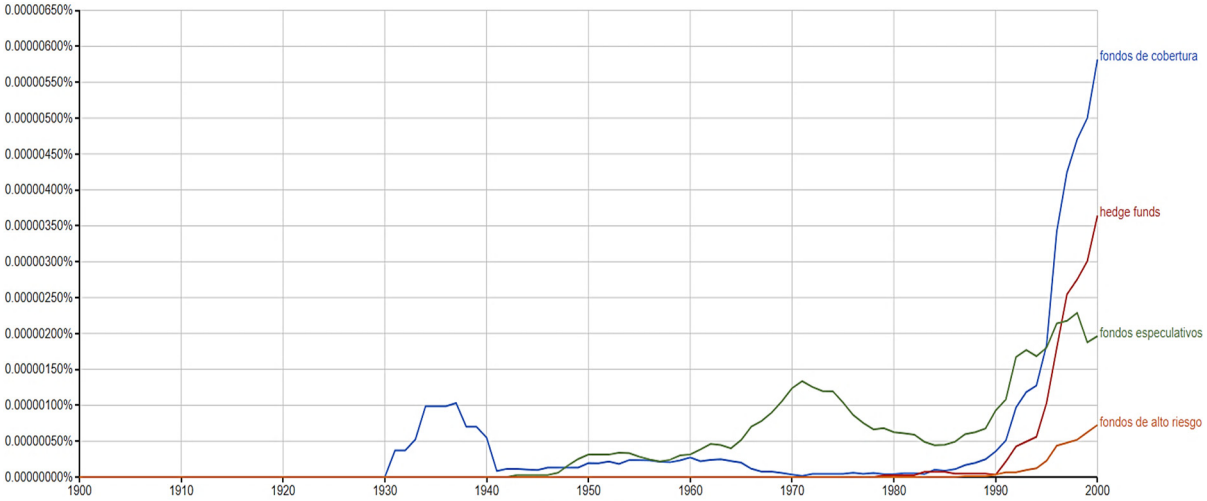

Figure 16. Occurrences of the borrowing ("hedge fund") and common Spanish translations of this term retrieved from *Google Books Ngram Viewer*

	ABC	EP	EM	EXP	5D	Total
hedge fund	365	317	402	1922	2652	5658
fondo de alto riesgo	92	171	77	87	359	786
fondo de cobertura	76	61	88	112	296	633
fondo especulativo	97	125	112	142	113	589
fondo de inversión libre	24	19	15	160	341	559
fondo de gestión alternativa	7	4	5	62	193	271
fondo de inversión de alto riesgo	26	20	20	10	41	117
fondo de inversión especulativo	30	8	18	10	15	81
fondo de capital inversión	1	5	9	5	21	41
fondo de resguardo	1	0	0	0	0	1
fondo especulativo de cobertura	0	0	1	0	0	1

Table 2. Occurrences of the borrowing ("hedge fund") and common Spanish translations of this term in selected Spanish newspapers

An overview of total occurrences in the press (see Table 2 and Figure 17) shows a similar trend: the borrowing is more frequently used than its translations in the Spanish economic press analyzed (in *Expansión* and, more overwhelmingly, in *Cinco Días*), and the most common option even in the three general newspapers considered.

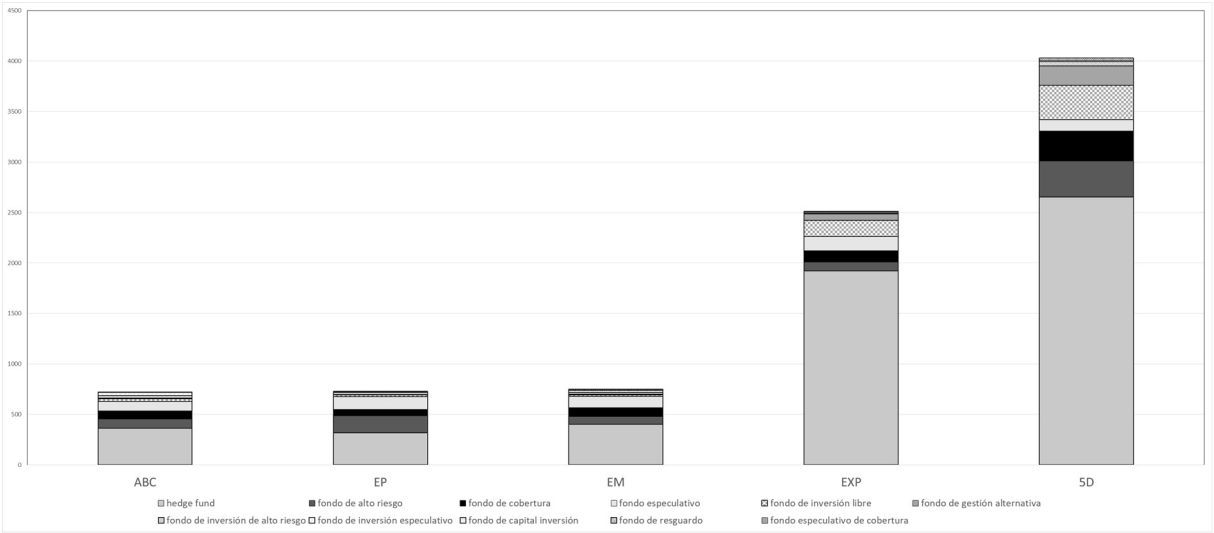

Figure 17. Occurrences of the borrowing ("hedge fund") and common Spanish translations of this term in selected Spanish newspapers

A closer examination of these patterns in *El Mundo* and *Expansión*,[16] with a focus on the borrowing and the terms recommended by the Fundéu BBVA (see Figure 18), reveals a very remarkable upward trend of the English term between 2005 and 2010, whereas "*fondo de inversión libre*" only registered a significant number of occurrences in *Expansión* after it was established in the Spanish legislation in the mid-2000s.

Among Spanish translations, "*fondo de alto riesgo*" appears to be the most widespread option, followed by "*fondo de cobertura*". This is in line with the most recent recommendation by the Fundéu BBVA, a foundation that was created for the purpose of advising on language usage in cooperation with the Royal Academy of the Spanish Language, and has had an increasing influence on the media and Spanish language drafters more generally.

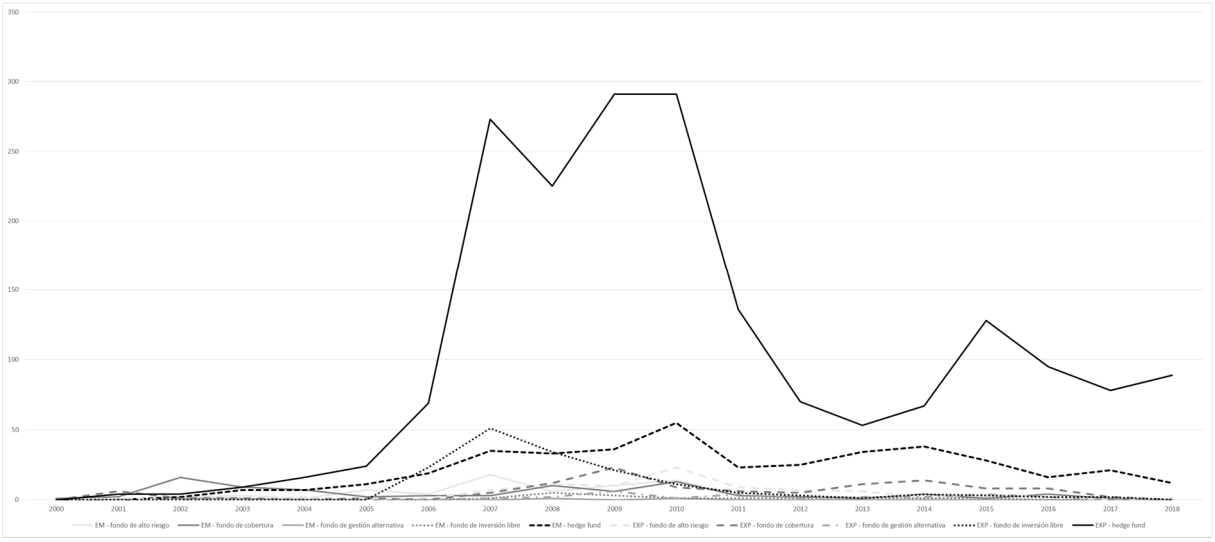

Figure 18. Occurrences of the borrowing ("hedge fund") and common Spanish translations of this term in *El Mundo* and *Expansión* since 2000

In 2016,[17] it referred to "*fondo de alto riesgo*" as a frequent and valid alternative to the borrowing in the specialized press, while "*fondo de inversión libre*" was presented as the appropriate legal term used by the National Securities Market

[16] As in the case of "governance", these newspapers have been chosen because they are representative of the general and specialized press, and because the yearly breakdown of uses can be retrieved from their repositories.

[17] Fundéu BBVA (2016): "Hedge fund, alternativas en español". https://www.fundeu.es/recomendacion/fondos-inversion-libre-cobertura-gestion-alternativa-hedge-funds-alto-riesgo/ (30 November 2018).

Commission (the main national financial supervisory body, CNMV in Spanish), and "*fondo de cobertura*" was described as the most common term in Latin America. The same foundation had previously recommended "*fondo de gestión alternativa*" in line with the CNMV (see 2006 recommendation in Prieto Ramos 2013: 397). Curiously, UNTERM also refers to the Fundéu BBVA's latest recommendation as the main source in its entry for "hedge fund" in Spanish, rather than to other primary legal or financial sources.

As opposed to international financial institutions, specialized book authors and the press, the borrowing is avoided in the three institutional settings examined here. Data suggest that the wide array of translations proposed for "hedge fund" at these institutions do not foster terminological uniformity in Spanish, but may indirectly reinforce financial experts' frequent preference for the borrowing in English. Even after the adoption of "*fondo de inversión libre*" in Spanish legislation and by the CNMV, financial experts from the same institution and other related bodies such as the Bank of Spain often used the borrowing (see e.g. García Santos 2005 and European Central Bank 2006). Today, it is also the preferred option at financial coordination bodies such as the Bank for International Settlements (or BIS, composed of central banks).[18]

5 Concluding remarks

The lexical importation and consistency patterns identified in this study suggest a correlation between institutions' degree of recognized competence in particular areas of specialization and the potential authoritativeness and impact of their terminological recommendations when dealing with neologisms through translation from English in those areas. Harmonization decisions on international affairs ("governance") at the UN and global trade ("tariff peak" and "tariff escalation") at the WTO have clearly had an impact on lexical choices in other settings where the UN and WTO are recognized as authoritative sources in these fields. Intra-, inter- and extra-institutional terminological convergence was especially marked in the

[18] See latest edition of their English-Spanish Glossary (Bank for International Settlements 2018).

case of "*gobernanza*" after this term was introduced in both UNTERM and the *DRAE* in 2000.

In the case of "tariff peak" and "tariff escalation", the preference for the Spanish terms used by the GATT Secretariat ("*cresta arancelaria*" and "*progresividad arancelaria*", respectively), a key authoritative source in this area, has prevailed similarly at the successor WTO and at the UN since the 1990s. The same Spanish translations are recommended by IATE referring to the GATT as the main reliable source, but texts retrieved from EUR-Lex rarely address this topic and only show scattered occurrences of the recommended and alternative translations. As suggested by data obtained from *Google Books Ngram Viewer*, however, book authors seem to gradually align with the WTO patterns regarding these terms.

At the other extreme, the case of "hedge fund" illustrates the persistent lexical diversity among international organizations dealing with neologisms in the area of financial markets in Spanish. This pattern is compounded by the fact that key institutions in this area often follow financial experts' preference for the English borrowing and do not contribute to standardization in Spanish. In the case of the IMF, for example, the number of Spanish translations included in its glossaries has grown in the past decade, adopting a descriptive rather than prescriptive approach. At the multilateral organizations examined for comparison in this study, variation also increased gradually, with a divergent preference for "*fondo de protección*" at the WTO and "*fondo de cobertura*" at the UN, while the highest variation was found in the EU, including a changing preference for "*fondo de cobertura*" or "*fondo de capital inversion*" in their translations. As also found in a previous study (Prieto Ramos and Guzmán 2018), the higher level of internal inconsistency can be associated with the higher fragmentation of translation services at the EU institutions. It is also worth noting that all of these terms avoid the negative connotations of "*fondo de alto riesgo*" or "*fondo especulativo*".

Extra-institutional uses observed in the press and *Google Books Ngram Viewer* in Spanish show that intra- and inter-institutional terminological dispersion may contribute to a vicious circle in which multiple translations, each with its specific nuances, are in circulation, and this "congestion" (see metaphor in Prieto Ramos 2013: 397) and lack of convergence in Spanish may lead specialized language users

to choose the borrowing as a safe "shortcut", which in turn contributes to the lack of entrenchment of a reliable Spanish alternative to the English term. This is confirmed by the frequent use of the loanword in the press and in specialized publications elicited above. The saturation of financial news in the international media during the recent financial crisis may have actually induced less specialized users to also become familiar with the English term following the "terminological shortcut" of financial experts who are often inclined to use English.

In other words, too many cooks can spoil the broth when it comes to terminological uniformity in processes of lexical importation through translation. From a double legal and institutional translation perspective, the diversity of terminological agents dealing with financial regulation is an overriding factor, but not the only one to consider when interpreting our results. The fact that terminology on financial products largely originates in a culture-bound context (as in the case of "hedge fund", exported from one country to the rest of the world) does not facilitate standardization, as opposed to terms emerging in the context of multilateral coordination, such as the other examples on international affairs and trade analyzed here. Moreover, when renderings of a neologism emerge before harmonization guidelines are issued, a certain level of replication will be inevitable due to the intertextuality that characterizes institutional settings (i.e. references to previous texts). Last but not least, as verified in the case of occasional uses of "*pico arancelario*" at the WTO, statements by delegates from Member States of the target language may use terminology that does not comply with internal institutional recommendations.

The contrastive analysis of institutional term bank entries and translation patterns also confirms that terminological recommendations are not always systematically followed by institutional translators. The same analysis shows that terminological records change over time (which may not contribute to uniformity either), and that, despite the apparent lack of convergence between terminological agents, they often include other institutional texts or databases as reliable sources. In the case of "hedge fund", the only commonality between the most recent recommendations of UNTERM, IATE and the Fundéu BBVA is the reference to the term "*fondo de inversión libre*" in line with Spanish regulations since 2005, but with no significant impact on intra- or extra-institutional uses so far.

The above findings serve to reaffirm the significant role that institutional translation services can play in terminological harmonization processes, not only for the sake of internal consistency, univocity and clarity (i.e. for the quality of institutional communication), but also for supporting the evolution of specialized terminology in the target language more broadly. Reinforcing this role requires coordinated efforts, both intra- and inter-institutional. International organizations have the technical and linguistic expertise to become terminological benchmarks in their areas of competence, but their contribution to language standardization can be more effective if it is recognized and disseminated in cooperation with other institutions and influential terminological agents like the Royal Academy for the Spanish Language and the Fundéu BBVA in the case of Spanish. In order to avoid duplication of efforts and recommendations, a step in the right direction would involve promoting further interconnection of translation services and resources, for example, by creating a shared umbrella platform or gateway to existing databases, a "terminological competence map" and a service of "neological alerts" similar to the Fundéu BBVA's popular recommendations (see Prieto Ramos 2013: 398 and aims of the TERMINESP project[19] advocated by the Spanish Terminology Association). This type of coordination would be particularly beneficial in the case of international languages that are official in several international organizations, including both supranational and intergovernmental institutions.

References

Anson, Mark J. P. (2006): *Handbook of Alternative Assets*. 2nd ed. Hoboken, NJ: Wiley.

Bank for International Settlements (2018): *English-Spanish BIS Quarterly Review Glossary*. Basel: Bank for International Settlements. http://www.bis.org/statistics/bulletin_gloss_es.pdf (30 November 2018).

Bratanić, Maja / Lončar, Maja (2015): "The Myth of EU Terminology Harmonization on National and EU Level". In: Šarčević, Susan [ed.] (2015): *Language and Culture in EU Law*: London / New York: Routledge. 207 – 218.

CCT Group (2005): "Hedge funds". In: *Puntoycoma* 95, 3 – 4. http://ec.europa.eu/translation/bulletins/puntoycoma/95/pyc952_es.htm (30 November 2018).

Deferrari, David (1996): "*Governance* o las tribulaciones de un terminólogo". In: *Puntoycoma* 40, 4 – 7. http://ec.europa.eu/translation/bulletins/puntoycoma/40/pyc403.htm (30 November 2018).

Del Pozo, Juan Ramón (2006): "Fondos de inversión". In: *Puntoycoma* 97, 7 – 8. http://ec.europa.eu/translation/spanish/magazine/documents/pyc_097_es.pdf (30 November 2018).

[19] http://www.aeter.org/?page_id=1377 (30 November 2018).

European Central Bank (2006): "*Hedge funds*: evolución e implicaciones". In: *Boletín mensual* January 2006, 69 – 83.

Fischer, Márta (2010): "Language (policy), translation and terminology in the European Union". In: Thelen, Marcel / Steurs, Frieda [eds] (2010): *Terminology in Everyday Life*. Amsterdam / Philadelphia: John Benjamins Publishing. 21 – 34.

García Santos, María Nieves (2005): "*Hedge funds* y riesgo sistémico: una primera aproximación". In: *Estabilidad financiera* 9, 99 – 142.

Law, Jonathan (2018): *Oxford Dictionary of Finance & Banking*. Oxford: Oxford University Press.

Nassar, André M. / Zuleika Arashiro / Marcos S. Jank (2007): "Tariff spikes and tariff escalation." In: Kerr, William A. / Gaisford, James D. / Estey Centre for Law and Economics in International Trade [eds] (2007): *Handbook on International Trade Policy*. Cheltenham, UK / Northampton, MA: Edward Elgar. 222 – 36.

Prieto Ramos, Fernando (2013): "Traducción institucional y (co)gestión de neologismos: entre la armonización y la congestión terminológicas". In: Sinner, Carsten [ed.] (2013): *Comunicación y transmisión del saber entre lenguas y culturas*. Munich: Peniope. 387 – 400.

Prieto Ramos, Fernando (2014): "International and Supranational Law in Translation: From Multilingual Lawmaking to Adjudication". In: *The Translator* 20.3, 313 – 331.

Prieto Ramos, Fernando and Diego Guzmán (2018): "Legal Terminology Consistency and Adequacy as Quality Indicators in Institutional Translation: A Mixed-Method Comparative Study". In: Prieto Ramos, Fernando [ed] (2018): *Institutional Translation for International Governance: Enhancing Quality in Multilingual Legal Communication*. London / New York: Bloomsbury. 81–101.

Sager, Juan Carlos (1990): *A practical course in terminology processing*. Amsterdam / Philadelphia: John Benjamins Publishing.

Solà, Amadeu (2001): "Nuevas formas de gobierno (y efectos terminológicos de la globalización)". In: *Puntoycoma* 71, 7 – 10. http://ec.europa.eu/translation/bulletins/puntoycoma/71/pyc716.htm (30 November 2018).

Part II

Interdisciplinary approaches to legal translation

Chapter 5

Terminologische Herausforderungen bei Gesetzesänderungen am Beispiel des Familienrechts

Elena Chiocchetti, Flavia De Camillis und Isabella Stanizzi

Abstract
Changes in legislation can heavily affect the terminology of a specific legal domain; designations and concepts may evolve and change or new concepts be introduced. This paper illustrates the effects of legislative reforms with examples from the domain of family law. Historical and legal developments in the domain followed common principles in Italy and the German-speaking countries. However, as a short overview of the most important legislative reforms in Italy and Germany shows, important differences at conceptual and linguistic level remain. This paper addresses the challenges of comparing terminology across legal systems. As a means of addressing such challenges, we describe the method of micro-comparison. Micro-comparison reveals similarities and differences at conceptual level between terms from different legal systems, thus determining the existence or absence of equivalent concepts. The examples show that factors such as temporal validity and connotations of terms must also be considered, even if the essential characteristics match. The method can be applied by translators in their daily work. Based on the example of the northern Italian province of South Tyrol, where German is an official language alongside Italian and terminology is developed taking into account the legal language of other German-speaking areas, we finally show that micro-comparison can be useful also for language planning.

Keywords: family law, legal terminology, micro-comparison, comparative terminology work

1 Das Familienrecht

Das Familienrecht regelt als Teil des Zivilrechts die familiären Beziehungen im weitesten Sinne und die damit verbundenen Rechte und Pflichten. Es befasst sich mit Verwandtschaft, Ehe, persönlichen und vermögensrechtlichen Beziehungen zwischen Ehegatten, Trennung und Scheidung, Kindschaft sowie Beziehungen zwischen Eltern und Kindern. Den Mittelpunkt bildet dabei das Rechtsinstitut der Familie.

Familienrechtliche Bestimmungen haben einen maßgeblichen Einfluss auf etliche andere Rechtsbereiche, wie Privat-, Verfassungs-, Straf-, Prozess-, Steuer-, Arbeits- und Verwaltungsrecht (Sesta 2005: 3). Beispielsweise wirkt sich eine

Gleichstellung homosexueller Paare u. a. auf die gesetzliche Erbfolge im Erbrecht (Schwenzer 2013: 2), auf die Hinterbliebenenrente im Sozialecht und auf die Möglichkeit der Zeugnisverweigerung vor Gericht im Prozessrecht aus (Dogliotti 2016: 877).

Das Familienrecht ist stark durch die kulturellen, ideologischen und religiösen Empfindungen einer Gesellschaft geprägt. Soziale und demografische Veränderungen finden darin ihren Niederschlag, nicht ohne Spannungen und Widerstände. In keinem anderen Bereich des Zivilrechts sind gesellschaftliche Konflikte so deutlich spürbar (Cassano 2002: 19). Das Familienrecht wurde vielerorts teilweise revolutionären Änderungen unterzogen (Ent 1997: 1, Schwenzer 2013: 2), wie mit der Einführung der Scheidung und der gleichgeschlechtlichen Ehe. Es spiegelt also die Entwicklung einer Gesellschaft wider und unterstreicht bei kontrastiven Gegenüberstellungen der Rechtslage in einzelnen Ländern etwaige kulturelle Unterschiede.

Auf internationaler Ebene bestehen zwar Bestrebungen, gemeinsame prozessrechtliche Regeln und materiell-rechtliche Kollisionsregeln einzuführen,[1] das materielle Familienrecht ist in der Europäischen Union aber noch nicht vereinheitlicht. Eine Harmonisierung wird sich in Zukunft aufgrund der wachsenden Zahl von grenzüberschreitenden und multinationalen Familienbeziehungen wohl als notwendig erweisen (Martiny 2009: 531, Schwenzer 2013: 2). Man denke beispielsweise an die möglichen Folgen von unterschiedlichen Regelungen für homosexuelle Paare in Europa: von der gleichgeschlechtlichen Ehe (z. B. in Deutschland) über anerkannte Partnerschaften (z. B. in Italien) bis hin zu Ländern, wo homosexuelle Beziehungen nicht anerkannt sind (z. B. in Polen). Das verstößt gegen die Grundsätze der Personenfreizügigkeit (AEUV[2] Art. 21) und Gleichbehandlung der Unionsbürger (AEUV Art. 18) in der Europäischen Union (Martiny 2009: 533-534).

[1] Die Kommission für Europäisches Familienrecht arbeitet beispielsweise in diese Richtung, vgl. http://ceflonline.net/.
[2] Vertrag über die Arbeitsweise der Europäischen Union, in Kraft getreten am 1. Dezember 2009 mit der Unterzeichnung des Vertrags von Lissabon.

2 Entwicklung des Familienrechts

2.1 Gemeinsame Entwicklungstrends

In Italien sowie in Deutschland, Österreich und der Schweiz zeichnen sich ähnliche Entwicklungstrends im Familienrecht ab, mit dem Ziel, die Rechtslage einem tiefgreifenden sozialen Wertewandel im Sinne der Säkularisierung, Emanzipation und Toleranz anzupassen (Schwenzer 2013: 4). Gemeinsame Prinzipien waren dabei die Aufwertung des Individuums, die Gleichstellung der Partner, der Vorrang des Kindeswohls und die Nichteinmischung des Staates in private Lebensbereiche. Das hat zur Einführung der Ehescheidung, zur Gleichstellung von ehelichen und nichtehelichen Kindern, zur partnerschaftlichen Ausübung der Erziehungsrechte sowie (teilweise) zur Anerkennung nichtehelicher und gleichgeschlechtlicher Beziehungen geführt. Prinzipiell haben sich alle Länder von einer patriarchalisch geprägten Familienform, die auf eine untrennbare Ehe zwischen Mann und Frau basierte und nichteheliche Beziehungen – einschließlich die darin geborenen Kinder – diskriminierte, wegbewegt, um auch neuen Familienformen Rechnung zu tragen und die Rechte aller Beteiligten aufzuwerten. Große Unterschiede bestehen jedoch im Zeitpunkt der Umsetzung wichtiger Reformen und in der Gestaltung einzelner Rechtsinstitute. Die folgenden Absätze fassen die wichtigsten Entwicklungsschritte in Italien und Deutschland[3] zusammen.

2.2 Italien

In der ersten Geltungsphase des Zivilgesetzbuchs von 1942 beruhte die normative Regelung der Familienbeziehungen auf strengen Prinzipien zum Schutz der Stabilität der Familie, ohne Rücksicht auf Wünsche und Neigungen der einzelnen Mitglieder (Sesta 2005: 16). Das Gesetzbuch war von der Ideologie des Faschismus stark geprägt. Grundprinzipien waren die Unauflösbarkeit der Ehe, die Ungleichheit zwischen Ehegatten, das Institut der väterlichen Gewalt und die Diskriminierung der nichtehelichen Kinder. Vor allem ab den Sechzigerjahren des 20. Jahrhunderts erwiesen sich diese Grundsätze als überholt: Die Rolle der Frauen in Gesellschaft und Familie wurde immer wichtiger, die Unterwerfung der

[3] Eine ähnlich detaillierte Behandlung des österreichischen und Schweizer Rechts ist aus Platzgründen nicht möglich.

Familienmitglieder gegenüber dem Familienoberhaupt nahm wesentlich ab. Es kam zu einer generellen Neuordnung der wirtschaftlichen und gesellschaftlichen Verhältnisse in Ehe und Familie (Sesta 2005: 5).

Mit dem kontroversen Gesetz zur Eheauflösung (G[4] 898/1970) und der Reform des Familienrechts (G 151/1975) in den Siebzigerjahren des 20. Jahrhunderts – zwei Meilensteine in der Entwicklung des italienischen Familienrechts –, beabsichtigte der Gesetzgeber den gesellschaftlichen Veränderungen Rechnung zu tragen. In der durch die Reformen neu gestalteten Familie wurden Autonomie und Neigungen des Einzelnen stärker anerkannt. Nichteheliche Kinder bekamen weitgehende Rechte zugesprochen. Die Gleichstellung von Mann und Frau wurde konkret gefördert. Den Ehegatten stand nun die Auflösung der ehelichen Bindung frei. Die Gesetzesreformen und -novellen überließen also dem Einzelnen die Entscheidungen über die Gestaltung der ehelichen Beziehung und des Familienlebens (Sesta 2005: 7).

Die Reformen der darauffolgenden Jahrzehnte folgten diesen Leitlinien. Innerhalb der Familie wurde den Individualrechten (vor allem von Frauen und Kindern) ein zunehmender Schutzraum gewährt. Der Prozess der Aufwertung des Individuums führte weiter zur zunehmenden Anerkennung alternativer Familienformen (z. B. Eineltern- und Stieffamilien), zur Beseitigung jeglicher Diskriminierung von nichtehelichen Kindern, zur Einführung von flexibleren Verfahren für Ehetrennungen und -scheidungen (G 55/2015).[5] Der Übergang vom Gerichts- zum Verwaltungsverfahren bei der Eheauflösung unter bestimmten Voraussetzungen (G 162/2014) stellte eine entscheidende Neuerung dar.[6] Der vorerst letzte Meilenstein ist das lang diskutierte[7] und kontroverse Gesetz zur Einführung von homosexuellen und eheähnlichen heterosexuellen Lebensgemeinschaften (G 76/2016).

2.3 Deutschland

Am Anfang des 20. Jahrhunderts war die Familie in Deutschland noch stark patriarchalisch: Die Ehe war nur in Ausnahmefällen lösbar, der Ehemann entschied

[4] Gesetz (*legge*)
[5] Mit dem genannten *Gesetz* sind verkürzte Fristen für die Trennung in Kraft getreten, nach deren Ablauf die Scheidung eingereicht werden kann.
[6] Seit 2014 können Ehegatten die Trennung oder Scheidung vor dem Standesbeamten vereinbaren, beispielsweise wenn das Paar keine Kinder hat.
[7] Die ersten Gesetzesentwürfe stammen aus den Achtzigerjahren des 20. Jahrhunderts.

über den Erwerb und das Vermögen der Frau sowie über die Kinder (Ramm 1996: 248). 1919 machte man den ersten Schritt zur Gleichberechtigung der Ehegatten, u. a. durch die gleichmäßige Verteilung der Verantwortung für die Entwicklung der Kinder. In den Zwanzigerjahren entstanden auch erste Gesetzesentwürfe zum Nichtehelichenrecht. Zur gesetzlichen Gleichstellung aller Kinder kam es jedoch erst vierzig Jahre später (Berg 2012: 12). Der Nationalsozialismus brachte 1938 Neuerungen durch das Ehegesetz (Ramm 1996: 250). Im Scheidungsrecht erschien neben dem Verschuldensprinzip auch das Zerrüttungsprinzip.[8]

Nach dem Zweiten Weltkrieg schlug das deutsche Familienrecht im Westen (mit dem Erlass des Grundgesetzes) und Osten (durch die DDR-Verfassung) unterschiedliche Wege ein. In der Deutschen Demokratischen Republik war Ehescheidung nur in besonderen Fällen erlaubt, jedoch waren Mann und Frau laut dem Familiengesetzbuch von 1965 auf allen Ebenen gleichberechtigt und trugen gemeinsam das Erziehungsrecht. Auch nichtehelichen Kindern wurden gleiche Rechte zugestanden (Ramm 1996: 257-269).

In der Bundesrepublik Deutschland stand die Familie unter dem besonderen Schutz der staatlichen Ordnung. Mit dem Ehereformgesetz von 1976 erhielten beide Ehegatten gleiche Rechte und Pflichten in der Familie. Die Haushaltsführungsehe, in der nur der Mann erwerbstätig war, blieb jedoch das bevorzugte Modell gegenüber der partnerschaftlichen Erwerbstätigenehe. Bei der Scheidung wurde das Verschuldensprinzip durch das Zerrüttungsprinzip ersetzt. 1970 war die Gleichberechtigung der nichtehelichen Kinder in Kraft getreten. Zehn Jahre später wurde die „elterliche Gewalt“ zur „elterlichen Sorge“, somit erfuhr auch dieses Rechtsinstitut eine Modernisierung.

Die späteren Reformen betrafen vor allem neue Formen des Zusammenlebens und gleichgeschlechtliche Beziehungen. 1992 definierte das Bundesverfassungsgericht (BVerfGE[9] 87, 234) die nichtehelichen Lebensgemeinschaften, um sie von den reinen Haushalts- und Wirtschaftsgemeinschaften zu unterscheiden. Gemäß

[8] Nach dem Verschuldensprinzip kann eine Ehe nur bei schuldhaftem Verhalten eines Ehegatten geschieden werden (z. B. bei Ehebruch oder körperlicher Gewalt), während das Zerrüttungsprinzip auf dem Scheitern der ehelichen Lebensgemeinschaft fußt.
[9] Entscheidung des Bundesverfassungsgerichts.

Lebenspartnerschaftsgesetz durften homosexuelle Paare ab 2001 eine Lebenspartnerschaft begründen. Das ist seit dem Eheöffnungsgesetz von 2017 nicht mehr möglich, da nun auch gleichgeschlechtliche Paare eine Ehe schließen können. Bestehende Lebenspartnerschaften können fortgeführt oder in Ehen umgewandelt werden.

3 Terminologische Auswirkungen von Reformen und Gesetzesänderungen

Neue Rechtsinstitute bzw. Änderungen existierender Rechtsinstitute können in einem Rechtssystem durch neu erlassene Vorschriften bzw. durch Novellierung bestehender Normen eingeführt werden. Diese verfolgen im Familienrecht meist das Ziel, den veränderten gesellschaftlichen Gegebenheiten und dem Wertewandel Rechnung zu tragen. Reformen und Gesetzesänderungen sind heute auch das Ergebnis der Anpassung an das Gemeinschaftsrecht und der Bestrebungen, die nationalen Rechtssysteme zu vereinheitlichen.

Aus terminologischer Sicht wirkt sich dieser Entwicklungsprozess auf die Begriffs- oder auf die Benennungsebene aus, meistens jedoch auf beide, wie die nächsten Absätze anhand von Beispielen zeigen.

3.1 Einführung neuer Begriffe

Vor 2016 waren in Italien gleichgeschlechtliche Partnerschaften in keiner Form anerkannt. Im Mai 2016 wurde das Rechtsinstitut der *unione civile* (wörtlich „bürgerliche Verbindung“) eingeführt, wobei sich der italienische Gesetzgeber an die eingetragene Lebenspartnerschaft des deutschen Rechtssystems anlehnte.[10] Beide Rechtsinstitute sind eine alternative Lebensform neben der Ehe und gleichgeschlechtlichen Paaren vorbehalten. Den Partnern werden größtenteils dieselben Rechte wie den Ehegatten zuerkannt. Ausnahmen bestehen in den Pflichten der Partner (z. B. ist die Treuepflicht, anders als bei der Ehe, im italienischen Gesetz nicht erwähnt), in den Formen der Begründung bzw. Auflösung der Partnerschaft sowie im Abstammungsrecht (z. B. ist in Italien die Stiefkindadoption[11] nicht

[10] So der ehemalige Ministerpräsident Renzi in einem Fernsehinterview am 25. Mai 2015.
[11] Adoption eines Kindes durch den Partner des leiblichen Elternteils.

vorgesehen). In Deutschland ist dieses Rechtsinstitut durch die Einführung der gleichgeschlechtlichen Ehe seit Oktober 2017 überholt.

Im italienischen Recht wurde bewusst ein sprachlicher Unterschied zwischen *unione civile* und *comunione matrimoniale* (eheliche Gemeinschaft) eingeführt. Die Beifügung *civile* (bürgerlich) erinnert an *matrimonio civile* (bürgerliche Ehe) und trägt somit dazu bei, das Wesen der Beziehung anzudeuten. Dennoch klingt die italienische Benennung im Gegensatz zur deutschen sehr bürokratisch. Die Partner der *unione civile* werden „Parteien" (*parti*) genannt, mit einem deutlichen Verweis auf die vertragsrechtliche Terminologie (Sesta 2016: 882).

3.2 Änderung der Benennung (aber nicht bzw. nur minimal des Begriffs)

Im Laufe der Jahre hat das italienische Rechtssystem verschiedene Benennungen verwendet für das dauerhafte Zusammenleben zweier volljähriger Personen, das sich durch emotionale Bindungen sowie gegenseitige moralische und materielle Unterstützung auszeichnet, jedoch nicht auf Verwandtschaft, Verschwägerung, Adoption oder Eheschließung gründet (G 76/2016, Art. 1, Abs. 36). *Concubinato* (Konkubinat), *convivenza more uxorio*[12] (eheähnliches Zusammenleben), *famiglia di fatto* (De-facto-Familie) und kürzlich *convivenza di fatto* (De-facto-Lebensgemeinschaft), sind Benennungen, die denselben Begriff aus unterschiedlichen Blickwinkeln beschreiben. Sie haben jedoch eine starke ideologische Konnotation und spiegeln die vorherrschende Kultur und Politik einer bestimmten Zeit wider. Das Konkubinat war bis in die Sechzigerjahre des 20. Jahrhunderts strafbar[13] und bezog sich auf das Zusammenleben eines verheirateten Mannes mit einer Frau, die nicht die rechtmäßige Ehegattin war. In der Allgemeinsprache bezeichnete es jedoch generell das Zusammenleben von zwei nicht verheirateten Personen (Riccio 2007: 30).

3.3 Änderung des Begriffs (aber nicht der Benennung)

Der Kernbegriff des Familienrechts ist die Familie. Seit jeher existiert sie in vielfältigen Formen, jede Epoche sah jedoch in der prävalenten Art von

[12] *More uxorio* ist Lateinisch für „eheähnlich".
[13] Die Straftat des Konkubinats gemäß Art. 560 des italienischen Strafgesetzbuchs wurde 1969 vom Verfassungsgericht für verfassungswidrig erklärt (*C. cost. 27.11.1969, n. 147*).

Zusammenleben die einzig mögliche Form von Familie (Dotto 2011: 14). Trotz der vielen Gesetzesänderungen in Italien, der Entstehung neuer Familienmodelle und einer wesentlichen Erweiterung des Familienbegriffs, blieb die Benennung im Kern immer gleich. Im Laufe der Jahre erhielt *famiglia* jedoch verschiedene Beiwörter, die den Begriff einschränkten bzw. erweiterten.

Seit 1948 definiert Artikel 29 der italienischen Verfassung die Familie als eine auf die Ehe begründete natürliche Gesellschaft (*società naturale fondata sul matrimonio*). Bereits mit dem Gesetz zur Einführung der Scheidung (G 898/1970) erfuhr der Begriff eine Änderung, da eine Auflösung der Familie und die Begründung mehrerer Familien möglich wurden (Sesta 2015: 7). Durch Ehescheidung entstehen eine aus einem Elternteil bestehende mütterliche und väterliche Familie (*famiglia materna* und *paterna*) (Sesta 2015: 9), was im ursprünglichen Familienbegriff nur beim Tod eines Ehegatten denkbar war. Falls geschiedene Elternteile eine neue Familie gründen, zu der die Kinder der neuen Partner gehören sowie etwaige gemeinsame Nachkommen, entsteht eine *famiglia ricostituita* (neugegründete Familie). Die Grenzen zwischen der Kernfamilie (*famiglia nucleare)* und der Patchworkfamilie (*famiglia plurinucleare)* sind jedoch schwierig zu ziehen (Théry 2002: 15).

Nichteheliche Lebensgemeinschaften (*famiglia di fatto*) hatten jahrelang Schwierigkeiten, gesetzlich als Familie erkannt zu werden, wobei im Grunde nur ein Trauschein fehlt (Oberto 2012: 7). Ebenso problematisch sind die Einpersonenfamilien (*famiglia unipersonale)*, die vor allem aufgrund des Geburtenrückgangs und der Verlängerung der durchschnittlichen Lebenserwartung stark zugenommen haben (Dotto 2011: 59).

3.4 Änderung von Begriff und Benennung

Wichtige gesetzliche Neuerungen, die zu einer tiefgreifenden Änderung eines Rechtsinstituts führen, werden oft durch eine Änderung der entsprechenden Benennung gekennzeichnet. Dadurch soll der Bruch mit der vorherigen Rechtslage auch sprachlich sofort erkennbar werden. Durch die große Reform des italienischen Familienrechts im Jahre 1975 (siehe Abschnitt 2.2) wurde beispielsweise die *patria potestà* (väterliche Gewalt) abgeschafft. Dafür wurde eine gemeinsame Pflicht und ein gemeinsames Recht beider Elternteile eingeführt: die *potestà genitoriale*

(elterliche Gewalt) (G 151/1975, Art. 29). Die Überschrift des 9. Titels des italienischen Zivilgesetzbuchs wurde entsprechend umbenannt. Während vorher die Familienmitglieder dem Willen des Vaters unterstehen mussten (Falcone 2014: 2), wurde mit der Reform die Rolle der Frau in der Erziehung der Kinder bedeutend aufgewertet. Beide Eltern waren nun ebenbürtig, beiden oblag das Recht, das Interesse der Kinder zu schützen. Jahrzehnte später erfuhr der Begriff eine erneute Reform (GvD[14] 154/2013), die sich ebenso in der Terminologie widerspiegelte: Im oben genannten Titel des Zivilgesetzbuchs lautet heute die Benennung *responsabilità genitoriale* (elterliche Verantwortung). Auf begrifflicher Ebene ist wiederum eine bedeutende Entwicklung zu verzeichnen: Im Interesse der Minderjährigen soll die Beziehung zwischen Eltern und Kinder nicht mehr asymmetrisch die Erwachsenen in den Mittelpunkt stellen, sondern die Kinder, denen viele Rechte und Pflichten zugestanden werden (Falcone 2014: 3-4). Vom ursprünglich öffentlich-rechtlichen Begriff der *patria potestà* hat sich der italienische Begriff zum privatrechtlichen *responsabilità genitoriale* bedeutend verändert, um auch den Entwicklungen auf internationaler Ebene Rechnung zu tragen, zumal bereits die UN-Kinderrechtskonvention von 1959 die Idee der Verantwortung der Eltern einführte (Falcone 2014: 2-3).

4 Herausforderungen bei der Suche nach äquivalenten Termini

Die im vorangehenden Abschnitt beschriebenen Auswirkungen von Reformen und Gesetzesänderungen auf die Rechtsterminologie eines Fachbereichs müssen bei der Suche nach Äquivalenten aus anderen Rechtssystemen berücksichtigt werden. Dies gilt natürlich bei der Übersetzung von Rechtstermini, kann aber auch bei der Entwicklung von Terminologie im Rahmen der Sprachplanung erfolgen (siehe Abschnitt 4.3). Die Systemgebundenheit der Rechtssprache (De Groot 1999: 12) stellt dabei eine beachtliche Herausforderung dar. Die Methode der Rechtsvergleichung (siehe Abschnitt 4.2) kann jedoch wichtige Gemeinsamkeiten und Unterschiede zwischen Termini aus verschiedenen Rechtsordnungen aufzeigen.

[14] Gesetzesvertretendes Dekret *(decreto legislativo).*

4.1 Systemgebundenheit von Rechtsterminologie

Rechtsterminologie ist immer eng an ein bestimmtes Rechtssystem gebunden, d. h. jeder Staat hat ein eigenes System an Prinzipien und Regeln sowie seine eigene juristische Terminologie (De Groot 1999: 11, Šarčević 1997: 230). Trotz gemeinsamen Ursprungs aus dem römischen Recht, wie im Fall der italienischen und deutschen Rechtsordnung, können bedeutende begriffliche und sprachliche Unterschiede bestehen (Udvari 2013: 15). Im Familienrecht fehlt zudem eine weitreichende Harmonisierung auf europäischer bzw. internationaler Ebene (siehe Abschnitt 1). In Italien können beispielsweise nur zwei Personen verschiedenen Geschlechts eine Ehe (*matrimonio*) eingehen, in Deutschland seit 2017 dagegen auch homosexuelle Paare (siehe Abschnitt 3.1). Auch bei gleicher Amtssprache, wie im Fall von Deutschland, Österreich, Teilen der Schweiz und Südtirol, können terminologische Unterschiede bestehen (De Groot 1999: 13, Sandrini 1999: 16-17). Im deutschen und Schweizer Sorgerecht ist beispielsweise der zentrale Begriff die „elterliche Sorge", in Österreich hingegen die „Obsorge" und in Südtirol die „elterliche Verantwortung".

Aus terminologischer Sicht besteht vollständige begriffliche Äquivalenz zwischen zwei Fachtermini desselben Fachbereichs, wenn sie in unterschiedlichen Sprachen gleich definiert werden (Šarčević 1997: 234), d. h. wenn sie in sämtlichen Begriffsmerkmalen übereinstimmen und daher begriffliche Identität besteht (Arntz *et al.* 2014: 145). Aufgrund der Systemgebundenheit der Rechtssprache (De Groot 1999: 12) ist eine volle begriffliche Übereinstimmung von Termini aus verschiedenen Rechtsordnungen jedoch eher selten. Viel häufiger trifft man auf begriffliche Überschneidungen oder breiter bzw. enger gefasste Begriffe (Arntz *et al.* 2014: 145-146), wie bei dem italienischen und deutschen Begriff der „Ehe". Möglich ist auch eine funktionale Äquivalenz (Šarčević 1997: 235 ff., De Groot, 1999: 206, Wiesmann 2004: 233), wie bei den oben genannten zentralen Begriffen des Sorgerechts. Die Begriffe sind zwar nicht identisch, haben aber in den einzelnen Rechtsordnungen eine vergleichbare Funktion. Sie betten sich zudem ähnlich im untersuchten Fachgebiet ein und werden vergleichbar angewandt (Chiocchetti und Ralli 2016: 106-107).

4.2 Rechtsvergleichung

Die Rechtsvergleichung befasst sich als Makrovergleichung mit der Gegenüberstellung verschiedener Rechtsfamilien und -systeme in Bezug auf deren allgemeinen Methoden u. a. des Umgangs mit Rechtsfragen, der Gesetzgebungs- und -auslegungstechniken sowie der Urteilsstile. Als Mikrovergleichung untersucht sie hingegen einzelne Rechtsinstitute oder -probleme (Zweigert & Kötz 1996: 4-5). Die Methode der Mikrovergleichung besteht also darin, einzelne Rechtsbegriffe komparativ gegenüberzustellen, um relevante Entsprechungen oder Unterschiede zu ermitteln (Pizzorusso 1995: 138). Dadurch kann festgestellt werden, ob sich zwei Benennungen aus verschiedenen Rechtssystemen auf einen äquivalenten Begriff beziehen, d. h. ob weitgehende Übereinstimmung in den für den bestimmten Kontext relevanten Begriffsmerkmalen besteht. Die Mikrovergleichung kann daher auschlaggebende begriffliche Unterschiede aufzeigen, die bei der Übersetzung von Rechtstermini berücksichtigt werden müssen.

Vor 2016 gab es beispielsweise in Italien kein Rechtsinstitut, das die gleichgeschlechtlichen Partnerschaften regelte. Die Suche nach einem äquivalenten Rechtsinstitut für die in Deutschland bereits 2001 eingeführte (und 2017 aufgehobene) „eingetragene Lebenspartnerschaft“ wäre vergebens gewesen. Zu den wesentlichen Merkmalen des deutschen Begriffs zählten einerseits die Tatsache, dass es eine alternative Lebensform zur Ehe war und andererseits, dass das Institut ausschließlich gleichgeschlechtlichen Paaren vorbehalten war. In Ermangelung eines italienischen Äquivalents wurde daher oft wörtlich mit *convivenza registrata* (eingetragenes Zusammenleben) oder *unione registrata* (eingetragene Verbindung) übersetzt.

Mit der Einführung der *unione civile* im Jahr 2016 füllte der italienische Gesetzgeber die terminologische Lücke und schuf ein der Ehe weitgehend entsprechendes, jedoch nur gleichgeschlechtlichen Paaren vorbehaltenes Rechtsinstitut. In den wesentlichen Merkmalen stimmen also der italienische und deutsche Begriff überein, sie betten sich in den zwei Rechtsordnungen ähnlich ein und erfüllen eine vergleichbare Funktion. Unterschiede bestehen bezüglich des Adoptionsrechts gleichgeschlechtlicher Paare, das in Italien nicht vorgesehen ist. Seit 2017 können in Deutschland infolge der letzten Reform des Eherechts keine neuen eingetragenen Partnerschaften eingegangen, bereits bestehende können aber weitergeführt

werden. Somit bleibt die begriffliche Äquivalenz zwischen *unione civile* und „eingetragener Lebenspartnerschaft“ weiterhin bestehen.

Das Beispiel der gleichgeschlechtlichen Partnerschaften zeigt auch, dass neben der begrifflichen Äquivalenz die zeitliche Geltung eines Begriffs ebenso berücksichtigt werden muss. Außerdem können konnotative Aspekte eine ausschlaggebende Rolle spielen. Während sich beispielsweise in Italien die Terminologie zu den nichtehelichen Partnerschaften mehrmals änderte (siehe Abschnitt 3.2), wird in der Schweizer Rechtssprache heute noch die Benennung „Konkubinat“ (neben „faktische Lebensgemeinschaft“) benutzt.[15] In Italien wird *concubinato* jedoch auch von Rechtsfachleuten vermieden, da es veraltet klingt und negativ konnotiert ist. *Famiglia di fatto* oder *convivenza di fatto* sind sicher besser geeignete und zeitgemäße Entsprechungen. Bei einer rechtssysteminternen Übersetzung – also für die italienischsprachige Schweiz – wäre die Benennung *concubinato* neben *comunione di vita* hingegen ebenso akzeptabel,[16] da sie für italienischsprachige Schweizer nicht negativ konnotiert ist.

4.3 Mikrovergleichung bei der Sprachplanung

Mikrovergleichung erweist sich nicht nur bei rechtssystemübergreifender Terminologie- oder Übersetzungsarbeit als hilfreich, sondern auch bei der Sprachplanung, wie bei der Entwicklung von EU-Terminologie oder von Minderheitensprachen. Minderheitensprachen stehen oft vor der Herausforderung, eine passende Benennung für Begriffe zu finden, die auf staatlicher Ebene eingeführt wurden. In Südtirol ist Deutsch beispielsweise neben der Staatssprache Italienisch eine offiziell anerkannte Sprache (DPR[17] 574/1988, Art. 1). Bei zentralen Gesetzesreformen muss auf lokaler Ebene eine deutschsprachige Benennung gefunden werden, wobei die Südtiroler Terminologie die Entwicklungen des italienischen Rechts widerspiegeln soll. Anders als in Regionen, deren Sprache ausschließlich regional anerkannt ist (wie z. B. Baskisch) kann man sich in Südtirol bei der

[15] Vgl. beispielsweise den Entscheid des Schweizer Bundesverwaltungsgerichts BGE 137 V 133 S. 134 von 2011.
[16] Vgl. beispielsweise die italienische Fassung des Kreisschreibens Nr. 30 vom 21. Dezember 2010 der Eidgenössischen Steuerverwaltung „Ehepaar- und Familienbesteuerung nach dem Bundesgesetz über die direkte Bundessteuer (DBG)“.
[17] Dekret des Präsidenten der Republik (decreto del Presidente della Repubblica).

Benennungssuche auf die Terminologie des deutschsprachigen Auslands stützen. In einem kleinen Land wie Südtirol besteht nicht der Wille, die eigene Rechtsterminologie von den anderen deutschsprachigen Teilen Europas völlig loszulösen. Falls möglich werden also im Ausland bereits etablierte Benennungen übernommen.

Für das Rechtsinstitut der *unione civile* gab es bereits die deutsche Benennung des äquivalenten Begriffs „eingetragene Lebenspartnerschaft“ (siehe Abschnitt 3.1) und die österreichische und Schweizer Benennung „eingetragene Partnerschaft“. Eine wörtliche Übersetzung mit „bürgerliche Verbindung“ wäre weder sprachlich noch rechtlich sinnvoll gewesen, zumal sich die ausländischen Benennungen ähneln und das italienische Rechtsinstitut am Beispiel des deutschen gestaltet wurde. In Südtirol wurde also die Benennung „eingetragene Lebenspartnerschaft“ eingeführt. Infolge der Reform mussten bald auch neue Personenstandsbezeichnungen entwickelt werden. Die Tabelle (Tab. 1) zeigt die Entsprechungen in den einzelnen deutschsprachigen Ländern:

Staat	**Personenstandsbezeichnung**		
	bei bestehender Lebenspartnerschaft	**nach Beendigung durch Tod des Partners**	**nach Beendigung durch Auflösung**
Italien (Italienisch)	*unito civilmente*	*già in unione civile (per decesso del partner)*	*già in unione civile (per scioglimento unione)*
Deutschland	in eingetragener Lebenspartnerschaft	Lebenspartner verstorben	Lebenspartnerschaft aufgehoben
Österreich	in eingetragener Partnerschaft lebend	hinterbliebener eingetragener Partner	aufgelöste eingetragene Partnerschaft
Schweiz	in eingetragener Partnerschaft	durch Tod aufgelöste Lebenspartnerschaft	gerichtlich aufgelöste Partnerschaft
Italien/Südtirol (Deutsch)	in eingetragener Lebenspartnerschaft	Lebenspartnerschaft aufgelöst (durch Tod des Partners)	Lebenspartnerschaft aufgelöst (gerichtlich oder einvernehmlich)

Tab. 1: Übersicht über die Personenstandsbezeichnungen in den einzelnen Staaten

Um die Südtiroler Rechtsterminologie möglichst an die Terminologie der anderen deutschsprachigen Rechtssysteme anzulehnen, entschied man sich für die Übernahme der deutschen Personenstandsbezeichnung bei bestehender Lebenspartnerschaft. In den anderen Fällen musste man jedoch berücksichtigen, dass in

Italien Lebenspartnerschaften aufgelöst (*scioglimento*) und nicht aufgehoben (*annullamento*) werden. Außerdem gibt es, neben dem Tod des Partners, verschiedene Möglichkeiten eine Auflösung zu beantragen: durch ein streitiges oder einvernehmliches Gerichtsverfahren, durch eine einvernehmliche Erklärung vor einem Standesbeamten oder infolge einer Vereinbarung zur Verhandlung mit Rechtsbeistand. Daher war eine Übernahme der deutschen Benennungen nicht mehr möglich. In teilweise Anlehnung an die österreichische und Schweizer Benennung wurden deshalb neue Personenstandsbezeichnungen für Südtirol eingeführt.

5 Schlussfolgerungen

Das Beispiel des Familienrechts zeigt, wie wichtig tiefgreifende Rechtskenntnisse bei der Arbeit mit Rechtsterminologie sind. Die Methode der Mikrovergleichung dient dazu, wichtige Gemeinsamkeiten und Unterschiede zwischen Rechtsinstituten aus verschiedenen Rechtssystemen aufzuzeigen. Weitere Faktoren können zudem die Benennungswahl bei der Übersetzung beeinflussen, insbesondere die Konnotation und zeitliche Geltung eines Rechtsbegriffs.

Am Beispiel Südtirols wurde gezeigt, dass auch bei der Benennungsbildung im Rahmen der Sprachplanung eine Mikrovergleichung mit der Terminologie gleichsprachiger Länder hilfreich sein kann. Das gilt natürlich nicht nur für das Deutsche in Südtirol, sondern auch beispielsweise für die deutschsprachige Gemeinschaft in Belgien. Ähnliche kontrastive Vergleiche können für alle Sprachen, die in mehreren Rechtssystemen benutzt werden (z. B. Englisch, Französisch, Spanisch), vorgenommen werden sowie bei der Entwicklung von EU-Terminologie.

Die Reformen im Familienrecht verursachen nicht selten einen tiefgreifenden Wandel der Rechtslage und Terminologie. Eine konstante Fortbildung für Terminologinnen und Terminologen bzw. Übersetzerinnen und Übersetzer in diesem Bereich ist daher besonders wichtig.

Literaturverzeichnis

Arntz, Reiner / Picht, Heribert / Schmitz, Klaus-Dirk (2014): *Einführung in die Terminologiearbeit*. Hildesheim / Zürich / New York: OLMS.

Berg, Tatjana (2012): "Die Entwicklung des Sorgerechts der Mütter nichtehelicher Kinder in Deutschland vom Inkrafttreten des BGB bis heute." In: *Beiträge aus dem Fachbereich Rechtspflege* 02.

Cassano, Giuseppe (2002): *Manuale del nuovo Diritto di Famiglia*. Piacenza: La Tribuna.

Chiocchetti, Elena / Ralli, Natascia (2016): "Ein Begriff, zwei Sprachen, unterschiedliche (Rechts)Kulturen." In: Drewer, Petra / Mayer, Felix / Schmitz, Klaus-Dirk [Hrsg.] (2016): *Terminologie und Kultur. Akten des Symposions, Mannheim, 3.-5. März 2016.* München *et al.*: DTT. 103 – 112.

De Groot, Gerard-René (1999): "Das Übersetzen juristischer Terminologie." In: De Groot, Gerard-René / Schulze, Rainer [Hrsg.] (1999): *Recht und Übersetzen.* Baden-Baden: Nomos. 11 – 46.

Dogliotti, Massimo (2016): "Dal concubinato alle unioni civili e alle convivenze (o famiglie?) di fatto." In: *Famiglia e Diritto* 10, 868 – 880.

Dotto, Valentina (2011): *Famiglie ricomposte e gestione delle risorse: una ricerca relazionale*. Promotionsarbeit, Università degli Studi di Verona.

Ent, Herbert (1997): "Österreichisches Familienrecht – Fünf Jahrzehnte Reform." In: Fachverband der Österreichischen Standesbeamten [Hrsg.]: *50 Jahre Fachverband der österreichischen Standesbeamten*. Wien: Fachverband der Österreichischen Standesbeamten. http://www.standesbeamte.at/gemeindeamt/download/221147986_1.pdf (26. November 2017).

Falcone, Andrea (2014): "Diritto di famiglia: la potestà genitoriale cede il posto alla responsabilità genitoriale." In *Filodiritto*. https://www.filodiritto.com/articoli/pdf/2014/02/diritto-di-famiglia-la-potesta-genitoriale-cede-il-posto-alla-responsabilita-genitoriale?_id8=3 (4. Dezember 2017).

Martiny, Dieter (2009): "Europäisches Internationales Familienrecht." In: Basedow, Jürgen / Hopt, Klaus J. / Zimmermann, Reinhard [Hrsg.] (2009): *Handwörterbuch des Europäischen Privatrechts*. Tübingen: Mohr Siebeck. 531 – 536.

Oberto, Giacomo (2012): *I diritti dei conviventi. Realtà e prospettive tra Italia ed Europa*. Padova: CEDAM.

Pizzorusso, Alessandro (1983): *Corso di diritto comparato*. Milano: Giuffrè.

Ramm, Thilo (1996): *Familienrecht. Verfassung, Geschichte, Reform*. Tübingen: Mohr Siebeck.

Riccio, Domenico (2007): *La famiglia di fatto*. Padova: CEDAM.

Sandrini, Peter (1999*):* "Translation zwischen Kultur und Kommunikation: Der Sonderfall Recht.". In: Sandrini, Peter [Hrsg.] (1999): *Übersetzen von Rechtstexten*. Tübingen: Narr. 9 – 43.

Šarčević, Susan (1997): *New approach to legal translation*. The Hague / London / Boston: Kluwer Law International.

Schwenzer, Ingeborg (2013): *Familienrecht und gesellschaftliche Veränderungen. Gutachten zum Postulat 12-3607 Fehr „Zeitgemässes kohärentes Zivil- insbesondere Familienrecht*". https://www.bj.admin.ch/dam/data/bj/aktuell/veranstaltungen/familienrecht/gutachten-schwenzer-d.pdf (23. November 2017).

Sesta, Michele (^{2}2005): *Diritto di famiglia*. 2. Aufl. Padova: CEDAM.

Sesta, Michele (2015): "Genitorialità, matrimonio e famiglia nel diritto italiano vigente." In: *Jus-online* 2. http://www.unav.edu/matrimonioyfamilia/observatorio/ uploads/33646_Sesta_J2015_Genitorialita.pdf (5. Dezember 2017).

Sesta, Michele (2016) “La disciplina dell’unione civile tra tutela dei diritti della persona e creazione di un nuovo modello familiare.” In: *Famiglia e Diritto* 10, 882 – 888.
Théry, Irène (2002) “Le costellazioni familiari ricomposte: una questione sociale e culturale.” In: Mazzoni, Silvia [Hrsg] (2002): *Nuove costellazioni familiari. Le famiglie ricomposte.* Milano: Giuffrè. 13 – 30.
Udvari, Lucia (2013): *Einführung in die Technik der Rechtsübersetzung vom Italienischen ins Deutsche*. *Ein Arbeitsbuch mit interdisziplinärem Ansatz*. Berlin: Frank & Timme. (= Forum für Fachsprachen-Forschung, 108).
Wiesmann, Eva (2004): *Rechtsübersetzung und Hilfsmittel zur Translation*. Tübingen: Narr.
Zweigert, Konrad / Kötz, Hein (^{3}1996): *Einführung in die Rechtsvergleichung*. Tübingen: Mohr Siebeck.

Rechtsquellen

BVerfGE 87, 234 – Entscheidung des Bundesverfassungsgerichts, Urteil des Ersten Senats vom 17. November 1992. http://www.servat.unibe.ch/dfr/bv087234.html (9. April 2018).
DDR-Verfassung – Verfassung der Deutschen Demokratischen Republik vom 7. Oktober 1949. GBl. S. 4, 5. http://www.documentarchiv.de/ddr/verfddr.html (9. April 2018).
Deutsche Gesetzgebung: https://www.gesetze-im-internet.de
Europäische Gesetzgebung: http://eur-lex.europa.eu/
Italienische Gesetzgebung: http://www.normattiva.it
Italienisches Verfassungsgericht, Urteile: https://www.cortecostituzionale.it
Kreisschreiben Nr. 30 vom 21. Dezember 2010 der Eidgenössischen Steuerverwaltung. Circolare n. 30 “Imposizione dei coniugi e della famiglia secondo la legge federale sull’imposta federale diretta (LIFD).” https://www.estv.admin.ch/dam/estv/it/dokumente/bundessteuer/kreisschreiben/2004/1-030-D-2010.pdf.download.pdf/1-030-D-2010-i.pdf (9. April 2018).
Schweizer Bundesgericht, Entscheidungen: https://www.bger.ch/index/juridiction/jurisdiction-inherit-template/jurisdiction-recht.htm
UN-Kinderrechtskonvention – Declaration of the Rights of the Child adopted by UN General Assembly Resolution 1386 (XIV) of 10 December 1959. https://web.archive.org/web/20130926070812/http://www.un.org/cyberschoolbus/humanrights/resources/child.asp (9. April 2018).

Chapter 6

Beyond Descriptive Legal Translation Studies: towards engaged research, towards critical practices

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Abstract
In the last two decades, Legal Translation or Legal Translation Studies have been claiming and gaining recognition as a distinct specialisation or branch of Translation Studies, or even as a discipline or interdiscipline in its own right. Research on legal translation has witnessed significant development replicating the evolution in research in the general field of Translation Studies. More particularly, a "shift from prescription to description" (Biel & Engberg 2013: 8) has been recently acknowledged. Empirical-descriptive approaches have contributed to the discovery of regular patterns and strategies in legal texts and in the texts produced by legal translators. These findings have often been praised as a useful basis for making informed translation decisions. By drawing on contributions which have shed light on the shortcomings of the descriptive paradigm in the broader realm of Translation Studies, this article will foster a critical perspective on the findings of empirical, data-driven approaches in the domain of legal translation, where prevailing 'norms' might be addressed and (re)assessed in terms of power differentials, ideological implications, and identity issues. Research methodologies combining (empirical) research on legal translation and critical perspectives, for instance those informed by sociological and post-structuralist approaches, might contribute to a better understanding of this activity as a never innocent socially-situated activity influenced by, and ultimately affecting, wider geopolitical dynamics and ongoing processes of identity construction.

Keywords: descriptive legal translation studies; critical approaches to legal translation; ideology; power; identity.

1 Legal Translation Studies: a burgeoning field of inquiry in Translation Studies

In recent times, Legal Translation or Legal Translation Studies (LTS) has been claiming and gaining recognition as a distinct specialisation or branch of Translation Studies, or even as an autonomous discipline or interdiscipline in its

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own right (Biel 2010: 6; Prieto Ramos 2014), which is "concerned with all aspects of translation of legal texts, including processes, products and agents" (Prieto Ramos 2014: 261). This development has been particularly significant in the last two decades, during which LTS has fast progressed from being a type of translation occasionally studied in the emerging academic field of Translation Studies to its current disciplinary stage of indisputable consolidation and well-established specificity.

With the benefit of hindsight, this evolution might be considered to be replicating, both quantitatively and qualitatively and with a certain lag, the evolution in research observed in the general field of Translation Studies, a domain which not so long ago also needed to assert its autonomy from other neighbouring and overlapping disciplines. In this regard, the current portrayal of LTS as a fast-expanding area which has been incorporating ever more diverse approaches (Engberg & Biel 2013; Prieto Ramos 2014; Biel 2017a) to a certain extent is reminiscent of comments in the late 90s and early 2000s about the explosive growth in research on Translation Studies which, by borrowing from branches of learning as varied as Linguistics, Literary Criticism, Comparative Literature, History, Anthropology, Ethnography, Psychology, Cultural and Gender Studies, Philosophy, Computer Science or Law and Economics, and other related fields, was also perceived as increasingly "encompass[ing] a plurality of voices, approaches and perspectives" (Ulrych & Bollettieri 1999: 219) and as experiencing an unprecedented "proliferation of types and areas of research" (Hermans 2002: 1).

The parallel might be taken even further. Even though the exponential growth in TS was, for certain authors, a revealing sign that the discipline had reached an advanced stage of maturity and could self-critically address and question its own coherence (Hermans 1999: 7-16), the multiplication and diversification of perspectives and approaches was not always assessed in positive terms, but was occasionally accompanied by feelings of reservation which could be construed in line with a general apprehension about multi-theoreticality or fear of theoretical profusion which had earlier been diagnosed by Malmkjær (1993:132). It was also followed suit by an increased interest in research methods, as proved by a significant number of volumes and conferences on this topic (Olohan 2000; Hermans 2002; Foz & Fraser 2011; Oakes & Ji 2012; Saldanha & O'Brien 2013;

Mellinger & Hanson 2016), as well as by extensive intra-disciplinary discussions about what could be considered to be the core constituents of the 'disciplinary matrix', that is, the basic or essential research approaches of the discipline vis-à-vis other contributions which could be considered to be subsidiary or peripheral. These discussions took place most notably within the framework of the much-quoted debate on the "shared ground in TS" (Arrojo & Chesterman 2000), auspiced by *Target* in 5 consecutive issues (2000, 12: 1 and 12: 2; 2001, 13: 1 and 13: 2; 2002, 14: 1), and which filled the pages of scholarly publications in the discipline at the turn of the century. Needless to say, these calls for finding a common ground evidenced the widespread conviction that the key for the advancement of knowledge lies in academic *agreement* rather than in critical discussion and dissent; in the *conciliation* of paradigms rather than in the variety of, or even conflict among, divergent points of view.

In the specific case of LTS, praise for the intensification of scholarly work on this particular subject has been accompanied by a discernment of "a certain sense of dispersion" (Prieto Ramos 2014: 271) and a growing emphasis on research methods (Biel & Engberg 2013; Biel 2017a; Biel / Engberg / Martín Ruano & Sosoni (2019) Although this interest has not crystallised into claims to determine, either by hierarchical arrangement or by exclusion, the cornerstone(s) of research on LTS, the centrality of empirical and descriptive studies in recent research on legal translation has been explicitly acknowledged: in a special issue presenting an overview of research approaches in the discipline, Biel & Engberg (2013: 1, 8) attest to the predominance of corpus-based research methods in LTS, as well as to a dual shift experienced regarding research approaches, that is, from qualitative to quantitative methods and from prescriptive to descriptive approaches; Biel (2017a) also confirms the centrality of descriptive research.

By no means minimising the impact and potential relevance of descriptive research, but guided by the aim of contributing insights which might be enlightening both for empirical research and for investigations which may go beyond alleged descriptivism, this article will review some of the limitations of descriptivism aided by scholars whose work forms the basis of a number of evolutions and so-called 'turns' in Translation Studies (the cultural turn, the ideological turn, the sociological, the power turn) which, in recent decades, have complemented and

refurbished the descriptive paradigm most commonly associated with the pioneering work of Gideon Toury. It is our contention that the *caveats* which can be learnt from our recent disciplinary history may help to realise the call for "methodological eclecticism and triangulation, as well as further integration along the interdisciplinary lines" (Biel & Engberg 2013: 1) recently advocated in LTS literature, as well as foster new, innovative and sophisticated research methodologies "that might cross boundaries across approaches and disciplines in order to shed light on the many facets of th[at] complex social practice" which is legal translation (Biel / Engberg / Martín Ruano & Sosoni (2019).

2 The Merits and Shortcomings of Descriptive (Legal) Translation Studies

2.1 DTS in retrospect

Descriptive translation studies saw its heyday in the discipline of Translation Studies during the 90s. Theo Hermans (1999: 9) described its chronological evolution in these terms: "[t]he descriptive and systemic perspective on translation and on studying translation was prepared in the 1960s, developed in the 1970s, propagated in the 1980s, and consolidated, expanded and overhauled in the 1990s". Influenced by polysystem theory, and this in turn by Russian formalism and the structuralist Prague School, the descriptive paradigm emerged as an alternative to previous scholarly literature produced in the initial stages of a then emerging new discipline. In line with the increasingly-shared view at that time that the study of social behaviour (including language and translation) should not be based on intuition or preconceptions but should be derived from actual practice, Translation Studies posited itself as a descriptive, empirical discipline drawing conclusions from the observation of real phenomena – in this case, translated texts, these including all the texts that a given society considers as such, regardless of how much they might differ or deviate from the assumption of what a translation should be. In these studies which were inspired by the conviction that neither the workings nor the definition of translation should be assumed or concocted, but needed to be registered and discovered, corpus, far from being merely a tool for analysis, became a research prerequisite in investigations which both needed interdisciplinarity and

took advantage of it: firstly, in order to empirically delineate the limits of "that which is termed 'translation'" in a given society (Hermans 1997: 13), where translated texts are perceived as operating and being judged on their own merits, and not necessarily as derived products of a worshipped but often missing original; and, secondly, in order to detect the relations of translation with other types of text-processing operations.

In this regard, descriptive studies attempted to clarify the requirements of equivalence as considered "from TT's point of view", a perspective from which equivalence could be defined "not a postulated requirement, but [as] an empirical fact, like TT itself" (Toury 1981: 39). Far from wishing to render the notion of equivalence useless, the descriptive paradigm aimed at revealing its historicity and contingency: translation could thus be disclosed and shown as a socially regulated activity, as a construct which is influenced by (different) sociohistorical and contextual constraints and which varies according to (changing) intersubjective expectations. In this sense, systematic analyses of translated texts at a given epoch or across time through representative corpora were conducted as a means to discover what Gideon Toury called "translation norms": behaviour which appears to be regular and prevalent within particular historical coordinates. By analysing which practices are accepted and thus consistently perceived as correct at a given time and context, historical-descriptive studies aimed at discovering, describing and explaining dominant translation norms in order to clearly grasp the underlying concept of 'translation' at work, to formulate the 'laws' which regulate translation behaviour and, ultimately, as Gideon Toury ventured (1997: 79-80), to predict translation behaviour according to those laws.

In parallel with historical-descriptive studies which were notably inspired by comparative literature and (poly)systemic theories, a wealth of research which extrapolated innovative corpus linguistic methodologies to the study of the features of translated texts, generally in comparison and contrast to those of purportedly original discourse, aided in the consolidation of corpus-based translation (CBTS) studies as "an established subfield of the descriptive branch of the discipline" (Zanettin 2013: 21). As argued by this author, although the potentialities of CBTS include applications as varied as identifying the idiosyncratic stylistic features of individual translators or studying the evolution and change of translation norms and

conventions, CBTS has focused interest mainly on isolating so-called 'translation universals'.

A significant number of studies with this orientation attempted to confirm the validity in different language combinations, contexts and genres of tendencies identified as a seemingly typical and regular feature of translation behaviour. These include explicitation, disambiguation and simplification, normalisation and levelling out, as identified in a seminal article by Baker (1993), as well as other features which seem to characterise translation behaviour in relation to the corresponding source text and in relation to non-translated language (Chesterman 2004). As in the case of historical-descriptive translation studies, the aim of large-scale computer-assisted, empirical studies grounded on the exploration and analysis of big data was to discover the properties and regular patterns of translation behaviour as derived from real texts, both in order to advance the understanding of the workings of an activity traditionally conceptualised idealistically in terms of exact reproduction *and* ultimately for practical applications, for instance to use scientifically tested results in training contexts. The pedagogical scope is present, for instance, in the much-quoted collection of essays edited by Mauranen & Kujamäki (2004) who, in the synopsis of the book, explicitly recognise that "the applicability of the hypotheses and findings to translator education is, as always, a concern for translation studies". For example, Rabadán (2005) supports proactive empirical descriptive research designed to discover the regularities of language and translation behaviour in the conviction that they may help to select standard options as against those not supported by observed use; in other words, to discriminate correct vs. incorrect alternatives.

The enormous contribution of historical and linguistic-oriented descriptive studies to the evolution of the discipline of Translation Studies cannot be overstated at this point in the history of the discipline. Aligned with other approaches such as *Skopos* theory and the *école du sens*, DTS contributed to shifting emphasis in the study and understanding of translation from the peculiarities of source text or culture to the importance which the dominant norms and conventions of the receiving context wield in shaping a translation, now understood and explained not as a derived, second-rate activity, but as a genuine product of the target culture. Furthermore, in

addition to other coetaneous perspectives, DTS played an essential role in establishing translation as a differentiated branch of knowledge in the academic realm.

In this regard, DTS served as a springboard for the recognition of translation as a discipline in its own right. In this process, and as Toury (1995: 28) clearly perceived when he claimed that "[n]o empirical science can make a claim for completeness and for (relative) autonomy unless it has a proper descriptive branch", an essential requirement was the compilation of a theoretical *acquis*, complying with the conditions and features of 'scientific knowledge', namely, of 'science' as conceptualised in the hegemonic paradigm of logical positivism: a body of knowledge, deprived of subjective or intuitive value judgements, based on empirically verified hypotheses and data; in this case, a purportedly neutral and objective description of translation behaviour (Toury 1995: 1, 2). As has been rightly and well-deservedly repeated (Hermans 1999; Rosa 2010/2016; Pym / Schlesinger & Simeoni 2008), the descriptive methodology designed to explain and ultimately predict translational phenomena proved successful in a process which has been termed 'academic empire-building' (Venuti 1998a: 28). Equipped with indisputable data, the perceived representativeness of which further increased with the progressive incorporation of large-scale observation of big data analysed through computer-processing methods, translation studies could prove to have superseded speculation and could thus finally claim a space of its own, a niche in the sphere of knowledge – which, under the lens of certain theories, rather than as a holistic, cumulative and integrative space, emerges as a stratified, competitive, disputed and tensional terrain where power, recognition and resources are involved.

2.2 DTS and Legal Translation

Inasmuch as history enlightens the present, this retrospective of the discipline may be useful for assessing the potential significance of descriptivism for the specific case of legal translation studies. As was the case with TS in the 80s, the current proliferation of research in LTS coexists with a perceived need in LTS to further strengthen its status, either within and vis-à-vis TS. The emphasis of DTS on research methods is enlightening as regards this purpose. The external validation of research design and procedures as scientific is essential in any process of academic consolidation, a fact of which Toury was only too aware when he

admitted to have been, at times, more concerned about methodology than about theory itself (*apud* Pym / Schlesinger & Simeoni 2008: ix). At a moment in which LTS is also perceiving the need for enhancing, fine-tuning and legitimising its own research procedures, both internally and externally, the extrapolation and furthering of those descriptive research methods already validated in other fields in the realm of legal translation has been seen as both convenient and desirable.

Indeed, Biel (2010) regrets the delay in the application of long-established methods of corpus-based linguistic analysis in this specific field. The need to scientifically establish the characteristics of legal language – i.e., the linguistic patterns which weave the 'fabric' of Law –, through systematic, computer-assisted analysis is still being perceived as a necessity, as attested in recent publications within the interdisciplinary field of Legal Linguistics (Hamann & Vogel 2017; Vogel / Hamann & Gauer 2017). The contrastive perspective inherent in translation-oriented research is perceived as an additional asset for this purpose: even if findings confirm general intuitions and accepted preconceptions to a certain extent, research not only allows the empirical determination of the regularities of linguistic behaviour, but also enables discovery or confirmation of the similarities and differences among languages and legal traditions (Montolío 2016). At a practical level, more reliable knowledge about the highly patterned nature of legal language(s) is perceived as fostering a less naïve and more cognizant approach of translators to original texts in the comprehension phase, as well as enhancing naturalness and idiomaticity in the production of translated texts.

In this regard, descriptive studies based on the observation of actual legal translation practices certainly might prove to be useful not only for replacing subjective ideas or aprioristic suppositions about legal translation with more rigorous knowledge about the workings of language and translation practices in the legal realm, but also for acknowledging and emphasising the importance of target audiences, contexts and cultures in the study and practice of legal translation. This is no doubt of special interest in a field where seemingly indisputable expectations of sameness and faithfulness have traditionally coexisted with, and prompted, source-oriented approaches both in research and professional practice for a long time, but also where the importance of 'receiver-oriented' and communicative approaches (Šarčević 2000; Borja Albi & Prieto Ramos 2013) has recently been

repeatedly emphasised, most notably by functional-inspired perspectives (Prieto Ramos 2002; Garzone 2000). As in the case of TS, descriptive legal translation studies might surely be of help in the 'TT reorientation' currently underway in LTS (Biel 2010).

In this respect, the applied potential of descriptive approaches in the field of legal translation, especially for training purposes, has not failed to go unnoticed. Recent literature has appraised the pedagogical usefulness of accurate descriptions of the real workings of legal language and legal translation, both as a textual operation and as a profession –as derived, for instance, from studies about the features of the 'textual fit' of (translated) legal texts (studied, for instance, in Biel 2014); the characteristics and conventions of prototypical text types and *genres* (analysed, for example, in the research carried out by the GENTT group: Borja Albi 2007, 2013); the translation strategies regularly selected by (expert) practitioners (studied in descriptive process-oriented research, for instance in Vesterager 2017 in relation to explicitation procedures); or the 'regular' or 'prevalent' translational norms applied by translators in certain contexts in the legal field (ranging from international organisations to domestic institutions, from global or international to local markets). The findings of descriptive studies have been valued as a sound foundation which might guide efficient decision-making during the translation process (Acuyo Verdejo 2004; Vigier 2016; Valderrey 2017).

Certainly, identifying prevalent conventions and patterns is of invaluable interest for LT practitioners and scholars, as well as for those desiring to enter this field. It cannot be forgotten that access to a given community of practice requires a degree of conformity to common standards, models and procedures. The usefulness of descriptive research in offering tools which facilitate this 'mimicry' has been explicitly recognised (Borja Albi 2013: 65): accurate knowledge of the workings and usual practices of any field is a prerequisite for sound performance which is strategically attuned to the characteristics, norms and demands of a particular context. Indeed, strategic competence has been identified as the most important subcompetence, controlling all other competences and guaranteeing quality and efficient translation provision in a particular translation situation (Prieto Ramos 2011). In any event, inasmuch as it might be strategically convenient to adapt or flout existing norms at times, rather than follow them, the applicability of the results

of descriptive research deserves, in our opinion, further consideration and reflection within LTS.

Findings of empirical studies are certainly of help in translator training, in which, as in every socialisation process, repetition of conventionalised procedures and internalisation of existing norms play a vital role. However, the risk which has been identified with regards to this is that those traits and behaviour identified as *normal* in descriptive studies might indirectly be reified as straightforwardly *normative*; the danger in doing so being that what is found in description might acritically be turned into covert prescription; into recommended or mandatory performance to be emulated; into a rule to be obeyed, regardless of the specific conditions of the translation context at issue, and regardless of the broader implications of adhering to institutionalised, but perhaps perfectible models of linguistic behaviour and professional practice.

2.3 Critical insights into DTS

One of the major criticisms levelled at the findings and applications of descriptivism lies in the fact that, however comprehensive they might be, descriptive studies cannot help but offer partial, fixed, and static snapshots of realities which are, by nature, dynamic. In this regard, for instance, at the linguistic level, in spite of its acknowledged conservatism, legal language(s) must be considered as entities in motion. They are constantly changing, and, most importantly, they might well be considered to be in need of change in some respects. Widespread complaints about the obscurity of legal jargon, recent institutional campaigns in favour of the use of plain language for efficient communication with citizens, and the call for simplification of the language of legislation are clear indications that existing communicative patterns are indeed, far from being indisputable and recommendable under all circumstances, subject to improvement. Descriptions of language used in the legal realm are a register of the performance of a language at a given stage of its development. However, by their nature, they cannot record potential, and perhaps more convenient, alternatives. In this regard, conferring on descriptive studies a predictive power by implicitly setting up their findings as patterns to be followed or imitated ultimately implies favouring what has come to

be institutionally or statistically standard, to the detriment of perhaps less usual but possibly more convenient occurrences and/or potentialities.

This reflection might also be relevant in relation to translation as a praxis. Despite the fact that prevailing expectations about what might be an adequate and acceptable legal translation in one particular culture are shaped by a particular legal translation tradition, and are conditioned by what appear to be the most usual forms to render a legal text into a given language in a particular culture or institutional context, they are not, or should not necessarily be, limited by and to prior models. To start with, it should not be forgotten that what today still emerges as conventional translational behaviour is the result of a long history in which the role and complexities of (legal) translation have been misrecognised and undervalued to a large extent. Certain authors, including Mayoral (2002: 11), have advised against the risk of fossilising the profession and of undermining the potential of translation to live up to its current challenges. This might be the case if the type of behaviour which operationalises the long-standing conceptualisation of translation as non-problematic linguistic transfer is automatically elevated, due to its recurrence, to a perceived "normality" or even to a desired "normativeness".

Indeed, legal translation has been described in recent times as a "multifaceted and dynamically changing profession" (Borja Albi & Prieto Ramos 2013: back cover), that is, one which has experienced change through time and which is experiencing and will continue to experience constant changes. This becomes especially apparent upon examination of the evolution brought about by translation practices throughout history in different cultures and institutional contexts (Mattila 2006). What is more, whereas norms in legal translation have certainly changed over the centuries, these changes seem to have accelerated in the last few decades, especially as a result of the rise of English as the new global lingua franca and as a result of an increased technologisation of translation processes. What has been defined as a "macrofield which is called, using a generalization, legal translation" (Ortega Arjonilla 2010: 1) is today experiencing dramatic changes as a result of wide-ranging phenomena with far-reaching implications such as globalisation and the growing automation of translation practices. Authors such as Koskinen (2008), Cronin (2012), Vidal (2013), and Megale (2015) have reflected on the effects of these complex processes, which include the (re)emergence of a new paradigm in

which language and translation are conceptualised as tools playing a mere instrumental role at the service of communication with purported universal reach; the fading or invisibilisation of cultural differences in seemingly global discourses; the aggravation of power differentials both at the macrolevel of the political economy of languages and cultures and at the microlevel of genres, textual fit and linguistic preferences; and the emergence of hybridised varieties which are transforming both translated and translating languages. Paradoxically enough, in the case of most languages, the directions in which these changes seem to push legal translation practices, at least statistically, do not coincide with those associated with quality as defined from a target culture perspective. While descriptive research based on updated corpora might be very useful in detecting the effects of globalisation and of the supremacy of English on peripheral legal languages, its findings might perhaps not continue to offer a valid basis in the future for supporting the 'TT' reorientation which has been called for in recent research in the field of legal translation.

These considerations might provide food for thought as to the assets and challenges of research in LTS, especially in a context in which a widespread view prevails that there exists – and should exist – a "bi-directional process of exchange between (Translation Studies) theory and (translation) practice" (Svoboda / Biel & Łoboda 2017: 7). In this context of sheer transformation in which legal translation faces unprecedented challenges and is in need of – possibly new? – answers, the rigorous explanation of phenomena as they occur might certainly help in order to gain a more accurate picture of their scope, but might also be perceived as insufficient when it comes to addressing the future. Far from being "neutral", a seemingly non-partisan description of current patterns and recent transformations which does not assess their effects in the long run might ultimately be perceived as promoting existing trends, and thus perhaps as limiting when it comes to a potential redefinition of the prevalent dynamics of translational flows and professional practices.

Indeed, it might perhaps be enlightening at this point to recall the assumption shared by a number of post-descriptive approaches to TS: "the untenability of a detached, Archimedean and value-free point of view" (Hermans 1999: 146). From a perspective which, as a precondition, assumes that observation is not neutral – to the extent that it implies a selection of what is observed and leads to conclusions

that produce effects one way or another –, (mere) description also appears to be a politicised form of research. Acceptance that "the human sciences take part in the production of culture and ideology" (Hermans 1999: 146) and that, consequently, both translation and research on translation are politicised activities is, indeed, the point of departure of certain research perspectives which might also be constructive in gaining a greater understanding of the complexities of legal translation. The following section will explore some arguments which have been forwarded by critical perspectives and which might be relevant for the purposes of Legal Translation.

3 Towards engaged research, towards critical, reflexive practice

3.1 Research perspectives beyond description

From the 1990s, research within TS, to a great extent inspired by the concepts and methodologies of descriptivism, gradually incorporated ideological, institutional and sociopolitical concerns into the study of translation practices. The common characteristic of various approaches with diverse features which were nevertheless jointly associated with what came to be known as the 'cultural turn' in TS was their emphasis on issues related to power, authority and ideology. Indeed, while the goal of orthodox descriptive studies was to discover relevant regularities in translation behaviour, these approaches started to place their focus on the causes and effects of such behaviour far beyond "minute literary and linguistic differences" (Gentzler & Tymoczko 2002: xiii), that is, on the broader context of the political dynamics of cultures. According to Bassnett and Lefevere, the main factors which condition textual production and, thus, translation "ultimately have to do with power and manipulation" ([1990] 1995: 12). For this reason, as argued by these authors in a much-quoted contribution, whereas empirical historical research had enabled the discovery of translation norms, in order to explain their variation or endurance, in their opinion, translation research needed to go "into the vagaries and vicissitudes of the exercise of power in a society, and what the exercise of power means in terms of the production of culture, of which the production of translations is a part" (Bassnett & Lefevere [1990] 1995: 5).

Based on the conviction that translation is never innocent, significant investigations in translation since the early 1990s have made a consistent effort to go beyond the descriptive framework in order to unveil the ideological implications, power bias and/or agendas camouflaged in translation practices. By examining the driving forces and the network of power relations and authority which underlie and affect every translated text, this type of research attempts to explain how and why translations are made – why a particular text has been selected (and why others have been discarded) and why a particular strategy has been implemented (to the detriment of other potential approaches), as well as how "they affect people's lives" (Bassnett & Lefevere [1990] 1995: 12). In the so-called 'cultural turn', complemented and enlarged by an 'ideological turn' and a 'sociological turn' (Snell-Hornby 2006: 172), as well as by a 'power turn' (Gentzler & Tymozcko 2002) every (translated) text emerges as a correlate of power, either as a pillar buttressing and underpinning the prolongation of a given social, cultural or discursive order, or as a direct or subtle attack aimed at undermining and transforming the status quo. It is from this perspective that translation has been defined as a "social practice" (Venuti 1996, 1998a) and a "political act" (Álvarez & Vidal 1996) which plays a decisive role in the construction of cultures (Bassnett & Lefevere 1998) and in the formation and negotiation of identities (House / Martín Ruano & Baumgarten 2005; Cronin 2006); as an activity performed by professionals who invariably have aesthetic, ideological and political responsibilities (Lane-Mercier 1997), who need to make decisions and to adopt positions, and who thus cannot avoid being politically engaged (Tymoczko 2000, 2003).

These concurrent 'turns' in TS, which encourage research both on the macrological and micrological factors and institutional constraints conditioning translated texts, as well as on their ideological implications and their cultural significance, thus emphasise the decisive role of the translator as a social agent, fostering an awareness of the effects of the translator's actions in building particular sociocultural orders. By not merely focusing on regular and predictable translation behaviour, but by placing translation practices that escape or openly challenge mainstream translation models at the forefront, research ascribed to these critical perspectives highlights the active intervention of professionals in the construction of meaning and of cultural discourses, in the shaping of subjectivities and of imagined

communities, and in the renegotiation of power relations among social constituencies and cultural identities. As has been particularly underscored in research ascribed to post-colonial and gender approaches to translation, the political dimension of this activity here becomes evident, although this is not merely the case when translation embraces antihegemonic agendas: every translation emerges as a form of political and ideological intervention to the extent that, whether reinforcing or challenging certain linguistic, cultural, social, ideological and professsional expectations and norms, it invariably contributes to the preservation or reorganisation of the scale of shared values in the receiving society. Regardless of the position that the translator might adopt in the continuum of (in)visibility and of the strategies that they might select between the two poles of domestication and foreignisation, under this lens, neutrality becomes simply impossible. Translation is perceived as inevitably immersed in the intrinsically and institutionally contested arena of language(s), representations and worldviews.

This same argumentation explains that the contribution of these critical approaches to TS has not been limited to (re)consideration of translated texts that are under examination in translation research, but has been extended to a reassessment of the role and potentialities of research itself. As perceived by Hermans (1999: 146-148), if the assumptions accepted at the object level are extrapolated to the meta level, the features of neutrality, detachment and rigour predicated of and by scientific knowledge and, particularly, of and by descriptive research, become problematic. Theories that endorse the instability and contingency of meaning and their dependency upon a particular surrounding environment, which have informed much of contemporary translation research, also enable questioning of the position and capacities attributed to the researcher in empirical-descriptive approaches and warning about the ideological bias of scientific studies. These are considered to be inscribed in a context which enables a particular perspective and which conceals other points of views and are seen as influencing the perception of readers, that is, as inevitably triggering certain social effects. Under the post-positivist prism which has gained increased currency in the field of humanities and in social sciences in the last few decades, no research can claim to be neutral or objective; what is more, in this paradigm, and as expressed by Hermans (1999: 36), “the claim to neutrality or objectivity is already an ideological statement in itself”.

Indeed, in the last three decades, progressive separation from the conceptualisation of TS research as an objective practice generating independent, disinterested and objective knowledge has given way to a more pronounced and explicit critical involvement of researchers who focus on translatorial phenomena in the development of these phenomena. Lawrence Venuti draws attention to this feature when he highlights that "[c]ulturally oriented research tends to be philosophically skeptical and politically engaged, so it inevitably questions the claim of scientific objectivity in empirically oriented work which focuses on description and classification, whether linguistic, experimental, or historical" (Venuti 2000: 333). Far from being considered to be a symptom of a renunciation of ethics, acknowledgement of the position and positioning from which research is conducted is perceived as an ethical point of departure for a type of scholarly work which openly discloses both its methodologies and its ultimate aims. Indeed, a vast amount of studies embracing trends associated with the cultural turn (including post-colonial critique, gender-sensitive approaches, and sociological and deconstructionist perspectives) considers that not only does research offer a critical lens for denouncing and shedding light on the bias and unbalances affecting translation flows and practices, but that it also entails a particular type of social agency. In particular, research is seen as an appropriate springboard for alternative translatorial policies and politics which may circumvent the limitations perceived in existing practices, and which may resist the pernicious side-effects of hegemonic models – for instance, the invisibility of translation; the invisibilisation of minorities and difference in and through translation; the conservative biases that have been identified in normative translation practices; the usual complicity of translation with patriarchal, monolingual and monocultural ideologies; its tendency to adhere to major languages and dominant discourses; its propensity towards the neutralisation of diversity, and so on. This type of research has indeed been decisive in mainstreaming statistically marginal, yet extraordinarily stimulating practices and has inspired new translation behaviour which has been posed as an alternative to inherited models.

3.2 Critical perspectives and LTS

At the current stage of development of LTS as an interdiscipline, but also at a moment in which legal translation as a practice and a research field faces new challenges of utmost importance derived from phenomena including increasing internationalisation, uneven globalisation, the increasing use of English as the lingua franca in legal contexts (Mattila 2006, 2014), and a growing technologisation of the profession, the considerations put forward by critical approaches to TS might contribute towards enhancing our understanding of legal translation and to opening up new avenues, both for research and for professional practice. As argued by Lambert (2009), legal translation plays an organisational role in the planning of societies: law has an intercultural dimension which is certainly of interest to translation studies but which can hardly be grasped by text-centred approaches focusing on the micro-levels of linguistic transfer. Furthermore, legal translators operate today in situations characterised by apparent power differentials, by increasingly asymmetrical relations of hegemony and subordination which have been, and may be, not only described but also questioned, opposed, contested and resisted.

In this regard, if the study of corpora of legal translated text undoubtedly yields interesting results in terms of how legal translations are made, the analysis of *what is* and *what is not* translated appears to be at least equally as interesting. The selection policy governing legal translations in a given cultural or institutional context might be highly revealing of the vertical stratification of languages in the global order and of attitudes towards certain cultural identities at a given moment. The call for a more constructive exchange between multilingual studies focusing on language policy and planning, and translation and interpreting (Meylaerts & Du Plessis 2016), may certainly be highly relevant for the specific field of LTS, where the study of the networks of power and the regimes of alterity governing legal translation may help not only to reveal the equality deficit in multilingual institutions and societies, but also to envisage higher levels of ethnolinguistic democracy (Jiménez & Monzó 2017). Certainly, according to Monzó (2018: 473), "LIT studies has yet to embrace its potential to achieve social goals".

What becomes evident is that these broader issues, which ultimately have to do with power, may nuance or invalidate what descriptive corpus-based research may

reveal as adequate or acceptable translation solutions. Indeed, as shown paradigmatically by translated texts which can be linked to what has been termed 'existential equivalence' (Koskinen 2000), the very existence of a translation of a particular text in a given language might be far more important than how the translation is achieved, or its quality. This might be especially true in the case of minority languages, where translation often plays an important, yet often neglected role in language revitalisation policies (Kuusi / Kolehmainen & Riionheimo 2017). According to these authors, research into (legal) translation in these politicised contexts marked by sheer asymmetries needs to revisit and challenge well-established disciplinary assumptions linked to an understanding of translation which is moulded in a paradigm of communication (Kuusi / Kolehmainen & Riionheimo 2017: 150). Indeed, it has been argued that the goals of (legal) translation in the case of minority languages may well transcend intercomprehension among the parties (Domènech 2012). In these cases, usual concerns about equivalence at the legal level might be overridden by the implications of translation in terms of identity (re)construction: it may well be the case that legal translation also tends to adopt the dual role that Cronin (1995) has attributed to translation in the context of minority languages – as granting them visibility while potentially threatening and endangering their singularities. Once again, research takes on a political dimension, as analysis of these struggles cannot escape ideology: as Kim has argued (2007), cultural identity as an analytical category is contested, and adoption of one particular conceptualisation may already align research with promotion of a given social ideology towards diversity.

Clearly, in an era of uneven globalisation marked by the predominance of English as a lingua franca, these reflections might be enlightening for LTS on the whole, as every language often occupies the relational position of a "minor" language in the current global linguascape (see Venuti 1998b for the concept of "minor" language). Descriptive studies in a significant number of European language pairs have attested to the Anglification of legal languages, which is often perceived as fostering feelings of alienation. In any event, empirical studies can also be a prelude to research which argues for resistant attitudes towards emerging trends that aggravate the power differentials between languages and cultures. As an example, against the progressive colonisation of Polish by Eurolect, Biel (2016: 206) calls

for empirical research which may help to improve the quality of translations "by minimizing departures from the conventions of Polish". Bestué & Orozco (2011) and Martín Ruano (2018) also pinpoint a gradual loss of readability and naturalness in legal translations into Spanish due to increasing automation of legal and institutional translation practices, and advise against this revival of literalism by highlighting the importance of concepts such as "language idiosyncrasy" and "creativity", which have been highlighted by important LTS scholars including Šarčević ([1997] 2000) and Alcaraz & Hughes (2002); Bestué (2016) and Martín Ruano (2017) argue for an active intervention by translators in translations in order to favour higher levels of cross-cultural mediation of legal concepts and enhanced promotion of the reciprocal recognition of differences among the cultures and identities involved. Regrettably, recent definitions in recent research of the legal translator as "a cross-cultural communicator, mediator and information broker" (Biel 2015), as a professional performing an "intercultural transfer" (Soriano–Barabino 2016) or as a knowledge mediator and communicator (Engberg 2013) can be interpreted more in terms of claims for the future than of factual description.

Indeed, sociological approaches to translation in general and to legal translation in particular, which focus on the interdependences among translated texts, translators and other agents working in particular institutional settings and taking part in particular cultural dynamics, have contributed to ascertaining certain regularities in the professional behaviour of contemporary legal translators. Nor have they hesitated to comment on the (long) road that still lies ahead in the pursuit of more empowered professional profiles. By way of illustration, the work of authors including Koskinen (2000, 2008), Monzó (2005) or Chromá (2014) contributes to a better understanding of the relations between existing translators' *habiti* and a given institutional policy (as in the case of the EU, studied by Koskinen), the lack thereof (as in the scarcely organised collectivity of official legal translators in Spain, analysed by Monzó) or of relevant macrological reasons (as in professionals performing legal translations in a country like the Czech Republic, referred to by Chromá). In the first case, the institution is seen as systematically underestimating and underusing translators' potential contribution to efficient communication; in the second case, the weakness of traits and bonds creating a shared sense of a profession and of intersubjective quality standards is perceived as favouring

unqualified practice; in the third case, Chromá regrets that the professionals entrusted with legal translation tasks in a country presented as monojural, monolingual and with limited international contacts often lack knowledge of relevant theoretical issues in legal translation – a diagnosis which confirms her conclusion that prevailing modes of legal interpretation and wider historical, social, cultural, geographical and international contexts have an impact on the development of any legal system. Clearly, these analyses do not lead to reification of this type of behaviour as normative, but rather to advocation of alternative professional models: Koskinen calls for a reflexive and more proactive praxis; Monzó maintains that the situation can be transformed through action-research committed to reinforcing the translators' professional self-image and to improving their professional performance; in all three cases, the beneficial effect of theory as derived from research is awarded great importance.

4 Conclusion

While there can be no doubt that descriptive studies, which have been identified as the central paradigm in contemporary LTS, have marked significant progress in research in this field, at the same time exploring the possibilities of research located beyond descriptivism as suggested by scholarly perspectives linked to the cultural and subsequent turns in TS may be of great interest for legal translation. It may enable design of integrated research frameworks which could provide promising insights into the multidimensional phenomenon of legal translation, as well as heighten the practical impact of empirical research findings on the profession. Indeed, recent contributions in the field have called for an exploration of the potential relations among the multiplicity of research approaches to LT in order to study the complex features, workings and demands of this activity (Biel 2017a; Biel / Engberg / Martín Ruano & Sosoni (2019)). As also became clear in the evolution of TS, where initial opposition between linguistic-oriented and culturally-oriented approaches progressively gave way to mixed-methods research designs which made the most of ultimately complementary perspectives, integration of research perspectives may offer substantial added value for research on the workings of such an interdisciplinary and complex field as legal translation. Taking into account the fact that "[e]very vantage point contains its blind spot" (Hermans 1999: 156), the

soundness of the methodological foundations of the overall architecture of LTS will, to a large extent, be dependent on the capacity of research in the field to amalgamate and interrelate analytical categories, concerns, and research interests from different perspectives. Furthermore, given the widespread perception that theory and practice could and should establish a two-way relationship leading to mutual improvement, legal translation as a profession would clearly profit from research perspectives which dare to open up some hitherto unmapped paths. In fact, fascinating as it is, legal translation is still far from absolute perfection, something which will always be the case, as it will continually be faced with new challenges in particular social settings and in connection with the evolution of societies. Legal translation will always be in need of being imagined beyond its current boundaries; it will always be in need of being thought and practised otherwise.

References

Acuyo Verdejo, M. Carmen (2004): "Textual Knowledge in Legal Translation." In: *Hermes* 32, 167 – 184.

Alcaraz Varó, Enrique / Brian Hughes. 2002. *Legal* Translation *Explained.* Manchester: St Jerome.

Álvarez, Román & Vidal, África (1996): "Translating: A Political Act." In: Álvarez, Román / Vidal, África [eds] (1996): *Translation, Power, Subversion*. Clevedon/ Philadelphia/ Adelaide: Multilingual Matters. 1 – 9.

Arrojo, Rosemary & Chesterman, Andrew (2000): "Shared Ground in Translation Studies." In: *Target* 12. 1, 151 – 160.

Baker, Mona (1993): "Corpus Linguistics and Translation Studies: Implications and applications." In: Baker, Mona et al. [eds] (1993): *Text and Technology*. Amsterdam / Philadelphia: John Benjamins. 233 – 250.

Bassnett, Susan / Lefevere, André ([1990] 1995). "Introduction: Proust's Grandmother and the Thousand and One Nights: The 'Cultural Turn' in Translation Studies." In: Bassnett, Susan / Lefevere, André [eds] (1995): *Translation, History & Culture*. London: Cassell. 1 – 13.

Bassnett, Susan / Lefevere, André (1998): *Constructing Cultures. Essays on Literary Translation.* Clevedon: Multilingual Matters.

Bestué, Carmen / Orozco, Mariana (2011): "La necesidad de la naturalidad en la reformulación en la traducción jurídica en la 'era de la automatización' de las traducciones." In: *JoSTrans* 15: 180 – 199.

Bestué, Carmen (2016): "Translating Law in the Digital Age. Translation problems or matters of legal interpretation?" In: *Perspectives* 24.4, 576 – 590.

Biel, Łucja (2010): "Corpus-based Studies of Legal Language for Translation Purposes: Methodological and Practical Potential." In: Heine, Carmen / Engberg, Jan [eds] (2010): *Reconceptualizing LSP. Online proceedings of the XVII European LSP Symposium 2009*. Aarhus. 1 – 15. http://bcom.au.dk/fileadmin/www.asb.dk/isek/biel.pdf (1 January 2018).

Biel, Łucja (2014): *Lost in the Eurofog: The Textual Fit of Translated Law.* Frankfurt am Main: Peter Lang.

Biel, Łucja (2015): "Legal Translator as a Communicator." In: *International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique* 28: 1, 227 – 232.

Biel, Łucja (2016): "Mixed corpus design for researching the Eurolect: a genre-based comparable-parallel corpus in the PL EUROLECT project." In: Gruszczyńska, Ewa / Leńko-Szymańska, Agnieszka [eds] (2016): *Polskojęzyczne korpusy równoległe.* Warsaw: The Institute of Applied Linguistics. 197 – 208.

Biel, Łucja (2017): "Researching Legal Translation: A multi-perspective and mixed-method framework for legal translation." In: *Revista de Llengua i Dret, Journal of Language and Law* 68, 76 – 88.

Biel, Łucja / Engberg, Jan [eds] (2013): "Research Models and Methods in Legal Translation." In: *Linguistica Antverpiensia* (Special Issue on Legal Translation) 12, 1 – 11.

Biel, Łucja / Engberg, Jan / Martín Ruano, Rosario / Sosoni, Vilelmini [eds] (2019): *Research Methods in Legal Translation and Interpreting: Crossing Methodological Boundaries.* London / New York: Routledge.

Borja Albi, Anabel / Prieto Ramos, Fernando [eds] (2013): *Legal Translation in Context. Professional Issues and Prospects.* Oxford / Bern / New York: Peter Lang.

Borja Albi, Anabel (2007): "Corpora for Translators in Spain. The CDJ-GITRAD Corpus and the GENTT Project." In: Anderman, Gunilla / Rogers, Margaret [eds] (2007): *Incorporating Corpora - The translator and corpora.* Clevendon: Multilingual Matters. 243 – 265.

Borja Albi, Anabel (2013): "A Genre Analysis Approach to the Study of the Translation of Court Documents." In: *Linguistica Antverpiensia* 12, 33 – 53.

Borja Albi, Anabel (2013): "Freelance Translation for Multinational Corporations and Law Firms." In: Borja, Anabel / Prieto Ramos, Fernando [eds] (2013): 53 – 74.

Chesterman, Andrew (2004): "Hypotheses About Translation Universals." In: Hansen, Gyde / Malmkjær, Kirsten / Gile, Daniel [eds] (2004): *Claims, Changes and Challenges in Translation Studies. Selected Contributions from the EST Congress*. Amsterdam: John Benjamins. 1 – 13.

Cronin, Michael (1995): "Altered States: Translation and Minority Languages." In: *TTR: Traduction, terminologie, rédaction* 8.1, 85 – 103.

Cronin, Michael (2006): *Translation and Identity.* London / New York: Routledge.

Cronin, Michael (2012): *Translation in a Digital Age*. London / New York: Routledge.

Domènech, Ona (2012): *Traduir del castellà al català, més enllà de la intercomprensió*. Barcelona: Editorial UOC.

Engberg, Jan (2015): "What Does It Mean to See Legal Translation as Knowledge Communication? Conceptualisation and Quality Standards." *Terminology Science and Research* 25, 1 – 10.

Foz, Clara / Fraser, Ryan [eds] (2011): "Presentation". In: *TTR* 24.2 *Cartographie des métodologies en traduction / Charting research methods in translation studies*, 9 – 13.

Garzone, Giuliana (1999): "The Translation of Legal Texts. A Functional Approach in a Pragmatic Perspective." In: *Textus* 12, 391 – 408.

Hamann, Hanjo / Vogel, Friedmann (2017): "The Fabric of Language and Law. Towards an International Research Network for Computer Assisted Legal Linguistics (CAL)." In: *International Journal of Language and Law* 6, 101 – 109.

Hermans, Theo (1997): "Translation as Institution." In: Mary Snell-Hornby et al. [eds] (1997): *Translation as Intercultural Communication.* Amsterdam / Philadelphia: John Benjamins. 3 – 20.

Hermans, Theo (1999): *Translation in Systems. Descriptive and System-oriented Approaches Explained*. Manchester: St Jerome.

Hermans, Theo (2002): "Preface." In: Hermans [ed.] (2002): 1 – 8.
Hermans, Theo [ed.] (2002): *Crosscultural Transgressions. Research Models in Translation Studies II. Historical and Ideological Issues*. Manchester: St Jerome.
House, Juliane / Martín Ruano, Rosario / Baumgarten, Nicole [eds] (2005): *Translation and the Construction of Identity*: Seoul: IATIS.
Jiménez Salcedo, Juan / Monzó, Esther (2017): "Introducció. Les identitats minoritzades davant l'oportunitat del postmonolingüisme." In: Jiménez Salcedo, Juan / Monzó, Esther [eds] (2017): *Les llengües minoritzades en l'ordre postmonolingüe / Minoritized languages under a postmonolingual order / Las lenguas minorizadas en el orden posmonolingüe*. Castellón: Universitat Jaume I. 1 – 4.
Kim, Young Yun (2007): "Ideology, Identity, and Intercultural Communication: An Analysis of Differing Academic Conceptions of Cultural Identity." In: *Journal of Intercultural Communication Research* 36.3, 237 – 253.
Koskinen, Kaisa (2000): "Institutional Illusions. Translating in the EU Commission." In: *The Translator* 6.1, 49 – 65
Koskinen, Kaisa (2008): *Translating Institutions.* Manchester: St. Jerome.
Kuusi, Päivi; Kolehmainen, Leena / Riionheimo, Helka (2017): "Introduction: Multiple Roles of Translation in the Context of Minority Languages and Revitalisation." In: *trans-kom* 10. 2, 138 – 163.
Lambert, José (2009): "The Status and Position of Legal Translation: a Chapter in the Discursive Construction of Societies." In Olsen, Frances / Lorz, Alexander / Stein, Dieter [eds] (2009): *Translation Issues in Language and Law.* London: Palgrave Macmillan. 76 – 95.
Lane-Mercier, Gillian (1997): "Translating the Untranslatable: The Translator's Aesthetic, Ideological and Political Responsibility." In: *Target* 9.1, 43 – 68.
Malmkjær, Kirsten (1993): "Underpinning Translation Theory." In: *Target* 5.2, 133 – 148.
Martín Ruano, Rosario (2017): "Developing PSTI under the Paradigm of Recognition: Towards Difference-sensitive Ethics in PSTI." In: Valero, Carmen / Tipton, Rebecca [eds] (2017): *Ethics, Ideology and Policy Development in Public Service Interpreting and Translating.* Bristol / Buffalo / Toronto: Multilingual Matters. 21 – 37.
Martín Ruano, Rosario (2018): "Unveiling and redressing inequality dynamics in legal and institutional translation: from symbolic violence to symbolic recognition." In: Monzó, Esther / Jiménez Salcedo, Juan [eds.] (2018): *Translating and Interpreting Justice in a Postmonolingual Age.* Delaware: Vernon Press.
Mattila, Heikki E. S. (2006): *Comparative Legal Linguistics.* Aldershot: Ashgate.
Mattila, Heikki E. S. (2014): "Foreword: New Challenges for Legal Translation." In: Cheng, Le; Sin, King Kui / Wagner, Anne [eds] (2014): *The Ashgate Handbook of Legal Translation.* Farnham: Ashgate. ixx – xxi.
Mauranen, Anna / Kujamäki, Pekka [eds] (2004): *Translation Universals: Do they exist?* Amsterdam / Philadelphia: John Benjamins.
Mayoral Asensio, Roberto (2002): "¿Cómo se hace la traducción jurídica?" In: *Puentes. Hacia nuevas investigaciones en la mediación intercultural* 2 (Special issue on legal translation), 9 – 14.
Megale, Fabrizio (2015): "Mondialisation et Traduction Juridique: Nouveaux Parcours de Recherche." In: *International Journal for the Semiotics of Law* 28, 31 – 52.
Mellinger, Christopher D. / Hanson, Thomas A. (2016): *Quantitative Research Methods in Translation and Interpreting Studies.* London / New York: Routledge.
Meylaerts, Reine / du Plessis, Theo (2016): "Multilingualism Studies and Translation Studies." In: Gambier, Yves / van Doorslaer, Luc [eds] (2016): *Border Crossings: Translation Studies and Other Disciplines.* Amsterdam: John Benjamins. 263 – 285.

Montolío, Estrella (2016): "Prólogo." In: Pontrandolfo, Gianluca (2016). *Fraseología y lenguaje judicial. Las sentencias penales desde una perspectiva contrastive.* Roma: Aracne. 9 – 12.

Monzó, Esther (2005): "Being ACTIVE in Legal Translation and Interpreting: researching and acting on the Spanish field." In: *Meta* 50.4, 10 – 20.

Monzó, Esther (2018): "Translation and Culture in Legal Settings and Institutions." In: Carbonell, Ovidi / Harding, Sue-Ann [eds] (2018): *The Routledge Handbook of Translation and Culture.* London / New York: Routledge. 463 – 482.

Oakes, Michael / Ji, Meng [eds] (2012): *Quantitative Methods in Corpus-Based Translation Studies. A practical guide to descriptive translation research.* Amsterdam / Philadelphia: John Benjamins.

Olohan, Maeve [ed.] (2000): *Intercultural Faultlines: Research Models in Translation Studies I*: *Textual and Cognitive Aspects.* Manchester: St Jerome.

Ortega Arjonilla, Emilio (2010): "Presentación: A vueltas con la traducción de la justicia." In: Alonso, Icíar / Baigorri, Jesús / Campbell, Helen J. L. [eds] (2010): *Translating Justice / Traducir la Justicia*. Granada: Comares. 1 – 5.

Prieto Ramos, Fernando (2002): "Beyond the Confines of Literality: A Functionalist Approach to the Sworn Translation of Legal Document." In: *Puentes. Hacia nuevas investigaciones en la mediación intercultural* 2 (Special issue on legal translation), 27 – 35.

Prieto Ramos, Fernando (2011): "Developing Legal Translation Competence: An Integrative Process-Oriented Approach." In: *Comparative Legilinguistics. International Journal for Legal Communication* 5, 7 – 21.

Prieto Ramos, Fernando (2014): "Legal Translation Studies as Interdiscipline: Scope and Evolution." In: *Meta* 59.2, 260 – 277.

Pym, Anthony; Schlesinger, Miriam / Simeoni, Daniel [eds] (2008): *Beyond Descriptive Translation Studies. Investigations in homage to Gideon Toury.* Amsterdam / Philadelphia: John Benjamins.

Pym, Anthony / Schlesinger, Miriam / Simeoni, Daniel (2008): "Preface." In: Pym / Schlesinger / Simeoni [eds] (2008): ix – x.

Rabadán, Rosa (2005): "Proactive Description for Useful Applications: Researching Language Options for Better Translation Practice?" In: *Meta* 50.4.

Rosa, Alexandra Assis (2010/2016): "Descriptive Translation Studies – DTS (revised version)." In: Gambier, Yves / van Doorslaer, Luc [eds] (2010/2016): *Handbook of Translation Studies*. Amsterdam: John Benjamins. 94 – 104.

Saldanha, Gabriela / O'Brien, Sharon (2013): *Research Methodologies in Translation Studies.* London / New York: Routledge.

Šarčević, Susan (2000): "Legal Translation and Translation Theory: a receiver-oriented approach." http://www.tradulex.com/Actes2000/sarcevic.pdf (1 January 2018).

Sbovoda, Tomáš; Biel, Łucja / Łoboda, Krzysztof (2017): "Quality Aspects in Institutional Translation: Introduction." In Sbovoda, Thomas / Biel, Łucja / Łoboda, Krzysztof [eds] (2017): *Quality Aspects in Institutional Translation*. Berlin: Language Science Press. 1 – 13.

Snell-Hornby, Mary (2006): *The Turns of Translation Studies. New paradigms or shifting viewpoints?* Amsterdam: John Benjamins.

Soriano-Barabino, Guadalupe (2016): *Comparative Law for Legal Translators*. Bern: Peter Lang.

Toury, Gideon (1981): "Translated Literature: System, Norm, Performance: Toward a TT-Oriented Approach to Literary Translation." In: *Poetics Today* 2.4, 9-27.

Toury, Gideon (1995): *Descriptive Translation Studies and Beyond*. Amsterdam / Philadelphia: John Benjamins.

Toury, Gideon (1997): "What Lies Beyond Descriptive Translation Studies, Or: Where Do We Go From Where We Assumedly Are?" In: Vega, Miguel Ángel / Martín Gaitero, Rafael [eds] (1997): *La Palabra Vertida: Investigaciones en torno a la traducción (Actas de los VI Encuentros Complutenses en torno a la traducción).* Madrid: Editorial Complutense/ Ediciones del Orto. 69 – 80.

Tymoczko, Maria / Gentzler, Edwin [eds] (2002): *Translation and Power.* Amherst: University of Massachusetts Press.

Tymozcko, Maria (2000): "Translation and Political Engagement. Activism, Social Change and the Role of Translation in Geopolitical Shifts." In: *The Translator* 6.1: 23 – 47.

Tymozcko, Maria (2003): "Ideology and the position of the translator: In what sense is a translator 'in-between'?" In: Calzada, María [ed.] (2003): *Apropos of Ideology. Translation Studies on Ideology – Ideologies in Translation Studies*. Manchester: St. Jerome. 181 – 201.

Ulrych, Margherita / Bollettieri Bosinelli, Rosa Maria (1999): "The State of the Art in Translation Studies. An Overview." In: *Textus* 12.2, 219 – 242.

Valderrey, Cristina (2017): "Modelos textuales multinivel y desarrollo del saber en Derecho en la formación de traductores." In: *Sendebar, Revista de Traducción e Interpretación* 28, 53 – 70.

Venuti, Lawrence (1996): "Translation as a Social Practice: or, the Violence of Translation." In: Gaddis Rose, Marilyn [ed.] (1996): *Translation Horizons. Beyond the Boundaries of 'Translation Spectrum'*. Binghamton: Center for Research in Translation (State University of New York). 195 – 213.

Venuti, Lawrence (1998a): *The Scandals of Translation. Towards an Ethics of Difference*. London / New York: Routledge.

Venuti, Lawrence (1998b): "Introduction." In: Venuti, Lawrence [ed.] (1998): *Translation and Minority* (Special issue)*, The Translator* 4.2, 135 – 144.

Venuti, Lawrence (2000): "1990s." In: Lawrence Venuti [ed.] (2000): *The Translator Studies Reader.* London / New York: Routledge. 333 – 342.

Vesterager, Anja K. (2017): "Explicitation in legal translation – a study of Spanish-into-Danish translation of judgments." In: *JosTRans* 27, 104 – 123.

Vidal, África (2013): "Towards a New Research Model in Legal Translation: future perspectives in the era of asymmetry." *Linguistica Antverpiensia* (Special issue on legal translation) 12, 183 – 196.

Vigier, Francisco Javier (2016): "Teaching the Use of ad hoc Corpora." In: *Language and Law/Linguagem e Direito* 3.1, 100 – 119.

Vogel, Friedmann / Hamann, Hanjo / Gauer, Isabelle (2017): "Computer-Assisted Legal Linguistics: Corpus Analysis as a New Tool for Legal Studies." In: *Law and Social Inquiry*. doi:10.1111/lsi.12305.

Zanettin, Federico (2013): "Corpus Methods for Descriptive Translation Studies." In: *Procedia – Social and Behavioral Sciences* 95, 20 – 32.

Chapter 7

Discursive constraints in legal translation: a genre-based analytical framework

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Abstract
This chapter presents some important discursive constraints translators can come across when working with legal texts. A case study is presented on one of the most challenging judicial genres, i.e. criminal judgments, in three legal systems (England and Wales, Spain and Italy). Perhaps the most important judicial decision, the judgment usually contains a compendium of the whole case and often encompasses excerpts of other legal documents produced during the proceedings.
A tripartite framework for the analysis is presented, which can be applied to any legal genre. More specifically, a genre-based, top-down approach is adopted with a view to identifying the main strategies and techniques that can be chosen during the translation process, also keeping in mind common law vs. civil law differences applied to criminal procedure in the background. After a brief introduction devoted to the notion of 'constraint' in legal translation studies, the chapter proposes a translation-oriented discursive framework for the analysis of the genre under examination (criminal judgment) based on the three classic van Dijkian categories: super-structure, macrostructure and microstructure. Constraints operating at each level are then scrutinised from a functional perspective and exemplified with cases of challenges (i.e. asymmetries) legal translators may have to face when mediating between different legal cultures and systems.

Keywords: discursive constraints, legal translation, criminal judgment, super-, macro- and microstructure, English, Spanish, Italian

1 On constraints in legal translation

The notion of "constraint" in Translation Studies (Delisle et al. 1999: 164, González Davies 2004: 228), which is close to the key concept of "norm" (Toury 1995, Chesterman 1997, Schäffner 1999) and intertwined with that of "translation problem"[1] (Nord 1991: 151), has rarely been applied to Legal Translation Studies. As far as general translation is concerned, few attempts in the literature have been made to classify constraints. An interesting, comprehensive categorisation is

[1] "An objective problem which every translator – irrespective of his level of competence and of the technical conditions of his work – has to solve during a particular translation task" (Nord 1991: 151).

offered by Palumbo (2010: 163) who groups the constraints into four categories, as shown in Table 1.

SEMIOTIC	SOCIAL	COGNITIVE	OPERATIVE
Linguistic: - grammar and use - register - discourse - genre/text-types	Cultural	Neurophysiological	Related to the working conditions: - available time - money - individual vs. team working - reference material and resources
Pragmatic: - deixis and distance - reference and inference - presupposition and entailment - cooperation (Gricean maxims) and implicature - speech acts and events - politeness	Ideological	Psycholinguistic	
Iconotextual[2]	Related to norms and translation conventions: - *habitus* - addressees' expectations - editorial policies	Related to the level of translation competence	
	Ethical: - deontology - moral responsibility	Related to the conception of translation equivalence	
		Related to the risk	

Table 1. Classification of translation constraints (adapted from Palumbo 2010: 163)

As the author points out, such classification is just an attempt of exemplification and cannot be considered as exhaustive. When analysing the four categories, one should bear in mind the natural tendency of constraints to interact among each other. For example, the constraint related to the genre has semiotic nature but is

[2] An interesting view on the importance of iconotextual elements in judicial genres (esp. judgments) is offered by Taranilla (2015).

highly dependent on the addressees' expectations (classified as social constraints); or the idea of risk (see also Pym 2003, 2008), which affects every dimension of the framework, as it is associated with the decisional process of translators (cognitive dimension) as well as to the expectancy norms (social dimension) and the linguistic and pragmatic side of the translation process (semiotic dimension). It is therefore necessary to conceive these categories as fluid factors, having a transversal impact on the translation process (see Palumbo 2010: 162-165).

Studies in the area of legal translation, although rare, include remarkable contributions. In her seminal work, Susan Šarčević hints at traditional constraints imposed on translators (as text producers and co-drafters), among which she includes the mandatory use of standard formulae, the principle of language consistency applied to the choice of the technical terminology and citations in the light of the authority of precedents (1997: 116-118), restrictions which make legal translation "[une] traduction bloquée" in Bocquet's terms (1994: 40).

More recently, Gotti has explored some aspects of legal translation from an interlingistic and intralinguistic perspective, with a view to showing the complexity of the task, which is greatly conditioned by specific factors strictly depending not only on the different cultural, linguistic and legal environments in which it takes place but also on the target users with their own legal culture and specialised knowledge (2016). He focuses especially on constraints which affect the linguistic structure of the text, its drafting traditions, legal terminology and translation strategies.

The most comprehensive work carried out on translation constraints, mainly from a professional perspective, is definitely that of Scott (2018) who develops a full-blown theoretical framework of constraints in action on legal translation performance. The author classifies the constraints weighing upon the performance of legal translation grouping them into three categories: a) *upstream constraints* (e.g. expectancy norms, source text quality, ethical norms); b) *in-performance constraints* (e.g. linguistic factors, systemic and conceptual performance constraints, genre-related elements, intertextual and interdiscursive performance constraints, purpose- or function- related performance constraints, relational

constraints); c) *downstream constraints* (e.g. performance assessment, fitness-for-purpose benchmark, translators' liability, logistic constraints).

The focus of this chapter is specifically on what Scott calls *in-performance constraints*, that is to say, aspects that constrain the legal translator's *textual* agency (i.e. their mediation of the text). By merging some of the categories pertaining to the four dimensions (especially the semiotic and social one) in Table 1, the emphasis is placed on the discursive dimension of legal translation which will be applied to the genre "criminal judgment" selected as a prototypical case.

2 Operationalising the approach

The aim of this section is to highlight the key structures underpinning the analysis, i.e. the coordinates that will guide the discursive approach to legal translation outlined in this chapter. The first notion sustaining the whole framework is that of *discourse* (van Dijk 1977; Schiffrin et al. 2001), conceived as the study of language use, linguistic structure "beyond the sentence" and social practices and ideological assumptions associated with language and/or communication (see Biber et al. 2007: 1-20). More specifically, the discursive structures adopted in this chapter were proposed for the first time by van Dijk (1977) and proved to be extremely useful in a translation-oriented approach (see § 4):

- *Superstructures*: conventionalised schemas that provide the global form for the macrostructural content of a discourse (the *form*);
- *Macrostructures*: the overall, global meanings of discourse, usually described in terms of topic (the *content*);
- *Microstructures*: the local structures of words, clauses, sentences or turns in conversation (the *language*).

The integration of these three levels allows for an in-depth analysis of the general patterns of discourse organisation that are used to construct legal texts; the identification of the discourse units follows a *top-down approach* (see Biber et al., 2007: 12-17) where the notion of genre[3] (the second notion sustaining the framework) plays a pivotal role.

[3] On the subtle differences between the term 'register' and 'genre' see Biber et al. (2007: 7-9).

Swales's classic definition of *genre* (1990: 58), underlining the conventional discourse structures of texts or the expected socio-cultural actions of a discourse community, focuses on the recurring patterns of discourse, which is particularly suitable for legal texts. As it will be demonstrated in § 4, genres may represent flexible interfaces between the source text (ST) and the target text (TT) (see Borja Albi 2013), a powerful instrument to transfer a specific communicative event from a (legal) culture to another, effectively negotiating its content and form.

In particular, the top-down approach adopted consists, on the one hand, in the analysis of the three discursive levels identified above (which start from the global, the super- and macrostructure, and end with the specific, the microstructure) and, on the other hand, in the application of the *move analysis* (Swales 1990) to legal discourse (Bhatia 1993). Move analysis is indeed an example of a specific genre analysis developed as a top-down approach to examine the discourse structure of texts from a given genre; the text is described as a sequence of "moves" where each move represents a stretch of text serving a particular communicative function (Biber et al. 2007: 15).

3 Preliminary considerations

Some preliminary observations are necessary before delving into the analytical framework. Among the different types of specialised translation, legal translation is perhaps the most subject to change according to a number of factors translators have to consider before undertaking their task. From a professional point of view, the availability of a technical translation brief (Nord 1997) is an essential prerequisite since the translated text can be shaped in many forms according to a variety of factors (see Scott 2018).

Some of the crucial aspects to bear in mind before approaching a legal text are the following ones:

- *Purpose*: (why is it being translated?)
- *End-user*: (who is the final reader? A legal expert or the general public?)
- *Translated text status*: (should the translation be *covert* or *overt* (House 1997)? *authoritative* or *non-authoritative*? (Šarčević 1997: 19)

These parameters – together with many others (for a detailed technical brief for legal translations see Scott 2019: 81-102) – need to be evaluated in the preliminary stage of the translation process because they affect the macrostrategy (see Scarpa 2008: 113-115) adopted by the translator. In fact, these are the general coordinates of the translation task, stemming from a first global evaluation of the text within its communicative situation.

The centrality of the *skopos* (see also Garzone 2000) of the translated legal text determines most of the discursive features of the final TT in the sense that it will guide translators in their choices of reformulation of the ST at each level (super-, macro- and microstructure).

In the case of judgments, for example, it is essential to know if the function of the TT is endo-procedural or extra-procedural as different translation techniques may be adopted following the former or the latter function. Garofalo exemplifies the change of approach with a clear example (2009: 83) at a microstructural level: the Spanish verbal phrase *convivir maritalmente* (literally, to live together as spouses) may be translated into Italian as "convivere *more uxorio*" (to live in a common-law marriage) if the legal text is addressed to legal experts and has an endo-procedural function or "convivere *di fatto*" (to cohabit) if the addressee is a lay person and the purpose of the translation is purely informative (the TT is not binding).

Once these aspects have been decided, the general approach to translation needs to be highlighted. If the purpose of the TT is to bring evidence in court or to inform legal experts, legal translators may aim at producing a translation that reads like an original document (the ideal situation foreseen in the case study presented in § 4). In doing so, the general macrostrategy adopted by professional translators is that of maintaining the superstructure and macrostructure of the ST while acting at the microtextual level to produce a cohesive and consistent TT (Garofalo 2009: 82).

This will be exemplified in the following section with the case study on appeal judgments (§ 4); the focus will be precisely on the some interesting cases of anysomorphysm (Alcaraz Varó 2009) between legal cultures, that is to say, challenges posed by the asymmetries existing between the three judicial systems under examination.

4 The translation-oriented discursive framework

The aim of this section is to present the discursive framework from a theoretical point of view and exemplify it with the genre under examination. Before applying the three van Dijkian structures to criminal judgments, a definition (Table 2) and a classification (Table 3) of criminal judgments are necessary.

EN	**ES**	**IT**
Judgment: A court's final determination of the rights and obligations of the parties in a case (Black's Law Dictionary 2009: 918). *Opinion*: A court's written statement explaining its decision in a given case, usually including the statement of facts, points of law, rationale and dicta (Black's Law Dictionary 2009: 1201).	La resolución judicial definitiva, por la que se pone fin al proceso, tras su tramitación ordinaria en todas y cada una de sus instancias y en la que se condena o absuelve al acusado con todos los efectos materiales de la cosa juzgada. (see Pontrandolfo 2016: 46).	Il provvedimento con il quale il giudice assolve alla sua funzione giurisdizionale decisoria. Si tratta dell'atto con cui si esaurisce il rapporto processuale, o almeno una sua fase, e si conclude il giudizio di responsabilità di un soggetto che ha commesso o non commesso un fatto qualificato come criminale dall'ordinamento. (see Pontrandolfo 2016: 52).

Table 2. Definition of judgment [EN, ES, IT]

The focus of the case study is on Supreme Court and appeal judgment, since it is based on the corpus COSPE (Pontrandolfo, 2016), which contains judgments of second and last instance. The analysis carried out in this chapter obviously contains a simplification of the legal aspects for translation purposes.

EN	**ES**	**IT**
form: oral (ex tempore) written* (handed-down judgments)	forma: - escrita (art. 248.3 LOPJ) - oral (art. 245.2 LOPJ)	*forma*: - scritta (art. 544-548 CPP)
content: - of acquittal - of conviction * dissenting vs. concurring opinion	contenido: - absolutoria - condenatoria	*contenuto*: - sentenza di proscioglimento (art. 529-530 CPP): sentenza di non doversi procedere (art. 529 CPP) vs. sentenza di assoluzione (art. 530 CPP) - sentenza di condanna (art. 526, 533-543 CPP)

EN	ES	IT
Appeal: - allow - dismiss - remit	Sentencias/recursos: - estimatoria - desestimatoria	*Sentenza della CSC*: - accoglimento - inammissibilità (art. 591, 610, 615 CPP) - rigetto (art. 615.2 CPP) - rettificazione (art. 619 CPP) - annullamento (art. 624 CPP): parziale vs. totale, con rinvio vs. senza rinvio

Table 3. Classification of criminal judgments [EN, ES, IT]

Table 3 shows a first comparison of how this genre is conceptualised in each legal system, which is part of the background legal translators need before translating their judgments.

Apart from some inevitable differences between the three judicial systems (e.g. the oral tradition of the common-law system and the absence of dissenting and concurring opinions in criminal civil law), and the hyponyms of each term which necessarily change, the three genres are comparable and present some formal similarities. However, the most important asymmetries lie in the three levels selected for the analysis (§ 4.1, 4.2, 4.3).

4.1 Superstructure

The superstructure of a genre is its format, made of non-modifiable sequences that Hasan defines as "generic structure potential" (GSP), i.e. "the total range of textual structures available within a genre" (1984: 79). This structure does not admit significant internal variation and therefore is considered as a discursive constraint from the translator's point of view. As van Dijk (1977) points out, the super-structure has a crucial cognitive function as it organises the reading process, as well as the comprehension and (re)elaboration of the text.

From a superstructural point of view, criminal judgments contain fixed, conventionalised schemas, which make them easily recognisable within the legal genres (see Table 4).

England & Wales	Spain	Italy
Id^eF^A^D	**EN^AH^HP^FD^F**	**I^F^D^PQM**
1. Identifying the case [Id]	1. Encabezamiento [ENC]	1. Intestazione [I]
2. Establishing facts of the case [eF]	2. Antecedentes de hecho [AH] 3. Motivación: 3a) Hechos probados [HP]	2. Motivazione: 2a) In Fatto [iF]
3. Arguing the case [A]	3b) Fundamentos de Derecho [FD]	2b) In Diritto [iD]
4. Pronouncing judgment (final decision) [D]	4. Fallo [F]	3. Dispositivo [PQM]

Table 4. Superstructure of criminal judgments [4] [EN, ES, IT]

Each sequence can be analysed following Swales's *move analysis* (for a detailed contrastive view, see Pontrandolfo 2016: 45-68), where each *move* refers to the pragmatic aim pursued linguistically; the picture resulting from all the moves composes the textual macro-act.

The translation approach suggested at this stage is the one recommended by Borja Albi when translating official, administrative documents (2007: 208):[5] the format of the TT should respect the internal structure of the ST without adapting it to the target culture and conventions. It is at a macro- and micro-structure level that mediation can and should take place. An example of a microstructural intervention is the use of tenses in each move: in the Spanish and Italian judgments, the Facts section (AH and iF respectively) usually contains the narrative imperfect so it may be worth considering and re-producing this habit when translating judgments from English into Spanish or Italian (EN: simple past, *walked*, *took* vs. ES, imperfecto narrativo: *andaba*, *tomaba* vs. IT, imperfetto narrativo: *camminava*, *prendeva*, etc.).

[4] The symbol "^" suggests that the disposition of the elements is mandatory and culturally predetermined (see Garofalo, 2009: 90-91).

[5] "[…] propugnamos un método de traducción en el que predomine más la "extranjerización" que la "apropriación" o "adaptación". Por ejemplo, no es recomendable utilizar el formato estereotipado de los certificados españoles para traducir certificados extranjeros. Mas bien habría que respetar el formato del original e "inspirarse" en la terminología o la fraseología tras haber observado diversos [textos paralelos]" (2007: 208).

The same applies to the final move (the decision) which generally contains passive construction having deontic value in Spanish and Italian whereas the English prefers more hedged structure (*we would allow* vs. *debemos estimar y estimamos* vs. *accoglie il ricorso* […]).[6]

A difference in the superstructure of common-law vs. civil-law criminal judgments is that the former is commonly laid out in numbered paragraphs. While the judgment is not the work of a single judge but contains the *opinions* of a bench of three or five judges (or more than five in some cases) the paragraphs are numbered consecutively in the order in which the opinions were delivered,[7] constituting a single coherently presented document (Alcaraz Varó & Hughes 2002 : 112-116). In the latter, instead, the number of paragraphs only has a cohesive function (see López Samaniego, 2006) since there are no single opinions but a "leading opinion" shared by all the members of the bench.

4.2 Macrostructure

The macrostructure refers to the overall, global meanings of discourse, usually described in terms of topic (the *content*). It is precisely this level that contains the higher number of asymmetries between the legal systems and it is here that comparative law plays a pivotal role (see Soriano-Barabino 2016).

Alcaraz Varó & Hughes (2002: 89-95) pointed out three challenges[8] for the legal translator working between English and one or other of the civil law system (as in this case, Spanish and Italian). In line with their approach, two main elements will be addressed here:

[6] Comparable corpora (parallel texts) represent a fundamental resource to reproduce the judges' *habitus* when delivering a judgment.

[7] Nowadays judgments are not pronounced extempore (in an improvised way) but they are written by the judges before the hearing and then read them out in open court (see Alcaraz Varó & Hughes 2002: 112-113).

[8] 1) the English criminal law is not organised into a single, coherent body (or code); 2) the English law no longer distinguishes by name between serious and minor or relatively minor crimes; 3) the common law system is unique in that the prosecution of crime is not the responsibility of the courts or the judiciary but is left in the hands of state or administrative prosecutors who are ultimately answerable to the government of the day (see Alcaraz Varó & Hughes 2002: 89-95).

a) the criminal offence (within the area of criminal law)
b) the criminal justice system with its actors (parties) and the criminal proceedings (within the area of criminal procedure).

Legal translators working with criminal judgments need to have some knowledge of these two areas, which represent the setting surrounding the legal content of the judicial case.

As far as the first element is concerned (a), the main asymmetry between the civil-law and the common-law tradition lies in the classification of criminal offence (Table 5): the civil-law tradition usually identifies the offences by degrees of seriousness of the conduct, whereas the English criminal law distinguishes them by the mode of proceedings/trial appropriate to each.

England & Wales	**Spain**	**Italy**
summary offence	falta* > delito leve[9]	contravvenzione
either-way offence	delito menos graves	
indictable-only offence	delito grave	delitto

Table 5. Classification of criminal offence

As shown in Table 5, the Italian Criminal Code (art. 39 CP) only distinguishes between two types of offences, minor (*contravvenzioni*) and major (*delitti*) ones, so it does not contain the tripartite structure typical of the English and Spanish criminal system, which may pose some terminological problems (see the example in Table 10). As far as the second element is concerned (b), knowledge of the hierarchy of the judicial bodies as well as the stages of the criminal proceedings is necessary to translate the genre properly.

For obvious reasons of synthesis, a full analysis of this element cannot be carried out in this chapter (for a summary of the way criminal proceedings work in the three legal system see Pontrandolfo 2016: 21-44; Peñaranda López 2011; Garofalo 2009: 13-60; Soriano-Barabino 2016).

[9] Pursuant to the L.O. 1/2015 the term *falta* has been replaced by *delito leve* so now the Spanish categorisation reflects the American one or French one: *infraction* / *misdemeanor* / *felony*; *contravention* / *délit* / *crime*.

However, Table 6 contains a tentative summary of the main concepts necessary to deal with the macrostructure of the genre.

EN	**ES**	**IT**
Types of proceedings: - summary offences [Magistrates' Court] - indictable offences [Crown Court] - either-way offences [Magistrates' Court]	Tipos de procedimientos: - ordinario - abreviado - juicio de faltas - procedimiento ante el Tribunal del Jurado	Tipi di procedimenti: - ordinario - speciali (direttissimo, immediato, abbreviato, davanti al tribunale monocratico, davanti al giudice di pace, davanti al tribunale per i minorenni)
Actors/parties: - Police (Chief Officer) - Crown Prosecutor - Custody Officer - Magistrate's Court - Crown Court - + other courts (Court of Appeal, Supreme Court - defendant / defence vs. - prosecution/prosecutor	Protagonistas/partes: - Juez de Instrucción - Ministerio Fiscal - Policía judicial + los órganos judiciales (Audiencia Provincial, Tribunal Supremo, etc.) - imputado (procesado, acusado, reo) / defensa vs. - acusación	Protagonisti/parti: - Pubblico Ministero - Polizia giudiziaria - Giudice dell'Udienza Preliminare (GUP) - Giudice per le Indagini Preliminari (GIP) - indagato (persona sottoposta alle indagini preliminari) / imputato / difesa vs. - pubblica accusa/MF
Stages:[10] - Preliminary phase - Preparatory phase - Final phrase - Appeals	Fases (procedimiento ordinario, pena privativa de libertad superior a 9 años): - fase preliminar (de instrucción o sumarial) - fase intermedia (o preparatoria) - fase final del juicio (o fase decisoria) - recursos	Fasi del procedimento ordinario: - indagini preliminari - udienza preliminare - dibattimento o giudizio - ricorsi

Table 6. Key macrostructural elements of criminal judgments [EN, ES, IT]

[10] The three stages are not officially forseen in the English criminal system; they are included in the Table for comparative purposes.

Once these elements have been examined in depth, legal translators know how to deal with the specialised content of the texts and have a kind of map allowing them to disentangle the complex conceptual web[11] typical of the criminal procedure. As stated in § 3, it is at this level that translators mediate between the legal cultures and the macrostrategy – to be adopted according to the brief – should be that of preserving the alterity of the judicial system (offences, criminal proceedings, etc.) while intervening at a microstructural level.

4.3 Microstructure

The microstructure contains the minimum discourse units (words, clauses, sentences) of the genre. At this level, legal translators may adapt the content of the ST to the stylistic conventions of the TT, thus moving the target readers closer to the linguistic habits of the TT (see the social constraint of the expectancy norms in Table 1).

Four sublevels have been identified for the analysis: the lexical/terminological level (§ 4.3.1.), the morphosyntactic level (§ 4.3.2.), the phraseological level (§ 4.3.3.) and the textual/pragmatic level (§ 4.3.4.). Examples of constraints operating in each sub-level will be provided in the following sections, with a special focus on the first one (§ 4.3.1.), the most constrained one.

4.3.1 The lexical/terminological level

As Brannan puts it, "[t]he area of criminal procedure – together with that of substantive criminal law – is notorious for its culture-specific terms and lack of equivalence, clearly representing a challenge for [translators]" (2017: 107). It is precisely the anisomorphysm (Alcaraz Varó 2009) existing between the legal cultures which makes the terminological level the most challenging one.

Different techniques or procedures have been identified in the literature to cope with gaps between legal concepts (for a synthesis see Pontrandolfo 2012):

[11] Alcaraz Varó / Hughes suggest the use of semantic fields (2002: 170-173), a systematisation of terminological items and development of the available contrastive vocabulary which is a fundamental resource for legal translators (see also the application of the "script theory" to criminal judgments in Pontrandolfo 2016: 92-96).

- Borrowing/transcription
- Calque (formal equivalent)
- Omission
- Neologism
- Paraphrase (descriptive equivalent)
- Functional equivalent (adaptation)
- Translation couplets or triplets (a combination of two or three of the previous procedures, see Šarčević 1985, 1997)

A constraint operates here also in the choice of the translation procedure, which ultimately depends on the technical brief (see § 3): an overt (thick) or covert (stealth) translation may be chosen according to the different contexts in which the problematic term appears.

These techniques may be placed on a continuum, exemplified in Table 7, according to the macrostrategy adopted by the translator.

ST							**TT**
	borrowing	calque	omission	neologism	paraphrase	functional equivalent	

Table 7. Translation procedures along the continuum

A traditional example used here is that of institutional terms (see Sánchez Montero 1996), such as names of domestic courts or types of judge, or other offence-holders that inevitably occur in criminal judgments.

Table 8 exemplifies the different techniques with the institutional term *Audiencia Provincial* translated into English and Italian.

ST							**TT**
	borrowing	calque	omission	neolo-gism	paraphrase	functional equivalent	
	Audiencia Provincial	*Pro-vincial Hearing	Ø	Provin-cial Court	Spanish Court of Appeal having its seat in the capital of each province. For some offen-ces, it has the same functions of a first-instance court.	Court of Appeal	

	Audiencia Provincial	*Udi-enza Pro-vinciale	Ø	Tribu-nale provin-ciale	Corte di appello spagnola con sede nella capitale di ciascuna provincia. Per alcuni illeciti, svolge anche funzioni di Tribunale di primo grado.	Corte d'Appello	

Table 8. Techniques for translating *Audiencia Provincial* (ES>EN-IT)

As a way of example, the common praxis at the Court of Justice of the European Union is that of using a translation couplet, generally a borrowing and a paraphrase in order to maintain the alterity of the source legal system[12] (see also Brannan 2017: 108).

In any legal translation, a terminological choice has to be made by weighing various considerations in the balance, and a compromise solution may be necessary. If institutional terms cause problems, then conceptual terms denoting one of the two areas (a, b) outlined in § 4.2 are even more challenging.

A first example of legal asymmetry is the concept of *habeas corpus* (see example 1), a recourse in law through which a person can report an unlawful detention or imprisonment to a court and request that the court order the custodian of the person, usually a prison official, to bring the prisoner to court, in order to determine whether the detention is lawful.

(1) On 20 March 2003 the appellant applied in addition for a writ of *habeas corpus* on the ground that his continued custody since the expiry of the custody time limit on 7 June 2002 was illegal.

The concept does not exist in the Italian criminal law system whereas in Spain it is a constitutional right set forth by the Spanish Constitution (art. 17.4). Different techniques can be adopted here to translate "writ of habeas corpus" in Spanish and Italian (Table 9).

[12] Guggeis (2014: 56): "In order to avoid confusion with national terminology, lawyer linguists try to avoid national terms by creating neologisms" or inserting definitions".

EN	ES	IT
writ of habeas corpus	petición escrito mandamiento/mandato procedimiento recurso + de habeas corpus [*calque*]	istanza di habeas corpus [* diritto angloamericano] [*calque* + *borrowing*] > riesame (CPP: 606-628) o ricorso per cassazione [*functional equivalent*]

Table 9. Writ of habeas corpus [EN > ES, IT]

Obviously, the solution of the calque and borrowing in Italian does not help a reader who is not familiar with the common-law system, whereas the functional equivalent is a solution which can be risky as there is no full correspondence between the institute of "riesame" or "ricorso per cassazione", which are actually two means of appeal. In fact, the function of the *habeas corpus* in the Italian criminal procedure is carried out by the same "Giudice per le Indagini Preliminari" (GIP) who makes an upstream control of the conditions under which the accused is detained.

Another interesting case of gaps is the one shown in (2) and (3).

(2) Que en dicho acto, al que no compareció la perjudicada ni el Policía Local n°8, el Ministerio Fiscal calificó los hechos como constitutivos de una *falta de hurto* penada y prevista en el art. 623.1 del CP, solicitando se imponga a su autor, DON [KL], la pena de 1 mes de multa a razón de una cuota diaria de 6 euros.

(3) Según doctrina sentada por el Tribunal Constitucional (St. 18/4/85), rigiendo en el *juicio de faltas* el sistema acusatorio penal, conforme al cual la facultad de juzgar depende de que el Ministerio Fiscal y el *acusador particular*, o *privado*, promuevan la acción de la justicia […]

When translating into English and Spanish the terms in italics (*falta de hurto*, *juicio de faltas*, *acusador particular*, *acusador privado*) a number of constraints enter into play.

First of all, the offence of *hurto* (theft) is considered a *falta* (after the reform of the Criminal Code, see note 13, a *delito leve*) (minor offence) in the Spanish criminal law if the sum of money is less than 400 EUR (art. 234 CP) and a *delito grave* if exceeds that sum. Such distinction does not exist in the English and Italian categorisation of offences so adaptations are needed (see Table 10).

ES	IT	EN
falta* de hurto	reato di furto di lieve entità [*paraphrase*] (*contravvenzione di furto) [*functional equivalent*]	minor theft [*paraphrase*]

Table 10. Falta de hurto [ES > IT, EN]

The functional equivalent proposed in Italian is unacceptable since does not make any legal sense. In the case of the English proposal, a paraphrase can work properly. In fact, in England and Wales the theft is considered as a triable either-way offence.

Juicio de falta is a special type of proceedings for minor infraction which does not exist in the Italian criminal system so a paraphrase is needed; in the case of English, instead, translators may opt for a paraphrase (closer to the ST legal culture) or for a functional equivalent (closer to the TT legal culture).

ES	IT	EN
juicio de faltas	procedimento penale per reati minori [*paraphrase*]	minor-offence trial/proceedings [*paraphrase*] summary trial [*functional equivalent*]

Table 11. Juicio de faltas [ES > IT, EN]

Finally, Spain has a unique prosecuting system whereby, in addition to the powers of the public prosecutor (*Ministerio Fiscal*) to prosecute criminal offenses on behalf of the state, the victim or any other private citizen may appear before the court in criminal proceedings representing a sort of "private prosecution" that is practically unknown or in in Anglo-American jurisdictions and it is in disuse in the Roman jurisdiction. In this context, *acusador particular* generally denotes the victim of a crime (or his representative) who files a private criminal complaint, entering an appearance in a criminal proceeding as a private prosecutor. Moreover, persons other than the victim may also enter an appearance in criminal proceedings as private prosecutors. In that regard *acusador popular* denotes a private citizen who files a *querella* and posts a bond (*fianza*) in order to be admitted as a party to the prosecution of a criminal case. And *acusador privado* refers to an individual seeking redress for a private offense (*delito privado*) that may only be prosecuted

by the victim and in which the public prosecutor does not intervene (see Pérez Gil 2003; Pontrandolfo 2010).[13]

Among the different viable techniques proposed in Table 12, it is interesting to observe in the case of the Italian term *accusatore privato*, the term existed in the ancient Roman Criminal Law, meaning a lawsuit brought by a third party in the interest of the public as a whole so the solution has been adopted in diachrony. The same applies to the use of the Latin loan word *actio popularis*, used in legal English, though typically to express civil-law concepts. Often, resorting to Latin can be a good strategy to cope with the absence of equivalent concepts in the source legal culture (see Scarpa et al. 2017: 78-79).

ES	**IT**	**EN**	
acusador particular	accusatore privato costituitosi per reato perseguibile a querela di parte [*neologism*]	[the victim of a crime or his representative who files a private criminal complaint and enter the criminal proceedings as a private prosecutor] [*paraphrase*]	
acusador privado	accusatore privato [*calque*] persona offesa dal reato [*functional equivalent*]	private prosecutor [*calque*]	
acusador popular	accusatore popolare [*calque > neologism*]	private citizen acting as a prosecutor [*paraphrase*] *actio popularis* [*loan word: Latin**]	

Table 12. Acusador particular, privado, popular [ES > IT, EN]

Another case in which translation solutions are negotiated in diachrony can be the term *libertad condicional/provisional bajo fianza* (arts. 530-531 LECrim) which no longer exists in the Italian criminal procedure, whereas it does exist in the English and Welsh criminal proceedings.

[13] See also: https://www.proz.com/kudoz/spanish_to_english/law_general/5184862-fiscal_acusador_privado.html (30/01/2018).

ES	IT	EN
libertad provisional/libertad condicional bajo fianza	libertà provvisioria (*) su cauzione [*calque*] liberazione su cauzione [*functional equivalent + calque*]	Release on bail or parole [*functional equivalent*]

Table 13. Libertad provisional/condicional bajo fianza [ES > IT, EN]

The Italian term *libertà provvisoria* (after substituted with *rimessione in libertà*) was used in the ancient 1988 Code of Criminal Procedure and it has been replaced now with the simple term *liberazione* of the suspect (art. 299 CPP).

One last example of inexistent concepts in the target legal cultures is the notion of *incidente probatorio* (see example 4), i.e. a special evidentiary hearing that takes place during preliminary investigations due to particular conditions (see art. 392 CPP). Paraphrases are needed to transpose the legal concept in Spanish and English contexts.

(4) Al contrario, per quel che riguarda i fatti commessi in danno degli ultraquattordicenni, si rileva che dalla lettura dei verbali di *incidente probatorio* non emerge alcuna condotta violenta o minacciosa posta in essere dall'imputato.

IT	ES	EN
incidente probatorio	vista oral mediante práctica anticipada de la prueba [*paraphrase*]	special evidentiary hearing [*paraphrase*] pre-trial hearing [*paraphrase*]

Table 14. Incidente probatorio [IT > ES, EN]

The cases exemplified in this section have demonstrated that conceptual networks, conveyed by terminology, do represent a constraint in the search for equivalence among legal concepts that are absent in the receiving cultures. A number of techniques may be adopted, whose application changes according to the skopos and macrostrategy chosen by the translator.

Lexical units can cause problems especially in cases of polysemy, synonymy (see Pontrandolfo 2013 for a case study on the terms *sumario* and *indagini preliminari*) and false friends (see Brannan 2017: 110-111; Alcaraz Varó & Hughes 2002: 41-43):

- Investigating judge [EN] vs. GIP [IT] / juez instructor [ES]
- Magistrate [EN] vs. magistrato [IT] / magistrado [ES]
- Tribunal [EN] vs. tribunal [IT] / tribunal [ES]
- Prescription [EN] vs. prescrizione [IT]
- Arrest [EN] vs. arresto [IT] / arresto [ES]
- Imputado [ES] vs. imputato [IT] > indagato

Legal translators need to be aware of these subtle differences to avoid legal misunderstanding.

4.3.2 The morphosyntactic level

The morphosyntactic level is perhaps the less constrained area. The aim of this section is to hint at some of the most important techniques that can be used when translating criminal judgments (for a detailed analysis of this level, see Alcaraz Varó & Hughes 2002: 181-192).

When translating the morphosyntax of an English judgment into Spanish or Italian and viceversa, it is necessary to consider some of the generic features of judicial discourse.

A first significant difference between English and Spanish and Italian judicial style is the use of personal pronouns: English judges use the first person singular to express their opinions (*I have not found, I readily see*, *I recognise*, *I find myself driven to conclude*, etc.). The use of the first person plural is confined to objective reference to the activity or thinking of the judges as a body or group (*We have considered the issue*, *We propose to start by considering*, *We have concluded to the contrary*, etc.) or else it is to be understood as expressing not the judge's personal view but the collective awareness of the whole court and of any members of the public who have followed the case (see Alcaraz Varó & Hughes 2002: 115). Spanish and Italian judges prefer the impersonal style, the third person singular and the passive voice as strategies to preserve the face while deleting any references to the identity of the subject or agent of the verb.

Transposition, i.e. the substitution of one grammatical category for another, is another factor that should be considered when translating a judgment from English into Spanish or Italian (Alcaraz Varó & Hughes 2002: 181-183). It is known that English tends naturally towards the noun phrase, whereas Spanish and Italian are

more inclined to expressions constructed around verbs and phrases; English prefers repetition, considered as a source of clarity, whereas Spanish and Italian tend to avoid repetition. English is much more prone to the use of the passive voice than Spanish and Italian, so active or impersonal forms may be used instead of the passive.

Expansion or periphrases may be called for in translating any part of speech, often in conjunction with transposition, since the reason due to the synthetic syntactic structure that requires the drawing out of the TL equivalent (an example are the *-ly* adverbials frequently used by English judges) (see Alcaraz Varó & Hughes 2002: 183-185).

Finally, modulation, i.e. changes to semantic categories or even alteration of the processes by which thoughts are expressed, may be especially useful when translating common-law judgment into civil-law one. As Alcaraz Varó & Hughes (2002: 185-186) put it, it is extremely useful to the translator of judgments and rulings, given the linguistic habits of the judiciary in the English-speaking countries, who often draw on everyday experience in formulating their opinions. The natural tendency is that of favouring colloquialism[14] of utterance, since they are more inclined than their continental counterparts to express themselves vigorously and personally and to deck out their speeches with rhetorical flourishes (see also § 4.3.4.).

The translator's duty at the morphosyntactic level should be that of naturalising the syntax of the TT while preserving the syntactic spirit of the ST.

Moreover, a balance should be struck between the literal approach to the syntax, which often makes legal documents "literalist to the point of illegibility"[15] (Pym

[14] Slight departures from the formal register that is the rule; admixture of more colloquial utterance (e.g. It is *high time* the decision was taken; I can *pick up* the story with the final House of Lords decision; Comity, like fairness, is *a two-way-street*; Although *at first blush* that express assurance might be thought of some importance; etc.) to temper the severity of the law, to make the opinion sound more humane and to create an impression of reader-friendliness suited to the democratic tone of our times (see Alcaraz Varó & Hughes 2002: 116).

[15] An opposite approach is that proposed by Alcaraz Varó & Hughes: "[…] any translation should attempt to be as accurate as possible and should never take refuge in sheer literalism, approximate legalese or mere gobbledegook. However arid or pedantic they may appear, all the 'subject to', 'whereas', 'except as otherwise indicated' or 'any person who either…or…'

1992: 212) and a more flexible perspective that does not alter the overall texture of the genre, but it is not a word-for-word approach.[16]

4.3.3 The phraseological level

The phraseological approach to be adopted while translating criminal judgments will ultimately depend on the purpose (*skopos*) and addressee of the TT (endo- vs. extra procedural function of the translation, see § 3). However, an effort should be made to reproduce the "routines" of the genre (Hatim & Mason 1997: 190).

A detailed description of the procedures that can be adopted to translate phraseological units (PU) in criminal judgments is provided in Pontrandolfo (2016: 159-166). A synthesis is presented here:

1. PU → PU (ex. interponer recurso (ES) > lodge an appeal (EN) / proporre ricorso (IT)
2. PU → No PU (ex. en concepto de (ES) > as (EN) / come (IT)
3. No PU → PU (ex. contra (ES) > at the expense of (EN) / ai danni di (IT)
4. PU → different/similar PU (ex. pronuncio, mando y firmo > I declare, order and sign (EN) / Così deciso con sentenza, debitamente pronunciata e sottoscritta (IT)
5. PU → Calque (ex. responsible criminalmente (ES) > criminally responsible (EN) / responsabile penalmente (IT)
6. PU → Ø (ex. debo absolver y absuelvo (ES) > I would acquit (EN) / [Questo giudice] assolve (IT).

Corpora (especially comparable corpora) of authentic legal texts represent an efficient tool to reproduce habitus/routines in TTs so as to give a legal flavour to the discourse.

4.3.4 The textual/pragmatic level

The aim of this section is to focus not so much on traditional textual aspects that have been dealt with in literature quite extensively (e.g. textual strategies to

clauses require extremely careful perusal and make exceptional demands on the translator's lexical skills as well as on their syntactic imagination" (2002: 178).

[16] As a way of example, in the translation into English of the Italian Code of Criminal Procedure (see Scarpa et al. 2017), explicitation strategies were needed at the *sentence* level in order to disambiguate potentially ambiguous pronouns, add missing information in the TT to address any instances of communicative underdeterminacy of the ST, simplify and normalize anomalous word-order and other features of Italian legalese.

promote *coherence* (see Alcaraz Varó & Hughes 2002: 192-194): *discourse markers* (see Szczyrbak 2013; Pontrandolfo 2014; *deixis and intertextuality* or *polyphony/discursive dialogism* see Garzone 2016; punctuation, etc.), but rather to look at the pragmatic level which plays a pivotal role in judicial decisions and has not received so far so much attention.

From a pragmatic point of view, judgments may be considered as performative macro-utterances producing legal effects (Garofalo 2009: 235). Their main objective is influencing and changing the reality more than describing it or informing about it. The final performative act with illocutive force contained in the decision is the core of this pragmatic axis and has thetic value, since they change the reality (see Table 15).

EN	**ES**	**IT**
I would allow/dismiss / The appeals against conviction are allowed / This appeal is dismissed.	F A L LO *Condeno al acusado* Jose Enrique como autor criminalmente responsable de […] Debo condenar y condeno / absolver y absuelvo	PQM *rigetta il ricorso e condanna il ricorrente* al pagamento delle spese processuali […] P.Q.M. La Corte di appello di […] assolve gli stessi

Table 15. Pragmatic realisation of the final performative act [EN, ES, IT]

The main contextual focus of the final move is obviously prescriptive but there are also additional textual functions intervening in the other moves: a) narrative (Facts); b) descriptive (Facts); c) argumentative (Arguing the case); d) persuasive (Arguing the case). In each of this generic move, it is possible to identify different speech acts in addition to the traditional declarative acts expressing epistemic modality:

- representative acts (e.g. EN: *I have seen* a copy of the report provided by; ES: *Vistos* en juicio oral y público, IT: *Visti* gli atti, il provvedimento impugnato ed il ricorso; *Sentita* la relazione ES: *Doy fe*)
- directive acts (e.g. EN: This article shall not prevent states from; ES: los hechos *deben ser considerados* como un delito de lesiones, IT: *si deve concludere* che nel provvedimento questorile de quo, etc.)
- anankastic acts (i.e. acts that do not prescribe nor forbid, but just express a necessary requirement) (e.g. EN: *It will be necessary to revert* to these in

greater detail; ES: *procede acceder* a lo solicitado por el MF, *cabe dictar* una sentencia absolutoria; IT: la questione *va ricondotta* nell'ambito dell'inadempimento);
- veredictive acts having thetic value (e.g. EN: The appeal *is allowed*; ES: *debo condenar y condeno*; IT: il ricorso *va* rigettato; see Table 15).

From a pragmatic point of view, common-law and civil-law systems differ on the extra vs. intra-procedural function of the judgment.

In the former, judgments can be considered as a specific case of 'self-referential' discourse, which justifies itself, since it is addressed (almost exclusively) to the parties and the counsels for defence who know the facts. The brief exposition of the proved facts as well as the cryptic character of the legal arguments demonstrate that in the Roman-German/civil-law tradition judgments have an intra-procedural function (Scarpa & Riley 1999: 44) since they do not aim at convincing nor informing a potential reader who is not aware of the proceedings (see Garofalo 2009: 235-245). This is the reason why frequent violations of the Gricean maxims (esp. quantity and manner) occur, every time the civil-law judges intertextually refer to the Codes considering unnecessary any other explanations (which calls for inferences that can be realised by expert readers). English judgments, instead, seem to be more oriented to the extra-procedural function (see Lord Hope of Craighead 2005: 2) which represent a challenge from a translation point of view.

Finally, judicial style is also a key generic feature (therefore a discursive constraint) of judgments which pertains to the textual level. As observed by Alcaraz Varó & Hughes, in line with the British tradition of strongly reasoned judicial opinion, judgments are often couched in a style that is flavoured with the personality of their maker. Flashes of verbal wit, veiled sarcasm and ironic or pointed comment on particular submissions are not unusual (2002: 114). Examples 5 and 6 show some famous opening lines[17] of criminal judgments which require a stylistic effort on the part of the translators.

[17] https://sirhenrybrooke.me/2017/04/29/judgments-the-best-opening-lines-and-a-few-more/ (31/01/2018).

(5) LORD DENNING M.R: It happened on April 19, 1964. It was bluebell time in Kent. Mr. and Mrs. Hinz had been married some 10 years, and they had four children, all aged nine and under. The youngest was one. Mrs. Hinz was a remarkable woman. In addition to her own four, she was foster-mother to four other children. To add to it, she was two months pregnant with her fifth child. On this day they drove out […] Hinz v Berry [1970] 2 QB 40.

(6) Lord Justice Mantell: 1. Some time between midnight and 1 o'clock in the morning on 30th August 2001 a burglar alarm went off at Whetstone golf club in Leicestershire. It was not the sort of burglar alarm which can be heard in the neighbourhood, but one which connected with the police station, and as a result, police officers arrived at the club to find on cursory examination, that it did not appear that the club house itself had been interfered with. However, on looking around, they found in the car park to the golf club, not too distant from the club house, two men dressed in frogman, or diving suits, and in possession of a sack, it can be described in no other way, of very wet golf balls. R v Rostron & anr [2003] EWCA Crim 2206

Nobody can question the literary style of these opinions, that is far from the aridity of legal jargon and pomposity which are thought to be the hallmarks of judicial style (see Solan 1993; Posner 2009: 329-385) and which are typical of the Spanish and Italian tradition.

In translating between common-law and civil-law system, style and tone needs to be preserved, since it is the translator's duty to reproduce them as faithfully as possible in the target language, even though the linguistic habits of the local judiciary are different (e.g. greater restraint or formality in Spanish and Italian judicial discourse compared to the English one) (Alcaraz Varó & Hughes 2002: 116).

5 Concluding remarks

The multifaceted discursive framework outlined in this chapter represents one of the many possible approaches to deal with the complexity of legal translation. One of its advantages is undoubtedly its schematic and systematic approach in classifying the multilayered discursive constraints in action while translating legal texts, as exemplified with the genre 'judgment'. Moreover, it also has the crucial

function of highlighting the main asymmetries between legal cultures which is the first step to search for missing equivalences.[18]

The genre-based perspective has allowed to decline each discursive constraint to a tripartite generic structure, thus enhancing the importance of "generic integrity", i.e. the stability of the communicative purpose across cultures" (Bhatia & Engberg 2004: 8) and "stability in the characteristics of a genre across language, socio-political contexts, and cultures" (Bhatia et al. 2008).

While translating legal genres, especially in professional discourse, it is of utmost importance to maintain such generic integrity of the TT, which is what has been stressed throughout this chapter. By conceptualising the genre in the proposed framework, legal translators are able to "make relevant connection between the use of language on the one hand and the purpose of communication on the other" (Bhatia 1997: 212) which is something every translator (not only legal translators) should aim at.

References

Alcaraz Varó, Enrique (2009): "Isomorphism and Anisomorphism in the Translation of Legal Texts." In: Olsen, Frances / Lorz, Alexander / Stein, Dieter [eds] (2009): *Translation Issues in Language and Law*. Basingstoke: Palgrave Macmillan. 182 – 192.

Alcaraz Varó, Enrique / Hughes, Brian (2002): *Legal Translation Explained*. Manchester: St. Jerome.

Bhatia, Vijay K. (1993): *Analysing Genre. Language Use in Professional Settings*. London / New York: Longman.

Bhatia, Vijay K. (1997): "Translating Legal Genres." In: Anna Trosborg [ed.] (1997): *Text, Typology and Translation*. Amsterdam: Benjamins.

Bhatia, Vijay K. / Engberg, Jan (2004): "Introduction." In: *Hermes, Journal of Language and Communication in Business* 32, Thematic section: Generic Integrity in International Commercial Arbitration, 7 – 11.

Bhatia, Vijay K. / Candlin, Cristopher N. / Engberg, Jan (2008): *Discourse across Cultures and Systems*. Hong Kong: Hong Kong University Press.

Biber, Douglas / Connor, Ulla / Upton, Thomas A. (2007): *Discourse on the Move. Using Corpus Analysis to Describe Discourse Structure*. Amsterdam: Benjamins. (= Studies in Corpus Linguistics).

Bocquet, Claude (1994): *Pour une méthode de traduction juridique*. Prilly: CB Service.

Borja Albi, Anabel (2007): *Estrategias, materiales y recursos para la traducción jurídica inglés-español*. Madrid: Edelsa.

[18] This top-down approach proves to be extremely useful also in the training of legal translators since it allows a simplification of the anysomorphysm that usually scares students.

Borja Albi, Anabel (2013): "A Genre Analysis Approach to the Study of the Translation of Court Documents." In: *Linguistica Antverpiensia. New Series – Themes in Translation Studies* 12, 33 – 53.

Brannan, James (2017): "The Benefits and Challenges of Translating A Code of Criminal Procedure." In: Gialuz, Mitja / Lupária, Luca / Scarpa, Federica [eds] (2017): *The Italian Code of Criminal Procedure. Critical Essays and English Translation*. Second edition. Milanofiori Assago: Wolters Kluwer / CEDAM. 97 – 112.

Chesterman, Andrew (1997): *Memes of Translation. The Spread of Ideas in Translation Theory*. Amsterdam: Benjamins.

Delisle, Jean / Lee-Jahnke, Hannelore / Cormier, Monique C. [eds] (1999): *Terminologie de la Traduction: Translation Terminology / Terminología de la Traducción / Terminologie der Übersetzung.* Amsterdam: Benjamins.

Garofalo, Giovanni (2009): *Géneros discursivos de la justicia penal. Un análisis contrastivo orientado a la traducción*. Milano: FrancoAngeli.

Garzone, Giuliana (2016): "Polyphony and Dialogism in Legal Discourse: Focus on Syntactic Negation." In: Tessuto, Girolamo [ed.] (2016): *Constructing Legal Discourses and Social Practices: Issues.* Newcastle upon Tyne: Cambridge Social Publishing. 2 – 27.

Garzone, Giuliana (2000): "Legal Translation and Functional Approaches: a Contradiction in Terms?" In: *Actes du Colloque International "La traduction juridique. Histoire, théorie(s) et pratique, 17-19.2.2000, Genève, École de Traduction et d'Interprétation - Université de Genève,* 395 – 414.

González Davies, María (2004): *Multiple Voices in the Translation Classroom*. Amsterdam: Benjamins.

Gotti, Maurizio (2016): "The Translation of Legal Texts: Interlinguistic and Intralinguistic Perspectives." In: *ESP Today, Journal of English for Specific Purposes at Tertiary Level* 4.1, 5 – 21.

Guggeis, Manuela (2014): "Multilingualism in the European Union Decision-Making Process." In: Ruggieri, Francesca [ed] (2014): *Criminal Proceedings, Languages and the European Union. Linguistic and Legal Issues.* Heidelberg / New York / Dordrecht / London: Springer, 45 – 56.

Hasan, Ruqaiya (1984): "The Nursery Tale as a Genre." In: *Nottingham Linguistic Circular* 13, 71 – 102.

Hatim, Brian / Mason, Ian (1997): The Translator as Communicator. London / New York: Routledge.

House, Juliane (1997): *Translation Quality Assessment: A Model Revisited*. Tübingen: Narr.

López Samaniego, Anna (2006): "Los ordenadores del discurso enumerarivos en la sentencia judicial: ¿estrategia u obstáculo? In: *Revista de Llengua i Dret* 45, 61 – 87.

Lord Hope of Craighead (2005): *Writing Judgments. Annual Lecture*, Judicial Studies Board.

Nord, Christiane (1991): *Text Analysis in Translation*. Amsterdam / Atlanta: Rodopi.

Nord, Christiane (1997): *Translating as a Purposeful Activity*. Manchester: St Jerome.

Palumbo, Giuseppe (2010): "I vincoli traduttivi: appunti per una classificazione." In: Palumbo, Giuseppe [ed.] (2010): *Sui vincoli del tradurre*. Modena: Officina edizioni. 147 – 167.

Peñaranda López, Antonio (2011): *El proceso penal en España, Francia, Inglaterra y Estados Unidos: descripción y terminología*. Granada: Comares (= Interlingua).

Pérez Gil, Julio (2003): "Private Interests Seeking Punishment: Prosecution Brought by Private Individuals and Groups in Spain." In: *Law & Policy* 25.2 (April, 2003), 151 – 172.

Pontrandolfo, Gianluca (2010): "La fase preliminare del processo penale. Il contributo dell'approccio sociocognitivo ad un'indagine terminografica spagnolo-italiano." In: *RITT (Rivista Internazionale di Tecnica della Traduzione)* 12, 251 – 260.

Pontrandolfo, Gianluca (2012): "Terminologia giudiziaria e traduzione letteraria: il caso di 'Testimone inconsapevole' di G. Carofiglio in inglese e spagnolo." In: *inTRAlinea*, online translation journal 14.

Pontrandolfo, Gianluca (2013): "Polisemia y sinonimia en la terminología del derecho procesal penal español e italiano: el caso de 'sumario'/'indagini preliminari'." In: *Revista de Llengua i Dret* 60, 37 – 49.

Pontrandolfo, Gianluca (2014): "Marcadores argumentativos del contraste y discurso judicial: un estudio propedéutico para la traducción." In: *Hermes - Journal of Language and Communication in Business* 52, 99 – 124.

Pontrandolfo, Gianluca (2016): *Fraseología y lenguaje judicial. Las sentencias penales desde una perspectiva contrastiva.* Roma: Aracne.

Posner, Richard A. (^{3}2009): *Law & Literature*. Third edition. Cambridge Mass / London: Harvard University Press.

Pym, Anthony (1992): *Translation and Text Transfer. An Essay on the Principles of Intercultural Communication.* Frankfurt am Main: Peter Lang.

Pym, Anthony (2003): "Redefining Translation Competence in an Electronic Age." In: *Meta* 48.4, 481 – 497.

Pym, Anthony (2008): "Professional Corpora: Teaching Strategies for Work with Online Documentation, Translation Memories and Content Management." In: *Chinese Translator's Journal* 29.2, 41 – 45.

Sánchez Montero, María del Carmen (1996): *Aproximación al lenguaje jurídico: una sentencia española de derecho laboral y su traducibilidad al italiano*. Padova: CLEUP.

Šarčević, Susan (1985) "Translation of culture-bound terms in laws." In: *Multilingua* 4.3, 127 – 133.

Šarčević, Susan (1997): *New Approach to Legal Translation*. The Hague / London / Boston: Kluwer Law International.

Scarpa, Federica (^{2}2008) *La traduzione specializzata. Un approccio didattico professionale*, Seconda edizione. Milano: Hoepli.

Scarpa, Federica / Riley, Alison (1999): "La traduzione della sentenza di common law in italiano." In: Scarpa, Federica [ed.] (1999): *Traduzione, società e cultura* 9, 1 – 91

Scarpa, Federica / Peruzzo, Katia / Pontrandolfo, Gianluca (^{2}2017): "Methodological, Terminological and Phraseological Challenges in the Translation into English of the Italian Code of Criminal Procedure. What's new in the second edition." In: Gialuz, Mitja / Lupária, Luca / Scarpa, Federica [eds] (^{2}2017): *The Italian Code of Criminal Procedure. Critical Essays and English Translation*. Second edition. Milanofiori Assago: Wolters Kluwer / CEDAM. 57 – 95.

Scott, Juliette (2018): "Negotiating Constraints on Legal Translation Performance in an Outsourced Environment." In: Tessuto, Girolamo [ed.] (2018): *Law, Language and Communication: Negotiating Cultural, Jurisdictional and Disciplinary Boundaries*. Cambridge: Cambridge Scholars, 370 – 392.

Scott, Juliette (2019): *Legal Translation Outsourced*. Oxford: Oxford University Press.

Schäffner, Cristina [ed.] (1999): *Translation and Norms*. Clevendon: Multilingual Matters.

Schiffrin, Deborah / Tannen, Deborah / Hamilton, Heide E. [eds] (2001): *The Handbook of Discourse Analysis*. Oxford: Blackwell Publishers.

Solan, Lawrence M. (1993): *The Language of Judges*. Chicago / London: The University of Chicago Press.

Soriano-Barabino, Guadalupe (2016): *Comparative Law for Legal Translators*. Frankfurt am Main: Peter Lang (= New Trends in Translation Studies, 17).

Swales, John M. (1990): *Genre Analysis: English for Academic and Research Settings*. Newcastle upon Tyne: Cambridge University Press.

Szczyrbak, Magdalena (2013): *The Realisation of Concession in the Discourse of Judges: A Genre Perspective.* Cambridge: Jagiellonian University Press.
Taranilla, Raquel (2015): "El empleo de imágenes en la sentencia judicial. Reflexiones sobre la evolución del género." In: *Revista de Llengua i Dret* 63, 1 – 12.
Toury, Gideon (1995): *Descriptive Translation Studies and Beyond*. Amsterdam: Benjamins.
Van Dijk, Theo (1977): *Text and Context. Explorations in the Semantics and Pragmatics of Discourse*. London: Longman.

CP: Codice Penale
http://www.altalex.com/documents/codici-altalex/2014/10/30/codice-penale
CPP: Codice di Procedura Penale
http://www.altalex.com/documents/codici-altalex/2014/10/30/codice-di-procedura-penale
Código Penal (Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal)
http://noticias.juridicas.com/base_datos/Penal/lo10-1995.html
LECrim: Ley de Enjuiciamiento Criminal
http://noticias.juridicas.com/base_datos/Penal/lecr.html
LOPJ: Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial
http://noticias.juridicas.com/base_datos/Admin/lo6-1985.l1t4.html

Part III

Recently adopted translation training curricula and didactics

Chapter 8

Future-proofing legal translation: a paradigm shift for an exponential era

Anabel Borja Albi and Robert Martínez-Carrasco

Abstract
This study is intended as a first attempt at future-proofing legal translator profiles to fit the digital era. For this purpose, we will compare the requirements demanded by the market *today* with the results of a comprehensive empirical study carried out in 2017, which revisited various competence models for legal translation and their implementation in Spanish Translation and Interpreting (TI) curricula. We will start by analysing the exponential changes society is undergoing as a result of globalisation and technological progress, especially Artificial Intelligence (AI), the increasing power of Big Data and Interconnectedness. We will then consider the impact these changes will have on the legal translation industry. Such transformations (in particular job losses due to automation) are indeed disruptive and bring new risks and challenges to the profession. The results of the empirical study we present here lead us to conclude that the competences and profiles of legal translators will need to be reconsidered in the light of the new organisational approaches and demands of the legal translation market. As a consequence, new educational strategies will need to be incorporated into current legal translation competence models and curricula to define the future niches and profiles of legal translators and prevent them from being turned into pawns of monopolistic multinationals and Tech Giants.

Keywords: AI and automatic translation, globalisation, language services and translation market, legal translation competence and curriculum adaptation, multiservice trans giants

1 Introduction

Current economic forecasts suggest that large numbers of people will be affected by the automation of many jobs in the next fifty years. According to the World Economic Forum's Global Competitiveness Report 2016–2017 (World Economic Forum 2017) the fourth industrial revolution is already underway due to a convergence of exponential advances in the fields of robotics, the Internet of things, autonomous vehicles, 3-D printing, nanotechnology, biotechnology, information and communication technologies, and more recently Artificial Intelligence (AI). This report from the WEF argues that as a result of these technological changes, together with geopolitical and socio-economic factors, 5 million jobs will have been

lost by 2020, even allowing for those that will be created by adapting to the new employment paradigm.

Schwab (2017) defines the first three industrial revolutions as the transport and mechanical production revolution of the late eighteenth century, the mass production revolution of the late nineteenth century and the computer revolution of the 1960s. In this fourth revolution, he claims: "The changes are so profound that, from the perspective of human history, there has never been a time of greater promise or potential peril". Other recent studies of the labour force (Frey & Osborne 2013; Brynjolfsson & McAfee 2012; McKinsey Global Institute 2017; World Economic Forum 2016) confirm these forecasts.

As well as the disruption that will be caused in the labour market and the global economy, at the back of everyone's mind is the threat that machines might eventually become smarter than human beings, which could happen, according to tech gurus, some time in the next 30 years. Whatever the exact date, it will ultimately affect everything, and what is a positive revolution for some is perceived by others as a serious threat, including major world figures like Stephen Hawking and Elon Musk, who recently signed an open letter calling for research on the societal impact of AI (Hern 2015).

In this context, various national and international organisations, social movements and associations of critical scientists have been analysing for several years this new paradigm in order to address its impact and the legislation to come regarding human rights, employment rights, the right to privacy, copyright protection, economic equality, sustainability of pensions, policies on monopolies, automated labour, robot liability and ethics, etc.

2 How globalisation and technology will change the translation industry

In the light of these developments and the advances in Machine Translation (MT) in the last five years due to the increase in Big Data and AI, it is essential to think about what the future holds for the translation industry in this ongoing battle of man vs machine. Up till now online automatic translation tools have proved ineffective for producing Fully Automated High-Quality Translation (FAHQT), but in recent

years the application of deep learning data technology has offered the prospect of *at least* Fully Auto-Usable Translation (FAUT) without post-editing (Enríquez Raído 2016: 980)

On the question of how far translation activity will lend itself to computerisation, historically the latter has been largely confined to routine manual and cognitive tasks involving explicit rule-based activities, but following recent technological advances it is also extending to domains commonly defined as non-routine (Frey & Osborne 2013: 17). Translation involves routine and non-routine cognitive tasks, and with the ever-increasing availability of Big Data (large textual corpora in the case of translation), a wide range of non-routine cognitive translation tasks are becoming computerisable. To this we must add the development of algorithms for processing Big Data, which are rapidly entering domains reliant upon storing or accessing information, such as translation. In conclusion, the language industry is regarded as one of the fields in which the technological revolution will be felt most keenly.

> The establishment of shared theoretical frameworks, combined with the availability of data and processing power, has yielded remarkable successes in various component tasks such as speech recognition, image classification, autonomous vehicles, machine translation, legged locomotion, and question-answering systems. (Russell / Dewey & Tegmark 2015: 105).

This technological progress has given rise to an unprecedented change in the translation industry, attributable to 1) the importance of translation and localisation in globalisation processes and the exponential increase in multilingual web content in more language combinations; 2) advances in the field of Big Data and AI, with the consequent consolidation of MT; 3) the process of corporate concentration and the new profiles of translation companies.

2.1 Increasing demand for translation: GILT processes, the rise of web-mediated genres and language pair variability

The GILT (Globalisation, Internationalisation, Localisation and Translation) process[1] inevitably entails translation and localisation actions to adapt organisations' communication and marketing plans to the various markets and cultures at which they are aimed. As global markets expand, the demand for multilingual

[1] Anastasiou & Schäler (2010: 11).

content increases exponentially. Another factor that will drive the translation industry is the growing concern for internationalisation observed in public bodies and private companies, prompting them to incorporate modules in other languages into their websites in their rush to globalise. Multilingual websites are now the main vehicle for information (both internal and external) used by organisations.

> Institutional communication strategies on the Web are nowadays closely linked to the emergence of semantic web technologies, […] making it possible not only to send messages but also to receive responses and interact dynamically with our respondents, post opinions in forums, consult databases and expand their content, create personalized user profiles, buy and sell services, and so on. Internet users are now not only looking for information, but want to (and in many cases have to) collaborate and participate actively in carrying out actions inherent in the dynamics of the community. (Ezpeleta-Piorno & Borja Albi 2017: 637)

The limitations that paper imposed on content generation have disappeared and production is now greater than ever because of the nature of the communicative interaction that arises in 'multilingual web genre ecologies', which Ezpeleta and Borja define as "complex conglomerates of genres based on distributed cognition and shared authorship". The volume of production of texts requiring translation in these conglomerates is such that it can only be tackled using technological solutions, applying MT with and without post-editing (PED) and connecting content management with translation management systems. In fact it is common these days to have some sections of corporate websites, such as customer comments and reviews, and even other more important types of content, translated using MT without any kind of post-editing at all.

> Vast quantities of text needing to be translated fairly quickly into other languages are currently being produced. These translation tasks can be performed by professionals, who ensure the quality of the translations, but the process is generally slow and expensive. This has compelled organisations to (semi)automate these processes using machine translation (MT) systems. An illustration of the importance of MT is the volume of words generated by the MT industry: over 100 billion words per day. (Casacuberta & Peris 2017: 67)

To the exponential increase in the volume of translations predicted by the reports we present below (see section 2.3) we must add the changing importance of the language pairs required, imposed by the new economic, political and social power relations among nations. Although up to now English has been the main target language, studies indicate that new language combinations will soon be the ones

with the highest volume of translation (see Lommel & De Palma 2017). These changes and developments are crucial to understanding overall market trends in language services.

2.2 Advances in Artificial Intelligence, Big Data and Neural Machine Translation

The increase in content, the larger number of languages and the demand for rapid turnaround compel the language industry to apply all the resources that the new natural language processing (NLP) technologies place at their disposal. NLP combines applied linguistics with technologies such as AI, machine learning and statistical inference to process human language in its wide variety of languages, dialects and forms of expression.

The idea of computer-based AI dates back to 1950, when Alan Turing proposed what has come to be called the *Turing test*: can a computer communicate well enough to persuade a human that it, too, is human? According to Casacuberta / Peris (2017: 67), the evolution of MT can be summarised very briefly as follows. In the 1950s, people began working with simple statistical models, but the limited power of computers at that time made it impossible to develop these models. Then, rule-based technologies arose and, subsequently, statistical machine translation (SMT) based on examples or corpora (translation memories). In the 1990s, SMT re-emerged with more powerful computers and more complex statistical models using large bilingual corpora. Currently, the authors consider that "neural machine translation (NMT) has demonstrated its effectiveness thanks to the new neural architectures, new components and new processors" (Casacuberta & Peris 2017*:* 68).

With the ever-increasing availability of Big Data and new deep learning technologies in the last few years, NLP has taken an exponential leap forward, and a wide range of non-routine cognitive tasks have become computerisable. In this regard, MT has been aided by the recent production of increasingly large and complex datasets. Institutional parallel corpora (e.g., EU documents, UN documents, specific datasets) and Internet language corpora (web crawling, news media, medical/legal documents) have been used to train translation systems. Google Translate, for instance, has resorted to UN documents (translated by human experts into six languages) to monitor and improve the performance of different MT algorithms.

In conclusion, AI in the twenty-first century has regained momentum and investment in this field is growing rapidly. Reports from several business analytics strategy consultancies (Alta Plana, Gartner, LTInnovate, etc.) foresee substantial growth in the world market for NLP over the next few years.

> Machine learning and a subfield called deep learning are at the heart of many recent advances in artificial intelligence applications and have attracted a lot of attention and a significant share of the financing that has been pouring into the AI universe – almost 60 percent of all investment from outside the industry in 2016. (Talwar & Koury 2017: 8)

Many Tech Giants, translation companies and startups are working nowadays to improve their translation engines, the most widely used in the world being the one developed by Google. The objective now is to have increasingly powerful, high-quality bilingual databases and to *train* translation engines so as to reach the point of being able to use MT without post-editing, as neural MT is gradually introduced into major MT engines and more language pairs are added. For the moment, however, a large percentage of professional translations are in fact created by post-editing MT output.[2]

A new challenge for the industry, both for private companies and for public organisations, will be to implement comprehensive technological language solutions that combine MT with quality control systems and Translation Management System (TMS) connectivity to optimise work flows. A clear example of these new services is the proxy translation for websites now offered by many companies, which enables new content to be detected automatically and translated directly on the website without the client having to worry about sending the new content and uploading the translations to the website.

2.3 Concentration of corporate power and multiservice Trans Giants

Reports on the language services industry[3] point to substantial growth in demand. According to the 2017 'The Language Services Market' report by the Common Sense Advisory consultancy, an independent market research firm, the world

[2] According to Common Sense Advisory (2016), more than 80% of LSPs offer Machine Translation Post-Editing (MTPE) services.

[3] Common Sense Advisory annual reports on Language Services [available at https://goo.gl/84ZAKH]; Gala Globalization and Localization Association [available at https://goo.gl/G2mjQ8]; Statista [available at https://goo.gl/Kx9mfn].

market for outsourced language services and technology reached US$ 43 billion. Data on small and individual language service providers are difficult to come by, due to the variety of ways the profession is practised. The majority of language agencies are small firms engaged mainly in translation or interpreting. In contrast, many of the larger language companies are considered *multiservice* providers offering translation (including MT), transcreation, localisation and localisation engineering, dubbing, voice-over and narration for audio and video content, desktop publishing and consulting, among other services. A list of the Top 100 Language Service Providers in 2016 can be found on the Common Sense Advisory Board website, where we find Lionbridge and Trans Perfect at the head of the list.[4]

Concentration of corporate power is another defining feature of the future global economy. The technological revolution is led and controlled by the Tech Giants and is helping to produce unprecedented concentrations of businesses. As in the case of Google and its parent company Alphabet, the dominant companies not only monopolise the sectors they work in; they also control political power and lead the technological progress that helps them become bigger, gradually swallowing the small businesses that previously provided them with auxiliary services. This is also the case in the translation industry, where big multiservice firms, some of which do not have translation as their main service, are gobbling up small translation companies and placing themselves in a clearly dominant market position. Supported by advanced language technology and software, cloud computing, powerful platforms and other technologies (AI, voice assistants, virtual and augmented reality, robotics, home automation, digital entertainment, autonomous transport, etc.), together with the many platforms, cloud servers, app stores, ad networks and venture firms they own, they generate most of the turnover in the language service industry, occupying a monopoly position in the market.

In conclusion, we can state that the emergence of digital systems, networked communications, machine learning and large-scale data analysis, and the increasing integration of these technologies into translation businesses and production processes, entails a risk of job losses, but also important advantages, in that there is an ever greater demand for translation into more and more languages. It will,

[4] The 2016 data for Spain can be consulted in Rico Pérez & García Aragón (2016).

however, involve a different way of working, requiring new training profiles that include technological skills, computational linguistics, marketing, transcreation, proofreading and entrepreneurship. For Brynjolfsson & McAfee (2012), from the MIT Center for Digital Business, the good news is that 'humans are strongest exactly where computers are weak, creating a potentially beautiful partnership'. While new technology may cause the creative destruction[5] of some jobs, it will also create new jobs, which have yet to be defined.

3 New competences and new profiles for legal translators

Demand for legal translation has remained consistently high over the years as the world has become increasingly globalised, and market research reports show that legal and financial translation are the fields that are growing most strongly, to articulate and give legal form to the new international relations. The needs of the major users of legal translation services and the range offered by providers will pave the way for automation of production processes on the industry.

International organisations, government agencies and top law firms in the magic and silver circles (which we identify as the main users and employers of legal translation services) have already joined the race against the machine. International organisations have been working for many years with assisted translation solutions involving MT with post-editing, often using ad-hoc solutions or commercial software partly developed by their own language services (e.g. Systran and Moses in the EU). Language technology plays a crucial role within the European Union, which has unconditionally supported all NLP initiatives, most recently neural machine translation. Furthermore, the multilingual nature of these organisations has made them the largest generators of linguistic Big Data, and their translation memories have contributed to the success of the latest advances in MT.

At national level, government agencies (ministries, courts, etc.) now communicate with citizens through large multilingual websites reflecting the current multicultural

[5] Creative destruction refers to the incessant product and process innovation mechanism by which new production units replace outdated ones. The term was coined by Joseph Schumpeter (2003), who considered it "the essential fact about capitalism".

reality, and this will give rise to an exponential rise in the demand for legal translation in an increasing number of language pairs.

As for the private sector, digital constraints have prompted law firms to shift their traditional niche and set of competences (Borja Albi 2005: 45) and are indeed adjusting their profiles accordingly, presenting a work culture in which technology and innovation are paramount. More and more law firms resort to large multilingual websites, cloud computing, knowledge management systems, social media for investigations and marketing, electronic discovery and law practice management software, automated document assembly procedures and metrics for efficient delivery of legal services.

If the international and domestic agencies and the legal marketplace are evolving and embracing technology and multilingualism, the requirements and challenges legal translators will need to face in the Big Data era are bound to go the same way. In a market where Fully Auto-Usable Translation (FAUT) is close to becoming standard practice, a number of readjustments both in the way legal translation is performed and in the profile of legal translators are to be expected. In fact, major companies offer already technology-enhanced translation, localisation and marketing services. As one of the top ten firms in the sector, Transperfect, points out in its website:[6] "At TransPerfect, we understand that our legal clients need much more than translation and language services to support their global litigation and discovery strategies". That is why, among their services, they offer their transnational clients a range of services including forensic technology and consulting, e-discovery and early data assessment, deposition and trial support, language services, paper discovery and production, etc.

It could be argued that MT will not be capable of solving many of the problems caused by anisomorphism in legal translation (Borja Albi 2013: 34): zero or partial equivalence; differences between legal concepts in the same language but belonging to different legal systems; the need to resort to ad-hoc functional equivalence based on the requirements of the client or the translation commission; the intended legal effect of the translation in the target country; the debate on law universals*;* and the ongoing process of globalisation of legal concepts (Orts 2017:

[6] See http://www.transperfect.com/industries/legal.

19). The need for certified translations adds a new element of complexity to the debate and leads us to wonder whether the day will come when a certification seal will be granted to a translation robot.

In our opinion, the unique features of the different areas and genres of legal translation will make automation advance at different speeds, and this will give us some leverage to adapt our practice gradually. Machines powered by AI can today perform many tasks (such as recognising complex patterns, synthesising information, drawing conclusions and forecasting) that not long ago were assumed to require human cognition. While the premium market for human legal translation, given its idiosyncratic features, seems likely to coexist at first with its automated counterpart, the fact that the latter is so much faster requires that consideration be given *now* to identifying the possible non-automated tasks, if any, that could constitute competitive strengths to counteract the time-to-market problem posed by human legal translation.

Altogether, it seems that in the near future the work profile of legal translators may rely not only on the interlinguistic component of translation, but rather stand at the intersection of a number of socio-professional skills which may not have been traditionally linked to interlinguistic agents. Indeed, mixed profiles based on the multimodal nature of transnational communication seem to be about to gain momentum in the legal translation industry, most of them related to hyper-specialisation in the legal field, the development of a bolder, more purposeful, entrepreneurial, market-oriented culture and, especially, active involvement of the translator in the technological, cutting-edge dimension of language service provision. These, in our view, will establish themselves as key elements in the specialisation and future work profile of legal translators.

Consequently, hyper-specialised expert knowledge willl be linked to technology, allowing legal translators to train MT engines, feed them with high quality linguistic resources, or assess the quality of their output. On the one hand, an increasing need will arise for revision and management of the various corpora and translation memories involved in MT; on the other, development engineers will require legal translation expertise to guide them in their quest for valid, applicable

solutions to legal translation problems, especially in a transnational context gradually moving towards global law.

Finally, localisation of multilingual legal content, a task strongly linked to content development, creativity and intercultural communication, will also play a significant role, whether through marketing multilingual legal products or acting as a consultant. Equally important will be interpersonal, teamwork and leadership skills, which may provide legal translators with the extra impetus to excel in the digital age. While it is true that this set of market-oriented skills will be different for freelance translators, in-house translators and translation agencies, the tendency in the legal language industry to form macro-clusters of companies offering a wide range of services will demand entrepreneurial, business-oriented, transnational self-promotion on the part of legal translators.

4 Refining legal translation education

4.1 Review of Spanish undergraduate syllabi

The mixed profiles we have outlined must not be conceived as a competence in legal translation with a technological competence bolted on as a completely separate component. On the contrary, it is impossible to plan an education in legal translation for the future unless we start from a joint strategy in which the legal and technological components are developed hand in hand. This will require coordinated efforts between those teaching translation technologies and those in charge of legal translation.

To argue the case for this approach, as part of our research on the future profiles of legal translators, we carried out a small exploratory study on degrees in Translation and Interpreting in Spain in the academic year 2017/2018 with a view to determining the weight given to the technological component in legal translation courses. For this purpose we analysed the syllabi of legal translation courses, on the one hand, and those courses dealing with the technological dimension, on the other, in an attempt to establish relationships, objectives and common paths.

Our main working hypothesis was that most of the legal translation syllabi would refer to the technological component not as a specific competence but as a cross-

curricular competence, without relating it to the course contents. We also expected that the syllabi would confine themselves to presenting electronic resources and tools related to information and terminology mining without mentioning the use of corpus tool, term extraction software, computer-assisted and MT applications.

In all, 121 legal translation syllabi were identified in 26 Spanish universities, of which 92 were analysed. The remaining syllabi either did not exist, because they were for course units that have not yet been introduced in new curricula, or were not available, in the case of some private universities. For technological courses 77 syllabi were identified and analysed in the same 26 universities.

As Table 1 shows, the great majority (80.4%) of legal translation courses did indeed refer explicitly to the role of translation technologies. They were not mentioned at all in 19.6% of the syllabi. This percentage could be regarded as a worrying sign, since in the current legal translation market it is unthinkable to work without using memories, term-extraction programmes, etc. In most cases the technological component was mentioned in vague terms, with generic references to "use of electronic tools", "electronic document search tools" or "information management tools", without giving explicit details or exploring the nature or function of such tools.

Item	**Guides (Total 92)**	**Universities (Total 26)**
Use of electronic techniques and tools (unspecified)	53 (57.6%)	14 (53.8%)
Production and use of databases	33 (35.9%)	5 (19.2%)
Use of CAT (unspecified)	28 (30.4%)	5 (19.2%)
Document search tools (unspecified)	26 (28.3%)	6 (23.1%)
Production and use of glossaries	18 (19.6%)	3 (11.4%)
No mention of technological competences	18 (19.6%)	4 (15.4%)
Use of MT	17 (18.5%)	2 (7.7%)
Management and use of translation memories	15 (16.3%)	1 (3.8%)
Editing and typesetting tools	10 (10.9%)	3 (11.4%)
Localisation tools	9 (9.8%)	2 (7.7%)
Word processing, spreadsheets and presentation software	5 (5.4%)	3 (11.4%)
Information management tools (unspecified)	4 (4.3%)	2 (7.7%)
Terminology management tools	4 (4.3%)	2 (7.7%)
Production and use of corpora	4 (4.3%)	2 (7.7%)
Pre- and post-editing for MT	2 (2.2%)	1 (3.8%)

Table 1. Technological competences in the legal translation syllabi

Only 30.4% of the syllabi included computer-assisted translation as a methodological tool. Unfortunately they did not mention the computer-assisted translation programmes used nor did they indicate whether they were used as isolated experiences or as an essential tool of the course. MT was referred to in 18.5% of the syllabi (17 syllabi in all). However, the fact that 15 of these 17 syllabi were from the same university (the same course in different language combinations) makes us wonder whether all those translation courses really include MT in their content or whether this is an element of the syllabi that is not actually used in class. In connection with this, it is important to emphasise that only one university drew attention to pre- and post-editing of texts for MT, a basic competence when trying to introduce the application of MT in teaching legal translation.

Similarly, we decided to investigate the various competences of all the courses in which the technological component is a specific objective (Translation Technologies, IT Tools for Translation, Localisation, etc.) with the aim of considering the priorities that Spanish curricula exhibit with respect to technological competences. As we can see in Table 2, the competence most often mentioned in syllabi was the use of computer-assisted translation solutions (33.8% of the syllabi), coupled with the use of basic IT tools (32.5%). This is because undergraduate curricula in Spain include, on average, three main courses of a technological nature. Of these, the most common option is an initial introductory course with general content, mostly focusing on issues of office automation and other basic, cross-curricular IT training elements for students.

As regards computer-assisted translation tools, out of all the syllabi that explicitly mention their use only 30.8% indicate the programmes used, being the most common SDL Trados Studio, OmegaT and Wordfast, in that order.

MT appeared in 12.9% of the syllabi analysed, as did pre- and post-editing for MT, mentioned specifically in 6.5% and 7.8% respectively. Indeed, at one university the syllabus reported that MT was used in classwork “despite its imperfections”, which could be taken, very tentatively, as a summing-up of the approach to MT in Translation and Interpreting curricula. Only one specific case refers to an “introduction to the operation of statistical and neural machine translation systems”, a result that coincides with previous conclusions (Doherty & Kenny

2014; Rossi 2017). The reluctance to incorporate the latest advances in FAUT seems to be a systemic feature of Spanish curricula.

Other competences that we considered vital elements of training for the mixed profiles advocated above (expertise in post-editing for machine-translated documents, content development in legal transcreation contexts, etc.) are minimally present, if at all, in the syllabi analysed.

Item	**Guides (Total 77)**	**Universities (Total 26)**
Use of CAT (program specified in 8 guides and unspecified in 18)	26 (33.8%)	22 (84.6%)
Use of word processing, spreadsheets, presentation software	25 (32.5%)	20 (77.0%)
Software and website localisation	19 (24.7%)	16 (61.5%)
Creation and management of terminological databases	16 (20.8%)	15 (57.7%)
Creation and use of translation memories	14 (18.2%)	12 (46.2%)
Creation and use of corpora	13 (16.9%)	10 (38.5%)
MT	10 (13.0%)	10 (38.5%)
Markup languages (HTML, XML)	10 (13.0%)	6 (23.1%)
Text alignment	8 (10.4%)	7 (26.9%)
Use of the Internet	6 (7.8%)	6 (23.1%)
Post-editing for MT or CAT	6 (7.8%)	4 (15.4%)
Pre-editing for MT or CAT	5 (6.5%)	4 (15.4%)
CMSs, web management, web content development	2 (2.6%)	2 (7.7%)
Advanced office automation	1 (1.3%)	1 (3.8%)
QA	1 (1.3%)	1 (3.8%)
Transcreation	1 (1.3%)	1 (3.8%)
Testing	1 (1.3%)	1 (3.8%)

Table 2. Technological competences in the ICT-related syllabi

In any case, we are aware that syllabi present a picture subject to too many variables to be taken as the sole source of reliable information on what happens in the translation classroom. After all, there is no guarantee that legal translation courses in Spanish faculties are conducted exactly as indicated in the syllabi. Therefore, the tentative results obtained should be compared with an in-depth, field study examining how those cross-curricular competences of a technological nature are effectively integrated into legal translation courses, if indeed they are.

Nevertheless, in our view these results do reflect the current state of affairs to some degree and help us visualise the gap that separates us from the translator profiles

that seem to be on their way. They also provide the grounds to discuss the increasing weight of technological competences in the education of translators and invite us to reflect on translation competence models.

4.2 Legal translation competence

A competence-based approach has been praised for its ability to bring together the conceptual, procedural and behavioural knowledge leading to the situated development of the skills, attitudes and knowledge that translators ought to possess nowadays. Moreover, because ours is a relatively young discipline, and especially because it is clearly geared towards professional practice, the debate on competence in our field is already underpinned by numerous empirical studies, to the point that it is difficult to understand translation education without resorting to this concept. Many authors have explored the various proposals on translation competence, whether for general translation (Morón 2009: 136-168; Muñoz Miquel 2014: 81-130; Martínez-Carrasco 2017: 174-218) or for legal translation in particular (Martínez-Carrasco 2017: 262-279).

With regard to the technological dimension in competence models for general translation, it is fair to say that we have come a long way since the earliest models. Indeed, we have moved from proposals such as that of Roberts (1984: 172 in Vienne 1998: 1), referring to a technical competence based on terminology banks and dictation machines, to Optimale's remarks, which include the relevant socio-professional requirements as an essential element in the education of translators (Valero-Garcés & Toudic 2015).

The tendency to attribute greater weight and specificity to technological skills is a constant feature if we take a look at the evolution of the competence models suggested up till now. The first proposals, from Hurtado (1999: 43-44), PACTE (2000, 2003) or Kelly (2002), speak of a relatively undefined instrumental sub-competence combining various "computing skills" and "communication technologies applied to translation", very often grouped with "professional competences" without elaborating in much detail on their nature and integration with other competences.

Somewhat more specific are Göpferich's proposal (2009), referring to search engines, corpora, word processors and assisted- and machine-translation management systems, and also Gouadec's notes (2007: 332-333), which, from a professionally-oriented standpoint, divide IT skills into categories according to the function of these technological tools in the translation process.

The gradual shift in conceptualisation of competence models culminates in the model proposed by the EMT Expert Group (2009: 4-7), whose technology-related competences (translation service provision, information mining and technological competence) show a remarkable degree of market-oriented specificity.

Alongside the competence models proposed for general translation, legal translation has followed a course with many similarities as regards the multi-competence-based nature of the construct. Among the pioneering contributions are those of Šarčević (1997: 113-114), who stresses the "field of discourse" as the differentiating element in legal translation, and Borja Albi (2005: 15), who places significant emphasis on information and terminology mining acquisition and retrieval using expert knowledge systems. In a more recent work, Borja Albi (2013: 36) advocates for a legal genre contrastive analysis approach and the use of online knowledge systems specially designed for translators, such as the Gentt TransTools,[7] encompassing a number of legal-conceptual, discursive-textual and terminological resources aimed at facilitating the re-usability of translation resources. They are articulated around four main sections: highly specialised *ad-hoc* corpora of original texts, *ad-hoc* corpora of bitexts, highly specialised terminology and phraseology glossaries and a comprehensive compilation of relevant on-line resources

The exhaustive work of EMT has also had a notable influence on the way competence in legal translation is conceptualised. Prieto Ramos (2011: 11-18), for example, draws on the proposals of EMT, the PACTE group and Kelly (2002), together with his classroom experience, and integrates the knowledge of legal concepts into a process-oriented construct combining an instrumental competence (information and terminology management, use of parallel documents, application of computer tools) underpinned by an interpersonal and professional management

[7] http://www.gentt.uji.es.

competence, intended to serve as a link between legal translation as a discipline and the constraints to which socio-professional reality is subject.

Cao (2014) also uses the EMT model as a basis to speak of a combined professional and technological sub-competence. As in most of the contributions mentioned, this competence, which embraces the application of professional ethical rules and legal obligations of translators working in legal environments together with competence in using electronic tools, does not specify the nature of the technological component, beyond the fact that it exists. A more recent model is the one found in the QUALETRA project, the follow-up implementation of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings (Scarpa / Orlando 2017: 26-31). QUALETRA, too, makes use of the EMT competence framework. However, unlike the original construct, its technological dimension is reduced to just one item: "Knowing how to effectively and rapidly integrate all available tools in a legal translation", reducing, in a way, the level of specificity that EMT does envisage for general translation.

5 Conclusions

Over the course of this article we have emphasised that Tech Giants and digital native companies are starting to see immediate, tangible applicability in the various technologies known collectively as AI. Investment in their digital journeys is *already* beginning to offer a competitive advantage, which, so the experts predict, seems to point to exponential development in the not too distant future. This will entail a change in the workflow processes, capabilities and culture of language service providers, and consequently a change in their workforce, who will have to be reskilled, given the impossibility of competing with the new digitally-based models of social and economic growth.

In the area of legal translation education, specifically, it is becoming clear that we need to implement a future-focused curriculum that addresses not only technological issues, the main focus of this article, but also questions such as adaptability, collaboration and intersection with other disciplines (Marketing, Computational Linguistics, etc.) that will provide our graduates with the tools and resources they will need to respond to the concerns raised above.

In our view, there are two main ideas that should guide this debate on the implications of the digital era for education in legal translation. The first one is the need to reflect on the translation competence models available to us, which must emphasise not only their situated nature, but also the dynamic, internally fluid character of their components and the emergent properties that result from applying them. In our view, the technological competence should not be seen as a watertight compartment but as a guiding thread that shapes competence in legal translation and that guides and supports the other sub-competences. This inevitably leads us to practical and methodological questions of day-to-day work in the classroom and curriculum adaptation. The development of language technologies obliges us, as a matter of urgency, not just to address the need for an education in legal translation that incorporates the technological element at its very basis, but to reconceptualise the role of technologies throughout the curriculum, whether as a main object of study or as an instrument that helps to shape the socio-professional needs of our future graduates.

References

Anastasiou, Dimitra / Schäler, Reinhard (2010): "Translating Vital Information: Localisation, Internationalisation, and Globalisation." In: *Syn*-Thèses *Journal* 3, 11 – 25.

Borja Albi, Anabel (2005): "Organización del conocimiento para la traducción jurídica a través de sistemas expertos basados en el concepto de género textual." In: García Izquierdo, Isabel [ed.] (2005): *El género textual y la traducción. Reflexiones teóricas y aplicaciones pedagógicas*. Bern: Peter Lang. 37 – 67.

Borja Albi, Anabel (2013): "A genre analysis approach to the study of the translation of court documents." In: *Linguistica Antverpiensia, New Series – Themes in Translation Studies (LANS – TTS)*, 12, 33 – 53. https://goo.gl/Zutzv9 (5 February 2018).

Brynjolfsson, Erik, / McAfee, Andrew (2012): *Race Against The Machine: How The Digital Revolution Is Accelerating Innovation, Driving Productivity, and Irreversibly Transforming Employment and The Economy*. Massachusetts. https://goo.gl/b98grn (12 February 2018).

Cao, Deborah (2014): "Teaching and learning legal translation." In: *Semiotica* 201, 103 – 119. http://doi.org/10.1515/sem-2014-0022.

Casacuberta Nolla, Francisco / Peris Abril, Álvaro (2017): "Traducción automática neuronal." In: *Revista Tradumàtica. Número Revista Tradumàtica. Tecnologies de La Traducció* 15, 66 – 74. http://doi.org/10.5565/rev/tradumatica.203.

Doherty, Stephen / Kenny, Dorothy (2014): "The design and evaluation of a Statistical Machine Translation syllabus for translation students." In: *The Interpreter and Translator Trainer* 8.2, 295 – 315. http://doi.org/10.1080/1750399X.2014.937571.

EMT Expert Group (2009): "Competences for Professional Translators, Experts in Multilingual and Multimedia Communication" (April 2007), 1 – 7. https://goo.gl/Ajhz75 (2 February 2018).

Enríquez Raído, Vanessa (2016): "Translators as Adaptive Experts in a Flat World: From Globalization 1.0 to Globalization 4.0?" In: *International Journal of Communication* 10, 970 – 988. http://ijoc.org (5 February 2018).

Ezpeleta-Piorno, Pilar / Borja Albi, Anabel (2017): "The *multilingual university website (MUW)* genre ecology: Content analysis and translation processes." In: Santaemilia-Ruiz, José / Maruenda-Bataller, Sergio [eds] (2017): Specialised T*ranslation in Spain: Institutional dimensions*. (Special issue of *Revista Española de Lingüística Aplicada*) 30.2, 636 – 661.

Frey, Carl Benedikt / Osborne, Michael (2013): *The Future of Employment*. Oxford. https://goo.gl/yrDwW9 (12 February 2018)

Göpferich, Susanne (2009): "Towards a Model of Translation Competence and its Acquisition: The Longitudinal Study TransComp." In: Göpferich, Susanne / Jakobsen, Arnt Lykke / Mees, Inger M. [eds] (2009): *Behind the Mind: Methods, Models and Results in Translation Process Research*. Frederiksberg: Samfundslitteratur. 12 – 38.

Gouadec, Daniel (2007): *Translation as a Profession*. Amsterdam / Philadelphia: John Benjamins.

Hern, Alex (2015, January 12): "Experts including Elon Musk call for research to avoid AI 'pitfalls." In: *The Guardian*. London.

Hurtado Albir, Amparo (1999): "La competencia traductora y su adquisición. un modelo holístico y dinámico." In: *Perspectives* 7.2, 177 – 188. http://doi.org/10.1080/0907676X.1999.9961356.

Kelly, Dorothy A. (2002): "Un modelo de competencia traductora: bases para el diseño curicular." In: *Puentes* 1. 9 – 20. https://goo.gl/JqtFMz (12 May 2018)

Lommel, Arle and DePalma, Donald (2017): *Language Pair Demand and Supply: 2017*. https://goo.gl/yQ61qj (12 February 2018).

Martínez-Carrasco, Robert (2017): *Epistemological Approaches to Legal Translation Education: A Situated Account*. Universitat Jaume I.

McKinsey Global Institute (2017): *Jobs Lost, Jobs Gained: Workforce Transitions in a Time of Automation*. New York. https://goo.gl/tFFra9 (12 February 2018).

Morón Martín, María de los Ángeles (2009): *Percepciones sobre el impacto de la movilidad en la formación de traductores: la experiencia de los graduados en el programa LAE (Lenguas Aplicadas Europa)*. Universidad de Granada.

Muñoz Miquel, Ana (2014): *El perfil del traductor médico: Análisis y descripción de competencias específicas para su formación*. Universitat Jaume I.

Orts Llopis, María Ángeles (2017): "Legal English as the Lingua Franca for International Law. Traits and Pitfalls for ESP Practitioners and Legal Translators." In: Keng, Nicole / Nuopponen, Anita / Rellstab, Daniel [eds] (2017): *XXXVII VAKKI Symposium. Ääniä, Röster, Voices, Stimmen*. Vaasa: Vakki Publications. 17 – 28.

PACTE (2000): "Acquiring translation competence: Hypotheses and methodological problems in a research project." In: Beeby, Allison/ Ensinger, Doris /Presas, Marisa [eds] (2000): *Investigating Translation*. Amsterdam / Philadelphia: John Benjamins. 99 – 106.

PACTE (2003): "Building a Translation Competence Model." In: Alves, Fabio [ed.] (2003): *Triangulating Translation. Perspectives in Process Oriented Research*. Amsterdam: John Benjamins. 43 – 66.

Prieto Ramos, Fernando (2011): "Developing Legal Translation Competence: An Integrative Process-Oriented Approach." In: *Comparative Legilinguistics - International Journal for Legal Communication* 5, 7 – 21.

Rico Pérez, Celia / García Aragón, Álvaro (2016): *Análisis del sector de la traducción en España*. Villaviciosa de Odón.

Roberts, Roda (1984): "Compétence du nouveau diplômé en traduction." In: *Traduction et Qualité de langue. Actes du colloque, Société des traducteurs du Québec/Conseil de la langue française*. Québec: Éditeur Officiel du Québec. 172 – 184.

Rossi, Caroline (2017): "Introducing statistical machine translation in translator training: from uses and perceptions to course design, and back again." In: *Revista Tradumàtica: Tecnologies de La Traducció* 15, 48 – 62.

Russell, Stuart / Dewey, Daniel / Tegmark, Max (2015): "Research Priorities for Robust and Beneficial Artificial Intelligence." In: *AI Magazine*, (Winter 2015), 105 – 114. http://doi.org/10.1609/aimag.v36i4.2577.

Šarčević, Susan (1997): *New Approach to Legal Translation*. The Hague / London: Kluwer Law International.

Scarpa, Federica / Orlando, Daniele (2017): "What it takes to do it right: an integrative EMT-based model for legal translation competence." In: *JoSTrans. The Journal of Specialised Translation* 27, 483 – 487.

Schumpeter, Joseph (2003): *Capitalism, Socialism and Democracy*. London / New York: Routledge.

Schwab, Klaus (2017): *The Fourth Industrial Revolution*. World Economic Forum. Geneva.

Talwar, Rohit / Koury, April (2017): *Artificial intelligence – the next frontier in IT security? Network Security* 4, 14 – 17.

Toudic, Daniel (2012): *The Optimale Employer Survey and Consultation, WP4 Synthesis Report*. Brussels. https://goo.gl/FE7AHC (12 December 2017).

Valero-Garcés, Carmen / Toudic, Daniel (2015): "Technological Innovation and Translation. Training Translators in the EU for the 21st century." In: *Verbeia* 0, 183 – 202.

Vienne, Jean (1998): "Vous avez dit compétence traductionnelle ? In: *Meta: Journal des Traducteurs,* 43.2, 187 – 190. http://doi.org/10.7202/004563ar.

World Economic Forum (2016): *The Future of Jobs Employment, Skills and Workforce Strategy for the Fourth Industrial Revolution*. Geneva. https://goo.gl/Bppdbf (2 February 2018).

World Economic Forum (2017): *The Global Competitiveness Report*. Geneva. https://goo.gl/Szoxfe (2 February 2018).

Chapter 9

Collocations, para-synonymie et polysémie: incertitudes en traduction juridique

Christina Dechamps[1]

Abstract
In this article, we will first present several issues regarding parasynonymy, polysemy, legal collocations and their translation (FR-PT). We will then present a case study on translation of legal collocations made by our students and finally propose several teaching strategies that can improve the quality of translator training. Our main aim is to demonstrate the importance of collocations studies on legal translation.

Keywords: collocations, parasynonymy, polysemy, legal translation

1 Introduction

Combattre l'incertitude est sans aucun doute l'objectif premier de tout traducteur et cette problématique s'avère d'autant plus épineuse lorsqu'il s'agit de traduire des documents juridiques. En plus de l'imprécision, parfois même recherchée par les propres rédacteurs des textes de droit pour permettre de multiples interprétations ou de l'apparente simplicité du texte juridique qui implique tout un travail de décryptage-recryptage (Bocquet 2008), il existe des zones d'ombre, sources d'incertitudes et véritables pièges pour le traducteur peu averti, où se manifestent, entre autres, des structures comme les collocations verbales (V+N), particulièrement délicates à traduire en raison de divers phénomènes de parasynonymie et de polysémie.

Dans le cas de la parasynonymie, il est essentiel d'être conscient des différentes nuances de sens dans l'emploi de l'un ou l'autre collocatif, apparemment synonymes, souvent présentés comme tels dans les ouvrages lexicographiques mais difficilement substituables si l'on recherche une communication efficace.

[1] Étude financée par la FCT – Fundação para a Ciência e Tecnologia, dans le cadre du projet UID/LIN/03213/2013 du Centro de Linguística da Universidade NOVA de Lisboa.

En ce qui concerne la polysémie, considérable en terminologique juridique, il faut aussi souligner sa présence au niveau collocationnel. Dans ce cas, bien maîtriser les propriétés sémantiques de la base (terme) et du collocatif (verbe) de la collocation sera fondamental pour trouver un équivalent satisfaisant dans la langue cible.

Dans le cadre de cet article, nous nous proposons d'analyser, sous une perspective bilingue (français-portugais), un ensemble de collocations verbales qui relèvent des deux problématiques mentionnées ci-dessus. Cette analyse se fera en deux parties ; nous nous appuierons, en premier, sur un corpus comparable bilingue français-portugais de textes de semi-vulgarisation juridique et, ensuite, sur un autre corpus, cette fois-ci, de traductions qui, réalisées par nos étudiants entre 2013 et 2017, mettent en évidence les doutes surgissant au moment de la traduction de ces combinaisons. Ensuite, nous présenterons quelques pistes de réflexion qui se basent, entre autres, sur la théorie des schémas d'arguments (Gross 1994, 2010 et Lerat 2006, 2008) et des structures actancielles (L'Homme 2012, 2015, 2016) et qui pourront nous aider à définir des stratégies qui permettent de surmonter l'incertitude résultant de la traduction de ces structures.

2 Incertitudes en traduction

2.1 Considérations générales

L'incertitude en traduction est sans aucun doute un problème majeur bien connu de tout traducteur, apprenti ou confirmé. Cependant, si l'on considère les ouvrages de référence en traductologie, peu d'auteurs s'y sont penchés, comme s'il s'agissait d'un tabou révélateur d'une certaine incompétence professionnelle.

Ceci dit, entre 2014 et 2015, entre Bruxelles, Paris et Genève, s'est tenu un colloque en trois volets, intitulé « Des zones d'incertitude en traduction », afin de mieux cerner le problème. Et, en 2016, suite à ces rencontres, la revue *Meta* a décidé d'y consacrer un numéro.[2]

L'incertitude, ou mieux les incertitudes, peuvent se manifester à différentes étapes du processus traductif qui est loin d'un ensemble d'actes automatiques, mais plutôt basés sur l'interprétation et sur de multiples reformulations au gré des doutes qui

[2] Il s'agit du volume 61-1 publié en mai 2016 exactement.

assaillent constamment le traducteur. Toutes ces incertitudes sont cartographiées par Hewson (2016), mettant en évidence le fait que la traduction est en réalité une suite de différentes étapes, chacune recelant ses difficultés et incertitudes, celles-ci se situant à plusieurs niveaux.

2.2 Incertitudes et traduction juridique

Si le thème est en général encore peu exploré scientifiquement, cela l'est encore plus dans le cadre de la traduction juridique. À titre d'exemple, aucun article de ce volume 61-1 de la revue *Meta* n'étudie cette question de l'incertitude dans le contexte de la traduction juridique.

Pourtant, les incertitudes foisonnent quand il faut traduire ce type de textes et de telle manière que peu de traducteurs n'osent au départ s'y aventurer. Et quand c'est le cas, ceux-ci sont amenés à maintenir dans leur texte un difficile équilibre entre les différentes contraintes imposées par la nature du texte de départ, les notions qui y sont véhiculées – et pas toujours maîtrisées –, sa fonction et son(ses) destinataire(s), le tout animé par une volonté d'adéquation de la traduction au discours normalement utilisé par les spécialistes. De ce complexe exercice de funambule, jaillissent naturellement doutes et incertitudes qui dépendent en partie des connaissances linguistiques et/ou juridiques du propre traducteur et de son expérience.

3 Collocations verbales et incertitudes

Là où l'incertitude va, entre autres, se manifester, c'est dans la traduction des collocations terminologiques[3] et, plus particulièrement, dans la traduction des collocations verbales. Ces difficultés de traduction sont dues en partie à deux phénomènes : celui de la parasynonymie et celui de la polysémie.

[3] On entend par collocation terminologique, une combinaison non libre constituée d'une base (terme), choisie librement et d'un collocatif qui permet d'attribuer un sens spécifique à l'expression et/ou qui l'encadre dans un discours plus ou moins spécialisé (Dechamps 2013a : 192). Celle-ci est à distinguer du syntagme libre où les différents éléments lexicaux sont choisis librement tout en respectant les règles de grammaire de la langue (Mel'čuk 2003: 20). De plus, contrairement à l'unité terminologique complexe, la collocation terminologique ne renvoie pas à un et un seul concept.

Notre première analyse de ces questions de parasynonymie et de polysémie au niveau collocationnel s'est basée sur un corpus comparable bilingue français – portugais de textes de semi-vulgarisation juridique, élaboré dans le cadre de notre thèse de doctorat soutenue en 2013.[4] Ce corpus de 650 000 mots environ regroupe des ouvrages d'introduction au droit destinés à un public estudiantin ou lycéen, cette catégorie de textes correspondant effectivement au concept de semi-vulgarisation scientifique proposé en 1983 par Loffler-Laurian et repris plus tard par Eurin-Balmet (1992) et, plus précisément à celui de semi-vulgarisation scientifique pédagogique.

Cette analyse s'est restreinte aux collocations verbales qui appartiennent au sous-domaine des sources du droit – sous-domaine transversal à toutes les branches du droit – et qui sont marquées par la transitivité directe. Cette dernière option a permis d'étudier les combinaisons à la voix active comme à la voix passive ou alors avec l'emploi adjectival du participe passé, ces deux derniers cas étant assez courant dans la langue juridique.[5]

3.1 Collocations et parasynonymie

Dans le discours juridique, la synonymie est assez dangereuse ; même si la substitution d'un terme par un autre synonyme est au départ possible, il faut se rendre compte que, bien souvent, survient un glissement de sens. Ainsi il est préférable de parler de parasynonymie.[6] Celle-ci s'observe également dans les collocations verbales où le remplacement d'un verbe collocatif par un autre réputé synonyme peut souvent soulever des problèmes de communication, surtout quand on considère la nouvelle collocation dans son contexte. Par exemple, *revogar uma lei* se traduit en français par *abroger une loi* et non *abolir une loi*, étant donné que ce dernier verbe s'applique en réalité aux institutions et concepts fondamentaux du système juridique et que le verbe *abroger* comporte un sens plus limité et s'emploie uniquement pour faire référence à la suppression d'une loi ou d'un règlement.

[4] Pour plus d'informations, voir Dechamps (2013a).
[5] Par exemple, on peut citer: *dresser un acte – l'huissier a dressé un acte, un acte a été dressé par l'huissier, un acte dressé*.
[6] Verlinde & Binon (2006) parlent de *quasi-synonymie.*

Ainsi, il est essentiel de bien maîtriser les nuances de sens dans l'emploi de l'un ou l'autre collocatif et de mettre en lumière les phénomènes de parasynonymie.

De cette manière et pour donner un aperçu plus étendu de la problématique où la permutation synonymique est loin d'être un acte anodin, il est pertinent de confronter quelques collocations verbales relevées dans le corpus, dont les verbes collocatifs, selon toute apparence synonymes, s'associent au même terme (ou à la même catégorie de termes) mais comportent des sèmes qui les distinguent les uns des autres.

- *Adopter – prendre un règlement, un texte* : ces deux verbes s'associent avec des termes qui renvoient à des actes unilatéraux. Néanmoins le verbe *adopter* se combine préférentiellement avec des termes qui désignent des actes approuvés par un vote.
- *Adopter – voter une loi* : comme cela vient d'être dit, le verbe *adopter* se combine avec des termes qui désignent des actes approuvés par un vote. Ici, la différence réside surtout dans une question de perspective. Le locuteur insiste ou sur l'adoption de la loi (résultat) ou sur le vote (action qui mène à l'adoption … ou non).
- *Affirmer – proclamer – reconnaître un principe* : le premier verbe a le sens de 'poser' et parfois 'imposer', le deuxième 'faire connaître ou reconnaître officiellement' et le troisième 'faire acte de reconnaissance, souvent officiellement'. Des sens donc très proches mais non équivalents.
- *Approuver – ratifier un traité, un accord, une convention* : les deux verbes possèdent aussi des sens très proches mais le second prend le sens de 'approuver expressément et selon des formes requises', c.-à-d. officiellement.
- *Conclure – passer un contrat, un accord, une convention* : ces deux verbes ne peuvent pas être considérés comme synonymes. «Si conclure signifie 's'entendre, accepter, convenir', *passer* ('execute' en anglais) ajoute une nuance : la conclusion étant formée par l'échange des consentements, l'engagement mutuel doit s'effectuer en ce cas dans le respect de toutes les formalités établies, devenant par le fait de l'observation des formalités juridiques une passation. » [7]
- *Créer – établir une règle* : le deuxième verbe, tout en présentant le sens de 'créer', signifie également 'donner une existence officielle' et est surtout utilisé lorsque l'on cite les références d'une loi ou d'un règlement particulier. Dans ce cas, *créer* n'est pas admis.

[7] http://www.btb.termiumplus.gc.ca/tpv2guides/guides/juridi/index-eng.html?lang=eng&lettr=indx_catlog_p& page=9BOJo8f5esLQ.html (24 janvier 2018).

- *Énoncer – affirmer/ établir / fixer / poser un principe* : le premier verbe a le sens d' 'exprimer, formuler' alors que les quatre suivants signifient 'mettre en place', 'donner une existence officielle'.
- *Fonder – motiver/justifier une décision* : le premier verbe a le sens d' 'établir, mettre en place, donner une existence officielle' alors que les deux autres signifient 'donner des motifs en vue d'expliquer ou de justifier'. *Fonder une décision* est généralement suivi d'un complément introduit par la préposition *sur*.

D'autres combinaisons, par contre, présentent des différences d'emploi liées au type de discours adopté, plus ou moins spécialisé suivant les cas.

- *Déférer – soumettre une loi* : les deux verbes sont synonymes, en présentant le sens de 'transmettre, renvoyer à l'autorité compétente'. Cependant le premier s'utilise dans un discours plus spécialisé. Il s'emploie également dans le contexte judiciaire.
- *Donner – émettre - publier un avis* : le premier verbe s'utilise plutôt dans un discours moins spécialisé, avec l'emploi de l'adjectif possessif qui renvoie à l'auteur (*donner son avis*) tandis que le second correspond à un discours plus spécialisé. *Publier* a le sens de 'porter à la connaissance du public' par le biais des publications officielles telles que le Journal Officiel de la République Française.
- *Dresser - établir – rédiger - écrire un acte* : au premier abord, tous ces verbes paraissent synonymes mais il existe quelques nuances dans l'emploi de l'un ou l'autre. *Dresser* a le sens de 'rédiger suivant un modèle officiel', tout comme *établir. Rédiger* et *écrire* ont des sens plus généraux et s'utilisent plutôt dans un discours moins spécialisé.
- *Observer – respecter une règle* : les deux verbes sont synonymes. Cependant le premier s'utilise dans un discours plus spécialisé.

Par ailleurs, il est intéressant d'examiner quelques collocations où les verbes collocatifs présentent des sens très proches, pour ne pas dire identiques, mais vont varier en fonction du terme utilisé comme base de la collocation.

- *Abroger une loi, une directive, un décret – annuler un acte – casser un jugement – rompre un contrat – abolir un privilège*
- *Adopter une loi, un code – approuver un accord, un traité, une convention, un règlement*
- *Créer une règle – produire un acte*
- *Définir une clause, un contrat – fixer un principe*
- *Émettre un avis – énoncer un principe*

- *Établir une règle, un principe – instituer un code*
- *Proposer un texte – soumettre un contrat, une loi*
- *Adopter une loi, un code – approuver un accord, un traité, une convention, un règlement*
- *Prendre un décret, un arrêté – rendre un arrêt, un jugement*

En somme, toutes ces collocations présentent des sens proches – mais à ne pas confondre – et sont susceptibles de créer des doutes et parfois des erreurs autant au moment de l'interprétation que de la rédaction.

3.2 Collocations et polysémie

La polysémie interne, qui est assez remarquable en langue juridique (Cornu 2000), est une autre source d'incertitudes et comporte inévitablement des implications au niveau collocationnel,

- *Citer une loi – citer une personne* : mentionner vs intimer. En portugais, ces collocations sont traduites par referir-se a uma lei et citar alguém respectivement.
- *Édicter une règle – édicter une peine* : dans le premier cas, *édicter* prend le sens d' 'établir une norme juridique'. On dira, par exemple, édicter une loi, un règlement, une directive, qui sont les principaux types de normes juridiques. On pourra également édicter une norme, un texte, des mesures, des dispositions, des prescriptions, etc. *Édicter* signifie aussi « prévoir », « disposer », « prescrire ». Par exemple, un code édicte des peines pour telle ou telle infraction. Ainsi, en portugais, *édicter une règle* se traduit par *decretar, estabelecer uma norma* alors qu'*édicter une peine* le sera par *prever, fixar uma pena.*
- *Consacrer un livre, un titre, un code – consacrer un principe* : dans le premier cas, consacrer prend le sens d' 'affecter à une fin déterminée, réserver' (en portugais, *dedicar*) ; dans le second, celui d''adopter en conférant une signification particulière qu'on ne peut changer, rendre durable, sanctionner' (en portugais, *consagrar*)
- *Soumettre un contrat, une loi à* : suivant le contexte où est intégrée la collocation, celle-ci prendra le sens de 'transmettre, renvoyer à l'autorité compétente' ou celui de 'contraindre à, assujettir' (*submeter* et *sujeitar* en portugais).

Les exemples qui viennent d'être cités portent sur la polysémie du verbe collocatif mais celle-ci peut aussi concerner la base de la collocation et justifier l'emploi de verbes distincts.

Rendre une ordonnance (discours juridictionnel) – *prendre une ordonnance* (discours législatif).[8]

Ainsi, il convient de ne pas ignorer la polysémie – tout comme la parasynonymie – propre à la langue juridique pour éviter que ces structures deviennent, par un mauvais usage, problématiques dans la communication ou soient à l'origine de mauvaises traductions par une compréhension insuffisante des nuances portées ici par les différents collocatifs ou bases des collocations.

De plus, il faut aussi remarquer que, si, dans la plupart des cas présentés dans ces deux derniers sous-chapitres, les verbes collocatifs cités présentent un contenu conceptuel identique au substantif déverbal qui leur correspond et qui fait normalement l'objet d'une description terminologique dans les meilleurs dictionnaires spécialisés (ex. *adopter une loi – adoption d'une loi*), certains d'entre eux cependant ne connaissent pas de nominalisation (ex. *déférer*) ou celle-ci ne s'emploie pas toujours dans le discours juridique (ex. *poser un principe – *pose d'un principe*). Ces derniers verbes – appelés verbes supports – sont souvent sémantiquement vides.

4 Collocations verbales et incertitudes : étude de cas en traduction

Suite à cette analyse sur corpus qui a permis de circonscrire deux problématiques à l'origine d'incertitudes dans la traduction des collocations verbales propres à la langue du droit, nous avons pris l'initiative d'analyser un corpus de traductions réalisées entre 2013 et 2017 par nos étudiants de 3e année de la licence en traduction à l'Universidade Nova de Lisboa mais aussi celles élaborées par des professionnels qui ont suivi une formation en traduction juridique en juillet 2017.

Relevons que toutes ces traductions ont été faites en petits groupes (en binômes, le plus souvent) et que les participants avaient chacun à leur disposition un ordinateur muni d'outils TAO ainsi que l'accès à internet pour la consultation de différentes bases de données et dictionnaires, notamment terminologiques. Notons également que les participants avaient aussi la possibilité de consulter de petits recueils

[8] Ces deux collocations et d'autres ont été largement étudiées dans Dechamps (2013b).

bilingues de textes authentiques appartenant à la même catégorie textuelle et discursive du texte à traduire, ces recueils étant disponibles sur la plate-forme Moodle qui sert de soutien au cours et à la formation.

Dans le cadre de cet article, ont été analysées les traductions de deux types de textes, l'un relevant du discours juridictionnel, une commission rogatoire, et l'autre de la sphère notariale, une procuration. Deux textes assez différents l'un de l'autre mais comportant une série de collocations verbales pouvant faire naître des doutes chez les (apprentis) traducteurs. Soulignons que ces deux types de documents ont été traduits dans les deux langues, c'est-à-dire en portugais et en français.[9]

Malgré l'accès à toutes les ressources terminologiques disponibles sur Internet et aux recueils de commissions rogatoires/procurations originales disponibles dans les deux langues, plusieurs collocations ont soulevé un certain nombre d'hésitations et engendré des traductions diverses, plus ou moins acceptables suivant les cas. Assez régulièrement, les (étudiants) traducteurs ont laissé sur leur copie deux propositions de traduction, ne sachant pas toujours trancher pour l'une d'elles.

> Ex. *inscrire un enfant (auprès du bureau de l'état civil) > registar, inscrever um filho, proceder ao registo de um filho* (procuration)
>
> *Dirigir uma carta rogatória > adresser, diriger une commission rogatoire* (commission rogatoire)

Il faut aussi mentionner que, si les tâtonnements dans le choix du verbe collocatif sont évidents lors de la traduction vers la langue étrangère (le français, en l'occurrence), ils ne sont pas pour autant absents lors de la traduction vers la langue maternelle (le portugais).

> *Ex. dresser un procès-verbal > *referir um *processo verbal* au lieu de *lavrar um auto* (commission rogatoire)
>
> *conclure une convention, un accord > *concluir uma convenção, um acordo au lieu de celebrar uma convenção, um acordo* (procuration)[10]

[9] Autrement dit, chaque type de textes a fait l'objet d'exercices de thème et de version.

[10] La combinaison *concluir uma convenção, um acordo, um contrato* est attestée, notamment dans certains textes légaux portugais (voir, par exemple, https://dre.pt/web/guest/pesquisa/search/273611/details/normal?p_p_auth= RY89neIW - 31 janvier 2018). Cependant, la collocation la plus utilisée pour exprimer la même idée est *celebrar uma convenção, um acordo, um contrato*.

Ceci dit, pour d'autres collocations, la traduction a été plus aisée, notamment grâce à la proximité linguistique des deux langues.

Ex. *reconnaître une signature* - *reconhecer uma assinatura* (procuration)

indicar uma diligência – indiquer une démarche (commission rogatoire)

En analysant l'ensemble des traductions, on en vient facilement à la conclusion que l'influence de la langue de départ, qu'elle soit étrangère ou maternelle, est manifeste sur la langue-cible, la tendance étant le plus souvent d'adopter la forme verbale la plus proche de la langue de départ. Si, dans bon nombre de cas, cela ne pose pas de problème vu que les deux langues en cause appartiennent à la même famille linguistique et partagent un bagage lexical et terminologique commun, cela devient, dans d'autres occasions, une source d'erreurs. À titre d'exemple, il y a le cas de *proferir um despacho* traduit par **proférer une ordonnance* par l'un de nos étudiants alors que la forme correcte serait *rendre une ordonnance*.

Par ailleurs, en comparant les productions des deux groupes, nous observons que l'expérience ne favorise pas toujours de meilleures traductions au niveau collocationnel, l'influence de la langue de départ étant souvent à l'origine des erreurs détectées.

5 Défis et stratégies en traduction juridique

Face à ces constats, il est crucial de réfléchir à des stratégies, notamment d'enseignement/apprentissage dans le cadre de la formation initiale et continue des traducteurs afin de les préparer à affronter et à gérer ce genre de difficultés et les incertitudes qui en découlent.

Il est évident qu'à l'heure actuelle, les dictionnaires et les bases de données terminologiques décrivent de manière peu satisfaisante les phénomènes collocationnels, que ce soit dans une perspective monolingue ou bilingue et que, dans ce sens, un effort d'enrichissement de ces ressources est souhaité.

En attendant cet enrichissement, il reste à développer chez les (apprenants) traducteurs leur esprit critique face aux ressources compulsées et à ne pas exclure dans

À titre d'exemple, dans le Code civil portugais, cette dernière expression est préférée à la première à raison de 25 occurrences contre 3.

leurs recherches la consultation de corpus de textes juridiques authentiques, comparables bilingues de préférence et facilement interrogeables. À partir de là et toujours en vue de favoriser de meilleures traductions et de limiter les doutes et incertitudes au moment de traduire, il serait pertinent d'élaborer des glossaires en mode collaboratif qui prennent en compte la dimension collocationnelle de la langue juridique. De nos jours, il existe de nombreux outils informatiques (logiciels, plates-formes numériques, applications diverses) qui permettent et facilitent ce type de travail en classe. Par ailleurs, dans le contexte d'un travail plus élaboré scientifiquement, cette description terminologique pourrait, entre autres, s'inspirer de la théorie des schémas d'arguments et des classes d'objets de Gaston Gross ou de celle des structures actancielles développée par Marie-Claude L'Homme. En mettant en évidence l'emploi des termes dans leur contexte phrastique et discursif tout en leur attribuant des étiquettes sémantiques, ces deux approches linguistiques appliquées à la terminographie devraient aider à répondre aux doutes des traducteurs en ce qui concerne la traduction des collocations terminologiques.[11]

Sujet – Agent	Verbe FR	COD – Patient	Équivalents PT
Discours législatif			
<source du droit> Une coutume, Une loi, Une ordonnance Un décret Une directive, Un règlement Un texte	**abroge**	<source du droit> une loi un décret une directive un texte	<source du droit> **revogar** <source du droit> uma lei um decreto um artigo um diploma uma norma
<autorité> Un État <source du droit> Un traité Un pacte	**abolit**	un privilège une institution la peine de mort l'esclavage	<autorité> <source du droit> **abolir** um privilégio a pena de morte a escravatura

Tableau 1 – verbes parasynonymes – *abroger* et *abolir*

De cette façon, sur la base de quelques collocations mentionnées précédemment et de l'analyse de leurs occurrences dans un corpus de textes authentiques, il est pos-

[11] Pour plus d'informations, voir DECHAMPS (2013a).

sible d'intégrer à la description terminologique des verbes parasynonymes et polysémiques en cause les informations suivantes : la mise en évidence de la structure actancielle de la combinaison avec l'identification de l'agent et du patient), l'indication des classes d'objets (<…>) se rapportant aux termes juridiques qui se combinent avec ces mêmes verbes, ainsi que la proposition d'équivalents en langue cible.

Sujet – Agent	**Verb PT**	**COD – Patient**	**Équivalent FR**
Discours juridictionnel			
<institution> <tribunal> <magistrat>	**profere**	<source du droit> um despacho um acórdão uma sentença	<institution> <tribunal> <magistrat> **Rendre** <source du droit> une ordonnance un arrêt un jugement (communication de la décision, souvent par écrit)
		<source du droit> um despacho um acórdão uma sentença uma condenação	<magistrat> **Prononcer** <source du droit> une ordonnance un arrêt un jugement (lecture à haute voix de la décision)
<humain> O arguido		ameaças insultas	<humain> Le prévenu **Proférer** des menaces des insultes

Tableau 2 – verbe polysémique - *proferir*

6 Conclusion

Dans cet article, seul un petit échantillon de collocations terminologiques a été analysé mais il a tout de même permis de mettre en lumière quelques aspects délicats de la traduction des collocations dans la langue juridique.

Par ailleurs, cette analyse montre, tout en changeant de perspective, l'importance du verbe, là où la tradition terminologique a surtout mis en valeur le substantif comme principal porteur de concepts spécialisés. Or, comme tout praticien le sait, traduire un texte spécialisé ne se limite pas à traduire des termes qui ne seraient que des substantifs. Il est donc urgent que la description des langues spécialisées considère de plus en plus le verbe terminologique et fournisse à la terminographie

des données susceptibles d'enrichir les bases de données terminologiques et d'aider de la sorte le traducteur à résoudre, du moins en partie, ses incertitudes.

Toutefois, et en note finale, il faut ajouter qu'il serait erroné de diaboliser complètement l'incertitude qui, vraisemblablement et malgré tous les efforts déployés pour la contrarier, fera toujours partie intégrante de la profession de traducteur ; c'est souvent sous le coup de l'incertitude et au fil d'innombrables questionnements, recherches et reformulations que le traducteur améliorera son texte.

Références bibliographiques

Bocquet, Claude (2008) : *La traduction juridique – Fondement et méthode*. Bruxelles : De Boeck Université.

Cornu, Gérard (2000) : *Linguistique juridique*. Paris : Montchrestien.

Dechamps, Christina (2013a) : « L'enseignement/apprentissage du français juridique : une proposition de démarche terminologique et didactique. » In : *Équivalences* 40.1-2, 191 – 224.

Dechamps, Christina (2013b) : « Traduction juridique et étude des collocations : quelles perspectives ? » In : *Parallèles* 25, 4 – 18.

Eurin-Balmet, Simone / Henao de Legge, Martine (1992) : *Pratiques du français scientifique.* Paris : AUPELF-UREF.

Gross, Gaston (1994) : « Classes d'objets et description des verbes. » In : *Langage*s 115, 15 – 30.

Gross, Gaston (2010) : « Sur la notion de contexte. » In : *Meta* 55.1, 187 – 197.

Hewson, Lance (2016) : « Les incertitudes du traduire. » In : *Meta* 61.1, 12 – 28.

L'Homme, Marie-Claude (2012) : « Le verbe terminologique : un portrait de travaux récents. » In : *Actes du 3e Congrès Mondial de Linguistique Française, Lyon, 4-7 juillet 2012*. http://www.shs-conferences.org/articles/shsconf/pdf/2012/01/shsconf_cmlf12_000340.pdf (31 octobre 2015).

L'Homme, Marie-Claude (2015) : « Classement des combinaisons lexicales spécialisées à base nominale dans un dictionnaire d'informatique. » In : *Cahiers de lexicologie* 106, 229 – 251.

L'Homme, Marie-Claude (2016) : « Terminologie de l'environnement et sémantique des cadres. » In : *Actes du 5e Congrès Mondial de Linguistique Française, Tours, 4-8 juillet 2016*. http://www.shsconferences.org/articles/shsconf/pdf/2016/05/shsconf_cmlf2016_05010.pdf (2 mai 2017).

Lerat, Pierre (2006) : « Terme et microcontexte. Les prédications spécialisées. » In : *Mots, termes et contexte.* Paris : éditions des archives contemporaines, coll. « Actualité scientifique », 89-98. http://perso.univ-lyon2.fr/~thoiron/JS%20LTT%202005/ pdf/Lerat.pdf (6 janvier 2017).

Lerat, Pierre (2008) : « Restrictions paradigmatiques et traduction des schémas d'arguments. » In : *Meta* 53.2, 434 – 442.

Loffler-Laurian, Anne-Marie (1983) : « Typologie des discours scientifiques : deux approches. » In : *ÉLA* 51, 8 – 20.

Mel'čuk, Igor (2003) : « Collocations dans le dictionnaire. » In : Szende, Thomas [ed.] (2003): *Les écarts culturels dans les dictionnaires bilingues*, 2003, Paris : Honoré Champion, 19 – 64.

Verlinde, Serge / Binon, Jean (2006) : « Corpus, collocations et dictionnaires d'apprentissage. » In : *Langue française* 150, 84 – 98.

Chapter 10

Rechtstexte unter der Lupe: Lesen Übersetzer anders als Juristen?

Eine empirische Untersuchung der Rezeption von Textstrukturmarkern in der institutionalisierten Textsorte des französischen Kassationsgerichtsurteils

Cornelia Griebel

Abstract
Legal texts place particular demands on the reader owing to the institutionalized communication context and their legalized abstract content, not to mention their institutionalized, complex text structure. In this article, the general question "Do (legal) translators read in a different way from legal experts" is narrowed down to the understanding of a particular text genre and its characteristic structure markers: French court decisions rendered by the *Cour de cassation*. The understanding of texts is driven by inferences. Cognitive approaches distinguish between (necessary) *bridging inferences* and (optional) *elaborative inferences.* Whilst the former ensure maintaining a coherent representation of the text, the latter are predictive and based on world knowledge and anticipation of the intended meaning of the utterance. By analyzing the think aloud protocols of 21 participants (professional legal translators, legal experts, students in translation and legal studies), the article focuses on the comprehension of typical structuring markers in this text genre. The following questions will be addressed: Do the typical text structure markers of the court decision trigger the construction of elaborative inferences that control the reading process? Do legal translators show different inference processes than legal experts? Does increasing legal (translation) competence have an impact on inference processes?

Keywords: legal text comprehension, structure markers, inference processes, think aloud

1 Einleitung

Das Verstehen des Rechtstextes ist der erste Schritt im Übersetzungsprozess. Dabei ist die von Rechtsordnung zu Rechtsordnung unterschiedliche und rechtssemantisch nicht deckungsgleiche Lexik zwar das am häufigsten diskutierte Merkmal der Rechtssprache, doch auch die Makrostruktur eines Rechtstextes kann rechtssystemimmanent sein und eine Verständnishürde für den Leser darstellen. Sie zu kennen und zu erkennen ist von ebenso großer Bedeutung, um die für ein umfassendes Verstehen erforderlichen Inferenzen zu bilden. In diesem Artikel wird

die übergreifende Frage, ob Rechtsexperten anders lesen als (Rechts-)Übersetzungsexperten, auf eine bestimmte Textsorte und ihre typische Textstruktur fokussiert: die Urteilstexte des obersten Französischen Gerichtshofes, der *Cour de Cassation* (*CdC*). Aus fachtextlinguistischer Perspektive sind Gerichtsurteile dem Texttyp der mehrfachadressierten „**Texte** der fachinternen und fachexternen Kommunikation **mit performativer Funktion**, mit denen Juristen rechtlich handeln" (Wiesmann 2004: 60; Hervorhebungen im Original), bzw. der Ebene der Rechtspraxis zuzuordnen.[1] Trotz ihrer grundsätzlichen Mehrfachadressiertheit richten sich insbesondere obergerichtliche Urteile aufgrund ihrer normativen Funktion (Busse 1992; 2000) aber primär an den Rechtsexperten und sind Teil der kognitiven Wissensrahmen von Juristen (Busse 1992). Gerade diese normsetzende Funktion lässt Juristen und Rechtsübersetzer Gerichtsurteile mit unterschiedlicher Intention rezipieren, und dies bereits in der Ausbildung – den Juristen zum Zweck der Rechtsanwendung und -auslegung, den Rechtsübersetzer zum sprachlichen und inhaltlichen Transfer in eine andere Rechtssprache und -ordnung.[2] Insofern kann davon ausgegangen werden, dass sich eingeübte Verstehensmuster bei jeglicher Rechtstextrezeption manifestieren, den Rezeptionsprozess der jeweiligen Expertengruppe aber unterschiedlich steuern.

Anhand von Think-Aloud-Protokollen (TAP) aus einer empirischen Studie mit Rechtsübersetzern, Masterstudierenden der Translation mit Schwerpunkt Recht, Rechtsexperten und Jurastudierenden wird untersucht, inwieweit typische textstrukturierende Elemente dieser institutionalisierten Textsorte von den Studierenden und Experten der beiden Richtungen wahrgenommen werden und ob sie Einfluss auf die dem Textverständnis zugrundeliegende Inferenzbildung haben.

[1] Eine ausführlichere Situierung von Gerichtsurteilen in den relevanten fachtextlinguistischen und translationswissenschaftlichen Textsortenschemata und die Diskussion ihrer Verständlichkeit vor dem Hintergrund ihrer Mehrfachadressiertheit können im Rahmen dieses Beitrags nicht erfolgen. Hierzu sei u.a. auf Busse (2001), Gémar (1995); Griebel (2013); Jeand'Heur (1999); Sandrini (1996); Wiesmann (2004) verwiesen.

[2] Zu den unterschiedlichen hermeneutischen Ansätzen von Juristen und Translatoren vgl. z.B. Simonnæs 2012: 27-49.

2 Das französische Gerichtsurteil

Das französische Gerichtsurteil hat eine unverkennbare, komplexe Gliederung. Prominentes Merkmal ist seine Einsatzstruktur, die „phrase unique“, die den gesamten Urteilstext, unabhängig von seiner Länge, in einen einzigen Satz zwängt (vgl. Krefeld 1989: 73). Dieses Redaktionsmuster geht auf die Französische Revolution zurück, als im Zuge einer Justizreform das *jugement motivé* eingeführt wurde, also die begründete Gerichtsentscheidung, die das *jugement nonmotivé* der Rechtsprechung im Ancien Régime ablöste (vgl. Krefeld 1985: 60-96). Die Einsatzstruktur ist bis heute erhalten geblieben, trotz wiederholter Modernisierungsbestrebungen. So folgte der französische Justizminister in einem Rundschreiben vom 31. Januar 1977 den Empfehlungen der *Commission de modernisation du langage judiciaire* über die Redaktion von Gerichtsurteilen, deren Ziel die Verbesserung der Lesbarkeit und Auslegung des Urteilstextes durch Einführung einer dem Standardfranzösischen näheren Formulierung war.

> A cette fin, elle [die Kommission; A.d.V.] avait préconisé, entre autres modifications, une rédaction intégrale en ‚style courant‘, entraînant suppression des locutions ‚attendu que‘ ou ‚considérant que‘. (Journal officiel de la République Française, JO 886 N.C. du 11/02/1977)

Und auch 2012, 35 Jahre später, legte eine im Auftrag des Conseil d’Etat gegründete Arbeitsgruppe einen Bericht vor, in dem sie in ihrer Empfehlung Nr. 14 (Conseil d'Etat - Groupe de travail sur la rédaction des décisions de la juridiction administrative 2012: 42) erneut auf den Verzicht der aus vielen durch Semikolon getrennten Nebensätzen bestehenden Einsatzstruktur zugunsten kurzer und mittels Punkt getrennten Sätze plädiert. Sie seien der typischen französischen Syntax ähnlich und damit auch für den juristischen Laien besser verständlich (vgl. ebd.: 38f).

Doch obgleich „die rigorose Normierung des Urteilstextes jeder fachlichen Notwendigkeit“ entbehre, wie Krefeld (1989: 78) anmerkt, und trotz der oben erwähnten Bestrebungen setzen sich die traditionellen Redaktionsmuster über die französischen Richtergenerationen bis heute fort und scheinen eher eine „soziolektale Funktion“ im Sinne eines standesspezifischen Vertextungsmusters zu erfüllen (Griebel 2013: 240). Dies gilt insbesondere für höchstrichterliche

Entscheidungen, während in den unteren Instanzen die Modernisierungsbemühungen zu einem uneinheitlichen Gebrauch geführt haben.[3]

Das Urteilsmuster des Kassationsgerichtshofes ist in vier Teile untergliedert und beginnt mit LA COUR, Agens und Subjekt des langen Urteilssatzes. Im einleitenden Teil sind die Tatsachen und die Rechtsfrage aufgeführt. Darauf folgen die rechtlichen Erwägungen und zusammengefasst die Beschwerdegründe des Klägers (*motifs*), bevor die Kammer Stellung nimmt und damit die Entscheidung (*dispositif*) einleitet (vgl. Grass 2000: 256). Eingeleitet werden die Elemente der ersten drei Teile durch die Partizipialphrase *attendu que*[4] (in der Erwägung, dass). Der Tenor beginnt mit PAR CES MOTIFS (aus diesen Gründen) und erst in diesem Schlussteil folgt das Hauptverb des mit *LA COUR* beginnenden Satzes (vgl. Ballansat-Aebi 2000: 4). Am häufigsten anzutreffen sind im Tenor die Verben *rejeter (La Cour… rejette…),* wenn das Gericht den Antrag zurückweist, bzw. *casser* und *annuler* (*La Cour… casse et annule…*) im Falle einer Aufhebung des vorinstanzlichen Urteils (vgl. Grass 2000: 254). Hinzu kommen weitere Textelemente, wie bspw. das hier nicht besprochene *vu,* das im einleitenden Teil des Urteils auf einschlägige Gesetzestexte verweist (z.B. ***vu*** *l'article XXX code civil*), oder auch ***sur*** *le moyen / sur le moyen unique* (ggf. ergänzt z.B. durch *pris en sa première branche*)*,* das im Urteilskopf angibt, ob sich die Kammer mit einem oder mehreren Beschwerdegründen befasst und ob der Beschwerdegrund mehrere Teile (*branches*) umfasst.

Attendu que leitet also sowohl die Tatsachen als auch die Argumentationen des Klägers und des Kassationsgerichts (*motifs*) ein und strukturiert den Diskurs (vgl. Cornu 2005: 342). Dabei ist *attendu que* Krefeld (1989: 76f.) zufolge zu einem desemantisierten Element mit Gliederungsfunktion an der Textoberfläche mechanisiert, dessen Funktion allein in der Einleitung eines *motif* besteht. Die

[3] Eine Übersicht über die Entwicklung des französischen Gerichtsurteils gibt Schreiber (2017: 81-83).

[4] Das heute eher seltene *considérant que* findet vor allem noch in den Entscheidungen des Conseil d'Etat und des Conseil Constitutionnel Verwendung. Der Conseil Constitutionnel strengt in jüngerer Vergangenheit ebenfalls Bemühungen mit den Zielen der besseren Lesbarkeit und verständlicheren Entscheidungsbegründung an. Siehe dazu die Berichte über die Vorschläge zu einem neuen Entscheidungsstil für das Verfassungsgericht und die Verwaltungsgerichtsbarkeit des Service de documentation, des études et du rapport de la Cour de cassation (Cour de Cassation, SDER, BDP 2016a; Cour de Cassation, SDER, BDP 2016b).

logische Beziehung zwischen Argument und Entscheidung wird durch Konjunktionen der Bestätigung oder Entgegnung wie *mais*, *cependant, en effet* (*mais attendu que, attendu, cependant, que*) usw. hergestellt (vgl. ebd.: 113; Grass 2000: 255), die somit die inhaltliche Beziehung präzisieren, während der feste Bestandteil (*attendu que*) die Gliederungsfunktion erfüllt (vgl. ebd.: 126).

Die Konjunktion *mais* und das Adverb *cependant* signalisieren dem Leser, dass nun die Erwiderung der Urteilskammer folgt und weisen bereits auf eine Zurückweisung des Antrags hin:

> **Mais attendu que** la domiciliation d'une personne morale dans les locaux à usage d'habitation pris à bail par son représentant légal n'entraîne pas un changement de la destination des lieux si aucune activité n'y est exercée ; (…) la cour d'appel a pu en déduire que la preuve d'une violation de la clause d'habitation bourgeoise n'était pas rapportée ;
>
> D'où il suit que le moyen n'est pas fondé ;
>
> PAR CES MOTIFS :
>
> **REJETTE** le pourvoi ; (…)
> (Cour de Cassation, Arrêt n° 302 du 25 février 2016; eigene Hervorhebung)

Erschwert wird das Textverständnis zudem dadurch, dass die Konjunktion *attendu que* durch einen Einschub getrennt sein kann und dass innerhalb des Absatzes die weiteren Nebensätze nur noch mit *que* angeschlossen werden:

> **Attendu**, selon l'arrêt attaqué, **que** Mme Caroline X…, passagère de son frère, M. Vincent X…, sur la motomarine qu'il pilotait, a été projetée en arrière lors d'une accélération ; **qu'à** la suite de sa chute, elle a été gravement blessée par la pression de la turbine du véhicule ; **que** Mme X… a assigné en réparation des préjudices subis M. X… et la société Matmut, son assureur, lesquels ont appelé en garantie la société Bombardier produits récréatifs, fabricant du produit ; (…)
> (Cour de Cassation, Arrêt n°126 du 4 février 2015; eigene Hervorhebung)

Obschon laut Krefeld desemantisiert, sind diese Gliederungssignale sowie die sie ergänzenden Konjunktionen für das Textverständnis entscheidend, denn sie strukturieren den Text, markieren den Beginn eines neuen Argumentationsabschnitts bzw. das Einsetzen eines neuen Sprechers (Argumentation des Klägers oder der Kammer) und führen auf das Urteil hin: „Jedes Argument (motif) findet nur im Bezug auf den Urteilsspruch seine Berechtigung" (Krefeld 1985: 105; Hervorhebung im Original).

3 Kognitive Prozesse des Textverstehens

Textverstehen ist ein dynamischer Prozess auf mehreren Ebenen und kann in sensomotorische, syntaktische, semantische und pragmatische bzw. situative Teilprozesse gliedert werden (vgl. Strohner 2006: 193f.). Im Mittelpunkt dieses Artikels stehen die semantischen Prozesse, die Strohner wiederum in Prozesse der Referenz, Kohärenz und Inferenz unterteilt, wobei Inferenzprozesse die Grundlage von Referenz- und Kohärenzprozessen bilden (vgl. ebd.: 194).

Der Leseprozess selbst verläuft dem Modell der kognitiven Textverarbeitung Kintschs und van Dijks (1978) zufolge in mehreren Zyklen.[5] Dabei werden gelesene Sätze im Arbeitsgedächtnis in mentale Propositionen überführt. Im Verlauf des Leseprozesses werden neue Mikropropositionen eingelesen und durch zyklische Integrations- und Löschungsprozesse in Makropropositionen überführt. So wird nach und nach eine kohärente *Textbasis* aufgebaut, die auf der Grundlage eines im Gedächtnis gespeicherten Textschemas den aktuellen Textinhalt abbildet. Kintsch und van Dijk (1978: 373) gehen davon aus, dass im Gedächtnis für unterschiedlichste Textsorten abstrakte mentale Textschemata gespeichert sind, die Leerstellen, *Slots*, enthalten. Die abstrakten Textmuster werden während des Lesens instanziiert und die Leerstellen mit den Textinformationen und durch Inferenzprozesse, d.h. durch Anreicherung von nicht im Text enthaltenem, sondern im Gedächtnis gespeichertem Wissen, ausgefüllt. Der Abruf eines Textschemas zu Beginn des Leseprozesses aktiviert Präsuppositionen, ein bestimmtes Textmuster mit spezifischen Merkmalen wird erwartet und Inferenzprozesse werden erleichtert.

Je komplexer der Text – und dies ist im vorliegenden Kontext sowohl inhaltlich als auch sprachlich zu verstehen – und je geringer das abrufbare Vorwissen, desto eher kommt es zu einer Überlastung des Arbeitsspeichers. Der Leser versucht – auch durch wiederholtes Lesen von Textstellen – mehr Propositionen in das Arbeitsgedächtnis aufzunehmen, um sie miteinander zu verknüpfen. Dies behindert die Bildung von Makropropositionen und schließlich einer kohärenten Textbasis (vgl.

[5] Zum Textverstehen und den verschiedenen kognitions- und psycholinguistischen Ansätzen sowie zur Diskussion über Top-down- und Bottom-up-Modelle der Inferenzbildung siehe ausführlich Griebel 2013, 88-121.

Kintsch & Van Dijk 1978, 1983). Textverstehen hängt daher maßgeblich von erfolgreicher Inferenzbildung ab.

Allgemein wird zwischen zwei Arten von Inferenzen unterschieden: So genannten obligatorischen oder Rückwärtsinferenzen (*bridging inferences*), die automatisch gebildet werden und Kohärenz zwischen Textpassagen herstellen, sowie elaborativen oder Vorwärtsinferenzen (*elaborative inferences*), die schema-, also erwartungsbasiert sind und den zu verarbeitenden Text durch Wissen aus dem Langzeitgedächtnis ergänzen (vgl. Rickheit 2008: 14ff.).

Gerichtsurteile – und hier speziell die Urteile des Kassationshofes – folgen einem institutionalisierten Vertextungsmuster. Im Idealfall kann der Leser zu Beginn des Leseprozesses ein entsprechendes Textschema im Gedächtnis aktivieren. Dieses Schema würde sich u.a. zusammensetzen aus der Einsatzstruktur sowie den einschlägigen Gliederungselementen *attendu que, que, mais attendu que, attendu, cependant, que*, *par ces motifs* usw. Sie steuern und erleichtern das Verstehen des Textes, also die Bildung von Präsuppositionen zu Beginn und von Inferenzen während des Leseprozesses.[6] Insofern ist anzunehmen, dass diese Elemente dem Leser als Wegweiser sowohl syntaktisch durch die Mikro- und Makrostruktur des Urteilstextes als auch semantisch durch die Argumentation des Gerichts bis hin zum Urteilsspruch dienen.

4 Die empirische Untersuchung

Im Titel wird die Frage gestellt: Lesen Fachübersetzer anders als Juristen? Diese Frage wird hier auf einen Teilausschnitt des Leseprozesses fokussiert: die Funktion und kognitive Verarbeitung der Gliederungssignale des französischen Kassationsgerichtsurteils, insbesondere *attendu que*.

Der Untersuchung werden die folgenden Fragen vorangestellt:

1. Lässt sich anhand der Versuchsdaten bestätigen, dass *attendu que* als „desemantisiertes Gliederungssignal“ nicht wort-, sondern eher textsemantisch verarbeitet wird, also eine den Leseprozess strukturierende Funktion erfüllt?

[6] Zur psycholinguistischen Beschreibung von Textschemata und ihrer Steuerungsfunktion, speziell in Bezug auf juristische Fachtexte, siehe ausführlich Griebel 2013.

2. Erfassen Fachübersetzer die Textstrukturen anders als die juristischen Fachexperten, d.h., sind andere Inferenzprozesse erkennbar?
3. Lassen sich diese Unterschiede ebenfalls zwischen den Experten und den Studierenden feststellen?

Der Fokus liegt damit auf der Bildung elaborativer Inferenzen. Anhand von Think-Aloud-Protokollen (TAP) wird untersucht, inwiefern die Gliederungsfunktion von *attendu que* wahrgenommen und zum Ausdruck gebracht wird.

4.1 Versuchsaufbau und Methodik

In diesem Artikel wird eine qualitative Teilauswertung aus einer größeren Mixed-Methods-Studie nach dem *convergent parallel design* (Creswell & Plano Clark 2011: 69) vorgestellt. Insgesamt 23 Versuchspersonen (Vpn), 4 Juristen, 5 professionelle Rechtsübersetzer, 5 Jurastudierende auf Masterniveau und 9 Masterstudierende der Translationswissenschaft mit Schwerpunkt Recht nahmen an dem Laborversuch teil. 21 TAP konnten ausgewertet werden, da zwei TAP aus technischen Gründen nicht aufgezeichnet wurden. Alle Vpn waren deutsche Muttersprachler mit Französisch in der Fremdsprachenkombination.[7] Sie lasen vier verschiedene Texte, zwei Urteile des CdC und zwei Gesetzestexte, die sie entweder in einem ersten Durchgang nur zum Verständnis lesen und anschließend bei der zweiten Anzeige zusammenfassen, oder von denen sie in nur einem Durchgang eine resümierende Stegreifübersetzung anfertigen sollten. Die Ausgangssprache der Texte war Französisch, die Zielsprache der Wiedergaben Deutsch.

Während aller Aufgaben wurden die Augenbewegungen mit einem Eye-Tracker aufgezeichnet. Im Genfer Labor wurde ein Tobii T120, 120 Hz, verwendet, im Germersheimer Eye Lab ein TOBII TX300. Die Vpn bestimmten die Dauer der Lese- und Wiedergabeetappen individuell. Vor dem Versuch füllten sie eine Einverständniserklärung aus, nach dem Versuch einen Fragebogen zu ihren

[7] Der Versuch wurde zwischen Juli 2016 und März 2017 in den Eye-Tracking-Labors des Fachbereichs für Translations-, Sprach- und Kulturwissenschaft der Johannes Gutenberg-Universität Mainz in Germersheim (FTSK) sowie der Fakultät für Psychologie und Erziehungswissenschaften (FPSE) der Universität Genf durchgeführt. An dieser Stelle möchte ich dem FTSK und der FPSE und insbesondere den engagierten Kolleginnen und Kollegen für die freundliche Bereitstellung der Ausrüstung und die Unterstützung bei meinem Versuch danken.

Profildaten sowie ihren Kenntnissen in den im Versuch behandelten Rechtsgebieten.

Die Vpn waren aufgefordert, während der Textwiedergaben laut zu denken, d.h., alles zu äußern, was ihnen während des Prozesses durch den Kopf ging. Das laute Denken wurde unmittelbar vor dem Versuch anhand eines Übungstextes zusammen mit der Untersucherin eingeübt und besprochen. Allerdings wurden die Vpn weder zu einem bestimmten sprachlichen Output aufgefordert, noch wurden sie, entgegen Empfehlungen in der Literatur, während des Versuchs daran erinnert, ihre Gedanken zu äußern. Damit sollten Artefakte infolge eines „Äußerungszwangs" sowie die in der Literatur zuweilen kritisierte Überlagerung komplexer kognitiver Prozesse reduziert werden (vgl. zu diesen Fragen Ericsson & Simon 1993 [1984]: 78-83; Göpferich 2008: 22-33).[8]

4.2 Think-Aloud-Protokolle und Codierung

Die TA-Protokolle (TAP) wurden einer „inhaltlich strukturierenden qualitativen Inhaltsanalyse" gemäß Kuckartz (2016: 97-121) unterzogen. Wenngleich qualitative Datenanalysen im Allgemeinen Daten aus unterschiedlichen Interviewarten, Fokusgruppengesprächen, Beobachtungen, Fallstudien etc. zum Gegenstand haben (vgl. Kuckartz 2016; Creswell & Plano Clark 2011), sind sie auch für die Analyse von TAP von Nutzen. Allerdings stellt sich im Unterschied zu Textmaterial aus Interviews etc. bei TAP, die im Übersetzungsprozess entstehen, das Problem, dass die Äußerungen nur in sehr wenigen Fällen kohärent sind und mit zunehmender Komplexität des Ausgangstextes die Menge der Metaäußerungen ab- und die Inkohärenz zunimmt. Geht also Kuckartz (2016: 104) davon aus, dass Sinneinheiten mindestens einen Satz, aber möglicherweise auch mehrere Sätze oder Absätze umfassen, gilt dies nicht für TA während des Übersetzungsprozesses, sodass u.U. auch Satzfragmente noch als Sinneinheiten zu codieren sind.

In der nachfolgenden Analyse werden in der Kategorie *Metakommentare* (MK) Äußerungen codiert, in denen die Vpn die hier interessierenden Satzelemente wie

[8] Die Audioaufnahmen wurden mit der Transkriptionssoftware f4transkript transkribiert und in der qualitativen Analysesoftware QDA Miner codiert. Bei der Transkription wurden die Zeitstempel zu den Äußerungen möglichst genau festgehalten, um eine spätere Zuordnung zu den Augenbewegungsmessungen zu ermöglichen.

attendu que, par ces motifs oder die Makrostruktur des Kassationsgerichtsurteils kommentiert, wie in dem folgenden Ausschnitt aus dem Transkript von TP002:[9] „OK.. es werden also, attendu, attendu.. mais attendu (Intonation steigend); OK.., das sind so drei (..) (aeh/m) (...) drei.. (..) Gründe oder drei.. Erwägungen (Intonation steigend)". Ein MK zur Textstruktur kann wie folgt formuliert sein (JP002): „Also, es.. ist ein Urteil des (aeh/m), der Cour de Cassation (Intonation steigend) (.) (aeh/m), das im Ergebnis (aeh/m) (.) abgewiesen (aeh/m) wur... (aeh/m) …". In diesen MK ist erkennbar, dass TP002 und JP002 die Textstruktur zu Beginn des Wiedergabeprozesses analysieren, also das Textschema eines (französischen) Gerichtsurteils aktivieren können.

Eine weitere Kategorie sind Explizierungen, d.h., das Textelement wird laut oder halblaut gelesen, aber weder kommentiert noch übersetzt, wie in diesem Beispiel (TP003): „Attendu que pour condamner (unv., liest flüchtig den AT laut)". In einer dritten Kategorie werden Übersetzungen codiert, wobei nicht relevant ist, ob das Element korrekt übersetzt wird (TS006): „(aeh/m) (.) In der Erwägung, dass laut dem (.) ja gerügten (.) Urteil.. (aeh/m)…".[10] Die folgende Datenanalyse konzentriert sich auf das Gliederungselement *attendu que,* die Einleitungsformel des Urteilstenors, *par ces motifs*, sowie allgemeine Metakommentare zur Textstruktur. Zum Zweck der vorliegenden Auswertung wurden die qualitativen Codierungen anschließend nach Text und Vpn-Gruppen quantitativ nach Häufigkeit analysiert.

4.3 Auswertung der TA-Daten

Die Datenauswertung wird auf Text- und Gruppenebene vorgenommen. Da die Gruppenstärken sehr gering sind und die Häufigkeiten der Kategorien und Codes je nach Verbalisierungsfreudigkeit der Vpn stark abweichen, wurde bei der Auswertung nur berücksichtigt, ob der Code in den jeweiligen TAP erfasst wurde, nicht, wie häufig er vergeben wurde.[11]

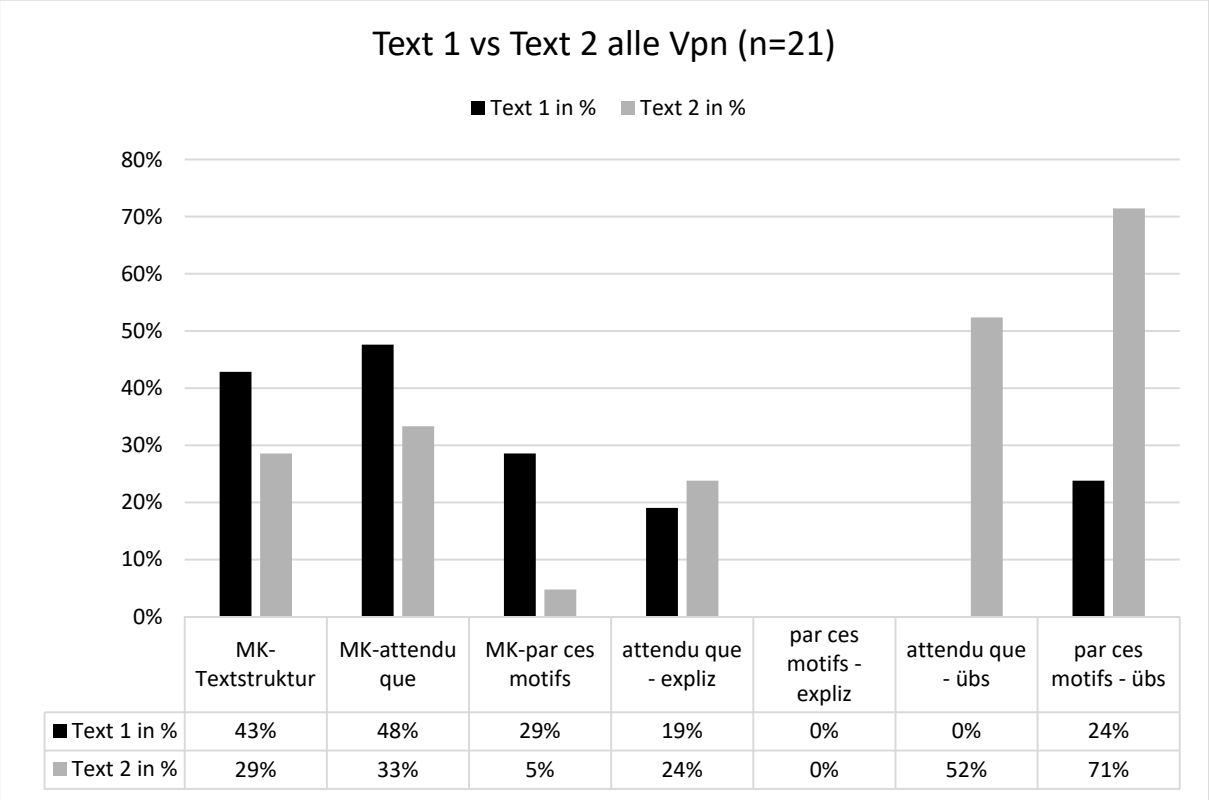
[9] Erläuterung der Kürzel: TP-Translationsprofi, JP-Juraprofi, TS-Translationsstudierender, JS-Jurastudierender.

[10] In Klammern stehen Kommentare zur Äußerung. Punkte in Klammern geben die Sprechpause in vollen Sekunden an (im Transkript mit Zeitstempel erfasst). Zwei Punkte ohne Klammern am Ende eines Wortes stehen für Dehnlaute bzw. kürzere Sprechpausen.

[11] Aus demselben Grund werden hier ausschließlich Prozentwerte berechnet und keine weiteren statistischen Verfahren, wie Standardabweichung bzw. Signifikanztests, eingesetzt, die angesichts der geringen Gruppenstärke wenig Aussagekraft hätten.

Zunächst erfolgt eine Analyse von Text 1 und Text 2[12] (T1, T2) im Hinblick auf die textstrukturierende Funktion von *attendu que* (*aq*) und *par ces motifs* (*pcm*) während der Textwiedergabe.

Abb. 1 zeigt, dass bei der Zusammenfassung von T1 (mit vorgeschaltetem Leseprozess[13]) häufiger MK zur Textstruktur sowie zu *aq* und *pcm* formuliert wurden als bei T2, der Stegreif resümiert werden sollte und tatsächlich mehr Übersetzungen generierte. So übersetzte keine der Vpn bei der Textzusammenfassung die Konjunktion *aq*, während 24% der Vpn *pcm* bei T1 und sogar 71% bei T2 übersetzten, um anschließend den Urteilsspruch zu resümieren.



	MK-Textstruktur	MK-attendu que	MK-par ces motifs	attendu que - expliz	par ces motifs - expliz	attendu que - übs	par ces motifs - übs
Text 1 in %	43%	48%	29%	19%	0%	0%	24%
Text 2 in %	29%	33%	5%	24%	0%	52%	71%

Abb. 1: Vergleich T1, Zusammenfassung, vs Text 2, resümierende Stegreifübersetzung

Die die Erwägungen einleitende Konjunktion *attendu que* wurde in 19% (T1) bzw. 24% Fällen (T2) expliziert, d.h. hörbar (zuweilen flüsternd) gelesen. Sie wurde also

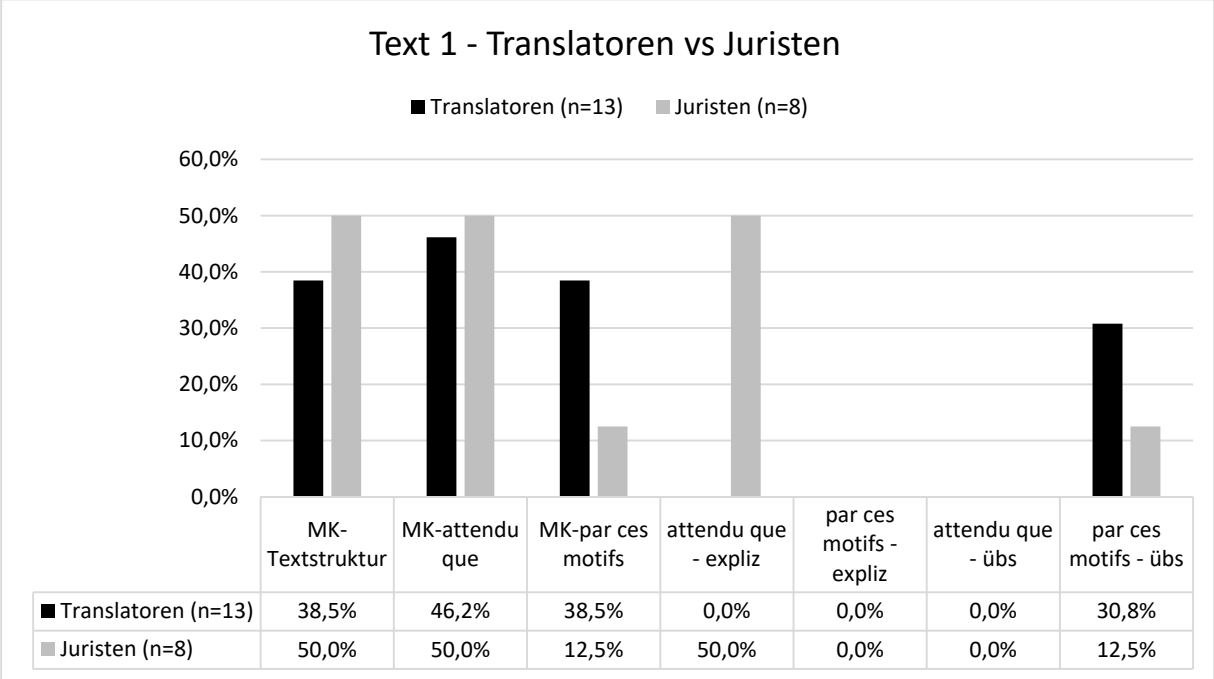
[12] Siehe Anhang.

[13] Zwei Versuchspersonen hatten den Instruktionstext nicht richtig verstanden und T1 bereits während des Leseprozesses resümiert. Hier wurden die ersten TAP ausgewertet, da die Vpn bei erneuter Anzeige des Textes nur noch kurz das Gesagte wiederholten.

miterfasst, wenn die betreffende Passage zum Verständnis erneut gelesen wurde. Dennoch wurde sie in T1 von keiner Vpn übersetzt.

Die Tenoreinleitung *par ces motifs* wird wiederum nicht (hörbar) mitgelesen, dafür aber bei T2 von fast drei Viertel der Vpn übersetzt. Dabei ist zu berücksichtigen, dass *pcm* nicht nur leicht zu verstehen ist, sondern im Urteilstext auch eine exponierte Stellung einnimmt (Blockschrift, allein auf einer Zeile bzw. am Zeilenanfang stehend), was die textstrukturierende Funktion verstärkt und wodurch *pcm* dem Leser als „Anker" in der Textwiedergabe dienen kann.

In einer weiteren Analyse werden die Verbalisierungen im Hinblick auf die Textelemente nach Gruppen betrachtet.



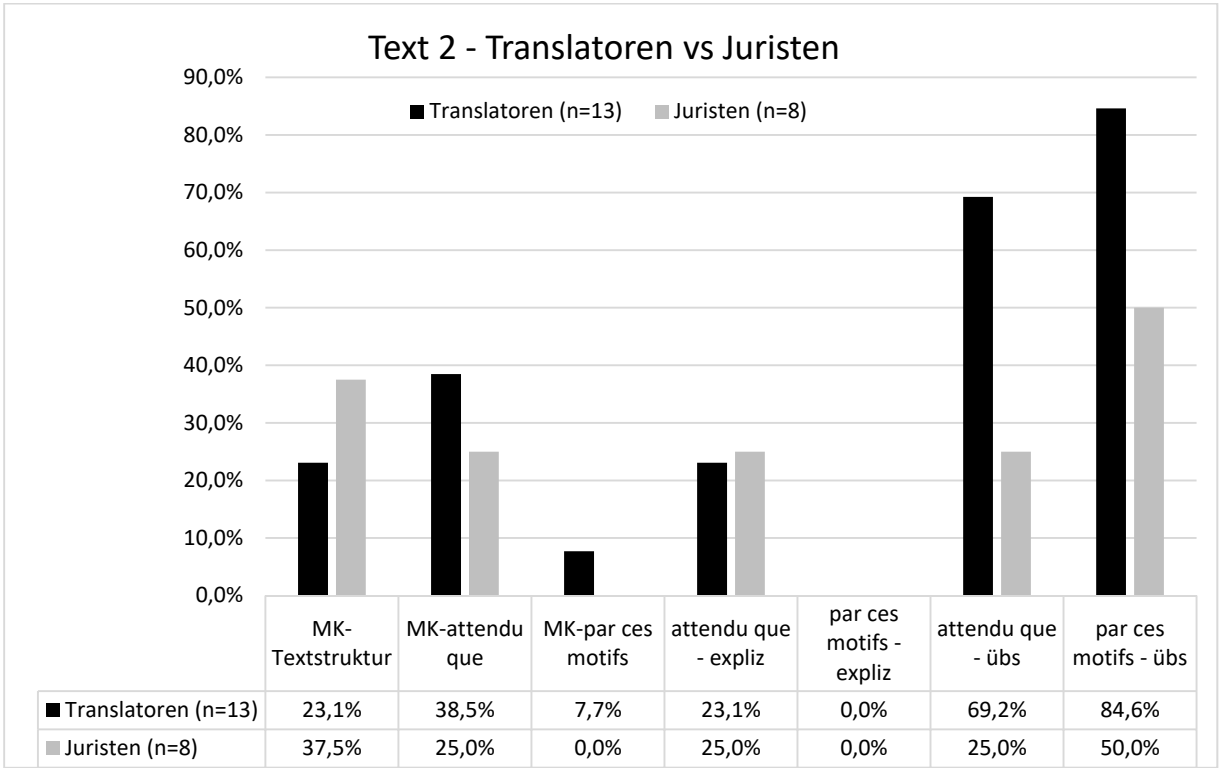
	MK-Textstruktur	MK-attendu que	MK-par ces motifs	attendu que - expliz	par ces motifs - expliz	attendu que - übs	par ces motifs - übs
Translatoren (n=13)	38,5%	46,2%	38,5%	0,0%	0,0%	0,0%	30,8%
Juristen (n=8)	50,0%	50,0%	12,5%	50,0%	0,0%	0,0%	12,5%

Abb. 2: Translatoren vs Juristen, T1

Abb. 2 bildet die Verbalisierungen in T1 nach Versuchsgruppen ab. Die Hälfte der Juristen kommentierte die Textstruktur sowie speziell das Element *aq*, während *pcm* nur von einem Juristen kommentiert wurde. Ebenfalls die Hälfte explizierten *aq*, erfassten das Strukturelement also bei erneutem Lesen der Textstelle zum Verständnis. Die Translatoren machten weniger MK zu Textstruktur und *aq* – wobei die Werte aufgrund der geringen Gruppenstärken nah beieinanderliegen –, kommentierten aber häufiger *pcm*, stellten also die Einleitung des Tenors heraus,

und übersetzten dieses Element mehr als doppelt so häufig bei der Zusammenfassung, während die Juristen den Tenor ohne dieses Element wiedergaben. Die Hälfte der Juristen wiederum explizierte *aq*, las dieses Textelement nochmals hörbar mit, während *pcm* von keiner Vpn nochmals laut mitgelesen wurde.

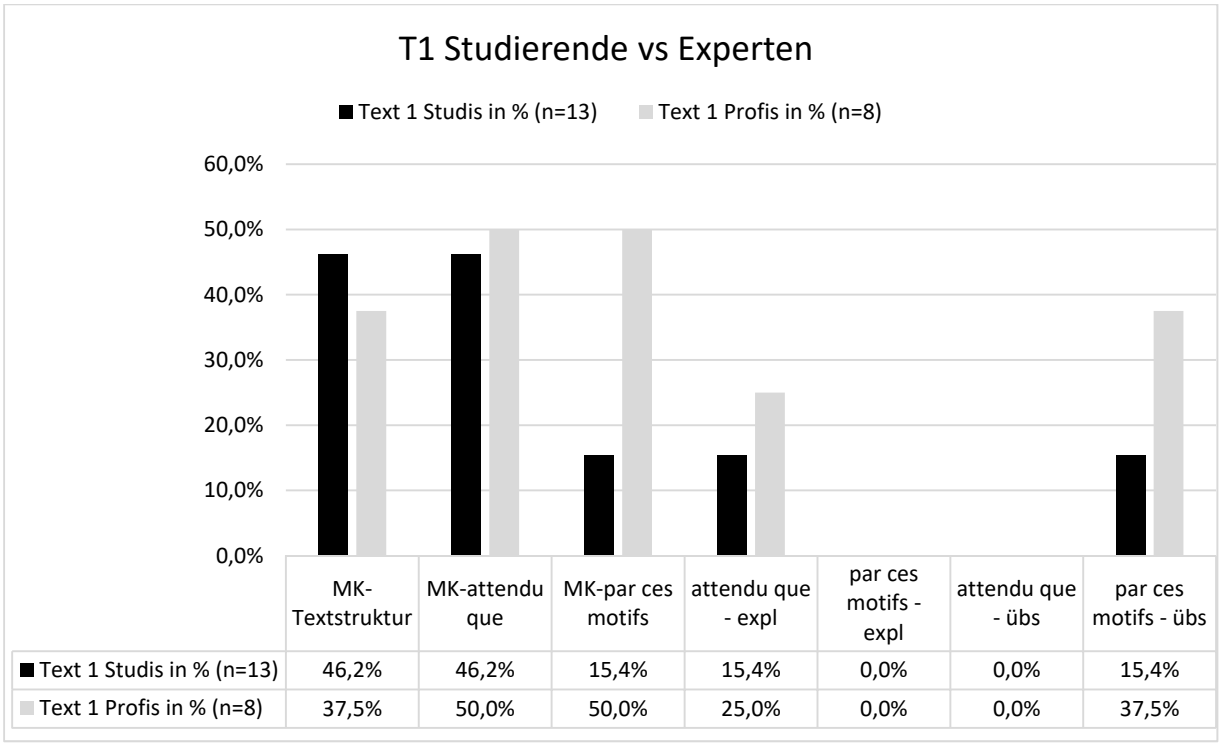
Bei T2 (Abb. 3) zeigen sich in beiden Gruppen weniger MK zur Textstruktur sowie zu *aq* und *pcm*, also generell weniger MK, wie schon in Abb. 1 erkennbar. Während die Juristen häufiger die Gesamttextstruktur kommentierten, konzentrierten sich die Translatoren stärker auf die Funktion von *aq.* Die nahezu gleich häufige Explizierung von *aq* zeigt, dass Teile der Erwägungen bei der zusammenfassenden Wiedergabe nochmals zum Verständnis gelesen werden mussten – und dies im Unterschied zu T1, der keine Explizierung von *aq* enthält. Deutlich erkennbar sind die Unterschiede bei der Übersetzung der beiden Gliederungselemente. Hier ist bei den Translatoren eine stärkere Orientierung an der Übersetzungsaufgabe zu erkennen, während Juristen den Inhalt häufiger ohne Nennung der strukturierenden Textelemente wiedergaben.



	MK-Textstruktur	MK-attendu que	MK-par ces motifs	attendu que - expliz	par ces motifs - expliz	attendu que - übs	par ces motifs - übs
Translatoren (n=13)	23,1%	38,5%	7,7%	23,1%	0,0%	69,2%	84,6%
Juristen (n=8)	37,5%	25,0%	0,0%	25,0%	0,0%	25,0%	50,0%

Abb. 3: Translatoren vs Juristen, T2

Abschließend werden die Unterschiede zwischen Studierenden und Experten betrachtet. Aufgrund der sehr kleinen Gruppenstärke, insbesondere bei den Juristen, erscheint eine Auswertung der vier Versuchsgruppen nicht sinnvoll. Allerdings wird dort, wo Differenzen deutlich werden, in absoluten Zahlen beschrieben, welcher Gruppe das betreffende Ergebnis maßgeblich zuzuschreiben ist.



	MK-Textstruktur	MK-attendu que	MK-par ces motifs	attendu que - expl	par ces motifs - expl	attendu que - übs	par ces motifs - übs
Text 1 Studis in % (n=13)	46,2%	46,2%	15,4%	15,4%	0,0%	0,0%	15,4%
Text 1 Profis in % (n=8)	37,5%	50,0%	50,0%	25,0%	0,0%	0,0%	37,5%

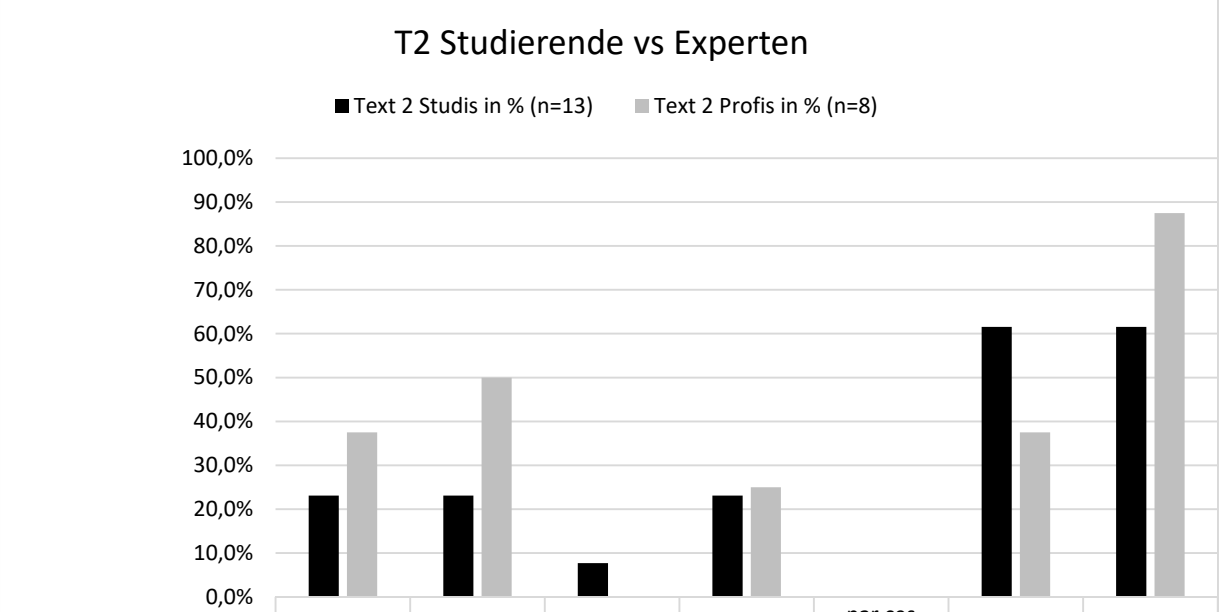
Abb. 4: Studierende vs Experten, T1

In Abb. 4 ist ersichtlich, dass bei T1 knapp die Hälfte der Studierenden und ein etwas kleinerer Anteil der Experten MK zur Textstruktur machten. Interessant ist, dass es sich bei Letzteren um zwei von drei Juristen handelt, während nur einer von fünf Translationsprofis die Textstruktur allgemein kommentierte.

Ferner zeigt sich, dass die Experten *pcm* deutlich häufiger kommentierten als die Studierenden, was aber vor allem den Translatoren zuzuschreiben ist (3 von 5, gegenüber einem Juristen). Die MK der Studierenden zu *pcm* wurden ebenfalls ausschließlich von Translationsstudierenden geäußert. Die Explizierungen von *aq* wiederum gehen ausschließlich auf das Konto der Juristen. Keine Vpn unter den Translatoren hat dieses Textelement bei der Wiedergabe nochmals laut mitgelesen.

Was die Übersetzungen der Elemente anbelangt, sind es wiederum die Translatoren, die die Wiedergabe des Tenors häufiger mit der Übersetzung von *pcm* einleiten, während kein Jurist und nur ein Jurastudierender dieses Satzelement übersetzt haben.

Im Vergleich dazu sind in Abb. 5 die Codierungen für T2 dargestellt.



	MK-Textstruktur	MK-attendu que	MK-par ces motifs	attendu que - expl	par ces motifs - expl	attendu que - übs	par ces motifs - übs
Text 2 Studis in % (n=13)	23,1%	23,1%	7,7%	23,1%	0,0%	61,5%	61,5%
Text 2 Profis in % (n=8)	37,5%	50,0%	0,0%	25,0%	0,0%	37,5%	87,5%

Abb. 5: Studierende vs Experten, T2

Es zeigt sich, dass die Experten auch bei der Aufgabe des resümierenden Stegreifübersetzens mehr MK zur Textstruktur und zu *aq* machten, also den Fokus stärker auf die strukturelle Analyse legten. Dahingegen übersetzten die Studierenden *aq* deutlich häufiger, was vermuten lässt, dass sie sich näher am AT und an der „Übersetzungsaufgabe“ orientierten. Allerdings sind es innerhalb beider Gruppen jeweils Translatoren, die *aq* übersetzen, während es von keinem Juristen und nur zwei von fünf Jurastudierenden übersetzt wurde. Ähnliches gilt für die Einleitung des Urteilstenors. Vier von fünf Translatoren und zwei von drei Juristen übersetzten den prominente Textstrukturmarker, während sich hinter den 61,5% der Studierenden sechs von acht Translationsstudierenden und nur einer von fünf Jurastudierenden verbergen. Dass *pcm* in Text 2 so häufig übersetzt wurde, mag an der syntaktischen

und inhaltlichen Komplexität des vorangehenden und folgenden Textteils liegen, weshalb insbesondere den Translatoren das den Tenor einleitende Textelement als Gliederungshilfe in der Textwiedergabe gedient haben kann. Die TAP weisen bei T2 bei allen Vpn auf Verständnisprobleme auf verschiedenen Ebenen hin.

5 Diskussion und Schlussbemerkung

Aufgrund der geringen Fallzahlen in dieser Untersuchung müssen die Quantifizierungen mit Zurückhaltung betrachtet und Generalisierungen als Annahmen formuliert werden. Dennoch bietet die zugrundeliegende qualitative Analyse der Verbalisierungen die Möglichkeit, elaborative Inferenzen zunächst zu identifizieren und zu interpretieren und erst in einem zweiten Schritt zu quantifizieren. Damit geht die qualitative Analyse über eine rein quantitative Auswertung hinaus und wird in einem späteren Schritt auch eine Interpretation der inhaltsbezogenen Inferenzbildung ermöglichen. Insbesondere bei den für die Translationsprozesswissenschaft charakteristischen – und angesichts des hier besonders spezifischen Probandenprofils unvermeidbaren – kleinen Fallgruppen erweist sie sich damit als probater Ansatz. Es lässt sich also der strikt im quantitativen Forschungsparadigma verwurzelten Kritik Krings widersprechen, der Fallbeschreibungen ein selektiv-phänomenologisches Vorgehen auf der „Nullstufe der Datenanalyse“ vorwirft (Krings 2005: 353).

Die im Vorangehenden vorgestellten Ergebnisse erlauben erste, tentative Antworten auf die zu Beginn dieses Abschnitts formulierten Fragen. Im Hinblick auf die Gliederungsfunktion zeigen die textbezogenen Ergebnisse (Abb. 1), dass knapp die Hälfte der Vpn bei T1, der vor der Zusammenfassung bereits gelesen worden war, Textschemata aktiviert und strukturbezogene elaborative Inferenzen gebildet hatten, die sie laut äußerten. Der unerwartet hohe Anteil textstrukturbezogener Metakommentare bestätigt die von Krefeld postulierte Gliederungsfunktion von *aq* sowie anderer Elemente des Urteilstextes wie *pcm*. Hier wird eine zusätzliche Auswertung der Augenbewegungsmessungen zeigen, inwiefern auch Vpn ohne einschlägige MK diese Textelemente im Leseprozess fixiert haben und sich die Annahmen aus den Verbalisierungen erhärten lassen.

Im Hinblick auf die generelle Abnahme der MK von T1 zu T2 lässt sich zum einen vermuten, dass die Vpn bei der Präsentation eines weiteren Urteilstextes bestimmte

Kommentare nicht wiederholten. Zum anderen könnte aber auch die Aufgabe der „groben, inhaltlich resümierenden Stegreifübersetzung“ die Abnahme der MK und Zunahme der Übersetzungen induziert haben, wie es sich auch in der deutlich häufigeren Übersetzung der Strukturelemente besonders durch die Translatoren zeigt. Entsprechend lässt sich vermuten, dass bei T1 der vorgeschaltete Leseprozess, also die erste semantische Verarbeitung des Textes, dazu führte, dass *aq* in T1 von keiner Vpn übersetzt wurde, in T2 jedoch von knapp 70% der Translatoren und 25% der Juristen. Ein weiterer Faktor könnte aber auch die Komplexität von T2 sein, die insbesondere die rechtlichen Erwägungen betrifft. *aq* könnte somit eine Ankerfunktion für die Orientierung im Text und damit für die Inferenzbildung erfüllt haben. Auch der Blick in die gesamten TAP lässt vermuten, dass *attendu que* infolge seiner Stellung zu Beginn eines Absatzes bzw. eines Teils des Urteilstextes eher der Strukturierung der Textwiedergabe diente. Dies bleibt näher zu untersuchen. Semantisch scheint dieses Element den TAP zufolge keiner Vpn Probleme bereitet zu haben, was ebenfalls die These Krefelds der Desemantisierung dieser Elemente bestätigen würde.

In Bezug auf die Frage nach den Textrezeptionsprozessen von Juristen und Translatoren fördert die Auswertung einige Parallelen, aber auch erkennbare Unterschiede zutage. Während bei T1 die Translatoren den Fokus stärker auf das exponierte Gliederungselement *pcm* legten, äußerten die Juristen häufiger globalere Überlegungen zur Textstruktur und zur Funktion von *aq*, wobei die Werte sehr nah beieinander liegen. In T2 wiederum zeigt sich deutlich die Übersetzungsaffinität der Translatoren, die die betreffenden Textelemente nahe am AT übersetzten, obwohl die primäre Gliederungsfunktion von *aq* in T1 und T2 von 46,2% bzw. 38,5% der Translatoren ebenfalls kommentiert wurde, also bewusst war. Die Juristen konnten sich bei T2 auch bei nicht vorgeschaltetem Leseprozess stärker vom Ausgangstext lösen und stärker inhaltlich resümieren. Dahingegen explizierte die Hälfte von ihnen in T1 *aq,* während bei den Translatoren keine Explizierung verzeichnet wurde. Es ist anzunehmen, dass im ersten stillen Leseprozess die erforderliche Inferenzbildung bei den betreffenden Vpn also noch nicht stattgefunden hatte, und die betreffenden Textteile in Sachverhalt und rechtlichen Erwägungen zum Verständnis nochmals laut gelesen werden mussten.

Hinsichtlich der dritten Frage zeigt der Vergleich zwischen Studierenden und Experten, dass insbesondere die Experten beider Richtungen in beiden Texten die Textstrukturmarker kommentierten. Es lässt sich anhand der hier vorliegenden Daten die tentative Schlussfolgerung ziehen, dass durch die zunehmende Erfahrung mit komplexen Urteilstexten die Funktion der Gliederungselemente besser inferiert, verbalisiert und damit zum Textverständnis – d.h. zur Generierung einer Textbasis – genutzt werden kann. Allerdings ist bei den Translatoren in beiden Untergruppen deutlich die Übersetzungsaffinität erkennbar, das Bemühen, nicht nur den Text inhaltlich zu resümieren, sondern auch sprachlich möglichst präzise wiederzugeben. Umgekehrt ausgedrückt lässt sich vermuten, dass Translatoren zwar ähnliche Präsuppositionen und elaborative Inferenzen bei der Textrezeption bilden wie die Juristen – sie aber bei der Wiedergabe von Textinhalten stärker sprachlich fokussiert sind. Diese Ähnlichkeit tritt in den hier analysierten Daten deutlicher zutage als Parallelen zwischen Studierenden einer- und Experten andererseits. Impressionen aus der inhaltlichen Sichtung der TAP erhärten diese Vermutung einer stark am AT orientierten Wiedergabe des Textinhalts.

Die hier vorgestellten Ergebnisse betreffen den textstrukturbezogenen Ausschnitt der empirischen Daten und lassen das inhaltliche Textverständnis bisher unberücksichtigt. Dennoch lassen sie bereits erkennen, dass in der besonders komplexen Struktur des französischen Gerichtsurteils die Textstrukturmarker von den Rezipienten bewusst zur Steuerung des Lese- und Verstehensprozesses eingesetzt werden, sie also der Bildung elaborativer Inferenzen dienen.

In einem anschließenden Schritt der qualitativen Analyse wäre nun zu untersuchen, inwieweit die Erkennung der Strukturmarker das inhaltliche – rechtliche sowie rechtssprachliche – Verständnis tatsächlich verbessert und ob auch hier Unterschiede zwischen Juristen und Translatoren zutage treten. Eine immer feinmaschigere Analyse der TAP sowie das Mixing mit den Eye-Tracking-Daten wird ein umfassenderes Bild über Lese- und Verarbeitungsprozesse ergeben, Letzteres auch jenseits verbaler Äußerungen. Es liegt in der Natur der Translationsprozessforschung, dass erst durch eine Vielzahl kleinzelliger Untersuchungen wie der vorliegenden ein größeres Mosaik entsteht. Dieses Gesamtbild wird dann u.a. Schlussfolgerungen für die Ausbildung von juristischen Fachübersetzern zulassen und die Frage beantworten, ob Rechtsübersetzer anders lesen als Übersetzer.

Literaturverzeichnis

Ballansat-Aebi, Suzanne (2000): "‚Attendu que'. Französische Gerichtsurteile als Herausforderung für den Übersetzer." Universität Genf, Schweiz. Online verfügbar unter http://www.tradulex.org/Actes2000/ballansat.pdf (Abruf am 12.01.2018).

Busse, Dietrich (1992): *Recht als Text. Linguistische Untersuchungen zur Arbeit mit Sprache in einer gesellschaftlichen Institution.* Tübingen: Niemeyer (= Reihe germanistische Linguistik, 131).

Busse, Dietrich (2000): "Textsorten des Bereichs Rechtswesen und Justiz." In: Brinker, Klaus / Antos, Gerd / Heinemann, Wolfgang [Hg.] (2000): *Text- und Gesprächslinguistik*, 1. Halbband. 1. Aufl. s.l.: Mouton de Gruyter. 658 – 675.

Busse, Dietrich (2001): "Semantik der Praktiker. Sprache, Bedeutungsexplikation und Textauslegung in der Sicht von Richtern." In: Müller, Friedrich / Wimmer, Rainer / Jeand'Heur, Bernd [Hg.] (2001): *Neue Studien zur Rechtslinguistik. Dem Gedenken an Bernd Jeand'Heur*. Berlin: Duncker & Humblot (= Schriften zur Rechtstheorie, 202). 45 – 81.

Conseil d'Etat - Groupe de travail sur la rédaction des décisions de la juridiction administrative (2012): Rapport final. Le Conseil d'Etat. Online verfügbar unter http://www.conseil-etat.fr/Actualites/Communiques/Groupe-de-travail-sur-la-redaction-des-decisions-de-la-juridiction-administrative-rapport-final (Abruf am 25.01.2018).

Cornu, Gérard (2005): *Linguistique juridique*. 3. éd. Paris: Montchrestien (Domat droit privé).

Cour de Cassation, Arrêt n°126 du 4 février 2015 (13-27.505). In: *Bulletin numérique des arrêts publiés des chambres civiles*. Online verfügbar unter https://www.courdecassation.fr/publications_26/arrets_publies_2986/premiere_chambre_civile_3169/2015_6937/fevrier_6939/126_4_31058.html (Abruf am 25.01.2018).

Cour de Cassation, Arrêt n° 302 du 25 février 2016 (15-13.856). In: *Bulletin numérique des arrêts publiés des chambres civiles*. Online verfügbar unter https://www.courdecassation.fr/publications_26/arrets_publies_2986/troisieme_chambre_civile_3171/2016_7404/fevrier_7406/302_25_33740.html (Abruf am 25.01.2018).

Cour de Cassation, SDER, BDP (2016a): "Les modifications de rédaction et de motivation des arrêts de la juridiction administrative." Hg. v. Service de documentation, des études et du rapport de la Cour de Cassation und Bureau du droit public et du droit constitutionnel. Cour de Cassation (35). Online verfügbar unter https://www.courdecassation. fr/IMG/35_SDER_BDP_Redaction_motivation_adm_1216.pdf (Abruf am 25.01.2018).

Cour de Cassation, SDER, BDP (2016b): "Les modifications de rédaction et de motivation des décisions du Conseil constitutionnel." Hg. v. Service de documentation, des études et du rapport de la Cour de Cassation und Bureau du droit public et du droit constitutionnel. Cour de Cassation (36). Online verfügbar unter https://www.courdecassation.fr/IMG/36_SDER_BDP_Redaction_motivation_CC_1216.pdf, zuletzt aktualisiert am 27.04.2017 (Abruf am 25.01.2018).

Creswell, John W. / Clark Plano, Vicki L. (2011): *Designing and conducting mixed methods research*. 2nd ed. Los Angeles, CA: SAGE Publications.

Ericsson, Karl Anders / Simon, Herbert Alexander (1993 [1984]): *Protocol analysis. Verbal reports as data*. Rev. ed., 7. print. Cambridge, Mass. [u.a.]: MIT Press (A Bradford book).

Gémar, Jean Claude (1995): *Traduire ou l'art d'interpréter. Fonctions, statut et esthétique de la traduction.* Sainte-Foy Québec: Presses de l'Université du Québec.

Göpferich, Susanne (2008): *Translationsprozessforschung. Stand, Methoden, Perspektiven*. Tübingen: Narr.

Grass, Thierry (2000): "Structures comparées des arrêts de la cour de cassation et de la Cour fédérale de justice allemande (Bundesgerichtshof)." In: Morgenroth, Klaus [Hg.] (2000):

Hermetik und Manipulation in den Fachsprachen. Tübingen: Narr (= Forum für Fachsprachen-Forschung, 55), 245 – 260.

Griebel, Cornelia (2013): *Rechtsübersetzung und Rechtswissen. Kognitionstranslatologische Überlegungen und empirische Untersuchung des Übersetzungsprozesses*. Berlin: Frank & Timme (= Forum für Fachsprachen-Forschung, 110).

Jeand'Heur, Bernd (1999): "Die neuere Fachsprache der juristischen Wissenschaft seit der Mitte des 19. Jahrhunderts unter besonderer Berücksichtigung von Verfassungsrecht und Rechtsmethodik." In: Hoffmann, Lothar / Kalverkämper, Hartwig / Wiegand, Herbert E. (Hg.): *Handbücher zur Sprach- und Kommunikationswissenschaft. Fachsprachen. Ein internationales Handbuch zur Fachsprachenforschung und Terminologiewissenschaft* (2. Halbband), Fachsprachen; 1. Aufl. s.l.: Mouton de Gruyter. 1286 – 1295.

Journal officiel de la République Française (1977): Fac-similé JO 886 N.C. du 11/02/1977 (886 N.C.). Online verfügbar unter https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000843305 (Abruf am 25.01.2018).

Kintsch, Walter / van Dijk, Teun A. (1978): "Toward a Model of Text Comprehension and Production." In: *Psychological Review* 85.5, 363 – 394.

Krefeld, Thomas (1985): *Das französische Gerichtsurteil in linguistischer Sicht. Zwischen Fach- u. Standessprache*. Frankfurt am Main: Lang (= Studia Romanica et linguistica, 17).

Krefeld, Thomas (1989): "Form - Formel - Formular: linguistische Bemerkungen zur Funktion der Formalisierung in französischen Rechtstexten." In: Dahmen, Wolfgang [Hg.] (1989): *Technische Sprache und Technolekte in der Romania.* Romanistisches Kolloquium II. Tübingen: Narr (= Tübinger Beiträge zur Linguistik, 326). 65 – 87.

Krings, Hans Peter (2005): "Wege ins Labyrinth – Fragestellungen und Methoden der Übersetzungsprozessforschung im Überblick." In: *Meta* 2, 342 – 358.

Kuckartz, Udo (2016): *Qualitative Inhaltsanalyse. Methoden, Praxis, Computerunterstützung*. 3., überarbeitete Auflage. Weinheim, Basel: Beltz Juventa (Grundlagentexte Methoden).

Rickheit, Gert (2008): "Inferenzen bei der Sprachverarbeitung." In: *Neue Beiträge zur Germanistik* 7, 7–28.

Sandrini, Peter (1996): *Terminologiearbeit im Recht. Deskriptiver begriffsorientierter Ansatz vom Standpunkt des Übersetzers*. Univ., Diss. u.d.T.: Innsbruck, 1995. Vienna: Internat. Network for Terminology (IITF series, 8).

Schreiber, Michael (2017): "La phrase unique: Die Ein-Satz-Struktur in Texten der Französischen Revolution und deren Übersetzungen.". In: Dahmen, Wolfgang [Hg.] (2017): *Sprachvergleich und Übersetzung. Die romanischen Sprachen im Kontrast zum Deutschen* : Romanistisches Kolloquium XXIX. Tübingen: Narr Francke Attempto (= Tübinger Beiträge zur Linguistik, 553). 81 – 98.

Simonnæs, Ingrid (2012): *Rechtskommunikation national und international im Spannungsfeld von Hermeneutik, Kognition und Pragmatik*. Berlin: Frank & Timme (= Forum für Fachsprachen-Forschung, 103).

Strohner, Hans (2006): "Textverstehen aus psycholinguistischer Sicht." In: Blühdorn, Hardarik & Breindl, Eva (Hg.) (2006): *Text - Verstehen. Grammatik und darüber hinaus*. Berlin [u.a.]: de Gruyter (= Jahrbuch des Instituts für Deutsche Sprache, 2005). 187 – 204.

Van Dijk, Teun Adrianus / Kintsch, Walter (1983): *Strategies of discourse comprehension*. New York: Academic Press.

Wiesmann, Eva (2004): *Rechtsübersetzung und Hilfsmittel zur Translation. Wissenschaftliche Grundlagen und computergestützte Umsetzung eines lexikographischen Konzepts.* Tübingen: Narr (= Forum für Fachsprachen-Forschung, 65).

Anhang

Text 1

Arrêt n° 302 du 25 février 2016 - Cour de cassation - Troisième chambre civile
Demandeur(s) : la SCI Foncière Le Coursonnois, société civile immobilière
Défendeur(s) : les époux X...
Sur le moyen unique :
Attendu, selon l'arrêt attaqué (Paris, 16 décembre 2014), que M. et Mme X…, locataires d'un appartement à usage d'habitation suivant un contrat de bail soumis aux dispositions de la loi du 1er septembre 1948, ont été assignés par leur bailleur, la société civile immobilière Foncière Le Coursonnois (la SCI), en déchéance de leur droit au maintien dans les lieux pour manquement à la clause d'occupation bourgeoise du bail ;
Attendu que la SCI fait grief à l'arrêt de rejeter sa demande alors, selon le moyen, *que la domiciliation d'une société commerciale suffit à conférer à l'occupation un caractère commercial, incompatible avec l'obligation d'occuper bourgeoisement les lieux ; qu'en jugeant le contraire et en écartant toute faute du preneur, la cour d'appel a méconnu l'article 1134 du code civil* ;
Mais attendu que la domiciliation d'une personne morale dans les locaux à usage d'habitation pris à bail par son représentant légal n'entraîne pas un changement de la destination des lieux si aucune activité n'y est exercée ; qu'ayant relevé que la société « Les nouvelles impressions » avait fixé son siège à l'adresse des lieux loués du 19 avril 2011 au 11 décembre 2012 mais que M. X… n'y accueillait ni secrétariat, ni clientèle, qu'il n'y avait aucune machine ni activité commerciale et qu'aucun trouble lié à une telle activité n'avait été constaté par les voisins, la cour d'appel a pu en déduire que la preuve d'une violation de la clause d'habitation bourgeoise n'était pas rapportée ;
D'où il suit que le moyen n'est pas fondé ;
PAR CES MOTIFS :
REJETTE le pourvoi ;

Text 2

Arrêt n°126 du 4 février 2015 - Cour de cassation - Première chambre civile
Demandeur(s) : la société Bombardier produits récréatifs
Défendeur(s) : M. Vincent X..., et autre
Sur le premier moyen, pris en sa première branche :
Vu l'article 1386-9 du code civil ;
Attendu, selon l'arrêt attaqué, que Mme Caroline X…, passagère de son frère, M. Vincent X…, sur la motomarine qu'il pilotait, a été projetée en arrière lors d'une accélération ; qu'à la suite de sa chute, elle a été gravement blessée par la pression de la turbine du véhicule ; que Mme X… a assigné en réparation des préjudices subis M. X… et la société Matmut, son assureur, lesquels ont appelé en garantie la société Bombardier produits récréatifs, fabricant du produit ;
Attendu que pour condamner la société Bombardier produits récréatifs à garantir M. X… et la Matmut des condamnations prononcées à leur encontre, l'arrêt retient qu'il n'est pas établi par cette société que l'étiquette rappelant la nécessité de porter un vêtement de protection ait été apposée sous le guidon de la motomarine en cause à destination du conducteur et des passagers, de sorte que le véhicule n'a pas offert, par sa présentation, la sécurité à laquelle la passagère pouvait légitimement s'attendre ;
Qu'en statuant ainsi, alors qu'il appartient au demandeur en réparation du dommage causé par un produit qu'il estime défectueux de prouver le défaut invoqué, la cour d'appel a inversé la charge de la preuve et violé le texte susvisé ;
PAR CES MOTIFS et sans qu'il y ait lieu de statuer sur les autres griefs du pourvoi :
CASSE ET ANNULE, dans toutes ses dispositions, l'arrêt rendu le 4 juillet 2013, entre les parties, par la cour d'appel de Douai ; remet, en conséquence, la cause et les parties dans l'état où elles se trouvaient avant ledit arrêt et, pour être fait droit, les renvoie devant la cour d'appel d'Amiens ;

Chapter 11

Specifying Levels of (C)overtness in Legal Translation Briefs

Juliette Scott

Abstract
There has been much debate historically on the subject of translators' action: whether translated texts should read as originals, or whether it should be clear to readers that the text is 'foreign' – whether the translation should be 'covert' or 'overt'. Such discussions, germinating in the literary and religious fields, have been fertile in general translation studies. There has been far less focus, however, on to what extent translators' action is or should be visible in the field of legal translation.
This chapter suggests that levels of (c)overtness for different legal genres and different textual purposes could be mapped, forming part of a comprehensive translation brief, whilst emphasizing how the translator's status as an authoritative professional who can interact with their client and determine their client's requirements, along with unencumbered agency, impact upon effective performance of translation in the specialist domain of the law. Some practical examples are provided to illustrate levels of (c)overtness in different genres and subgenres, in legislative, judicial, and corporate legal texts, and how translators' intervention might be commissioned most effectively, particularly where translation takes place outside institutions.

Keywords: legal translation brief, legal genres, covert-overt translation, fitness-for-purpose

1 Background: Perception of and theorizing on translatorial action

The translation of a legal text from one natural language into another implies the transfer and communication of complex information, which is embedded within the source legal system and subject to the constraints of the genre (Bhatia 1997, 2006, 2014), into the receiving environment. The purpose of the text must also be taken into account, and adds an extra layer of difficulty to achieving a successful outcome in this multidimensional endeavour (Scott 2017a). As Engberg has emphasised, legal meaning arises from a person's encounter with another's knowledge, and legal genres have a readership with widely divergent levels of knowledge, in terms of both depth and breadth (e.g. Engberg 2017): for example, between lay persons, legal practitioners or legal scholars. Each of these groups has different expectations,

possesses different tools for interpreting the text, and applies different legal, intellectual and linguistic filters to their reading.

For all that, the complexity of the process of conveying source to target, ensuring its suitability for the readership, is not the sole cause of discomfort for the legal translator, who also has to contend with problematic aspects of their own status. Indeed for Holz-Mänttäri, in her theory of translatorial action, the links between process and profession are crucial and inextricable (Schäffner 2000, Palumbo 2009). In the following, I first offer an overview of stances relating to the process of translation generally, with some prominent examples from legal translation over the centuries, and in Section 2 discuss the relevance of translator status.

General Translation Studies theories have offered many dichotomies concerning approaches to translation performance, summarized in Figure 1, adapted from Pym (2010: 30-33). Notwithstanding this duality, Pym notes that many scholars allow for nuances between the two poles.

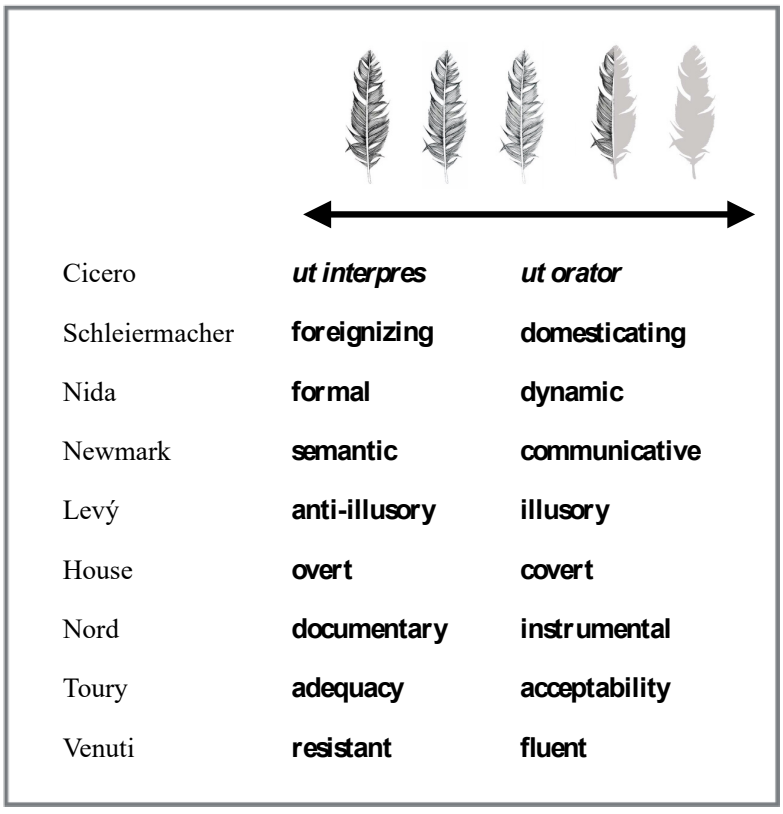


Figure 1: Theoretical polarities describing approaches to translation (after Pym 2010 : 33)

Orientations on how legal translation should be approached can be traced back to ancient times, although its detailed history has yet to be written (Glanert 2014: 257). As Lavigne notes (and the situation has not changed in the years since her paper):

> too little is known about the various translational strategies and techniques used through the ages in translating legal texts to be able to make general statements on the evolution of legal translation (2006: 158).

For this reason, the prescriptions selected below seek only to call attention to waypoints, and are by no means exhaustive.

Cicero, the often-called "father of translation theory" (McElduff 2013), who might also be termed the first 'lawyer-linguist', set *ut interpres* against *ut orator*, which Nord explains respectively as "literally to the point of incomprehensibility" and "altering the wording in order to reach the audience" (2012: 201). Here, however, Cicero may well be reflecting rather on his literary translation work than on the translation of legal texts – Brock tells us that in the Roman era "the translator of a literary text went about his work in a manner totally different from that of the *fidus interpres*, the hack translator, who produced slavish renderings of legal and business documents" (1979: 69).

According to Lavigne, the "oldest known written rule restricting the type of translation to be used when translating a legal text" (2006: 146), imposed by Roman Emperor Justinian I, can be found in the *Corpus Juris Civilis*, and Glanert has interpreted the rule, relating to the Digest, as follows:

> transpositions from the Latin into the Greek language 'in the same order and sequence' ('*sub eodem ordine eaque consequential*') would be authorised; all other reformulations, however, would be qualified as 'perversions' ('*perversiones*') (Justinian 533, lx-lxi) (2014: 269).

As well as requiring the source order of words to be followed, Lavigne notes that the rule also contained a prohibition from appending comments or glosses (2005). For Lavigne, Justianian's rule may be the source of what she refers to as the "myth of literalness" in legal translation whereby scholars, in particular Šarčević, hold that "Because legal texts are authoritative documents, they were translated literally […] until at least the beginning of the seventeenth century" (Lavigne 2006: 147). In the first major research work devoted solely to legal translation, with a section on its history, Šarčević contends that strategies have developed over 2,000 years in a

continuum from "strict literal", "literal", "moderately literal", "near idiomatic", "idiomatic" through to, in recent decades, bilingual drafting or "co-drafting" (1997: 23-24). In a later paper Šarčević concludes that in the past "literal translation (the stricter the better) was the golden rule for legal texts and is still advocated by some lawyers today" (2000: 3). Lavigne challenges this view and argues that even in medieval times other factors such as the "translational goal of the translator", "the period in which the text is translated", and "the legal culture to which the text is […] transferred" were also taken into account (2006: 146). In addition to her discussions of literal approaches, Šarčević reminds us that "substance must always prevail over form in legal translation" for legally binding texts (2000: 3). She notes however that practices differ according to the jurisdiction and even according to genre, and that opinions on this issue are evolving (2000: 3).

It is important to point out with regard to legal and translation practitioners that the choice of strategy can and should be clarified by using a translation brief – where the goal or purpose may be different for the source text, say legally binding, and the target text, say an information purposes translation of legislation destined for the general public. Moreover, an "indelible marker" (Scott 2016: 159-160) is desirable, to provide permanent references to the criteria according to which a translation was performed, and accompany the target text with a caution to that effect, in particular to reduce the problems that arise when a text is used for a purpose other than that for which it was intended at the outset.

Although it focuses mainly on literary translation, one cannot broach the subject of perception of translators' action without citing the landmark work *The Translator's Invisibility*, ostensibly a history of translation from the seventeenth century, even if it places legal translation in a basket called "technical" comprising scientific, legal, diplomatic, commercial texts (Venuti 1995: 41). In his *magnum opus*, Venuti weighs up "domestication" and "foreignization" strategies, a dichotomy formulated by various scholars, but in his words "none so decisive as that offered by […] Schleiermacher". Venuti strongly advocates what is akin to a source-oriented approach. For our purposes here, it is interesting to note that Venuti describes the [literary] translator's "shadowy existence in Anglo-American culture", and deplores their "ambiguous and unfavourable" situation in terms of copyright law and contractual arrangements (1995: 8). Unfortunately, in spite of the extensive

skillset required for the legal translation specialism, legal translators in many countries, not only the UK or the USA, suffer from invisibility and low status, and it is this point which I address in the next section.

2 How legal translators' inconspicuous status affects their ability to establish (c)overtness requirements in interactions with other stakeholders

We have seen that there has been a longstanding tension among translation strategies, and for those who dare to translate legal content, one might even say suspicion regarding the extent of interpretation permissible. The paradox is stated clearly by Prunč, who highlights the "discrepancy between the rather marginal status of the translator, on the one hand, and his or her crucial role in the construction of meaning in transcultural exchange, on the other" (2007: 40). For many contemporary legal professionals, translators can 'just translate', without interdiscursive references or instructions (Scott 2016). Furthermore, they tend to believe that additional contextual knowledge would in fact be harmful to an unrealistic 'ideal' according to which the translator's textual agency does not – or even must not – 'affect' the text in any way as it is transferred from one language to another.

For some comparatists, the fact that the translator's hand is clearly obvious and the translation "overt" is more likely to preserve the text's legal effects (e.g. Baaij 2014). Whereas for stakeholders from the world of business, the translated text may need to appear originally drafted in the target language and thus be a necessarily "covert" translation. Such covertness may even have a bearing on legal effect – i.e. whether that text is taken seriously by the genre community (Gotti 2012: 60). Views thus vary considerably as to how 'translational imperceptibility' and legal effect can be reconciled.

Certain lawyers and legal scholars are convinced that effective legal translation is the exclusive province of lawyers (e.g., Lavoie 2003; Manganaras 1996; Schroth 1986; Gonod 2017), some even denigrating linguists for this role. Other experts point out that a deep grasp of translation and language skills is indispensable, and that lawyers may well not possess such skills (Gémar 1988; Lavoie 2003). In this

regard, two recent empirical studies are worthy of note. In the first, Catherine Way (2016) compared the performance of translation students and law students and sought, successfully, to raise awareness in the group investigated of the importance of translation skills in their own right. The second, a doctoral project in the field of criminal law, once again involving students, comparing the performance of MA-level translation trainees with linguistically-skilled postgraduate lawyers, was carried out by Daniele Orlando (2015). As yet no comparative research of this kind has been undertaken involving practitioners. The lack of interdisciplinary cross-fertilization does not help matters: Goddard describes the no-man's land between the fields of linguistics and the law (2010), while Pommer pleads for more collaboration between comparative law and legal translation (2005).

To this basic lack of confidence in and/or incomprehension of the legal translator's work, we must add the general problem of the translator's low status regardless of domain demonstrated by numerous studies (Dam & Zethsen 2010; Katan 2009, 2011; Monzó 2011, Sela-Sheffy & Shlesinger 2008; Pym *et al.* 2012; Scott 2016 and 2017b,). A palpable lack of proactive behaviour worsens the situation. Moreover, according to findings by Pym *et al*. (2012), in many countries limited support for proactive behaviour to improve status, if any, is provided by translators' professional associations. The concept of "relational agency" coined by Edwards (2005, 2010) can make a contribution here. It is defined by Edwards thus: "professionals work in and between work settings and interact with other practitioners and clients to negotiate interpretations of tasks and ways of accomplishing them" (2010: 13). Legal translators therefore need to position themselves as skilled professionals meriting respect. Edwards pinpoints the intersection of "practice boundaries" where two or more professions are "involved in accomplishing tasks together" (2010: 46). In the case of legal translation, especially when it takes place outside institutions, we may evoke boundaries between sole traders and firms or organisations, boundaries between translation and legal professions, and boundaries between linguistic and legal knowledge. Although Edwards warns that these spaces can be "uncomfortable places to be" (2010: 43), she points out that engaging in collaborative working practices can have very positive outcomes for all stakeholders. However, she notes that practitioners "need to be able to label their own

expertise" and "demonstrate a strong sense of their own identities as practitioners whose actions can make a difference in the world" (Edwards 2010: 1).

If we assume that a healthier climate of stakeholder interaction is attainable, let us now examine how in practice client requirements could be ascertained regarding the level of (c)overtness sought in the target text to be supplied to them.

3 Levels of (c)overtness: a way for clients to specify the perceptibility of legal translators' action

As noted earlier in this chapter, the distinction between overt and covert translations was first drawn by House, in a general translation context, as follows:

> An overt translation is one in which the TT [target text] addresses are not being directly addressed; thus an overt translation is one which must overtly be a translation and not, as it were, a 'second original'. (1977: 106, explicitation added)
>
> A covert translation […] is *not* marked pragmatically as a TT of an ST [source text] but may, conceivably, have been created in its own right. (1977, 107, original emphasis, explicitation added)

In order to apply this distinction to the field of legal translation, I do not follow the finer detail of House's 1977 arguments, which apply to a wide range of literary, historical, journalistic and marketing texts, and I shall restrict my adoption to the above and to her more recent definition as follows:

> An *overt* translation is one in which the addressees of the translation text are quite 'overtly' not directly addressed: an overt translation is not a 'second original'. In *overt* translation the original is tied in a specific manner to the source language community and its culture […]. (2015: 54, original emphasis)

House adds that in overt translation the source text "is to remain as intact as possible" (2015: 55). Concerning covert translation, she asserts that "a *covert* translation is a translation which enjoys the status of an original source text in the target culture" (2015: 56, original emphasis). In a legal context this is more problematic – a translation required by the client to be non-marked may still have different legal status to that of the ST. She further holds that a source text and its covert target text have equi-valent purposes (1977: 107, 2015: 56). Once again, in a legal context, the purposes of the source and target text may differ, even though a covert translation is required.

With respect to the sections below, it is most important to stress – as House observes – that an individual text does not necessitate an overt or covert translation *per se*, and, depending on the target text purpose, one or the other may be preferable (1977: 108). Rightly, she notes: "it is obvious that the specific purpose for which a 'translation' is required, i.e. the specific brief a translator is given, will determine whether a translation or an overt version should be aimed at" (2015: 60).

In order to clarify client requirements as set out in a brief, I submit that the terms "overt" and "covert" could speak more clearly to commissioners of legal translation than other terms from Translation Studies listed in Figure 1, some of which are highly technical ("semantic", "domesticating"), some ripe for misinterpretation ("illusory", "resistant", "acceptability"), and others almost synonymous from a lawyer's perspective ("documentary" and "instrumental"), e.g. cross-referenced entries for "document" and "instrument" in *Black's Law Dictionary* (Garner, 2009). Although Chesterman holds that: "Whether a translation is expected to be covert or overt, and how this expectation then affects the translation itself, will be determined partly by the translation tradition in the target culture" (1993: 9), I suggest rather that in the field of legal translation, commissioners' expectations are governed rather by matters relating to the intended purpose of the text and generic integrity than by tradition.

Whatever determines their choice, the commissioner's wishes concerning (c)overtness must, if fitness-for-purpose is to be achieved, be explicitly stated as part of the legal translation brief. At the briefing stage, drafters, intermediaries or commissioners may also introduce additional constraints on or directions for the translator affecting (c)overtness, such as: structural fidelity to the source text (e.g., layout, whether to maintain or to split long sentences); the use of client-recommended terms; and the acceptance or not of explanatory footnotes for system-specific terms; as well as endorsement of paraphrasing.

It is clear that dichotomy alone is not sufficient to cover the range and complexity of legal translation. I have therefore sought to propose a spectrum embracing various degrees of (c)overtness. Here we can usefully refer to a cline put forward at the intersection of comparative law, sociology and translation by Ng (2014), who refers to different levels of "interpretive autonomy".

> Interpretive autonomy refers to how [the extent to which] independently translated legal material can stand on its own in the new linguistic environment of the target language [and in law] without referring back to the source language. (Ng 2014: 54-55, my insertions)

Figure 2 shows Ng's typology of translation techniques according to increasing interpretive autonomy.

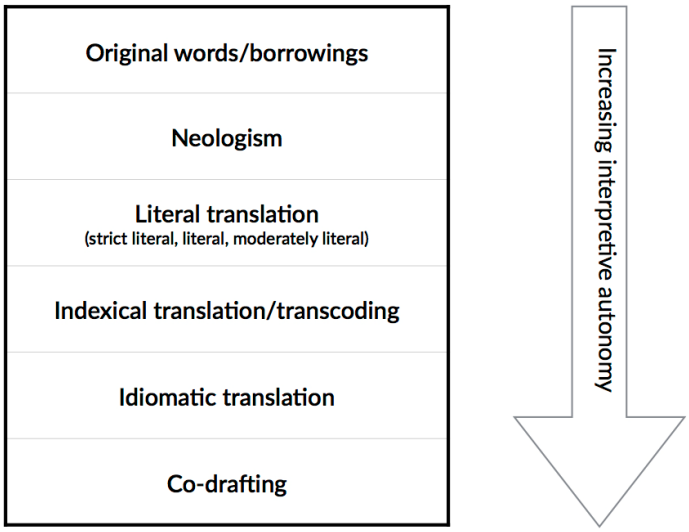


Figure 2 – Ng's view of translation techniques used in legal documents (recreated from 2014: 55)

The most overt technique, for Ng the lowest level of interpretive autonomy, is the use of source language terms in the translation – known as a "borrowings" (Vinay & Darbelnet 1958/2000: 85). To take a well-known example, instances of borrowings from Latin in English common law texts are rife, and have for the most part become entrenched (Tiersma 2000). The next technique, the use of neologisms, is especially frequent according to Ng in legal transplants where "one is not supposed to interpret the meaning of a neologism from within the […] target language. As such it is a gesture of 'glancing back' at the original." (Ng 2014: 56). The use of neologisms is also propounded by Galdia where there is a lack of legal equivalence between two legal systems, based on work by De Groot (Galdia 2003: 2).

Ng's next group of techniques combines the three types of literal translation differentiated by Šarčević in her historical continuum of the development of legal translation, cited earlier in this chapter. He points out that the "awkwardness of literally translated sentences constantly reminds readers of their 'translated' nature, and that this translation technique "reduces the complexity of meaning to surface

denotational meaning" (2014: 56). This lack of 'depth' and ensuing failure to address ambiguities is a concern expressed by Harvey (2002), while Strandvik (2014) informs us that the official guide for multilingual lawmakers at the European Union deprecates literal translations.

The fourth technique, "indexical translation" or "transcoding", is described by Ng as especially relevant, particularly to the translation of statutes, in jurisdictions such as Hong Kong that are "purportedly multilingual" and where the significance of the target language is restricted (2014: 57). A target term becomes a "token" for the term in the source. To summarize: in indexical translation the target text does not stand alone but points to an indexed item. If we need to refer back to the original source for information or authority, the status of the translation remains accessory. However, in business and many judicial contexts, the source text is rarely available or accessible to, or usable by, those receiving translations.

Ng defines "idiomatic" legal translation as "'free' translation in common parlance" and "an act of ceding a substantial share of interpretive control [from the source language] to the target language" (2014: 58-59, my insertion), while he notes that co-drafting is a process whereby "meaning is co-derived from the two or more languages involved in the 'translation' process", and occurs in multilingual societies such as Switzerland and Canada (2014: 59). Insofar as Ng situates idiomatic translation between "indexical translation" and co-drafting, this may cover a great deal of extra-institutional legal translation work.

Figure 3 maps a number of legal genres onto an amended version of Ng's levels of interpretative autonomy, superimposed on an overt-covert spectrum, to show how given strategies may be particularly appropriate for certain genres, where (c)overtness is considered to refer to how a translation is seen by a client not specialised in translation. These are meant as examples only, and clearly do not cover the wide range of legal genres translated. Moreover, as already pointed out, the same genre may be translated using a number of strategies depending, *inter alia*, on the target text purpose or locus, for instance.

Overt translation ⟷ Covert translation					Co-drafting
borrowings	neologisms	word-for-word ('literal')	'indexation' to source	reads like a *well drafted* source text	lawyers and translators draft together
Diplomas	**Legal journalism**	**Comparative law research**	**Legislation** (e.g. Hong Kong)	**Contracts** to be signed	**Legislation** (e.g. Canada)
Expert witness reports	**Patents**	**Court documents** (e.g. France)	**Draft contracts**	**T&Cs** to be published	**Case law** (e.g. CJEU)
Legislation (e.g. EU)	**Financial-legal texts**	**Case files** (e.g. basic machine translation for discovery)	**Factsheets on law**	**Calls for tender** to be issued	**Corporate legal genres**

Figure 3: Examples of the covert-overt spectrum in practice – mapping genres, purposes and loci

At the most "overt" extreme of the spectrum we find borrowings. Diplomas or certificates are often translated using this strategy because failure to use the source term may be misleading, owing to differences between educational systems. It may also be helpful when translating expert witness reports citing highly technical or legal system-specific terms. The strategy of using neologisms that "stand out" in the target text is to be found, for example, in the genres of legal journalism, patents, and financial-legal texts owing to the rapidly changing terminology in cutting-edge technologies and financial markets. As already stated in this chapter, some comparative law scholars promulgate word-for-word translation for research purposes. Literal translation may be the preferred choice of courts in some countries, and I discuss this further in section 4.3 below. Until the quality and methodologies of machine translation for legal purposes develop significantly, literal is the *de facto* technique used when large quantities – e.g. hundreds of thousands or even millions of documents – are translated automatically for discovery/disclosure. In addition to its use for legislation in certain jurisdictions as outlined above, the practice of indexation, "pointing back" to the source text, could be desirable when collaborating to draft a contract for example, or when producing a factsheet on the law for migrants. The most "covert" target texts are those which appear to have been drafted in the target language and do not appear to have been translated. I have replaced Ng's term "idiomatic" here, a fairly technical linguistic

term, with "reads like a well-drafted source text" to foster stakeholder understanding. Examples of genres potentially suitable for translation in this way include contracts that are destined to be signed and legally binding, as well as terms and conditions or calls for tender for publication. On the right-hand side of the table, beyond the field of translation, strictly speaking, is co-drafting, which I position on the cusp of the covert-overt spectrum. As well as its implementation in the Canadian context, it is also in use at certain institutions, namely the Court of Justice of the European Union. A form of joint drafting could also be highly effective in corporate contexts (see section 4.2 below).

In a future study, it would be interesting to see whether there is a predominance of covert or overt legal translations being outsourced or performed by translators working in-house at law firms and institutions, and how this interplays with the relaying of instructions as well as with the acceptability of target texts. Furthermore, the overt-covert spectrum could be suitable for cross-fertilisation with standards development and assessments of fitness-for-purpose.

3.1 Dealing with source text errors

It is important to note that in practice, errors are common in source legal texts – in a recent study involving around 300 legal translators one third of them reported serious source text problems including sloppy drafting, the provision of pivot texts previously translated from another language that have not been proofread, factual errors, and legal inaccuracies (Scott 2016: 220-226). This point has been neglected by translation studies in general, a lacuna foregrounded by Molnár in one of the few works on the subject (2013).

Overt and covert strategies also have relevance when dealing with errors in source texts, as systematised by Wagner, who considers that the translator has five choices when faced with errors:

1) do nothing, just translate;
2) translate literally but put in a [sic];
3) correct covertly (translate correctly but don't draw attention to the error);
4) correct overtly (translate correctly and put in a translator's note drawing attention to the error in the original);
5) correct fully, translate it correctly and get the original corrected too. (Chesterman & Wagner, 2002: 31)

In Figure 4 I have adapted Wagner's proposed techniques, rewording and reordering them. In particular I have replaced the words "translate correctly" with "correct target text", as I felt that the former could be interpreted both negatively and subjectively by clients. Once again with a mind to stakeholders, I have replaced the term "original" by the less problematic "source text". I have used "translate 'as is'" rather than "translate literally" – I believe that Wagner's intention here concerned the translator leaving the error "unmodified" rather than performing a "word-for-word" or "literal" translation. The resulting spectrum thus orders ways of dealing with source text errors according to their transparency or (c)overtness as perceived by the client/reader/receiver when looking at the target text.

Overt strategy ⟵					⟶ Covert strategy
translate error "as is"	translate error "as is"	translate error "as is"	correct target text	correct target text	correct target text
add translator's note drawing attention to error in source text	**insert [*sic*]**	**take no action**	**add translator's note drawing attention to error in source text**	**error is not pointed out by the translator in the target text**	**have source text corrected**

Figure 4: Overt-covert strategies for dealing with errors in legal source texts

We may add another course of action in the case of self-employed legal translators – that of informing their direct contact, who may well be an intermediary, of the error in separate notes or an email, since the insertion of a translator's note in a deliverable that it is to be a binding legal instrument may be frowned upon. It is also important to stress that the (non-)action chosen from the above alternatives must be brought to the attention of the commissioner – i.e., even if the translator has decided to correct covertly, or to leave the error as is, this should be specified.

4 Levels of (c)overtness in different legal genres

In the following section I have selected three groups of genres to illustrate how different levels of (c)overtness may be required from translations, even within the same genre, depending on the target text purpose. The examples chosen are non-

exhaustive, and are intended only to provide a flavour of the wide variations in requirements and approaches.

4.1 Legislative genres

The translation of legislative genres performed within institutions is perhaps where the legal translator's agency is the easiest to discern, and the most willingly accepted. In a number of jurisdictions, namely Canada (Gémar 2013) and the European Union (Strandvik 2015), lawyers and translators work collaboratively on the various language versions in order to harmonize them as far as possible (translators working in this way at institutions are sometimes referred to as "lawyer-linguists" or "jurilinguists", the job title depends on the institution in question). This process is, as already mentioned, often referred to as co-drafting (Gémar 2013). A similar process has been reported by McAuliffe relating to case law at the Court of Justice of the European Union (McAuliffe 2016). In this setting, the translator is an active and involved member of a team working towards to common – and known – purpose.

The strong trend towards facilitating multilingual access by the general public to law has engendered a subgenre of factsheets on or summaries of legislation, produced by institutions such as the European Commission's SCAD Summaries, and by advocacy organizations, while large international law and accountancy firms also offer this kind of service for their clients.[1] The technique used is highly covert, whilst rarely being co-drafted – i.e. produced collaboratively with legislative drafters or lawyers. Here, the translation process is carried out at the same time as simplification. Texts in this subgenre are rewritten for the new target

[1] The SCAD (*Service central automatisé de documentation*) Summaries of EU [European Union] legislation "inform on the main aspects of the European legislation policies and activities in a clear, easy-to-read and concise way, intended for a "general, non-specialized audience". See http://eur-lex.europa.eu/browse/summaries.html. At the New York City Family Courts, the nonprofit organization Legal Information for Families Today, dedicated to access to justice through legal information, provides Legal Resource Guides in eight languages: http://www.liftonline. org/guide/english. As examples of law firms' guides see the Corporate Governance and Directors' Duties Global Guide collated online by Thomson Reuters and authored by a variety of firms worldwide (https://uk.practicallaw.thomsonreuters.com/Browse/Home/International/CorporateGovernanceandDirectorsDutiesGlobalGuide?transitionType=Default&contextData=(sc.Default), or the summaries of financial reporting requirements at https://www.iasplus.com/en/jurisdictions, published by Deloitte.

audience, often according to plain language specifications. This work may be carried out by professional translators, volunteers in the case of advocacy, or by lawyers located in-country as regards the summaries offered by law firms – often entitled "insights" or "guides".

Legislation may also be translated for the purposes of academic study in the field of comparative law. In this case, translation is frequently carried out by the scholar themselves – often without any professional translation experience or any Legal Translation Studies knowledge – or by a translation practitioner with whom there may or may not be close collaboration regarding the aims sought. It is relatively common for comparatists to request a highly overt 'literal' translation, deeming that this is 'more faithful to the source' (Baaij 2014).

Commercial lawyers often procure translations of specific pieces of legislation to inform their case in cross-border litigation. Procurement in this instance very often takes place via for-profit intermediaries, translation agencies, and contextual information regarding purpose is almost always lacking, either filtered out or not even requested from the client – who is unaware that a comprehensive translation brief is essential or even that briefing procedures exist (Scott 2016). In these circumstances, the (c)overtness of the target text will be a matter of chance, probably decided arbitrarily by the translator.

4.2 'Corporate' genres

Oscillating between the highly covert and rather overt, we find subgenres that we might collectively and loosely refer to as 'corporate', such as calls for tender, terms and conditions, or contracts and agreements. The level of (c)overtness will depend on whether the translation of the document is to be forwarded to end-users upon completion, for signature and to be legally binding – where it is likely to be highly covert, or whether the source text is a draft or a translation for gist or for information. In the second case the translator may usefully add glosses or notes to raise inconsistencies, errors, or points of law without a legal equivalent in the target legal system – and the translation will, accordingly be rather overt.

Contacts between drafting lawyers and translators are, in general, quite rare when these genres are translated outside law firms or corporations, often due to the

interposition of agencies (Scott 2016). In-house translators may benefit from much better access to the authors of source texts. However, one highly experienced legal translation practitioner has initiated a move to offer and foster collaborative drafting in these environments. Christina Guy has mapped out a procedural pathway (2016), comprising steps that can be effected on a rolling basis and thus not delay the final deadline, for the detailed exchanges required, especially where this takes place off-site and with busy lawyers. Her method takes advantage of certain aspects of Translation Environment Tools (TEnTs) such as, but not limited to, MemoQ to facilitate the annotation of texts with legal references, or to highlight source ambiguities, or to insert questions and replies. The translator thus becomes a partner in the drafting process who can offer additional services such as monitoring changes in the legal environment(s) concerned as cases progress, at the same time contributing to improving the clarity and quality of source texts.

4.3 Judicial genres

The translation of documents for the judiciary is an area where legal translators' agency is not always clearly defined, or regulated.[2] The translation process and the constraints of producing a high-quality target text are often little understood by judges – and this may affect the level of (c)overtness required. In France, for example, its highest court – the *Cour de Cassation* – has ruled that translations must be word-for-word: "a 'simple translation' consists of rendering the literal meaning of a text". Furthermore, the Court feels that this kind of 'mechanical' translation should be distinguished from an *expertise* [expert appraisal] which gives an appreciation, or an opinion of a technical nature of the text" (Monjean-Decaudin 2012: 226, my translation).

Genres translated for courts range from certified documents where an overt translation may required and/or appropriate, through all kinds of legal and non-legal genres submitted as evidence, to complex pleadings in large cross-border litigation, where collaborative drafting between lawyers and translators of the sort described above could be of precious assistance in winning cases. Texts handed

[2] For example, see various European Union projects on legal translation and interpreting, of which some are aimed at regulation, while others are aimed at educating the judiciary, available at the EULITA website: http://www.eulita.eu.

down by the court to be served abroad – judgments, orders, witness summonses, divorce decrees, and injunctions – are also poorly regulated and may be outsourced by court registries and process servers either via translation agencies or directly to translators on court lists. In these situations comprehensive translation briefs are rarely supplied, including on the subject of levels of (c)overtness. This lack of oversight and engagement with the translation process is prevalent notwithstanding the fact that problems in translated legal documents can go as far as leading to failures or miscarriages of justice.

5 Conclusion

The extent to which translatorial action should be perceived in a target text – its covertness or overtness – is a nuanced question. As we have seen, it may depend, for example, on the genre, on the needs or preferences of the client, receiver and/or end-user, the purpose of the translation, and the locus in which it is carried out – the country, the institutional or extra-institutional environment. In some countries, levels of (c)overtness may even be regulated by law.

Generally, legal translators are capable of responding to the varying needs of those commissioning their work – as long as those needs are made clear in a comprehensive brief. By using an overt-covert spectrum as part of that brief, to clearly identify and specify what is required, the fitness-for-purpose of output and customer satisfaction could be significantly enhanced. The central issue is thus not whether the translator's agency should be visible or invisible, but how clearly expectations and preferences are expressed and agreed in a climate of mutual collaboration between professionals of equal status.

References

Baaij, C. J. W. (2014): "Legal Translation and the 'Contamination' of Comparative Legal Research." In: Glanert, Simone [ed.] (2014): *Comparative Law – Engaging Translation.* Abingdon: Routledge. 104 – 122.

Bhatia, Vijay (1997): "Translating legal genres." In: Trosborg, Anna [ed.] (1997): *Text Typology and translation*. Amsterdam: John Benjamins. 203 – 214.

Bhatia, Vijay (2006): "Legal genres." In: Brown, Keith [ed.] (2006): *Encyclopedia of Language & Linguistics*, Volume 7. Boston: Elsevier. 1 – 7.

Bhatia, Vijay (2014): *Worlds of written discourse: A genre-based view*. London: Bloomsbury.

Brock, Sebastian P. (1979): "Aspects of translation technique in antiquity." In: *Greek, Roman, and Byzantine Studies* 20.1, 69 – 87.
Chesterman, Andrew (1993): "From 'Is' to 'Ought': laws, norms and strategies in translation studies." In: *Target* 5.1, 1 – 20.
Chesterman, Andrew / Wagner, Emma (2002): *Can theory help translators?: a dialogue between the ivory tower and the wordface*. Manchester: St Jerome.
Dam, Helle V. / Zethsen Karen Korning (2010): "Translator status: Helpers and opponents in the ongoing battle of an emerging profession." In: *Target* 22.2, 194 – 211.
Edwards, Anne (2005): "Relational agency: Learning to be a resourceful practitioner." In: *International Journal of Educational Research* 43, 168 – 182.
Edwards, Anne (2010): *Being an expert professional practitioner: The relational turn in expertise*. London: Springer.
Engberg, Jan (2017): "Developing an Integrative Approach for Accessing Comparative Legal Knowlege for Translation." In: *Revista de llengua i dret / Journal of language and law* 68, 5 – 18.
Galdia, Marcus (2003): "Comparative law and legal translation." In: *The European Legal Forum* 1, 1 – 4.
Garner, Bryan A. [ed.] (2009): *Black's Law Dictionary*. St. Paul: Thomson Reuters.
Gémar, Jean-Claude (1998, September 25): "Les enjeux de la traduction juridique. Principes et nuances." Paper presented at Equivalences 98, ASTII seminar.
Gémar, Jean-Claude (2013): "Translating vs. co-drafting law in multilingual countries: beyond the Canadian Odyssey." In: Borja Albi, Anabel / Prieto Ramos, Fernando [eds] (2013): *Legal translation in context*. Bern: Peter Lang. 155 – 178.
Glanert Simone (2014): "Law-in-translation: an assemblage in motion." In: *The Translator* 20.3, 255 – 272.
Goddard, Christopher (2010): "Legal Linguists: As (In)substantial as Ghosts and True Love?" In: Giannoni, Davide S. / Frade, Celina [eds] (2010): *Researching Language and the Law: Textual Features and Translation Issues.* Bern: Peter Lang. (= Linguistic Insights, 121). 199 –211.
Gonod, Pascale (2017, May 12): "La collection Rivages du droit : une contribution à la diffusion des oeuvres juridiques étrangères." Paper presented at Justement traduire : L'enjeu de la traduction juridique.
Gotti, Maurizio (2012): Text and genre. In: Tiersma, Peter M. / Solan, Lawrence M. [eds] (2012): *The Oxford Handbook of Language and the Law.* Oxford: Oxford University Press. 52 – 66.
Guy, Christina (2016, May 27): "The use of translation as an additional QA layer in drafting." Paper presented at Law, Language and Professional Practice, Caserta, Italy.
Harvey, Malcolm (2002): "What's so special about legal translation?" In: *Meta* 47.2, 177 – 185.
House, Juliane (1977): "A model for assessing translation quality." In: *Meta* 22.2, 103 – 109.
House, Juliane (2015): *Translation quality assessment: Past and present*. London / New York: Routledge.
Katan, David (2009): "Translation theory and professional practice: a global survey of the great divide." In: *Hermes* 42, 111 – 53.
Katan, David (2011): "Status of translators." In: Gambier, Yves / van Doorslaer, Luc [eds]: *Handbook of Translation Studies*. Volume 2. Amsterdam: Benjamins. 146 – 152.
Lavigne, Claire-Hélène (2005): "Droit, traduction, langue et idéologie: *Kata poda* ou la traduction pas à pas selon Justinien 1er." In : *TTR: traduction, terminologie, rédaction* 181, 183 – 202.

Lavigne, Claire-Hélène (2006): " Literalness and Legal Translation: Myth and False Premises." In: Bastin, Georges L. / Bandia, Paul F. [eds] (2006): *Charting the Future of Translation History*. Ottawa: Ottawa Press. 145 – 162.

Lavoie, Judith (2003): "Faut-il être juriste ou traducteur pour traduire le droit?" In: *Meta* 48.3, 393 – 401.

Manganaras, Ionnis (1996): "The Qualified Legal Translator is a Lawyer Trained in Translation." In: *Lingua Legis* 4, 62 – 71.

McAuliffe, Karen (2016): "Hidden translators: the invisibility of translators and the influence of lawyer-linguists on the case law of the Court of Justice of the European Union." In: *Language and Law / Linguagem e Direito* 3.1, 5 – 29.

McElduff, Siobhán (2013): *Roman Theories of Translation: Surpassing the Source*. Abingdon: Routledge.

Monzó, Esther (2011): "Legal and Translational Occupations in Spain: Regulation and Specialization in Jurisdictional Struggles." In: Sela-Sheffy, Rakefet / Shlesinger; Miriam [eds] (2011): *Identity and Status in the Translatorial Professions.* Amsterdam: John Benjamins. 11 – 30.

Molnár, Ondřej (2013): "Source text quality in the translation process." In: Zehnalová, Jitka, Molnár, Ondřej / Kubnánek, Michal [eds] (2013): *Traditions and Trends in Trans-Language Communication.* Olomouc. Palacký. 59 – 86.

Monjean-Decaudin, Sylvie (2012): *La traduction du droit dans la procédure judiciaire*. Paris: Dalloz.

Ng, Kwai Hang (2014): "Legal translation and the problem of heteroglossia." In: Glanert, Simone [ed.] (2014): *Comparative law: engaging translation*. London: Routledge. 49 – 66.

Nord, Christiane (2012): "Functionalism in translation studies." In Millán, Carmen / Bartrina, Francesca [eds] (2012): *The Routledge Handbook of Translation Studies* Abingdon: Routledge. 201 – 212.

Orlando, Daniele (2015): "The trials of legal translation competence: triangulating processes and products of translators vs. lawyers." As yet unpublished doctoral thesis. Trieste: Trieste.

Palumbo, Guiseppe (2009): *Key terms in translation studies*. London: Continuum.

Pommer, Sieglinde (2005): "Re-evaluating Interdisciplinarity: The Significance of Comparative Law for Legal Translation Methodology." In: *FIT Proceedings, XVIth World Congress of the International Federation of Translators: Rights on! Tampere 4-7.8.2005*. Paris: FIT. 72 – 74.

Prunč, Erich (2007): "Priest, Princes and Pariahs. Constructing the Professional Field of Translation." In: Wolf, Michaela / Fukari, Alexandra [eds] (2007): *Constructing a Sociology of Translation*. Amsterdam: John Benjamins. 39 – 56.

Pym, Anthony (2010): *Exploring translation theories*. Abingdon: Routledge.

Pym, Anthony / Grin, François. / Sfreddo, Claudio / Chan, Andy L. J. (2012): *The status of the translation profession in the European Union.* Luxembourg: European Commission.

Šarčević, Susan (1997): *New approach to legal translation*. The Hague: Kluwer Law International.

Šarčević, Susan (2000, February 17-19): "Legal translation and translation theory: a receiver-oriented approach." Paper presented at Legal translation, history, theory/ies, and practice.

Schroth, Peter W. (1986): "Legal translation." In: *American Journal of Comparative Law* 34, 47 – 65.

Scott, Juliette R. (2016): *Optimising the performance of outsourced legal translation*. Doctoral thesis. Bristol: Bristol.

Scott, Juliette R. (2017a): "Legal Translation – A Multidimensional Endeavour." In: *Comparative Legilinguistics: International Journal for Legal Communication* 32, 37 – 66.

Scott, Juliette R. (2017b): "The Pernicious Effects of Terms Used For and By the Legal Translation Profession." In: *Revista de Llengua i Dret /Journal of language and law, From Legal Translation to Jurilinguistics* 68, 57 – 75.

Schäffner, Christina (2000): "Action (theory of 'translatorial action')." In: Baker, Mona / Malmkjær, Kirsten [eds] (2000): *Routledge Encyclopedia of Translation Studies* (2nd ed.). London: Routledge. 3 – 5.

Sela-Sheffy, Rakefet, / Shlesinger, Miriam (2008): "Strategies of Image-Making and Status Advancement of Translators and Interpreters as a Marginal Occupational Group." In: Pym, Anthony / Shlesinger, Miriam / Simeoni, Daniel [eds] (2008): *Beyond Descriptive Translation Studies: Investigations in homage to Gideon Toury*. Amsterdam: John Benjamins. 79 – 90.

Strandvik, Ingemar (2014): "Is there Scope for A More Professional Approach to EU Multilingual Lawmaking?" In: *The Theory and Practice of Legislation* 2.2, 211 – 228.

Strandvik, Ingemar (2015): "On Quality in EU Multilingual Lawmaking." In: Šarčević, Susan [ed.] (2015): *Language and Culture in EU Law: Multidisciplinary Perspectives*. Farnham: Ashgate. 141 – 168.

Tiersma, Peter M. (2000): *Legal language*. London: University of Chicago Press.

Venuti, Lawrence (1995): *The translator's invisibility*. London: Routledge.

Vinay, Jean-Paul, / Darbelnet, Jean. (1958/2000): "*A methodology for translation* " (Translated by Juan C. Sager and M.-J. Hamel) In: Venuti, Lawrence [ed.] (2000): *The translation studies reader.* London: Routledge. 84 – 93.

Way, Catherine (2016): "The Challenges and Opportunities of Legal Translation and Translator Training in the 21st Century." In: *International Journal of Communication* 10, 1009 – 1029.

http://eur-lex.europa.eu/browse/summaries.html.

http://www.eulita.eu.

http://www.liftonline.org/guide/english

https://uk.practicallaw.thomsonreuters.com/Browse/Home/International/CorporateGovernanceandDirectorsDutiesGlobalGuide?transitionType=Default&contextData=(sc.Default)

https://www.iasplus.com/en/jurisdictions.

Chapter 12

Training turnkey legal translators: fiction or fact?

Catherine Way

Abstract
As legal translator trainers, we are accustomed to the criticisms often cast on translation graduates and their unpreparedness for translating in the real world. Yet, training proficient, highly qualified legal translators is no easy task. Curriculum, political and budgetary constraints frequently thwart our untiring efforts to create the ideal legal translator training course. Undeterred by the obstacles encountered, legal translator trainers have battled on, taking up Gémar's (1979) torch in the belief that legal translators can be trained and upholding Sparer's bold defence (1988) of training translators who are not always trained in Law, by continuing to train legal translators for today's complex world. We will approach legal translator training by discussing how trainees can acquire sufficient competence to enter the market as novice translators. An overview of the most common problems which arise and how they may be integrated into courses will be described from a competence-based approach. By extricating trainees from the commonly found word-based approach (Way, 2008, 2009, 2012, 2014, 2016a) we will monitor their progress over a 15 week course through their description of the problems encountered. Finally, we will consider the training outcome through a review of their experiences on entering the legal translation market.

Keywords: legal translator training; market requirements; turnkey legal translators; graduate satisfaction

1 Introduction

After almost thirty years training legal translators, the constant criticisms directed at universities for failing to produce legal translation graduates prepared to enter the labour market have become, at best, somewhat tiresome. Faced with the predicament of providing complete, critical thinking citizens or professional training to meet industry demands, universities toil to find a balance between translator education and translator training. The difference between the two has been explained by Bernardini (2004: 19-20), who considers training to be the process of accumulating chunks of knowledge in a specific field (such as IT or language learning) and education as having a much wider scope. The purpose of higher education is to prepare responsible, critical, creative citizens able to solve new problems and to build new knowledge throughout their lives with lifelong

learning skills. Translator provision is not uniform the world over, but, in general terms, there has been a transition from more academic studies to more professionally focused studies, particularly at universities, over the last thirty years. The translation profession, however, is at a crucial moment facing an onslaught of new translation contexts (transcreation, localization, the emergence of a language data market,[1] etc.) and the increasingly fuzzy identities, roles and responsibilities of translators. Whilst this implies a myriad of opportunities and challenges for the translation profession, it does not make our job any easier. Trainers must decide between providing a basic grounding on which to grow or specialisation in a narrow field. In a review of the EN 15038:2006 standard of translation services and its training implications Biel (2011a: 70-71) suggests that greater requirements for specialisation and expertise are expected in the future. What, then, do employers expect exactly from recent graduates? Despite being frequently thwarted by curriculum, political and budgetary constraints, legal translator trainers strive to create the ideal legal translator training course for a diverse global market. Some data is available, such as that provided by the OPTIMALE[2] project, which aims to monitor market, societal and professional needs and surveyed 535 industry agents or the extensive research by the European Master in Translation (EMT)[3] Expert Group[4] on the basic competences translators require to work successfully in today's market. We shall consider how trainees can acquire sufficient competence to enter the market as novice translators. An overview of the most common problems which arise and how they may be overcome in courses will be described from a competence-based approach by analysing trainees' progression over a 15 week course and considering graduate perceptions of their incorporation to the legal translation market.

[1] See https://www.taus.net/think-tank/articles/time-to-build-a-language-data-market.
[2] http://www.ressources.univ-rennes2.fr/service-relations-internationales/ optimale/.
[3] EMT https://ec.europa.eu/info/education-be-deleted/european-masters-translation-emt_en programmes/emt/key_documents/ emtcompetences_ translators_en.pdf.
[4] The expert group included Daniel Gouadec, Federico Federici, Nike K. Pokorn, Yves Gambier, Kaisa Koskinen, Outi Paloposki, Dorothy Kelly, Michaela Wolf, Alison Beeby, Dorothy Kenny and members of the EMT board.

2 Legal Translator Training and Competence

If trainers are to provide legal translators for local, national and global employers, in both B-A and A-B translation, they face a mammoth task. Not surprisingly, Biel (2011b: 162) revealed that translation market research data found graduates lacking in specialised translation, terminology, thematic knowledge, speed, IT skills, autonomy and teamwork. Translation pedagogy, which originally adopted much from language teaching, has concentrated, over the last 20 years, on how course content and objectives can be grounded in a context by promoting learning strategies that encourage a significant, cognitive learning process for students. Translation Studies (TS) quickly incorporated what is now a core concept in translator training: translation competence or translator competence (TC). Generally defined in TS literature as the knowledge, skills or abilities needed to translate proficiently this concept has been developed in numerous models over recent years. Hague, Melby & Zheng (2011) provide an interesting comparison of 4 of these models (Neubert 2000; Kelly 2005, 2007; Hurtado Albir 2017 and Pym 2003), whilst other newer models have also emerged (EMT[5]; Göpferich 2009). Koby & Melby (2013: 189-99) provide an excellent review of the development of TC in TS and of the numerous models available. More recently, Shreve, Angelone & Lacruz (2018) have intensified the debate as to the use of TC or expertise as constructs in TS. As already (Way 2008: 91) explained, TC "is a vital tool in establishing specific objectives in translator training and, as a result, I also believe, when trying to perform effective assessment of our trainees".

3 Legal Translator Competence

Fine-tuning TC to the specific requirements of legal translation has been discussed since Gallardo & Way (2009) presented a proposal based on Kelly's TC model (2005, 2007), and has been further discussed by Prieto Ramos (2011, 2014) and Piecychna (2013). All of the authors recognise the importance of comparative law as a tool (Soriano-Barabino 2016) and of situating any translation task in the wider situational context. Whichever model we may choose, we have found that a threefold approach blending a Critical Discourse Analysis (CDA) approach (Way

[5] https://ec.europa.eu/info/resources-partners/european-masters-translation-emt_en.

2012); a decision-making course structure (Way 2014, 2016a); and a student-centred (Kiraly 2000) authentic project management-based approach which monitors the trainees' individual TC development (Way 2008; 2009, 2016b) has been successful in legal translation courses.

To develop a structured analytical process when approaching the translation of legal texts, I adopted the three-dimensional model suggested by Fairclough (1992, 1995), incorporating the description of a text, the interpretation of the discursive practice (production, distribution, and reception of the text) and the explanation of how the discursive practice is related to the social process, besides how the three elements relate to each other, by adding translation as a new element in the process.

In this model trainees are guided through a step-by step procedure which firstly situates the text within the social process and social events which surround it. Secondly, it locates the text within the discursive practice (production, distribution, consumption) helping trainees to become familiar with the internalised social structures and conventions governing the text. As a result of combining the social and discursive practices seemingly incomprehensible elements in the text become immediately clearer. The process in then also applied in the Target Language (TL) and Target Culture (TC) to discover whether parallel discursive and social practices exist, thereby leading to parallel or similar texts before beginning the translation process proper.

The second approach centres on building an overarching framework for decision-making in the translation classroom, based upon translator competence, rather than specific decision-making processes for individual translation problems. This framework of decision-making is applied through careful course structuring and text selection scaffolding, bringing into play different subcompetences to solve different problems. This framework provides a sequencing pattern of increasing difficulty dependent on the activation of all the subcompetences and not just subject area/thematic competence. The third approach combines authentic translation projects with rotation of the roles in each project and self-assessment of trainees' competences through the Achilles' Heel sheet (Way 2008, 2009). The specific nature of legal translation, involving the culture-bridging skills of the translator more so than other fields of specialised translation (Way 2017), is complicated by

various factors such as legal translator trainees' obsession with words (from prior pedagogical translation experience in language learning); their obsession with terminology in later stages of training and their youth, as they lack vital experience. The use of the combined approach palliates the deficiencies reported by Biel (2011b).

Deficiencies (Biel 2011b)	Tools	How
Terminology Thematic knowledge IT skills	CDA, Project Management, student-centred, authentic projects	Using authentic projects and briefs the students adopt different project roles (Project manager, researcher, terminologist, translator, /editor) to hone their information mining and IT skills, acquiring thematic knowledge and terminology and discourse through the CDA approach.
Teamwork	Project Management, student-centred, authentic projects	By adopting different roles, students learn to organise, negotiate and reach consensus.
Autonomy Speed Specialised translation	Decision-making course structure	Using a course structure which increases the difficulty of decision-making for all the sub-competences, trainees progress rapidly to harder and longer texts from a variety of often previously unfamiliar areas of Law. Creating a framework of decision-making gives them greater autonomy as translators.

Table 1 Applying the approach to industry needs

To illustrate the application of this approach (Way 2008, 2009, 2012, 2014, 2016a), we will examine students' perceptions prior to and after a 15 week introductory course on specialised translation, scrutinizing their TC development through their comments on their weaknesses and the difficulties they encounter.

4 Trainees' Perceptions of Weaknesses and Difficulties

The list of shortfalls provided by Biel (2011b: 162) falls roughly into the subject area or thematic, professional and instrumental, interpersonal or social competences (Kelly 2007). Thirty-three students followed the course, of which 8 were international students from other universities. Most of the home students have encountered translation metalanguage in translation theory or earlier translation courses. Nevertheless, international students are often following language degrees and are unaware of this metalanguage. The students were administered the Achilles' Heel sheet (Way 2008) at the start and end of the course to self-assess their competences (Kelly 2007: 133-134). As their first contact with specialised translation in the A-B combination, it is generally considered to be a daunting course. Over the 15-week course, of the 30 two hour sessions, approximately 20% are used for introductions to new topics. The remaining 80% are used to comment on each group's project work at the rate of one translation per two hour session. The texts selected are approximately 250-300 words long and increase progressively in difficulty for all competences and for decision-making. Project roles are rotated for each translation.

Typically, trainees will assign international students to revision or editing, with blind faith in their skills as native English speakers. They soon realise, however, that unfamiliarity with specialised discourse may diminish this apparent advantage. The comments are in the trainees' own language and have not been adapted in any way. Table 2 shows their most common comments about their possible weaknesses recorded.

Evidently, at the start of the course trainees detect many weaknesses due to the novelty of the specialised fields they are about to face. After fifteen weeks their focus and even their metalanguage have evolved considerably.

Competences	Week 1	Week 15
Communicative and textual competence	Problems understanding and producing specialised discourses Lack of familiarity with legal genres, legal discourses and registers	Need to polish legal discourses Need to improve knowledge of registers and genres Improvement made and must continue
Cultural and/or Intercultural competence	Not recognizing implicit cultural problems in texts Lack of familiarity with legal cultures	Culture is a problem Implicit cultural elements must be identified before translating Improvement made and must continue
Subject area or thematic competence	Lack of knowledge	Must continue to improve thematic knowledge in other legal systems and fields of Law Improvement made and must continue
Professional and/or Instrumental competence	Lack of familiarity with the best resources leads to excessive time for information mining	Use of IT tools, resources, parallel texts and deciding about reliability have all improved, but must be honed
Attitudinal or psychophysiological competence	Tendency to calque due to lack of confidence in other competences Unsure of reliability of sources Decision-making at all levels	Much more confident when translating, improved concentration and perseverance More work needed
Interpersonal or social competence	Shy, dominating, competitive classmates Lack of organizational and negotiating skills	Social skills, leadership, time-keeping and organisation improved More work needed
Organisational or Strategic competence	Uncertainty about how to improve competences Constant doubts about best translation strategies, solutions, how to revise, identifying translation problems	An organised work process and framework for decision-making has been acquired Improving other competences will bolster this competence

Table 2 Trainees' self-assessment of possible weaknesses

A more detailed study week by week is beyond the limitations of this chapter. They have, nevertheless, eliminated *problem, lack of, unsure,* and *uncertainty* from their comments. Instead, they recognise the progress they have made in all their competences and, more importantly, the need to continue to do so, using *polish, improve, hone, continue* and *confident*. Moreover, trainees commented on greater freedom to approach the text and brief as a whole, rather than rushing to a dictionary or termbases to find concepts which they would then use without fully

understanding them. When they consider themselves more confident and creative when translating, they are really referring to their self-efficacy (see Haro Soler 2017a, 2017b, 2018).

Their progression in different roles is apparent in the metalanguage used to describe their difficulties. We have extracted the most common difficulties, particularly the verbs and adjectives used by 6 project groups. The three columns reflect the 3 projects each group prepared. Nevertheless, they can also be read vertically and then horizontally as each class presentation and the ensuing discussions obviously influence the work of the following groups. We should not forget the individual trainee's competences are at different levels, therefore some comments repeat earlier problems found or new problems when tackling a role for the first time.

PROJECT MANAGEMENT SHEET COMMENTS

POST	**Group**	**Text 1**	**Text 2**	**Text 3**
Project Manager	1	*Reaching* consensus Parallel texts	Sharing tasks Communication Poor original text (OT)	Coordination Roles
	2	Meeting	None	No difficulties
	3	*Managing* internal communication (Mature student)	Organising Monitoring Checking	*Which* translation strategy Monitoring Selecting terminology and research
	4	Sharing work	----------	Coordination Monitoring progress
	5	Trusting others Monitoring	Trusting others *Solving* their doubts/problems	Deadline Xmas Monitoring effectiveness of team Providing good quality leadership
	6	Coordinating drive group Organizing meetings – problems with schedules Contacting client Doubts	Reorganising calendar Solving doubts	None

POST	Group	Text 1	Text 2	Text 3
Researcher	1	Deciding which information to include Parallel texts	Finding appropriate websites	None
	2	Finding documentation *Choosing* information	*Finding* tourism documents Selecting information *Finding* parallel texts	What and where to look Comprehension Reliability
	3	*Lack of* manuals for style guide	Presenting information concisely Selecting relevant information	Selecting relevant information *Finding* parallel texts
	4	Deciding which parallel texts to look for *Identifying* difficulties	----------	Selecting correct information Reliability
	5	*Deciding* what to look for *Finding* parallel texts Comprehension Difference between pottery/ceramic	Finding information for younger audience Selecting reliable sources Not selecting too much – refining searches	Comprehension *Finding* parallel texts Finding information on certificates
	6	Finding reliable parallel texts Selecting information needed by colleagues	Finding reliable sources	Finding and selecting best information from *wide* range of sources
Terminologist	1	Some English definitions	None	Comprehension Phraseology *Term* guardadores
	2	Selecting terminology/ deciding Reliability Phraseology	Institutional equivalents Phraseology Examples contexts	*Finding* examples phraseology
	3	*Precision* for parts of TT	Comprehension Verifying terms (Non-native both languages)	*Finding* reliable sources Comprehension Finding precise definitions
	4	Finding accurate terms *Finding* cultural concept equivalents Political *positions*/ institutional names	----------	Searching accurate terms Consistency
	5	Finding exact quivalents *Reliable* parallel texts ICEX Pottery/ceramic	Comprehension (new field) *Deciding* between conversion or exchange	Finding reliable parallel texts Finding reliable definitions in Spanish and English

POST	Group	Text 1	Text 2	Text 3
	6	*Lack of* specialised terminology in text – hard to search Establishing difference UK/US English	Finding reliable parallel texts Comprehension ST and complex phraseology	Finding appropriate equivalent for Certificado de nacimiento
Translator(s)	1	First sentence of third paragraph	No major problems	Comprehension *Useful* terms Difficulty producing legal discourse
	2	Comprehension Equivalents	*Using* specialised discourse Structures	Comprehension *Lack of* thematic knowledge *Need* to see more parallel docs
	3	Poor ST Discourse	Poor OT Accuracy *Correct* discourse Prepositions	Comprehension (non-native both languages) More extensive research Accuracy Reliability
	4	Poor OT Doubts on explicitation or not?	----------	Structures Grammar and discourse
	5	Different textual conventions	Economic terms/ discourse *Register* – children Organising and formatting text Prepositions	Restructuring text No major problems
	6	Adapting to formal register Finding natural structures	Comprehension ST Producing economic discourse	Adapting ST and conveying information correctly to fulfill brief Finding equivalents and structures in English
Revisor	1	*Finding* errors and room for improvement	Identifying idiomatic versions Converting metric to imperial or not	More information needed to revise
	2	Re-arranging structure Idiomatic Collocations Checking all information	*Which* changes to make	Comprehension Complex text Checking terminology

POST	Group	Text 1	Text 2	Text 3
	3	*Doubts* use of capital letters *Need for* more parallel texts	Idiomatic? Collocations	Polishing TT
	4	*Deciding* on revision or personal preference *Finding* correct term Fulfilling brief Non-expert	----------	*Doubts* between personal style and objectivity
	5	Register Grammatical nuances Acronyms	*Checking* terms – maths/economic Idiomatic Explicitation? Deciding if to rewrite omitted paragraph	*Verifying* accuracy Verifying if natural when not familiar with legal discourse
	6	Difficulties creating more natural structures	*Being* objective Influence of OT	*Finding* errors Finding equivalents for some terms Not changing correct terms or expressions
Editor	1	*Doubts* street/calle and licenciatura	How much to change Institutional names *Choosing* between different terms	Checking idiomatic expressions
	2	Synonyms Sentence structure	*Which* changes to make	*Lack of* practice revising English texts
	3	Determining if use of terminology and phraseology correct Collocations	Verifying punctua-tion,figures, symbols, grammar, register format	Accuracy Fulfilling brief Register
	4	Comprehension *Finding* equivalent terms Natural, idiomatic English *Checking* numbers	----------	Finding alternatives Ensuring corrections do not cause mis-understandings
	5	Syntax, collocations and stylistics	Natural? *Register* – easy for children? Format/position of examples	Checking *accuracy* Explaining Fé de vida Prepositions Coherence and consistency *Redoing* format Rewriting parts thought *badly* expressed
	6	Format *doubts*	*Checking* accuracy Idiomatic	Also reviser so hard to *distance* herself from text

Table 3 Project management sheet comments

Group 4 did not complete one project and the reviser/editor for the last project was often the weakest student in textual and communicative competence (non-native of either language or an international student). The multilingual, multicultural classroom, nevertheless, offers opportunities to engage students in peer learning and for them to take advantage of each other's strengths and weaknesses.

The first column shows preoccupation with a lack of skills or competences through the verbs *finding*, *selecting*, *establishing*. Furthermore, the focus is very much language and word based. A recurrent item is *doubts* as they tackle specialised translation for the first time and a range of new fields and text types. *Finding* still appears in the first half of the second column, however, a change begins to appear as they start to employ *use*, *verify*, *select*, *monitor*, *identify*, *decide*, *choose*, *ensure* or *check*, as well as *how much*, *which* or *correct*, *good quality* and *reliable*. Similar progression is also clearly evident in the work of the revisers and editors who progress from *finding errors, doubts, deciding* or specific language errors to *checking/verifying, accuracy, coherence* and *consistency*. Some doubts still remain given the increased difficulty of the final texts as they tackle new areas of law, new text types, and more complex decisions to be taken.

When trainees indicate *no major problems/ difficulties* or *none*, this is usually due to one of two reasons. The student has mastered the necessary skills and has actually tackled the project with no significant problems or, on the other hand, the student has excessive confidence in their competences and has underestimated the difficulties posed in the text.

Comprehension is dominant in the first column, less relevant in the second column, but returns in the third column. As the trainees acquire the necessary competences to search, analyse and select information in the first half of the course, comprehension becomes less of a difficulty for them. In the final stages of the course they face legal texts with much more complex concepts and difficulties, thereby raising comprehension problems again until they apply the approach and see that they can acquire sufficient thematic competence to perform their translation tasks. Nevertheless, and despite their apprehensions, they are perfectly capable of completing their tasks and applying their earlier learning to new text types and fields. A further development throughout the 15 weeks is their preoccupation with

providing the necessary information, terminology or assistance for their fellow team members.

All of the students passed the course with an increase in their marks ranging from 5% in a few cases, to the vast majority increasing by 15-20%, and some even 30% in the texts translated for class and their exams. More importantly, their attitude and approach towards specialised translation, their confidence when translating, their work processes and their results have all undergone positive changes. This can be verified through the changes in their comments and metalanguage in each project role, the reduction in time used for each task, despite the increasing difficulty of the texts, as recorded on their Project Management Sheet over the 15 weeks, and in research on self-efficacy performed by Haro Soler (2018).

5 Market Experience

It is too early to analyse the perceptions of the trainees on this course, as many continue to study. Nonetheless, feedback from trainees of the same course in 2013-2014, 2014-2015 and 2015-2016 indicates that all the trainees had improved their TC, interiorizing translation strategies (framework of decision-making), becoming aware of their own weaknesses and difficulties and how to remedy their situation. Improvements in instrumental and professional competence lead to improved thematic and cultural and intercultural competence. Whilst interpersonal and psychophysiological competence also improved, above all, the importance of strategic competence was assimilated and trainees had learnt to learn and be self-critical of their own work. Trainees found the approach innovative and underlined their ability to recognise the reliability of resources, greater speed in all the tasks undertaken, despite the increasing difficulty and less doubts which helped them to feel prepared to enter the translation market. Observation and discussions with graduates working as professional translators throughout 2016-2017 produced similar conclusions, highlighting the fact that they had acquired a work process applicable not only to the texts that they had translated in their degree, but which could be applied in all types of translation and that they continue to apply in their professional practice.

6 Conclusions

The results of the proposed three-fold approach (see Table 1) is achieving training results and graduates are satisfied with their preparation as turnkey legal translators, thereby belying the fiction that legal translators cannot be trained and reaffirming the fact that they can and are. Nonetheless, today's climate for translator training and research is dynamic and exhilarating. The emergence of new professional profiles, the obvious need for Continuous Professional Development (CPD) and the vast range of new employment possibilities will require constant renewal of training approaches if we are to confront the challenge of providing turnkey legal translators. If we are to bridge any apparent gaps between graduate training and industry requirements we must implement CPD to train the trainers and incorporate best practices into training. This will require institutional support undoubtedly. One such programme allowed us to train ten novice translation lecturers over an academic year at the University of Granada. Greater input from the industry, such as information on minimum requirements and standards expected of novice translators or the shortcomings the industry detects in graduates, would be a valuable resource for trainers. Despite the existing networking between the industry and trainers, a more systematic approach and a clear-cut outline of industry requirements can only improve training and thereby benefit the industry. Moreover, more research into the degree of satisfaction of graduates with their training, where they highlight strengths and weakness, will lead to further improvement in training based on their professional needs (Vigier Moreno 2010). Complacency blinds us to the chance to constantly improve training, where there is always room for improvement.

References

Bernardini, Silvia (2004): "The Theory behind Practice: Translator Training or Translation Education?" In: Malmkjaer, Kirsten [ed.] (2004): *Translation in Undergraduate Degree Programmes*, Amsterdam / Philadelphia: John Benjamins. 17 – 30.

Biel, Łucja (2011a): "Training Translators or Translation Service Providers? EN 15038:2006 Standard of Translation Services and its Training Implications." In: *The Journal of Specialised Translation* 16, 61 – 76. http://www.jostrans.org/ (15 February 2018).

Biel, Łucja (2011b): "Professional Realism in the Legal Translation Classroom: Translation Competence and Translator Competence." In: *Meta: Translators' Journal* 56.1, 162 – 178.

Rodríguez de Céspedes, Begoña (2017): "Addressing employability and enterprise responsibilities in the translation curriculum." In: *The Interpreter and Translator Trainer* 11.2-3, 107 – 122.

Gallardo San Salvador, Natividad / Way, Catherine (2009): "Training Legal Translators without Legal Training?" http://eulita.eu/wp/wp-content/uploads/files/Training%20legal%20translators%20without%20legal%20training.pdf (15 February 2018).

Gémar, Jean-Claude (1979): "La traduction juridique et son enseignement: aspects théoriques et pratiques." In *Meta* 15.1, 35 – 53.

Göpferich, Susanne (2009): "Towards a Model of Translational Competence and its Acquisition: the Longitudinal Study TransComp." In: Göpferich, Susanne/ Jakobsen, Arnt Lykke / Mees, Inger M. [eds] (2009): *Behind the Mind. Methods, Models and Results in Translation Process Research*. Copenhagen: Samfundslitteratur. 11 – 37.

Hague, Daryl/ Melby, Alan/ Zheng, Wang (2011): "Surveying Translation Quality Assessment." In: *The Interpreter and Translator Trainer* 5.2, 243 – 267.

Haro-Soler, María del Mar (2017a): "¿Cómo desarrollar la autoeficacia del estudiantado? Presentación y evaluación de una experiencia formativa en el aula de Traducción [How to Develop Students' Self-Efficacy: Description and Assessment of a Learning Experience in the Translation Classroom]." In: *Revista Digital de Investigación en Docencia Universitaria* 11.2, 50-74. doi: http://dx.doi.org/10.19083/ridu.11.567 (15 February 2018).

Haro-Soler, María del Mar (2017b): "El Derecho Comparado y el Análisis Crítico del Discurso como herramientas para la incorporación de metodologías activas al aula de Traducción y de Derecho [Comparative Law and Critical Discourse Analysis as Tools for Incorporating Active Methodologies into the Translation and Law Classrooms]." In *El Derecho comparado en la docencia y la investigación* , Nuria Marchal Escalona (Dir.), Sara Muñoz González y María Carmen Muñoz González (coords.) (2017): Madrid: Dykinson. 127 – 145.

Haro-Soler, M. M. (^{2}2018): "Self-Confidence and its Role in Translator Training: The Students' Perspective." In: Lacruz / Jääskeläinen [eds] (^{2}2018):131 – 160.

Hurtado Albir, Amparo [ed.] (2017): *Researching Translation Competence by PACTE Group*. Amsterdam/Philadelphia: John Benjamins.

Kelly, Dorothy (2005): *A Handbook for Translator Trainers*. Manchester: St. Jerome.

Kelly, Dorothy (2007): "Translator Competence Contextualized. Translator Training in the Framework of Higher Education Reform: in Search of Alignment in Curricular Design." In: Kenny, Dorothy / Ryou, Kyongjoo [eds] (2007): *Across Boundaries. International Perspectives on Translation Studies*, Newcastle: Cambridge Scholars Publishing. 128 – 142.

Kiraly, Donald (2000): *A Social Constructivist Approach to Translator Education. Empowerment from Theory to Practice.* Manchester: St. Jerome.

Koby, Geoffrey S. / Melby, Alan K. (2013): "Certification and Job Task Analysis (JTA): Establishing Validity of Translator Certification Examinations." In: *Translation and Interpreting* 5.1, 174 – 210.

Lacruz, Isabel / Jääskeläinen, Riitta [eds] (^{2}2018): *Innovation and Expansion in Translation Process Research.* Amsterdam: Benjamins. (= American Translators Association Scholarly Monograph Series, XVIII):

Neubert, Albrecht (2000). "Competence in Language, in Languages, and in Translation." In: Schäffner, Christina / Adab, Beverly [eds](2000): *Developing Translation Competence*. Amsterdam / Philadelphia: John Benjamins. 3 – 18.

Piecychna, Beata (2013). "Legal Translation Competence in the Light of Translational Hermeneutics." In: *Studies in Logic, Grammar and Rhetoric* 34.1, 141 – 159.

Prieto Ramos, Fernando (2011): "Developing Legal Translation Competence: An Integrative Process-oriented Approach." In: *Comparative Legilinguistics (International Journal for Legal Communication)* 5, 7 – 21.

Prieto Ramos, Fernando ([2]2014) "Parameters for Problem-Solving in Legal Translation: Implications for Legal Lexicography and Institutional Terminology Management." In: Wagner / Sin / Cheng [eds] ([2]2014): 121 – 134.

Pym, Anthony (2003), "Redefining Translation Competence in an Electronic Age: In Defence of a Minimalist Approach." In: *Meta* 48.4, 481 – 497.

Shreve, Gregory M. / Angelone, Erik / Lacruz, Isabel ([2]2018): "Are Expertise and Translation Competence the Same? Psychological Reality and the Theoretical Status of Competence." In: Lacruz / Jääskeläinen [eds] ([2]2018): 37 – 54.

Soriano-Barabino, Guadalupe. (2016): *Comparative Law for Translators*. Oxford: Peter Lang.

Sparer, Michel (1988): "L'enseignement de la traduction juridique: une formation technique et universitaire. [Teaching legal translation: Technical university training]." In: *Meta: Translators' Journal* 33.2, 320 –328.

Vigier Moreno, Francisco Javier (2010): *El nombramiento de traductores-intérpretes jurados de inglés mediante acreditación académica: descripción de la formación específica y del grado de satisfacción de los egresados*, Ph.D. http://digibug.ugr.es/bitstream/10481/5658/1/18896753.pdf (15 February 2018).

Wagner, Anne / Sin, King-Kui / Cheng, Le [eds] ([2]2014): *The Ashgate Handbook of Legal Translation*. Farnham: Ashgate.

Way, Catherine (2008): "Systematic Assessment of Translator Competence: In Search of Achilles' Heel." In: Kearns, John [ed.] (2008): *Translator and Interpreter Training: Issues, Methods and Debates*. London, UK: Continuum. 88 – 103.

Way, Catherine (2009): "Bringing Professional Practices into Translation Classrooms." In: Kemble, Ian [ed.]. (2009): *The Changing Face of Translation*. Portsmouth, UK: University of Portsmouth. 131 – 142.

Way, Catherine (2012): "A Discourse Analysis Approach to Legal Translator Training: More than Words." In: *International Journal of Law, Language & Discourse* 2.4, 39 – 61. http://www.ijlld.com/journal-index/2012-index/94-2012-journals/111-ijlld-2-4-2012 (15 February 2018).

Way, Catherine ([2]2014): "Structuring a Legal Translation Course: A Framework for Decision-making in Legal Translator Training." In: Wagner/ Sin / Cheng [eds] ([2]2014): 135 – 152.

Way, Catherine (2016a): "The Challenges and Opportunities of Legal Translation and Translator Training in the 21st Century." In: *International Journal of Communication* 10, 1009 – 1029.

Way, Catherine (2016b): "Intra-university projects as a solution to the simulated/authentic dilemma." In: Kiraly, Don et al. (2016): *Authentic experiential learning in translator education*. Mainz: Vandenhoeck & Ruprecht. 147 – 160.

Way, Catherine (2017): "Teaching and Assessing Intercultural Competence: From Common Ground to Divergence." In: Deconinck, Julie / Humblé, Arvi Sepp, Philippe / Stengers, Hélène [eds] (2017): *Towards Transcultural Awareness in Translation Pedagogy.* Representation – Transformation. Translating across Cultures and Societies, Berlin, Vienna, Hamburg, London: LIT Verlag. 157 – 180.

Chapter 13

Zum Nutzen von ausgangssprachlichen Korpora beim Verstehen und Übersetzen von Rechtstexten

Eva Wiesmann

Abstract
Today it is impossible to imagine the practice and didactics of professional translation without corpora. Even in the field of law, monolingual corpora provide valuable information on the use of language in context, despite all the limitations that arise from conceptual and textual differences in translations between different legal systems. However, the focus of interest is generally on the context of the target language and synchrony. This paper, on the other hand, uses Italian and German notarial deeds as an example to demonstrate the usefulness of diachronic source language corpora for understanding current legal texts as a prerequisite for their translation into the other language. Notarial deeds are characterised by a strong but not rigid formulaicity, which always presents a challenge in translation. The formulas have mostly crystallized within the notary's office, are conditioned by convention and tradition and are more or less understandable in view of their socio- and idiolectic features. Due to the wide scope of variation that the formulas offer, comparing them can be an important aid to understanding, which helps to avoid translation errors. Source language corpora thus prove to be a valuable complement to the target language corpora and other resources.

Keywords: source language corpora, textual comprehension, notarial deeds

1 Einleitung

Im vorliegenden Beitrag wird eine Einsatzmöglichkeit von Korpora bei der Rechtsübersetzung besprochen, der offensichtlich bislang keine Beachtung geschenkt wurde. Bei Auseinandersetzungen mit dem Nutzen von Korpora bei der Fachübersetzung im Allgemeinen und der Rechtsübersetzung im Besonderen gilt das Augenmerk in der Tat sowohl Parallelkorpora aus alignierten Übersetzungen, die als Translation Memory in CAT-Tools eingebunden sind, als auch multilingualen Vergleichskorpora und einsprachigen Korpora, die beide aus Originaltexten bestehen und u.a. mit Korpusanalyseprogrammen konsultiert werden. Einsprachige Originaltext-Korpora geben dabei auch im Recht trotz aller Einschränkungen, die sich bei Übersetzungen zwischen verschiedenen Rechtsordnungen aus den begrifflichen und textuellen Unterschieden ergeben, wertvolle Aufschlüsse über den

Gebrauch von Sprache im Kontext. Der Fokus des Interesses liegt in dem Zusammenhang jedoch auf dem zielsprachlichen Kontext und auf der Synchronie. Mit Blick auf die textsortenadäquate Formulierung interessieren also v.a. zielsprachliche Texte derselben Textsorte, die aus einer vergleichbaren Zeit wie der Ausgangstext stammen. Mit dieser Untersuchung soll demgegenüber am Beispiel von italienischen und deutschen notariellen Urkunden vom Typ Immobilienkaufvertrag der Nutzen aufgezeigt werden, den ausgangssprachliche, die diachrone Dimension berücksichtigende Korpora für das Verständnis von heutigen Rechtstexten als Grundvoraussetzung für deren fehlerfreie Übersetzung in die jeweils andere Sprache haben.

Nach einem kurzen Überblick über die in der Fachliteratur beschriebenen Einsatzgebiete von Korpora im Zusammenhang mit der Rechtsübersetzung wird das Korpus vorgestellt, um dessen spezielle Einsatzmöglichkeit bei der Rechtsübersetzung es im vorliegenden Beitrag geht. Die Beschreibung der sprachlich-textuellen Besonderheiten italienischer und deutscher notarieller Urkunden bildet dann die Grundlage für die Kategorisierung der textsortenspezifischen Merkmale, die beim Verstehen notarieller Urkunden eine besondere Herausforderung darstellen und bei denen der über die Synchronie hinausgehende, die diachrone Achse berücksichtigende Vergleich der Sprachvarianten da zielführend ist, wo andere Hilfsmittel an ihre Grenzen geraten. Den Abschluss bilden Überlegungen zum Umgang mit den betreffenden textsortenspezifischen Merkmalen bei der Übersetzung notarieller Urkunden und zur Nutzbarmachung von Korpora aus rechtspraktischen Texten.

2 Korpora und Rechtsübersetzung

2.1 Einsatzgebiete von Korpora im Zusammenhang mit der Rechtsübersetzung

Ein Korpus ist nach Laviosa (2010: 80) eine “collection of authentic texts held in electronic form and assembled according to specific design criteria”, die wie folgt klassifiziert werden kann:

sample				monitor			
synchronic				diachronic			
general				specialized			
monolingual		bilingual			multilingual		
written	spoken			mixed		multi-modal	
annotated				non-annotated			

Tab. 1: Korpusklassifikation nach Laviosa (2010: 80-81)

Korpora werden zu unterschiedlichen wissenschaftlichen, praktischen oder didaktischen Zwecken erstellt und analysiert, wobei die Methoden der Korpuslinguistik eine immer größere Rolle spielen.

In Bezug auf den Nutzen der Korpuslinguistik für die Rechtsübersetzung unterscheidet Biel (2010: 3-4) bei Ausweitung des Korpusbegriffs auf Übersetzungen von Originaltexten wie folgt:

1) einsprachige Korpora:
1a) einsprachige Korpora aus Originaltexten der Sprache A;
1b) Vergleichskorpora aus Originaltexten der Sprache A und Übersetzungen in die Sprache A;
2) zwei- bzw. mehrsprachige Korpora:
2a) Vergleichskorpora aus Originaltexten der Sprache A und Originaltexten der Sprache B und ggf. weiterer Sprachen;
2b) Parallelkorpora aus alignierten Übersetzungen zwischen den Sprachen A und B und ggf. weiteren Sprachen.

Während einsprachige Korpora von Originaltexten einer Sprache (1a) Biels Ausführungen zufolge primär zu linguistischen, lexikographischen und sprachdidaktischen Zwecken eingesetzt werden, ist der Zweck der Analyse aller anderen Korpora immer (1b) oder zumindest immer auch (2a und 2b) ein translationswissenschaftlicher. In der Praxis – wie auch in der Didaktik – der Rechtsübersetzung spielen, sieht man einmal von den auf Korpusuntersuchungen basierenden lexikographischen und terminographischen Produkten ab, die wissenschaftlichen Ergebnisse der linguistisch und/oder translationswissenschaftlich ausgerichteten Korpusuntersuchungen aber eine vergleichsweise geringere Rolle als die

unmittelbare Nutzung von bereits verfügbaren oder aber ad hoc erstellten, auf die spezifischen Erfordernisse von Übersetzungsaufträgen zugeschnittenen Korpora, deren Potenzial, so Wurm (2017: 229), gleichwohl längst nicht ausgeschöpft ist. "One of the major limitations concerning the application of legal corpora", stellt Biel (2010: 4) in diesem Zusammenhang fest,

> is their availability, in particular for less researched languages. […] Furthermore, accessibility to the existing corpora is limited due to copyright restrictions. Another issue which significantly impacts the accessibility, size and composition of legal corpora is confidentiality of legal documents, in particular private legal and litigation documents.

Aus diesem Grund seien "legal corpora – like most specialised corpora – […] rather small", was angesichts der starken Formelhaftigkeit von Rechtstexten nach Bhatia / Langton & Lung (2004: 207) allerdings ausreichend ist, und es sei unvermeidbar, dass "legislation is over-represented while other legal genres are underrepresented." (Biel 2010: 4) Solche unterrepräsentierten Textsorten, zu denen auch die übersetzungspraktisch wichtigen notariellen Urkunden gehören, sind zwar in für die Rechtspraxis konzipierten, meist einsprachig vorliegenden Formularbüchern leicht, im Original – und mehr noch in der Übersetzung – aber mehr oder weniger schwer zu finden. Formularbuchtexte, aus denen sich leicht ein größeres Korpus erstellen lässt, spiegeln allerdings bei Weitem nicht die Vielfalt an Ausdrucksmöglichkeiten des "'real life' use" (Pontrandolfo 2012: 122), die Originaltexte auszeichnen und die für das Verstehen und Übersetzen von rechtspraktischen Texten eine so wichtige Rolle spielen. Wer solche Korpora in der Praxis der Rechtsübersetzung nutzen will, kommt daher nicht umhin, Formularbuchtexte mit mehr oder weniger großem Aufwand durch Originaltexte zu ergänzen.

2.2 Korpus von italienischen und deutschen notariellen Urkunden

Bei der Erstellung eines Korpus von notariellen Immobilienkaufverträgen ergeben sich für deutsche Urkunden größere Schwierigkeiten als für italienische. Beide können aus Datenschutzgründen nur äußerst schwer und unter der Voraussetzung der Löschung aller personenbezogenen Daten von Notaren selbst beschafft werden.

Will man ein größeres Korpus erstellen, bleibt also nur der Bezug aus den staatlichen Archiven, in die die Urkunden in Italien schneller Eingang finden als in Deutschland.

Das zu wissenschaftlichen Zwecken erstellte, aus zwei Subkorpora bestehende Korpus, dessen Möglichkeiten der Nutzung mit Blick auf die Übersetzung ins Deutsche bzw. ins Italienische hier aufgezeigt werden sollen, lässt sich auf der Grundlage von Punkt 2.1 wie folgt beschreiben:

bilingual	Italienisch, Deutsch
sample	76.198 tokens, 6.259 types (italienisches Subkorpus) 55.887 tokens, 6.166 types (deutsches Subkorpus)
specialized, written	notarielle Urkunden vom Typ Immobilienkaufvertrag
comparable	100 italienische und 100 deutsche Originalurkunden
diachronic	Zeitspanne 1860 – 1960

Tab. 2: Beschreibung des Korpus von notariellen Urkunden

Es handelt sich um ein nach Abschrift der überwiegend handschriftlichen Urkunden im Format.txt zugängliches, mit Korpusanalyseprogrammen untersuchbares, nicht annotiertes Korpus, das primär zu linguistischen Zwecken erstellt wurde, um die Bedingungsfaktoren des notariellen Sprachgebrauchs herauszuarbeiten und die italienische und die deutsche Urkunde in ihrer Entwicklung und in ihren Unterschieden zu beschreiben (Wiesmann 2018).

Der übersetzungspraktische Nutzen eines solchen Korpus ist für seine drei möglichen Einsatzgebiete ein je anderer. Ausgehend von Monzó (2008: 230) lässt es sich wie folgt nutzen:

a) als zweisprachiges Vergleichskorpus aus italienischen und deutschen Originalurkunden mindestens zur Identifizierung und/oder übersetzungsadäquaten Verwendung von “generic equivalents, semantic structure, terminology, formula, syntactic structures, typography”,
b) als einsprachiges Korpus aus Zieltexten “genre-dependent” für die Identifizierung von “semantic structure, collocates, formula” und “register-dependent” die von “word frequencies, phrase frequencies” und

c) als einsprachiges Korpus aus Ausgangstexten für die Identifizierung von "discourse effects" wie "universalization, neutralization, defamiliarization", die den rechtssprachlichen Diskus im Allgemeinen kennzeichnen.

Darüber hinaus besteht der Nutzen einsprachiger Korpora aus Ausgangstexten – und das wird von Monzó und, soweit bekannt, auch in anderen Publikationen zum Nutzen solcher Korpora für die Fachübersetzung im Allgemeinen und die Rechtsübersetzung im Besonderen nicht erwähnt – darin, das Verstehen von Texten zu erleichtern und damit die Grundvoraussetzung für deren Übersetzung zu schaffen. Dieses Verstehen wird grundsätzlich durch synchrone Korpora von Texten derselben Textsorte gefördert, in denen gleiche Sachverhalte sprachlich in unterschiedlicher Weise zum Ausdruck gebracht werden. Bei notariellen Urkunden als historisch gewachsenen, tief in der Tradition wurzelnden, der Innovation nur wenig zugänglichen Texten, erweisen sich aber besonders diachrone Korpora als eine wertvolle Verständnishilfe.

3 Sprachlich-textuelle Besonderheiten notarieller Urkunden

Die den Textaufbau maßgeblich bestimmenden Inhaltsbestandteile von italienischen und deutschen notariellen Urkunden sind durch Rechts- und/oder Verwaltungsvorschriften festlegt und weisen interkulturell eine Reihe von Unterschieden auf, die sich auf der sprachlich-textuellen Ebene manifestieren (vgl. Wiesmann 2013b). Gemein ist den Urkunden beider Länder, dass der eigentliche, je nach Rechtsgeschäft anders ausgestaltete zentrale Urkundentext von einem sog. Protokoll eingeleitet wird und mit einem sog. Eschatokoll abschließt, die die Rahmenstruktur der notariellen Urkunde bilden.

Auf der textuellen Ebene ist die Binnengliederung in der Rahmenstruktur bei synchroner Betrachtung fest und unterscheidet sich interkulturell erstens dadurch, dass die italienischen Urkunden mit der Angabe der Rechtsordnung im Protokoll und der Angabe zu Errichtung und Umfang der notariellen Urkunde im Eschatokoll zwei Angaben aufweisen, die den deutschen Urkunden fehlen. Zweitens unterscheidet sie sich interkulturell dadurch, dass die Ortsangabe, die Angabe zum Notar und die Angabe zu den Zeugen in den italienischen und den deutschen Urkunden an je anderer Stelle stehen. Bei diachroner Betrachtung erweist sich dagegen auch

der Textaufbau der Rahmenstruktur als Ergebnis einer Entwicklung, die in den italienischen und den deutschen Urkunden unterschiedlich ausgeprägt ist (vgl. Wiesmann 2018). Bei vertraglichen Rechtsgeschäften derselben Art ist auch der Aufbau des zentralen Urkundentextes in seiner Gliederung in Klauseln von einer gewissen Regelmäßigkeit geprägt (vgl. in Bezug auf den Immobilienkaufvertrag Valente in Vorbereitung), wobei die Gesetze der betreffenden Länder, sofern sie nicht auf europäisches Gemeinschaftsrecht zurückgehen, wiederum interkulturelle Unterschiede bedingen und sich gesetzliche Änderungen auf den Bestand an und die Art von Klauseln auswirken.

Doch nicht nur der Textaufbau, sondern auch die Sprache der notariellen Urkunden ist zu einem gewissen Grad durch Rechts- und/oder Verwaltungsvorschriften bedingt. So ist in Italien und Deutschland die Art der Angabe wichtiger Zahlen und in Italien darüber hinaus der Wortlaut der Angabe der Rechtsordnung vorgeschrieben. Vor allen Dingen aber ist die Sprache von einer starken, jedoch keiner starren Formelhaftigkeit geprägt, die bei notariellen Urkunden einen breiten Spielraum für Variation lässt. Die Formeln haben sich dabei meist kanzleiintern herauskristallisiert, sind durch Konvention und – oft weit in die Geschichte zurückreichende – Tradition bedingt und für ÜbersetzerInnen angesichts ihrer sozio- bis idiolektalen Züge mehr oder weniger verständlich. Zu den sprachlich-stilistischen Merkmalen notarieller Urkunden, die nicht im Dienste der Verständlichkeit stehen, lassen sich auf der Grundlage von Mortara Garavelli (2006) und Wiesmann (2012) die folgenden zählen:

1) Verwendung von Archaismen (z.B. *a mente di legge*; *ausweisen*);
2) Vorliebe für sprachökonomische Ausdrucksweisen (z.B. *salvo altri*; *Auf Vollzugsnachricht wird verzichtet*);
3) kein Verzicht auf Redundanzen (z.B. *libero ed immune* oder *dare, cedere e vendere*; *frei und ungehindert*);
4) Rückgriff auf syntaktische Stereotypen wie Abweichungen von der normalen Wortstellung (z.B. *Consta l'atto presente di un foglio*; *und wird hierüber quittiert)*;
5) Missbrauch von Nominalisierungen und abstrakten Formulierungen;
6) exzessive Satzlänge.

Zu den Redundanzen gehört in den italienischen Urkunden auch ein Phänomen, das von Marmocchi (2006: 25) als "dichiarativismo" bezeichnet wird und das sich über die Verwendung von *dichiarare* hinaus darin äußert, dass die rechtliche Handlung erst angekündigt und dann vollzogen wird (*Tizio dichiara di voler rinunciare come in effetti rinuncia*).

Abgesehen davon liegen die Unterschiede zu den deutschen Urkunden v.a. darin, dass die genannten sprachlich-stilistischen Merkmale dort weit weniger ausgeprägt und von der Tendenz her stärker rückläufig sind.

4 Korpora als Verständnishilfe

Ausgangssprachliche Korpora aus Texten derselben Textsorte wie der zu übersetzende Text, die mit Korpusanalyseprogrammen wie AntConc untersucht werden können, erweisen sich nicht nur bei textsortenspezifischen Phänomenen jeder Art als nützlich. Bei den in Punkt 3 genannten archaischen, sprachökonomischen und redundanten Ausdrücken stellen sie insofern eine wertvolle Ergänzung dar, als es sich um lexikalische und phraseologische Einheiten handelt, die in lexikographischen Nachschlagewerken oft nicht verzeichnet oder erklärt sind.[1] Ersteres ist bei einsprachigen Rechts- und gemeinsprachlichen Wörterbüchern der Fall, von denen überhaupt nur die gemeinsprachlichen derartige verständlichkeitsbeeinträchtigenden Merkmale teilweise erfassen, Letzteres bei zweisprachigen Rechtswörterbüchern, die solche Merkmale gleichfalls nicht lückenlos berücksichtigen und, wenn sie es tun, dann nur selten Informationen zur Bedeutung liefern. Eine Sonderrolle nehmen historische Rechts- und gemeinsprachliche Wörterbücher[2] ein, die aber nicht zu den üblicherweise von RechtsübersetzerInnen konsultierten lexikographischen Nachschlagewerken gehören. Korpora der genannten Art dagegen haben v.a. dann, wenn sie sich ganz oder überwiegend aus Originaltexten zusammensetzen, den Vorzug, dass sie eine Fülle von Sprachvarianten bieten, die

[1] Syntaktische Stereotypen, Nominalisierungen und abstrakte Formulierungen sowie lange Sätze bleiben als syntaktische Phänomene hier außer Betracht. Auch zu ihnen gibt es im Korpus Varianten, die das Textverständnis erleichtern können.

[2] Für das Italienische sei hier auf die online auf der Website der Accademia della Crusca zur Verfügung gestellten historischen Wörterbücher verwiesen, für das Deutsche auf die Plattform Woerterbuchnetz.de, über die auch das Deutsche Rechtswörterbuch zugänglich ist.

insbesondere bei einerseits formelhaftem, andererseits aber stark kanzleispezifischem Sprachgebrauch das Verständnis gerade der für ÜbersetzerInnen besonders schwierigen archaischen, sprachökonomischen und redundanten Ausdrücke fördern.

Der Zugriff auf Korpora mit Hilfe von Korpusanalyseprogrammen ist grundsätzlich ein semasiologischer. Die Konkordanzfunktion zeigt den gesuchten sprachlichen Ausdruck in seinem Verwendungskontext und über die Kontextwörter kann mit einer neuen Suche nach vergleichbaren Kontexten gesucht werden. Ist der semasiologische Zugriff nicht zielführend, kann mit Hilfe der Textanzeigefunktion aber auch die Position eines sprachlichen Ausdrucks in einer Angabe der Rahmenstruktur oder in einer Klausel des zentralen Urkundentextes ausfindig gemacht und daraufhin onomasiologisch nach dem sprachlichen Ausdruck der Angabe oder Klausel in anderen Texten des Korpus gesucht werden. Der onomasiologische Zugriff wird also durch die Binnengliederung der Rahmenstruktur der notariellen Urkunde in Angaben und des zentralen Urkundentexts in Klauseln erleichtert.

4.1 Archaismen

Unter Archaismen sollen in einem weiteren Sinne sprachliche Mittel verstanden werden, die nicht nur zu stilistischen Zwecken wiederaufgenommen, sondern auch aus sprachkonservativen Gründen bewahrt werden (vgl. Wiesmann 2013a). Dazu gehören im Italienischen *in parola* bzw. *in vocabolo* vs. *chiamato*, *ragione* vs. *diritto* und *a mente di* bzw. *a forma di* bzw. *a senso / sensi di* bzw. *a termine / termini di* vs. *a norma di*, im Deutschen *ausweisen* vs. *bezahlen*, *heimzahlen* vs. *zurückzahlen* und *gegenwärtig* vs. *vorliegend*.

Die Schwierigkeiten, die solche sprachlichen Mittel RechtsübersetzerInnen bereiten, zeigen sich besonders deutlich da, wo sie in speziellen berufsspezifischen Plattformen wie ProZ.com oder TranslatorsCafe.com thematisiert werden. Bei den genannten sprachlichen Mitteln ist dies bei *a mente di* und *a sensi di* der Fall, von denen Ersteres, wie Mortara Garavelli (2006: 89) herausstellt, schon in den lexikographischen Nachschlagewerken der zweiten Hälfte des 19. Jhs. als überholt bezeichnet wurde.

Bei *in parola* bzw. *in vocabolo*, die weder in einsprachigen gemeinsprachlichen noch in zweisprachigen Rechtswörterbüchern verzeichnet sind, ist es der Kontext allein, der über die Bedeutung *chiamato* Aufschluss gibt und die korrekte Übersetzung mit *genannt* ermöglicht:

(1) *planimetria […] su cui l'area in parola è distinta […]* (it. Subkorpus)
(2) *Un Podere […] diviso in due appezzamenti in vocabolo = Lecce e Grotte = […]* (it. Subkorpus)

Ragione ist dagegen sowohl in einsprachigen gemeinsprachlichen als auch in zweisprachigen Rechtswörterbüchern in der Bedeutung *diritto* bzw. mit der Übersetzung *Recht* verzeichnet, aber nicht wie im Korpus in Verbindung mit den Ausdrücken *pieno* einerseits und *forma*, *modo* oder *effetto* andererseits, so dass sich die Bedeutung wiederum nur eindeutig aus vergleichbaren Kontexten erschließt und andere in lexikographischen Nachschlagewerken genannte Bedeutungen wie *motivo* oder *causa* und Übersetzungen wie *Grund* oder *Ursache* ausgeschlossen werden können. Man vergleiche:

(3) *spetta a lui […] di piena ragione* (it. Subkorpus)
(4) *la […] Casa a loro […] appartiene […] di pieno diritto* (it. Subkorpus)

Auch redundante Ausdrücke (vgl. 4.3) können in diesem Zusammenhang einen Beitrag zum Verständnis leisten, da die Kombination von *ragione* mit *legge* die Bedeutungen *motivo* und *causa* ausschließt:

(5) *in ogni più ampla e valida forma di ragione* (it. Subkorpus)
(6) *in ogni e più ampla forma di legge, e di ragione* (it. Subkorpus)

A mente di bzw. *a forma di* bzw. *a senso / sensi di* bzw. *a termine / termini di* in der Bedeutung *a norma di* bzw. mit der Übersetzung *gemäß* sind teils in einsprachigen gemeinsprachlichen und teils in zweisprachigen Rechtswörterbüchern genannt. Die Suche nach den Kontextwörtern *legge* oder *articolo (di legge)* im Korpus hat aber den Vorteil der Zeitersparnis, der in Zeiten immer schnelleren Arbeitstempos alles andere als zu vernachlässigen ist (vgl. Wurm 2017).

Bei den Ausdrücken *ausweisen* vs. *bezahlen*, *heimzahlen* vs. *zurückzahlen* und *gegenwärtig* vs. *vorliegend* gehen die Bedeutungen nur aus historischen Rechts- und gemeinsprachlichen Wörterbüchern hervor, aus deren Einträgen die

Bedeutungen und davon ausgehend die Übersetzungen mit *pagare*, *restituire* bzw. *presente* ermittelt werden können. Abgesehen davon, dass die Konsultation historischer Wörterbücher durch ÜbersetzerInnen die Ausnahme darstellen dürfte, führt die Kontextsuche im Korpus unmittelbar zum Ziel. Bei *ausweisen* lassen schon die im Anschluss an den Doppelpunkt genannten Zahlungsmodalitäten darauf schließen, dass die Bedeutung *bezahlen* sein muss.

(7) *Der Kaufpreis wird ausgewiesen, wie folgt: […]* (dt. Subkorpus)

Noch deutlicher wird dies in vergleichbaren Kontexten, in denen redundante Ausdrücke (vgl. 4.3) verwendet werden.

(8) *Der Kaufpreis wird ausgewiesen und beglichen wie folgt: […]* (dt. Subkorpus)

Bei *heimzahlen* und *gegenwärtig* ist es dagegen die Suche nach den Kontextwörtern *Darlehen* bzw. *Urkunde*, die zu den Bedeutungen *zurückzahlen* und *vorliegend* führt.

4.2 Sprachökonomische Ausdrücke

Bei sprachökonomischen Ausdrücken wird nicht expliziert, was zwar nicht für den Fachmann, wohl aber für den Laien explizierungsbedürftig ist. Im Italienischen sind es die Ellipsen, die sich am stärksten auf die Verständlichkeit der notariellen Urkunde auswirken, im Deutschen betrifft die Einsparung weniger die syntaktische als vielmehr die satzsemantische Ebene.

Wie bei den archaischen sind auch bei den elliptischen Ausdrücken die übersetzerischen Schwierigkeiten u.U. Gegenstand von Forumsbeiträgen in berufsspezifischen Plattformen. Der interessanteste davon ist der Beitrag zum elliptischen Ausdruck *Sopra le quali cose* in TranslatorsCafe.com. Dieser steht in italienischen Urkunden entweder allein in einer eigenen Zeile am Ende des zentralen Urkundentextes in der Angabe zum Gegenstand der Beurkundung oder aber zu Beginn des Eschatokolls in der Angabe zu Verlesung, Errichtung und Umfang der notariellen Urkunde. Elliptisch ist der Sprachgebrauch v.a. am Ende des zentralen Urkundentextes, wo er durch *sono stato richiesto di fare rogito* zu ergänzen wäre. Zu Beginn des Eschatokolls wird der Ausdruck durch das Partizip *richiesto* als Ausdruck der Beurkundungsbitte (vgl. 4.4) ergänzt, auf die i.d.R. das Perfekt *ho ricevuto* (vgl. 4.4) als Ausdruck der Errichtung der Urkunde folgt, ausgespart bleibt aber *di fare*

rogito. Trotz der Ergänzung durch *richiesto* in dem hier interessierenden Forumsbeitrag in TranslatorsCafe.com konnte keiner der Forumsteilnehmer mangels Kenntnis der historischen Hintergründe einerseits und der Möglichkeit der Konsultation eines diachronen Korpus wie dem in Punkt 2.2 beschriebenen andererseits eine korrekte Lösung vorschlagen.

Die von einem der Forumsteilnehmer für den Ausdruck

(9) *Sopra le quali cose richiesto, io Notaio ho ricevuto il presente atto […]* (Forumsbeitrag in TranslatorsCafe.com)

vorgeschlagene Lösung, die von der Fragestellerin als die beste akzeptiert wurde, lautet:

(10) *Nach Anfrage in oben genannter Angelegenheit […] habe ich, Notar […]* (Forumsbeitrag in TranslatorsCafe.com)

Auch wer die historischen Hintergründe nicht kennt, kann dank der Untersuchung der Varianten, die das diachrone Korpus bietet, die Bedeutung des elliptischen Ausdrucks klar erkennen und eine fehlerfreie Übersetzung anfertigen. Der semasiologische Zugriff auf das Korpus führt jedoch in dem Fall nicht unmittelbar zum Ziel, sondern muss durch einen onomasiologischen ergänzt werden. Es muss also auch die Angabe, hier die zu Verlesung, Errichtung und Umfang der notariellen Urkunde, konsultiert werden, in der der elliptische Ausdruck vorkommt. Wie die Variante

(11) *Su di che io Notaro sono stato pregato a far Rogito […]* (it. Subkorpus)

zeigt, sind sowohl *sopra le quali cose* und *su di che* als auch *richiesto* und *sono stato pregato* gleichbedeutend. Bei Ersterem geht es um den Bezug auf das Rechtsgeschäft des zentralen Urkundentextes, an den sich die Angabe zu Verlesung, Errichtung und Umfang der notariellen Urkunde anschließt, bei Letzterem, wie gesagt, um den Ausdruck der Beurkundungsbitte. Die Übersetzung mit *nach Anfrage in oben genannter Angelegenheit* ist damit erstens wegen des Ausdrucks *Anfrage*, zweitens wegen des fehlenden Bezugs zwischen Beurkundungsbitte seitens der Beteiligten und Beurkundungstätigkeit durch den Notar und drittens wegen der Übersetzung mit *in oben genannter Angelegenheit* falsch, die keinen eindeutigen Bezug auf das notariell beurkundete Rechtsgeschäft gewährleistet. Eine korrekte Übersetzung wäre dagegen:

(12) *Auf Ansuchen der Beteiligten habe ich, Notar, über das obige Rechtsgeschäft die vorliegende Urkunde errichtet […]* (eigene Übersetzung)

Als weitere elliptische Ausdrücke, bei denen dagegen der semasiologische Zugriff auf das Korpus und entweder die Untersuchung von Varianten der gesuchten Ausdrücke in anderen Kontexten oder die Untersuchung des näheren und weiteren Kontextes der gesuchten Ausdrücke zielführend sind, können die folgenden genannt werden: Mit *strada da più* ist im Zusammenhang mit der Nennung der Grenzen einer Immobilie die *strada da più parti*, d.h. die auf mehreren Seiten angrenzende Straße gemeint, mit *salvi*, *salvi altri* oder *salvi se altri* wird zum Ausdruck gebracht, dass die Reihe der zuvor genannten Personen oder Sachen, beim Immobilienkaufvertrag sind es insbesondere die Grenzen (*confini*), um weitere ergänzt werden könnte, die nicht ausgeschlossen werden sollen, und mit *nel nome* oder *nei nomi* wird auf eine oder mehrere u.U. auch weit vorher genannte Personen Bezug genommen, in deren Namen ein Vertretungsbefugter handelt. Etwas leichter zu verstehen sind demgegenüber elliptische Ausdrücke, bei denen nicht ein Substantiv, sondern ein Partizip ausgespart ist. Dazu gehören u.a. *sempre nella qualità (sopraindicata)* oder *e come meglio (descritto) a*.

Zu den sprachökonomischen Ausdrücken, die keine Ellipsen sind, zählt *Auf Vollzugsnachricht wird verzichtet*. Unausgedrückt bleibt dabei wer verzichtet, wer vollzieht, was vollzogen wird, wer für die Nachricht sorgt und an wen sich dieselbe richtet (Wiesmann 2012: 168). Auch diesbezüglich erweist sich das Korpus als eine wertvolle Verständnishilfe und erleichtert die Übersetzung insofern, als im Zieltext zumindest das, was vollzogen wird, genannt werden sollte. So gibt die Variante

(13) *Auf Mitteilung vom grundbuchamtlichen Vollzuge dieser Urkunde wird verzichtet.* (dt. Subkorpus)

darüber Aufschluss, dass es die Urkunde ist, die vollzogen wird. Die Variante

(14) *Die Beteiligten wurden darauf hingewiesen: a) daß das Eigentum erst mit der Eintragung im Grundbuche auf den Erwerber übergeht und diese Urkunde erst dann dem Grundbuchamte zum Vollzug vorgelegt werden kann, wenn […]* (dt. Subkorpus)

lässt erkennen, dass der Vollziehende das Grundbuchamt ist. Der Variante

(15) *beantragen die Beteiligten die Eintragung dieser Rechtsänderung im Grundbuche unter Verzicht auf Vollzugsnachricht* (dt. Subkorpus)

schließlich lässt sich erstens entnehmen, dass die Verzichtenden die Beteiligten sind und zweitens, dass der Vollzug etwas mit der Eintragung der Rechtsänderung ins Grundbuch zu tun hat. Dass das Grundbuchamt der Benachrichtigende und die Beteiligten die Empfänger der Nachricht sind, ergibt sich daraus indirekt.

4.3 Redundante Ausdrücke

Bei Redundanzen erweist sich die Analyse der Varianten im Korpus insofern als fruchtbar, als sie Redundanzen überhaupt erst als solche erkennen und die Kanzleispezifik des Sprachgebrauchs verstehen lässt. Zu redundanten Ausdrücken gibt es m.a.W. nicht nur andere redundante Ausdrücke als Varianten, sondern auch einfache Ausdrücke, die denselben Sachverhalt ausdrücken, und jede Kanzlei hat ihre spezifischen Ausdrucksweisen, die sich von denen anderer Kanzleien unterscheiden und u.a. nicht nur zur Abgrenzung des Berufsstands nach außen (soziolektales Merkmal), sondern auch gegenüber anderen Kanzleien nach innen (ideolektales Merkmal) eingesetzt werden.

Eine besondere Rolle spielen in diesem Zusammenhang usuelle Wortverbindungen (vgl. Wiesmann 2018), die vorwiegend unter der Bezeichnung Paarformeln abgehandelt werden, obwohl sie formal gesehen nicht nur zweigliedrig sein müssen. Unter einem inhaltlichen Gesichtspunkt gibt es neben usuellen Wortverbindungen mit bedeutungsgleichen oder bedeutungsähnlichen Gliedern auch solche, deren Glieder einen Gegensatz ausdrücken oder einander ergänzen. Die hier interessierenden tautologischen Wortverbindungen kommen in notariellen Urkunden jedoch am häufigsten vor.

Im Vergleich zu den deutschen Urkunden sind die tautologischen Wortverbindungen in den italienischen Urkunden nicht nur frequenter, auch eine Zahl von drei und mehr Gliedern kommt nur dort vor. Ein besonders charakteristisches Beispiel ist in dem Zusammenhang die Verbindung von Ausdrücken, die auf den Verkauf (Vertragsangebot) verweisen, gepaart mit weiteren Wortverbindungen, die auf den Kauf (Annahme des Vertragsangebots) bezogen sind. Zwar drücken Ausdrücke wie *cedere*, *vendere* und *trasferire*, ebenso wie die Ausdrücke *accettare*, *comprare* und *acquistare* durchaus laut Marmocchi (2006: 24 – 25) rechtliche Unterschiede aus, eigentlich erforderlich sind ihm zufolge jedoch nur *vendere* und *comprare*. Einen Schritt weiter noch geht La Porta (2006: 74), der in Anbetracht der

Besiegelung des Rechtsgeschäfts durch die Unterschrift *vendere* allein für ausreichend hält. Während die Verwendung von *vendere* auf der Verkäufer- ohne das entsprechende *comprare* auf der Käuferseite im Korpus nicht belegt ist, kommt verkäuferseitig *vendere* durchaus allein oder in Verbindung mit *cedere*, *trasferire*, *alienare* und/oder *dare* und käuferseitig *comprare*, ebenso wie *accettare* und *acquistare*, sowohl allein als auch in Verbindung mit *accettare*, *acquistare* und/oder *stipulare* vor. Während der Ausdruck der Annahme des Vertragsangebots in den deutschen Urkunden völlig fehlt, kommt an tautologischen Wortverbindungen zum Ausdruck des Vertragsangebots dort nur, und das sehr selten, *verkaufen und übertragen* vor. Mehr Parallelen zwischen den Urkunden der beiden Subkorpora gibt es dagegen bei tautologischen Wortverbindungen wie *libero ed immune* und *frei und ungehindert*, wobei die Zahl der Varianten im Italienischen wiederum größer ist.

4.4 Sonstige Ausdrücke

An sonstigen Ausdrücken, die Verständnisschwierigkeiten verursachen können und in lexikographischen Nachschlagewerken nicht oder nur teilweise verzeichnet oder erklärt sind, gehören bestimmte fachsprachliche und literatursprachliche Ausdrücke, von denen Letztere ein Charakteristikum italienischer Urkunden darstellen. Zu den fachsprachlichen Ausdrücken gehört das Verb *ricevere*, zu den literatursprachlichen das Verb *richiedere* in Verbindung mit einem Akkusativobjekt. Beide kommen in der Angabe zu Verlesung, Errichtung und Umfang der notariellen Urkunde vor und lassen sich in ihrer Bedeutung wiederum leicht mit Hilfe des Korpus erschließen. Als Varianten zu *ricevere* (vgl. Beisp. 9) werden in der Tat *redigere* und *compilare* gebraucht, als Varianten zu *richiedere* (vgl. Beisp. 9) *essere pregato* (vgl. Beisp. 11).

5 Übersetzung von notariellen Urkunden

Die Übersetzung notarieller Urkunden dient überwiegend als Verständnishilfe. Im Fall von Immobilienkaufverträgen aus einer Rechtsordnung, die für Empfänger aus einer anderen Rechtsordnung anzufertigen sind, kommen die interkulturellen Unterschiede auf der sprachlich-textuellen Ebene zum Tragen und müssen nach Verständnis des Ausgangstextes im Zieltext in angemessener Weise überbrückt

werden. Die allgemeine Übersetzungsmethode ist dabei grundlegend eine verfremdende, auf der sprachlich-stilistischen Ebene gibt es jedoch, wie Rega (2006: 406) treffend herausstellt,

> la possibilità di recuperare la dimensione "acculturata" della traduzione, e questo ovviamente non solo a livello di lingua di arrivo in generale, ma a quello delle microlingue all'interno della lingua speciale del diritto, di "mimare" insomma per quanto possibile lo stile di redazione della lingua d'arrivo nel momento in cui si traduce un testo giuridico.

In Bezug auf die sprachlich-stilistischen Unterschiede wie sie hinsichtlich der archaischen, sprachökonomischen und redundanten Ausdrücke in notariellen Urkunden bestehen (vgl. ausführlich Wiesmann 2018), heißt das, dass bei funktionaler Entsprechung einbürgernd übersetzt werden sollte, ohne dabei aber die, wenngleich mehr oder weniger geringen, Innovationstendenzen außer Acht zu lassen.

Wenn zu archaischen Ausdrücken (vgl. 4.1) also in der Sprache der italienischen oder deutschen Notare nicht-archaische Varianten vorhanden sind, dann sollten bei der Übersetzung vorzugsweise die nicht-archaischen Ausdrücke verwendet werden. Dies ist bei *in parola* bzw. *in vocabolo* und *genannt*, *ragione* und *Recht* sowie *a mente di*, *a forma di*, *a senso / sensi di* bzw. *a termine / termini di* und *gemäß* einerseits und bei *ausweisen* und *pagare*, *heimzahlen* und *restituire* sowie *gegenwärtig* und *presente* andererseits der Fall.

Elliptische Ausdrücke (vgl. 4.2) bedürfen in aller Regel einer Ergänzung in der anderen Sprache. Eine Ausnahme stellt hier nur der Fall da, dass vorhandene funktionale Entsprechungen gleichfalls elliptische Ausdrücke sind. Umso wichtiger ist die Ergänzung, wenn funktionale Entsprechungen angesichts interkultureller Unterschiede fehlen. Dies ist bei *strada da più (parti)* und bei *salvi / salvi altri / salvi se altri (confini)* der Fall, die zwecks besseren Verständnisses mit *auf mehreren Seiten angrenzende Straße* bzw. mit *unbeschadet anderer Grenzen der Immobilie* übersetzt werden sollten. Die Beurkundungsbitte, ausgedrückt durch *sopra le quali cose (sono stato) (richiesto) (di fare rogito)*, wiederum kommt in italienischen Urkunden oder in der Angabe zu Verlesung, Errichtung und Umfang der notariellen Urkunde vor und ist damit Teil des zentralen Urkundentexts oder des Eschatokolls. In deutschen Urkunden kommen

zwar auch Beurkundungsbitten vor, doch finden sie sich dort ausschließlich vor dem zentralen Urkundentext im Protokoll, und werden entsprechend auch anders, überwiegend durch *Auf Ansuchen der Beteiligten beurkunde ich den folgenden Vertrag*, zum Ausdruck gebracht.[3] Trotz der Unterschiede in der Textposition, die sich im Italienischen im anaphorischen, im Deutschen im kataphorischen Verweis manifestieren, handelt es sich um eine funktionale Entsprechung, die, wie sich in der Übersetzung von *Sopra le quali cose richiesto, io Notaio ho ricevuto il presente atto […]* mit *Auf Ansuchen der Beteiligten habe ich, Notar, über das obige Rechtsgeschäft die vorliegende Urkunde errichtet […]* zeigt, nach entsprechender Anpassung als Äquivalent fungieren kann.

Betrifft die sprachökonomische Ausdrucksweise die satzsemantische Ebene, so können ohne funktionale Entsprechung auch hier Ergänzungen erforderlich sein, um die Verständlichkeit der Übersetzung zu gewährleisten. Bei dem sprachökonomischen Ausdruck *Auf Vollzugsnachricht wird verzichtet* sollte im Zieltext zumindest das genannt werden, was vollzogen wird, also eine Übersetzung für die sprachlich teilweise explizierte Form *Auf Mitteilung vom Vollzug der Urkunde wird verzichtet (Si rinuncia all'avviso di esecuzione dell'atto)* gefunden werden. Besser verständlich noch ist die Übersetzung der sprachlich vollständig explizierten Form *Auf Mitteilung vom Vollzug der Urkunde durch das Grundbuchamt verzichten die Beteiligten (I comparenti rinunciano all'avviso di esecuzione dell'atto da parte dell'ufficio del registro fondiario)*.

Für redundante Ausdrücke (vgl. 4.3) schließlich gilt, dass die Redundanz dann problemlos beseitigt werden kann, wenn redundanten ausgangssprachlichen Ausdrücken einfache Ausdrücke in der Zielsprache entsprechen. Wird das Vertragsangebot im Italienischen also durch *vendere* und/oder *cedere* und/oder *trasferire* und/oder *alienare* und/oder *dare* und die Annahme des Vertragsangebots durch *comprare* und/oder *accettare* und/oder *acquistare* und/oder *stipulare* ausgedrückt, so kann die Übersetzung ins Deutsche angesichts der Tatsache, dass Redundanzen beim Vertragsangebot meist nicht vorkommen und die Annahme des

[3] Auch in italienischen Urkunden können Beurkundungsbitten im Protokoll vorkommen und die Überleitung zum zentralen Urkundentext bilden. An dieser Stelle werden jedoch keine elliptischen Ausdrücke verwendet. Überwiegend lautet die Formulierung hier vielmehr *persone […] le quali mi richiedono di far risultare per atto pubblico quanto segue*.

Vertragsangebots sprachlich gar nicht zum Ausdruck gebracht wird, schlicht *verkaufen* lauten.

6 Schlussbemerkung

Rechtspraktische Korpora, deren Erstellung aus den von Biel (2010: 4) genannten Gründen auf Schwierigkeiten stößt (vgl. 2.1), die aber im Rahmen wissenschaftlicher Arbeiten, einschließlich universitärer Abschlussarbeiten, oder im Zusammenhang mit der berufspraktischen Tätigkeit erstellt wurden, sollten zumindest in der Didaktik der Rechtsübersetzung einsetzbar sein und universitätsintern zur Verfügung gestellt werden. Am Dipartimento di Interpretazione e Traduzione der Universität Bologna wurde für registrierte Nutzer eine Moodle-Seite zu Hilfsmitteln für die Rechtsübersetzung eingerichtet, unter der auch rechtspraktische Korpora der Rechtssprache konsultiert und heruntergeladen werden können.

Literaturverzeichnis

Bhatia, Vijay K. / Langton, Nicola M. / Lung, Jane (2004): "Legal discourse: Opportunities and threats for corpus linguistics." In: Connor, Ulla / Upton, Thomas A. [eds] (2004): *Discourse in the Professions. Perspectives from corpus linguistics*. Amsterdam / Philadelphia: John Benjamins. (= Studies in Corpus Linguistics, 16). 203 – 231.

Biel, Łucja (2010): "Corpus-Based Studies of Legal Language for Translation Purposes: Methodological and Practical Potential." In: Heine, Carmen / Engberg, Jan [eds] (2010): *Reconceptualizing LSP*. Online proceedings of the XVII European LSP Symposium 2009. Aarhus. http://bcom.au.dk/fileadmin/www.asb.dk/isek/biel.pdf (17.10.2017).

La Porta, Ubaldo (2006): "Il linguaggio nell'attività notarile." In: Marmocchi, Enrico [a cura di] (2006): *L'atto pubblico fra tecniche di redazione e forme di comunicazione. Atti del convegno di studi Tropea, 10 e 11 giugno 2005*. Milano: Giuffrè. 69 – 82.

Laviosa, Sara (2010): "Corpora." In: Gambier, Yves / Doorslaer, Luc van [eds] (2010): *Handbook of Translation Studies*. Vol. 1. Amsterdam / Philadelphia: John Benjamins. 80 – 86.

Marmocchi, Enrico (2006): "L'atto pubblico e il suo ordine." In: Marmocchi, Enrico [a cura di] (2006): *L'atto pubblico fra tecniche di redazione e forme di comunicazione. Atti del convegno di studi Tropea, 10 e 11 giugno 2005*. Milano: Giuffrè. 19 – 36.

Monzó Nebot, Esther (2008): "Corpus-based Activities in Legal Translator Training." In: *The Interpreter and Translator Trainer* 2.2, 221 – 252.

Mortara Garavelli, Bice (2006): "L'occhiale del linguista su testi notarili." In: Marmocchi [a cura di.]: 83 – 98.

Pontrandolfo, Gianluca (2012): "Legal Corpora: an overview." In: *Rivista Internazionale di Tecnica della Traduzione* 14, 121 – 136.

Rega, Lorenza (2006): "Riflessioni sulla traduzione giuridica tedesco-italiano-tedesco." In: Benelli, Graziano / Tonini, Giampaolo [a cura di] (2006): *Studi in ricordo di Carmen Sànchez Montero*. Vol. 2. Triest: EUT Edizioni Università di Trieste. 401 – 420.

Valente, Sabrina (in Vorbereitung): *Il contratto di compravendita immobiliare da un punto di vista pragmatico. Modello per un'analisi testuale contrastiva sviluppato su corpora da Italia, Germania e Austria.* Dissertation an der Universität Mainz (Betreuer: Prof. Dr. Michael Schreiber) in Cotutelle mit der Universität Bologna (Betreuerin: Prof. Dr. Eva Wiesmann).

Wiesmann, Eva (2012): "Die Sprache des deutschen Notars gestern und heute. Dimensionen der Verständlichkeit." In: Moraldo, Sandro M. [Hrsg.] (2012): *Sprachenpolitik und Rechtssprache. Methodische Ansätze und Einzelanalysen*. Frankfurt: Lang. (= Deutsche Sprachwissenschaft international, 15). 153 – 190.

Wiesmann, Eva (2013a): "Ältere sprachliche Mittel und Veränderungen im lexikalischen Bereich: eine Untersuchung zum Konservativismus in deutschen notariellen Urkunden." In: Wagnerová, Marina / Sander, Gerald [Hrsg.] (2013): *Die Rechtssprache in der internationalen Diskussion*. Hamburg: Kovač. (= Schriften zu Mittel- und Osteuropa in der Europäischen Integration, 13). 267 – 281.

Wiesmann, Eva (2013b): "Die notarielle Urkunde im italienisch-deutschen Vergleich: Überlegungen zur Übersetzung von Immobilienkaufverträgen." In: Biel, Łucja / Engberg, Jan [eds] (2013): *Research models and methods in legal translation*. *Linguistica Antverpiensia New Series* 12, 54 – 70. https://lans-tts.uantwerpen.be/index.php/LANS-TTS/article/view/232 (17.10.2017).

Wiesmann, Eva (2018): *Der notarielle Immobilienkaufvertrag in Italien und Deutschland. Eine kontrastive diachronische Untersuchung zur Bedeutung von Norm und Konvention und zur Entwicklung der Textsorte.* Berlin: Frank & Timme (= Forum für Fachsprachen-Forschung, 148).

Wurm, Andrea (2017): "Effizienzsteigerung bei Fachübersetzungen durch die Nutzung von Korpora." In: Wienen, Ursula / Sergo, Laura / Reichmann, Tinka / Gutiérrez Aristizábal, Ivonne [Hrsg.] (2017): *Translation und Ökonomie.* Berlin: Frank & Timme. (= TransÜD. Arbeiten zur Theorie und Praxis des Übersetzens und Dolmetschens, 88). 229 – 251.

Part IV

Specific features of legal language

Chapter 14

Dilemmas in Translating Legal Terms between Chinese and English

Deborah Cao

Abstract
People have been translating for thousands of years. Translation has always played an important part in the cultural evolution in China's long history. Legal translation was a relatively late comer. The translation of Western legal texts into Chinese started in the late 1800s and the translated legal language and legal concepts in those early days laid the foundation and formed the building blocks for the modern Chinese legal language. Similarly, the early translation of Chinese imperial laws into English and other Western languages also helped people in the West gain an understanding of the Chinese cultural and legal world. Such exchanges via translation also revealed the gulfs between the Western and Chinese legal orders and the roles of law in the societies in the West and China. Even for seemingly basic words such as "law", "rights", "justice", and "court", there are considerable differences when translated or understood in Chinese and English respectively. This essay focuses on translating legal terms between English and Chinese. It explores and highlights sources of difficulties and peculiar challenges in such translation. It also raises the issue of subjectivity in legal translation.

Keywords: Chinese law, Chinese legal language, legal culture, legal concepts, legal terms

1 Introduction

How to translate has always been a question of interest and contention since ancient times, in both the West and China. One of the perennial themes in the practice and study of translation is the discussions about literal and free translation and how much constraint or freedom the translator has in the translating process. The approaches in legal translation were sometimes stipulated as written rules. For instance, the first codified rule on the translation of legislative texts is said to be that from Emperor Justinian in the *Corpus juris civilis*. Justinian issued a directive explicitly permitting only translations into Greek that reproduced the Latin texts word for word to preserve the letter of the law and to prevent distortion of his monumental codifications (Šarčević 1997: 24). In other words, it meant to stipulate that the words of the source text were to be translated literally into the target language, a strict literal translation approach in legal translation. In the more recent

past, starting from the 1970s, in order to implement the principle of equality, translators in Canada among other bilingual or multilingual jurisdictions, were given freedom to produce idiomatic translation of legislation instead of literal translation (Šarčević 1997: 46). As the target reader oriented and communicative approach gains more currency, the literal and free translation debates have not been as prominent in the recent decades in the study of translation. Nevertheless, for scholars of translation, translation practitioners and end users of translation, the question of how close or accurate a particular translation presents or represents in the final product of translation, or to put it in more colloquial terms, how much is lost in translation, never really goes away.

This essay focuses on Chinese/English legal translation. It discusses and highlights some of the difficulties in translating legal terms between English and Chinese. It also raises the issue of subjectivity in legal translation, that is, how much freedom and creativity the legal translator should have and how much subjectivity comes into play in legal translation. After all, how one translates and the act of translating law has been and still is very much a human and subjective act.

2 Sources of difficulty in Chinese legal translation

One may ask: what is so special about Chinese legal translation and why is it particularly difficult to translate legal texts between Chinese and Western languages?

There are a number of sources giving rise to challenges and difficulties when translating between English and Chinese. First, generally speaking, the nature of law and legal language contributes to the complexity and difficulty in legal translation. This is compounded by further complications arising from crossing two languages and legal systems in translation. Some of the sources of legal translation difficulty include the systemic differences in law, linguistic differences and cultural differences. Due to the differences in historical and cultural development, the elements of the source legal system cannot be simply transposed into the target legal system (Šarčević 1997: 13). One major challenge to the legal translator is the incongruency of legal systems in the source language and target language. Furthermore, when we translate legal texts between different legal systems or families and languages, the degrees of difficulty may vary. There are the following

scenarios according to the affinity of the legal systems and languages according to De Groot (1988: 409-410): (1) when the two legal systems and the languages concerned are closely related, e.g., between Spain and France, the task of translation is relatively easy; (2) when the legal systems are closely related, but the languages are not, this will not raise extreme difficulties, e.g., translating between Dutch laws in the Netherlands and French laws; (3) when the legal systems are different but the languages are related, the difficulty is still considerable, and the main difficulty lies in *faux amis*, e.g. translating German legal texts into Dutch, and vice versa; and (4) when the two legal systems and languages are unrelated, the difficulty increases considerably, e.g., translating the Common Law in English into Chinese, and vice versa. In short, the degree of difficulty of legal translation is related to the degree of affinity of the legal systems and languages in question (De Groot 1988: 410). Given the considerable differences between Chinese and Western laws and languages, translating between the two systems is particularly arduous.

Second, one major source of difficulty comes from the nature and characteristics of the Chinese legal language, to be discussed next in terms of translating legal terms between Chinese and English.

3 Challenges in translating legal terms between Chinese and English

Yan Fu (1854-1921), one of the most influential Chinese modern thinkers and a leading translator, in his Chinese translation of Montesquieu's *De l'esprit des lois* published in 1913, warned his readers about the difference between the Chinese *fa* (law) and Western "law" this way:

> In the Chinese language, objects exist or do not exist, and this is called *li* [order in nature, things as they are, or the law of nature]. The prohibitions and decrees that a country has are called *fa* [human-made laws]. However, Western people call both of these "law". Westerners accordingly see order in nature and human made laws as if they were the same. But, by definition, human affairs are not a matter of natural order in terms of existence or non-existence, so the use of the word "law" for what is permitted and what is prohibited as a matter of law of nature is a case in which several ideas are conveyed by one word. The Chinese language has the most instances in which several ideas are expressed by one word, but in this particular case the Chinese language has an advantage over Western languages. The word "law" in Western languages has four different interpretations in Chinese as in *li* [order], *li* [rites, rules of propriety], *fa* [human-made laws] and *zhi* [control]. Scholars should take careful note (cited in Cao 2007b: 1).

Arguably, Chinese is not the only language that presents dilemmas and challenges in legal translation. Yan Fu was not the only person who saw the linguistic difficulty and complication in translating legal terminology between English and Chinese. For more than the past century, both translators and legal scholars in China and outside have been pondering over the question of whether *fa* is indeed the equivalent of "law". This, in many ways, illustrates peculiarities in translating legal terms between Chinese and Western language, to be further discussed.

First, as we know, one distinctive feature of legal languages and legal texts is the complex and unique legal vocabulary. Legal terminology is the most visible and striking linguistic feature of legal language as a technical language, and it is also one of the major sources of difficulty in translating legal documents. This common feature of the language of law is found in most languages, but there are linguistic and legal differences in each language, often unique. The legal vocabulary in a language, including both legal concepts and legal usage, is extensive. It is resulted from and reflects the law of the particular legal system that utilizes that language. Applicable to the translation of most legal languages, three major terminological challenges can be identified related to translation. These are: (1) legal conceptual issues and the question of equivalence and non-equivalence of legal concepts in translation; (2) legal jargon and usage that are bound to the legal institutions, personnel and areas of law; (3) legal language as a technical language in terms of ordinary vs legal meanings, and legal synonyms (see Cao 2007b). For our discussion, Chinese legal terminological challenges and peculiarities relevant to Chinese translation include (1) non-equivalence of legal concepts and terms; (2) legal and institutional differences resulting in non-equivalence of terms, especially in light of and against the backdrop of the inherent nature and characteristics of the Chinese legal language and its evolutionary development in modern times.

More specifically, one inherent nature of the Chinese legal language (and Chinese language in general) is that it is characterized by imprecision and vagueness. I have argued elsewhere (Cao 2004, 2018) that Chinese legal language is more imprecise and uncertain than English, and this is inherent, not a defect in the Chinese language. Such a linguistic characteristic, in addition to the Chinese legislative drafting preference for broad, imprecise and all-inclusive language in law, often makes it difficult to translate into legal English which, in contrast, strives for precision in

legal writing (for examples and more detailed discussions relating to linguistic and legal uncertainty, see Cao 2004, 2007a, 2018). A related issue is the prevalence of the use of imprecise terms and synonyms that lack distinction causing ambiguity. For instance, in Chinese, we have 不法*bufa*，非法*feifa*, 不合法*buhefa*, 违法*weifa*, and they all essentially mean "illegal" or "unlawful". It is not always clear what the distinctions or different meanings of such synonyms carry, and this is not helped by the fact that Chinese statutes do not often provide definition except for a few major legal terms, and Chinese courts seldom elaborate on meanings of words, unlike Common Law judges. Another factor in presenting difficulties in Chinese legal translation is the linguistic character and usage of the Chinese legal language in its modern evolution, and there were many linguistic gaps found in the two languages.

People have been translating for thousands of years. Translation has always played an important part in the cultural evolution in China's long history. Legal translation between Chinese and other languages was a late comer. The introduction and translation of foreign legal texts into Chinese is believed to have been started by Lin Zexu (1785-1850). In 1839, Lin Zexu, a Qing dynasty imperial commissioner, organized and commissioned the translation of international law texts into Chinese by an American medical missionary Peter Parker (1804-1884). They translated sections of E. de Vattel's (1714-1767) *The Law of Nations*. The Chinese titled of De Vattel's work was *Wanguo lüli* later published in *Hai guo tu zhi* (Illustrated Treatise on the Maritime Countries) in 1847 which consisted of translations of texts on various subjects from the West. This is believed to be the earliest published translation of a Western legal text into Chinese. More systematic introduction of Western law together with Western science and social science in general on a broader scale started in 1862 with the establishment of Tongwenguan (Tongwen College, or Peking Imperial College) in Beijing for the purpose of disseminating Western knowledge in China. A significant translation of Western law during the early period was *Wanguo gongfa* (1864), the Chinese translation of Wheaton's *Elements of International Law* (1836) carried out by an American missionary and legal scholar in China, W.A.P. Martin. The major efforts in the translation of Western law that ensued from the second half of the nineteenth century onwards till the first two decades of the twentieth century prepared and laid the building blocks for modern Chinese legal language and Chinese law. It is common accepted

that modern Chinese legal language started to take shape in the early 1900s. Early modern Chinese dictionaries included *Xin er ya*, a dictionary published in 1903, with a section on politics and a section on law, explaining new political and legal terminology, and *Han yi xin falü cidian* (New Legal Dictionary Translated into Chinese) published in 1905 (see Li Guilian 1997. For the formation of modern Chinese legal language, see also Yu 2001, and Qu 2013).

It is relevant to mention these because the words used a century ago have much impact on the translation of legal terms between Chinese and English since then including today. Similarly, the early translation of Chinese imperial laws into English and other Western languages also helped people in the West gain an understanding of the Chinese cultural and legal world. Such exchanges via translation also revealed the considerable gulfs between the Western and Chinese legal orders and the roles of law in the vastly different societies and traditions in the West and China. Even for seemingly basic words such as "law" (see Cao 2004, 2018), "rights" (see Cao 2004, 2017), "justice" (see Cao 2018, 2019), and "court" (see Cao 2007b), there are considerable differences when these words and concepts are translated or understood in Chinese and English respectively.

Here it is necessary to clarify and distinguish classical Chinese legal language and modern Chinese legal language. Classical Chinese legal language refers to the language of and about law and legal process in imperial China which ended in 1911. Modern Chinese legal language began taking shape around the turn of the twentieth century when Western laws were translated and introduced to China and formally came into use in 1911 when the Republic of China was founded. Although some of the legal texts translated into Chinese from Europe in the late 1800s and early 1900s were written in classical Chinese, new legal concepts and vocabulary of modern legal systems and law, completely different from imperial Chinese law, were introduced and created in modern Chinese (see Cao 2004). They helped to lay the foundations of modern Chinese legal system and of modern Chinese legal language. The laws enacted by the Republic of China from 1911 onwards signal the formal start of modern Chinese law, hence the start of modern Chinese legal language. Due to the historical and linguistic continuity of the Chinese written language, the important law-related words used in classical Chinese are an integral part of the modern Chinese legal language. Modern Chinese legal language was

greatly enriched in the late 1800s and early 1900s when many new words were coined to introduce Western legal concepts and practices, often via borrowing from the Japanese (see Lackner et al. 2001; Cao 2004).

In this connection, an additional complication is that the modern Chinese legal language has evolved into three legal speech communities, mainland China, Hong Kong and Taiwan. Hong Kong now is a bilingual jurisdiction with English and Hong Kong Chinese as its official legal languages in a Common Law jurisdiction, and its legal Chinese is mainly a translated language from legal English with influence from its indigenous language of Cantonese, very different from mainland China or Taiwan (or the Republic of China) in terms of the legal system and language use. The written language used in China and Taiwan is largely the same writing system but there are some variations due to historical, political and other reasons. The mainland Chinese legal language began in the 1950s when the People's Republic of China (PRC) started to enact law and build legal institutions. Apart from the substantive legal differences in law, generally speaking, China's legal language is less formal and more modern, using more plain language, while Taiwan's statutes are much more formal and have retained the classical style and usage and terminology from a previous classical age. Thus, one should not assume that meanings of identical words from texts in China, Taiwan and Hong Kong are the same. In fact, very often, the meanings of legal terms differ considerably deriving their meanings from the law of each of the three jurisdictions.

Back to the difficulties associated with the translation of legal terms between Chinese and English in the historical evolutionary context, initially, when translation of legal texts was first started in the 1800s, there were many Western legal concepts and system bound legal terms that had no equivalent in the Chinese language.

A good example is the translation of the term "rights" in Chinese. This early Chinese translation of the Western legal concept can throw some light not only on translation, but also on how language, culture and ideas evolve and interact. In the Chinese text of *Wanguo gongfa* (*Elements of International Law*), two major translation methods employed by Martin and his collaborators can be identified: creating neologisms and using existing Chinese terms for new legal meanings. In

Wanguo gongfa, many Western legal concepts, in particular international law concepts, were introduced into Chinese for the first time (see Chiu 1970, Henderson 1970, Li Guilian 1997). One of the significant neologisms that Martin and his Chinese collaborators introduced is *quanli* 权利 for the Western legal concept of "rights". The phrase was coined as explained by Martin:

> [International] law is a separate field of study and thus a specific vocabulary should be devised for this purpose. Therefore, when there are occasional passages in the original text which are difficult to render comprehensively in Chinese, then the translation may sometimes seem strained. Take for instance the character *quan*. In this book it carries not only the meaning of someone being in power but also the meaning of the share ordinary people ought to obtain (rights). Sometimes a character *li* is added to this meaning, such as in the passage "the rights enjoyed by the common people" etc. Passages and terms like this may seem awkward at first but when one has encountered them several times one comes to realize that there is no other way than to use such an expression. (Martin 1878 cited in Svarverud 2001: 134)

Quanli, prior to Martin's usage, had been used since ancient times in China, but it meant something totally different. *Quan* and *li* were mostly used separately, with *quan* meaning "power" and *li* meaning "profit", "interest" or "benefit". *Quan* and *li* were occasionally used together in philosophical texts to mean "power" and "interest or benefit" (see Cao 2004, 2017). Initially not only *quanli* seemed awkward linguistically as Martin indicated, it has since been awkwardly ambiguous in Chinese culture, due to linguistic, cultural, political and other reasons (Cao 2004). This translated new word uses the old Chinese characters, with its new Western legal meaning inevitably is mixed with and influenced by the old Chinese meaning unrelated to rights (see Cao 2004, 2017). The ambiguity associated with *quanli* for rights has always stayed with the phrase including today. Its linguistic ambiguity stems from the following reasons (for discussion of the conceptual ambiguity of *quanli*, see Cao 2004, 2017): first, the basic meaning of *quanli* (rights) arises from the meaning of *quan*. In classical Chinese, *quan* refers to a type of weight measuring instrument, for instance, the phrase *quanheng* meaning "to weigh", "to deliberate" and "to balance" in a political context. But the more common and the dominant meaning of quan is "power", "authority", and "privilege", most often "political power". Second, *quanli* (权利) has a homophone *quanli* (权力), but the latter means "power" or "authority". They are indistinguishable in speech in modern Chinese, except by context. In writing, they are distinguishable by the second character *li*. The two li are written differently and carry

different meanings. *Li* 力in *quanli* (权力power) means "strength" and "power", while *li* 利in *quanli* (权利rights) means "benefits", "interests" and "wealth". Third, quan with the basic and essential meaning of "power" is a short form for both *quanli* (权力power) and *quanli* (权利rights).

Today *quanli* is very commonly used in Chinese and has become part of the Chinese language. Most Chinese users are not aware of its foreign origin. It is translated back to English as "rights". It is also often used in combination with other words. However, one should not assume the meanings of these words are clear cut or unambiguous today in China. For instance, a common usage is *quanli he liyi* (rights and interests), often shortened to *quanyi*. The meanings of *quanyi* are far from clear. It is ambiguous and uncertain. To translate it into English or other European languages presents some difficulties, and is highly problematic. *Quanyi* can mean "rights and interests", but not always so. For instance, *feifa quanyi* (literally, illegal or unlawful rights and interests) is a new legal term used in used in Chinese court documents and judgments. For the purpose of translation, should this phrase be translated as "illegal rights and interests", and does it make sense in English when one says "illegal rights"? In a separate study (Cao & Mannoni 2017), it is found that *feifa quanyi* actually means "illegal interests", or "rights or interests tainted by illegality". As we know, in English and other Western languages, the term "illegal rights" is an oxymoron. You either have "rights" or you do not. There is no such thing as "illegal rights". Under the current Chinese law as seen through Chinese court judgments from recent years, *feifa quanyi* actually refers to interests that are acquired unlawfully or otherwise tainted by illegality (Cao & Mannoni 2017). Consequently, it may be understood and translated as "illegal interests", not "illegal rights and interest". Or it is suggested that it can be paraphrased as "rights and interests acquired through illegal or unlawful means", or "rights and interests tainted by illegality" (see Cao & Mannoni 2017). In this case, *quanli* or *quanyi* should not be literally translated into English as "rights". In any event, the meanings of *feifa quanyi* are not yet settled in Chinese law.

This relates to another issue in translating Chinese legal terms into English. The translator needs to be aware of the multi-facetted influx of foreign legal terms in both the early and late twentieth century into Chinese. For instance, the term for "self-defense" in Chinese, 正当防卫 (*zhengdang fangwei*), is derived from a

Japanese rendition of the French legal term *defense legitime* that had been introduced in China in the beginning of the twentieth century, but the legal provision on self-defense under Chinese law was written modelling after the German Criminal Law. Thus, when translating Chinese legal terms today, one needs to keep such background information in mind. Conversely, a potential pitfall is that even when two legal concepts in English and Chinese are different in terms of the substantive law in an English-speaking jurisdiction and China, we still need to translate them as lexical equivalents. Take for example the word "constitution". The concept and practice of "constitution" as in constitutional law did not exist in China until around the turn of the twentieth century when it was introduced from the West. The Chinese term *xianfa* for "constitution" was borrowed from the Japanese that had translated the concept from Western laws. The Japanese borrowed and used the Chinese characters 宪法 (*xianfa*) that had been used in classical Chinese in ancient China, but the original Chinese phrase was totally unrelated to the modern Western concept of "constitution". This new term *xianfa* in modern Chinese has its referential meaning in the Western constitutional law. This linguistic existence of *xianfa* was given a conceptual and referential object, a functional equivalence, in the Chinese system, only when constitutional practice was adopted and the first constitution was promulgated in China in the early 1900s and when the concept was incorporated into the Chinese political and legal system. Now *xianfa* has a generic meaning, that is, a constitution is a legal document with supreme legal force, setting out the basic structures of government, and this meaning originated from the Western liberal tradition. But when we talk about the Chinese Constitution and Chinese constitutional practice, Chinese *xianfa* specifically refers to the Chinese context as opposed to others, and its referential object is found in China, not in Australia, Europe or elsewhere. Pragmatically, it is commonly acknowledged that the Chinese "Constitution" differs significantly from constitutions in Western liberal democratic societies. However, this does not prevent *xianfa* from being an equivalent to "constitution", as the basic idea of *xianfa* in Chinese corresponds to that in English. A core conceptual equivalent meaning exists linking the English and Chinese linguistic signs. An absurdity would arise if the Chinese *xianfa* is not translated into English as "constitution" despite the legal and other differences. However, a question does arise as to where we can draw the

line between equivalence and non-equivalence. When a term in one language is deviated so much from the meaning of a term in another language, they do not share a core semantic or functional feature, then a different term needs to be found and used. In the case of *xianfa* and *fa* mentioned earlier, they are and should be translated into the corresponding "constitution" and "law" as they share a core semantic and conceptual meaning with the English counterparts. This does not prevent people from agreeing or disagreeing as to whether the constitution, law and rule of law as practised in China are different or similar to those in a Western liberal democracy. Relevantly, China calls itself "a socialist democratic country with rule of law", although common sense and realities tell us otherwise.

4 Legal translator subjectivity?

Finally, in translation studies, there are two general strategies in dealing with foreign words and concepts regarding the degree to which translators make a text conform to the target culture – foreignization and domestication. Foreignization refers to the form of translation deliberately foregrounds the cultural other, so that the translated text can never be presumed to have originated in the target language; the final product may seem strange and unfamiliar (Bielsa & Bassnett 2009: 9). In contrast, domestication is the strategy of making text closely conform to the culture of the language being translated to, which may involve the loss of information from the source text (Venuti 1995). Basically, domestication, and sometimes also called acculturation, means that a text is adapted to suit the norms of the target culture since the signs of its original foreignness are erased (Bielsa & Bassnett 2009: 9). Furthermore, Venuti (1992, 1995) is of the view that the dichotomy between domestication and foreignization is an ideological one. According to Venuti (1995), every translator should look at the translation process through the prism of culture which refracts the source language cultural norms and it is the translator's task to convey them, preserving their meaning and their foreignness, to the target-language text. There may be tendency in English translation of foreign texts of over-domestication, the tendency to minimize the foreignness of the target text and reduce the foreign cultural norms to target-language cultural values. According to Venuti (1995), the domesticating strategy "violently" erases the cultural values and

thus creates a text which as if had been written in the target language and which follows the cultural norms of the target reader.

For our purpose of legal translation, there is no strict rule as to which approach is more preferable, although it is believed that the translation of legal concepts try to preserve as much as possible the original tenor and the words, and such translation should be source language and culture oriented. I believe that legal translation should be source-text and source-culture oriented, that is, both the translation and understanding of law in translation should be made with reference predominantly to the source text and source culture. Thus, a question worth asking and consideration is: how much freedom does the legal translator have to change, alter and modify the original words and how far the legal translator can go in making the translation sound familiar to the target readers? For our discussion, for instance, should we translate *fa, xianfa, quanli*, to make it familiar to the English reader, or should we translate them in retaining the foreignness and its original Chinese meanings and connotation? Different translations may entail loss as well as gain respectively, but to what extent is it desirable and legitimate? Sometimes extra meanings may be added through subtle changes made in translation intentionally or unintentionally, in either methods. Such examples abound and most often the target readers would not be aware of the different meanings using different translation methods as most target readers do not read the original language (for more examples and discussions, see Cao 2018).

Whether we admit it or not, the legal translator's subjectivity exists and manifests itself in the final product of translation, but this does mean that the translator can make arbitrary choices in translation. In translation and especially in legal translation, there is often no one single correct rendering for a term or a phrase as there is a multitude of variables and considerations when and why words are chosen. However, there are also situations where extra-linguistic factors may intrude and interfere that can subtly or violently change or betray the original meaning and intent. Translators owe a certain degree of loyalty and duty to the original texts, particularly in legal translation, although often-quoted adage says *traduttori traditori* (translators are traitors), no matter what translators do, including the legal translator.

References

Bielsa, Esperanca / Bassnett, Susan (2009): *Translation in Global News*. New York: Routledge.

Cao, Deborah (2004): *Chinese Law: A Language Perspective*. Aldershot: Ashgate.

Cao, Deborah (2007a): "Interlingual Uncertainty in Bilingual and Multilingual Law". *Journal of Pragmatics.* 39, 69 – 83.

Cao, Deborah (2007b): *Translating Law.* Clevedon: Multilingual Matters.

Cao, Deborah (2017): "On the Universality of Rights: Absence and Presence of Rights in the Chinese Language". *Intercultural Pragmatics* 14(2), 277 – 292.

Cao, Deborah (2018): *Chinese Language in Law: Code Red*. Lanham: Lexington Books.

Cao, Deborah (2019, in press): "Desperately Seeking 'Justice' in Classical Chinese: On the Meanings of *Yi*". *International Journal for the Semiotics of Law*.

Cao, Deborah / Mannoni, Michele (2017): "Are There Illegal Rights in Chinese Law: The Meanings of *Feifa quanyi*". *Chinese Journal of Comparative Law* 5(1), 190 – 204.

Chiu, Hungdah (1970): "The Development of Chinese International Law Terms and the Problem of Their Translation into English". In: Jerome Alan Cohen [ed.] (1970): *Contemporary Chinese Law Problems and Perspectives.* Cambridge: Harvard University Press. 139 – 157.

De Groot, Gerard-René (1988): "Problems of Legal Translation From the Point of View of a Comparative Lawyer". In: *XIth World Congress of FIT Proceedings: Translation – Our Future*. Maastricht: Euroterm. 407 – 421.

De Vattel, Emerich (1863): *The Law of Nations*. Philadelphia: T. & J.W. Johnsen.

Henderson, Dan Fenno (1970): "Japanese Influences on Communist Chinese Legal Language". In: Jerome Alan Cohen [ed.] (1970): *Contemporary Chinese Law: Research Problems and Perspectives.* Cambridge: Harvard University Press. 158 – 187.

Lackner, Michael, Iwo Amelung and Joachim Kurtz [eds.] (2001): *New Terms for New Ideas: Western Knowledge and Lexical Change in Late Imperial China*. Leiden/Boston/Köln: Brill.

Li, Guilian (1997): "Ershi shiji chuqi de Zhongguo faxue" (Legal Studies in Early Twentieth Century China). In: *Zhongwai faxue (Chinese and Foreign Legal Studies*) 2, 1 – 14.

Qu, Wensheng (2013): *Cong cidian chufa (Starting from Dictionaries).* Shanghai: Shanghai renmin chubanshe.

Šarčević, Susan (1997): *New Approach to Legal Translation*. The Hague: Kluwer Law International.

Svarverud, Rune (2001): "The Nations of 'Power' and 'Rights' in Chinese Political Discourse". In: Michael Lackner, Iwo Amelung and Joachim Kurtz [eds] (2002): *New Terms for New Ideas: Western Knowledge and Lexical Change in Late Imperial China*. Leiden: Brill. 125 – 146.

Venuti, Lawrence [ed.] (1992): *Rethinking Translation: Discourse, Subjectivity, Ideology*. London: Routledge.

Venuti, Lawrence (1995): *The Translator's Invisibility: A History of Translation*. London: Routledge.

Wheaton, Henry (1836): *Elements of International Law*. Boston: Little, Brown and Company.

Yu, Jiang (2001): "Jindai Zhongguo faxue yuci de xingcheng yu fazhan" (Formation and Development of Modern Chinese Legal Language and Terms). In: *Zhongxi falü chuantong (Chinese and Western Legal Tradition).* Vol 1. Beijing: Zhongguo zhengfa daxue chubanshe, 24 – 66.

Chapter 15

Emotions in Normative Legal Texts

Ada Gruntar Jermol

Abstract
This paper examines normative legal texts selected based on specific criteria (the German and Slovenian constitutions, and the German and Slovenian criminal codes) in relation to possible emotional attitudes. The results of the analysis show that even in normative legal documents, "which are usually associated with the feature of non-emotionality," text writers communicate their emotions, even if they intend to convey only factual information about a topic. In these texts, emotions are often of a low intensity and as such their integration into the text is very subtle and implicit. Although a subject appears to be presented neutrally, the selection of information, its sequence, and the type of representation contribute to emotionally charged expression in the text.

Keywords: law, normative legal texts, constitution, criminal code, German/Slovenian normative legal texts

1 Introduction: complementarity of cognition and emotion

"Emotional systems are defined as a fundamental component of the perception, thinking, and behavior of every individual" (Jahr 2000: 126).[1] In the communication process not only information, but also evaluations, are exchanged because communication has two "equal aspects": the understanding of facts and the understanding of evaluations (Fiehler 1990: 36). This last feature, the evaluation aspect of the communication process, has been and is often neglected "in favor of the information aspect," which has led or leads to the systematic neglect of emotions (Fiehler, 1990). However, modern neuroscience has recently been able to demonstrate that "the links between logic and emotion in the human brain extend deeper than even astute introspection is able to grasp," as the German philosopher Peter Sloterdijk (2010: 142-143) emphasizes. This is also indicated by Antonio R. Damasio, "whose studies on the organization of human and animal consciousness have not only shown the 'Cartesian' dualism of reason and feeling to be untenable,

[1] All quotations from German authors and all examples from the analysed corpus are rendered in English as translated by the author.

but have also pointed to the key role of feeling for all cognitive processes" (Sloterdijk 2010: 143).

This article seeks to demonstrate that even normative legal texts contain emotions. A selected text corpus is used to show how emotions are expressed in such texts.

2 Feeling — emotion — evaluation (*Gefühl – Emotion – Bewertung*)

2.1 Feeling vs. emotion: not every feeling is an emotion

"The fact that there are emotions and that we have feelings is taken completely for granted in our everyday understanding of the world," reads the introductory sentence in Fiehler's book *Kommunikation und Emotion* (Communication and Emotion; 1990: 1). Although the author of this quote distinguishes very carefully between feeling and emotion, the two expressions are often used as synonyms, especially in everyday speech. Therefore it is necessary to offer a brief definition or delimitation of the concepts of feeling and emotion.

Fiehler (1990: 116) draws attention to the fact that the general emotional concept of "feeling(s)" has various meanings, and Fries (2000: 104) emphasizes that "feeling" and "emotion" are not (always) equivalent. The concept of "feeling" can thus be related to the following:

- To bodily sensations: *to have a tingly feeling in one's stomach, to feel thirsty*;
- To mental sensations: *a feeling of fear*, or to emotional experiences: *a strong feeling came over me;*[2]
- To hunches that cannot be explained well (*to have the feeling that something unpleasant is happening*, to have an unpleasant premonition);
- To the ability to grasp something through mental perception (*a feeling for a language, a sense of rhythm*).

According to Fries (2000: 107) *emotions* are:[3]

[2] According to Fiehler (1990: 116), it is only in this meaning – in the sense of emotional experience – that it involves emotions.

[3] Fries (2000: 9) tries to distinguish the terms *feeling(s)* (or *sensations*; for example, psychological, medical, or biological parameters) and *emotion* (as *semiotic entities*) from one another as follows: "The term *emotion* refers to phenomena of expression for mental sensations,

> Feelings (in the sense of mental sensations) encoded by symbols. […] Emotions in this sense are therefore not innate behavioral mechanisms, but arbitrary, semiotic entities. As such, they involve characteristic identification procedures for semiotic processes: specific emotions (fear, disgust, anger, etc.) thus relate to specific aspects of feelings (in the sense of mental sensations).

A major difference between feelings and emotions is that feelings are free of evaluation, whereas with emotions the evaluation component plays a significant role; for example: the coffee is cold – that annoys me, it's unbearably hot today – this is not pleasant. The emotional evaluation is not linked to a thing itself, but always comes from a person because the value of something is always determined by taking into account one's own value scale (see Ripfel 1987).

From the sociological point of view, emotional expressions refer not only to private sensations, but are also to be understood as a result and necessary component of social interaction (see Jahr 2000: 160) – or, in other words, emotions not only occur between individuals but also as a social phenomena. Bednarek (2008: 5), for example, believes that some aspects of emotional behavior are universal and biologically anchored, whereas other aspects of emotional experiences are related through socialization and culture.

2.2 Evaluation vs. emotion: not every evaluation must be emotional

According to Fiehler (1990: 36), communication is always to be seen "as an exchange of information and evaluation." "When it comes to exchanging information through interaction, when it comes to communicating on a topic through linguistic activity, evaluations are also always exchanged at the same time." Fiehler refers to the communication theory model of Watzlawick / Beavin & Jackson (1969, cited in Fiehler 1990: 53), according to which "all communication is characterized by a content aspect and relationship aspect" (Jahr 2001: 160). In the way that a topic is talked about, one also communicates certain evaluations and emotions at the same time, even if emotions are not the topic (see Jahr 2001: 160). Daneš (1987: 274, cited in Jahr 2001: 160) even suggests that every utterance is connected with an emotional value and therefore also with an

whereas the term *feeling* refers to mental (and in the singular also physical) sensations independent of phenomena of expression". http://www2.rz.hu-berlin.de/linguistik/institut/syntax/docs/fries_em_2000.pdf).

evaluation, in which evaluations are also communicated in the form of emotional stances.[4] Following Ripfel (1987) and Stürmer / Oberhauser / Herbig & Sandig (1997), Sandig (2006: 249) defines evaluations as follows: "Evaluation occurs for a particular purpose based on certain values and value standards […], in the framework of certain text patterns for particular (groups of) recipients." Evaluation and emotionalization go together because emotionalization involves an increased evaluation because it "implies an 'experience' of the evaluation" (Sandig 2006: 249). Jahr (2001: 161) also emphasizes that emotions are always connected with evaluations because they represent the core of emotions. The decisive factor "for an emotional evaluation is ego-participation or internal self-affectedness" (Jahr 2001: 161).

2.3 Emotions and their means of expression

In oral communication, "emotions are expressed to a large extent through *nonverbal means* of expression, to which belong, for example, the *paralinguistic phenomena* of facial expressions, gestures, articulation, phonation (production of speech sounds), voice, vocal timbre, intonation, and speech rhythm" (Baumann 2004: 84f.; *emphasis in the original*). According to Jahr (2001: 161), these means of expression – which (to some degree) attest to the internal self-affectedness – are not present in written communication, which raises the question of how ego-involvement can be recorded in written texts. If "the strength of the ego-involvement is not specified," then so-called "feeling words" (i.e., words "that are usually associated with a feeling dimension") do not necessarily allow themselves to be interpreted as emotional attitudes. Evaluative linguistic means are thus possible candidates for the occurrence of emotion, but not every evaluation also needs to be emotional. Emotions are present only when a certain intensity of emotional experience is given. According to Jahr (2001: 161), this intensity is influenced by the following factors, known as intensity variables, for instance:

[4] For the linguistic generalization of *emotions*, the categories of *emotional stance* and the *emotional scene* are relevant. *Emotional stances* and *emotional scenes* refer to specific components of emotion, to qualities of sensation, to degrees of intensity of sensation, to the degree of social distance, and to their complex conditions (http://www2.rz.hu-berlin.de/linguistik/institut/syntax/docs/Fries%20IZS.pdf; see also Fries 2000: 2).

- Psychological proximity to the issue thematized;
- Desirability in terms of goals and desires: the greater the desire, the more intense the emotion; and
- Social approval: the more social approval or rejection experienced by the behavior of an author (a person or institution), the stronger the associated emotion (e.g., the social relevance of the topic).

If a text contains nonverbal and verbal clues that refer to the intensity factors above, one may speak of emotions.

Evaluations and emotions can be communicated explicitly or implicitly; explicit evaluations are carried out by linguistic means; for example, with connotative lexemes (alongside their denotative meaning, some words also have a significant share of connotative semes, such as *murder*, *cruel*, *insidious*), with stylistic means (e.g., repetition), and so on. In contrast, with implicit evaluation a topic is presented in a seemingly neutral manner, but the selection of information, its sequence, and the type of representation play a significant role. Emotions are therefore also communicated by the content of the text.

3 Emotions in normative legal texts: an empirical analysis

The language of laws and normative legal texts involves very specific language, characteristic features of which include: a concise and abstract manner of expression, the use of impersonal pronouns (e.g., *nobody*, *no one*, *everyone*, etc.), the passive voice, and the present tense, which gives the text a certain "timelessness" and at the same time represents the symbolic stability of the laws. At the same time, this language is also affected by the absence of certain words and expressions such as metaphors, euphemisms, or emotional expressions (see *Nomotehnične smernice* - regulatory technical guidelines 2008: 57- 64). For these reasons, normative legal language has an impersonal effect; it lacks the "personal touch" of an author – which is why one generally does not expect emotional elements in legislation.

Nonetheless, life – with its numerous historical, cultural, and social influences – reflects a community in legislation and legal language. Thus, some rules are created at historically decisive moments (e.g., constitutions), and in some cases lawmakers also pursue instructional thoughts to a certain degree, so that sometimes "more memorable" expressions are used to give greater advantage to the content.

Moreover, considering the fact that in law language is the means of communication for thoughts and that cognition and emotion – as already emphasized in the introduction – are closely linked, emotional elements in normative texts are therefore ultimately not so surprising.

Because this article analyzes selected legal texts in terms of possible emotional stances, at this point I very briefly outline legal texts according to text type. Susan Šarčević (1997: 11) has designed a text typology for legal texts that is based on the text function of the source text and distinguishes among the following types of text:

- Prescriptive/normative text type (e.g., laws and regulations, codes, contracts, treaties, conventions, etc.);
- Hybrid text type: primary descriptive texts that also contain prescriptive parts (e.g., judicial decisions and instruments used to carry on judicial and administrative proceedings such as actions, pleadings, briefs, appeals, requests, petitions etc.);
- Descriptive text type: this has a more indirect effect on law; here, authors are primarily legal scholars (e.g., legal texts such as law textbooks, opinions, research articles, etc.).

3.1 The corpus analyzed and aspects of the analysis

The corpus studied consists of the following texts:

a) Studied in detail:

- The German Constitution: *Das Grundgesetz für die Bundesrepublik Deutschland* (The Basic Law of the Federal Republic of Germany, GG);
- The Slovenian Constitution: *Ustava Republike Slovenije* (The Constitution of the Republic of Slovenia);
- The German Criminal Code: *Das Strafgesetzbuch der BRD* (The Criminal Code of the Federal Republic of Germany);
- The Slovenian Criminal Code: *Kazenski zakonik Republike Slovenije* (The Criminal Code of the Republic of Slovenia);

b) Other texts analyzed:

- The Weimar Constitution: *Die Verfassung des Deutschen Reichs* (The Constitution of the German Reich; entered into force in 1919);
- The Slovenian Charter: *Temeljna ustavna listina o samostojnosti in neodvisnosti Republike Slovenije* (The Basic Constitutional Charter on the Autonomy and Independence of the Republic of Slovenia);

– The Yugoslav and Slovenian criminal codes: *Kazenski zakon SFR Jugoslavije in kazenski zakon SR Slovenije* (The Criminal Code of the Socialist Federal Republic of Yugoslavia and the Criminal Code of the Socialist Republic of Slovenia).

Whereas a law code is a normative text type, according to Šarčević's text typology a constitution can be described as a hybrid type of text: the main text of a constitution is characterized by a normative function; however, the preamble is characterized by a descriptive text function. In legal theory, the prevailing opinion is that a preamble is not part of a constitution, but only its introduction; the preamble usually highlights significant historical facts and basic values (on which the constitution is based), but occasionally also programmatic principles and state goals. Because a preamble is not part of a constitution, it also has no normative effect like the normative part of a constitution, but a preamble does have a certain political weight, which can occasionally also be greater than the normative (see Grad / Kristan & Perenič, 2004: 100 -103.)

The selected texts are examined with regard to possible emotional stances in three aspects (based on Jahr (2001: 163):

– The situational context: here some intensity variables can be assessed; for example, how important the issue thematized is for the society or the author;
– The content aspect: explicit and implicit thematization of issues are examined here;
– Verbal expression: connoted lexemes.

3.2 The Basic Law of the Federal Republic of Germany

The situational context

At the instruction of the three occupying Western powers, the eleven western German states were to convene a constituent assembly, which was to adopt a German Constitution. However, instead of adopting a constitution, the prime ministers of the states ended up proposing a basic law, which was to represent a kind of transitional arrangement. Instead of convening a constituent assembly, the state diets elected their representatives to the parliamentary council, which consisted of 65 members and elected Konrad Adenauer as its president. With this step, they sought to avoid the formal procedure of adopting a constitution because

a constitution would have definitively established the basic legal and political order of the western part of Germany, which they wanted to avoid in anticipation of an early reunification. Instead of a constitution, a "Basic Law" was therefore passed, indicating a temporary constitutive basic order; the Basic Law is thus a kind of constitutional interim arrangement. The Basic Law was an expression of the expected reunification with the Soviet occupation zone, on the basis of which a constitution was to be adopted. The Basic Law entered into force on 23 May 1949.

The situational context in which the Basic Law was adopted therefore already expressed the Germans' desire for reunification. One can speak of lawmakers' strong psychological proximity to the subject — or, in other words, it involves strong ego-involvement of the legislature.

The content

The preamble to the Basic Law of 1949 explicitly expresses the desire for the reunion of all Germans: the German people from the eleven states thus "also acted on behalf of those Germans to whom participation was denied" (Preamble to the Basic Law in the original version (1949):

> Im Bewußtsein seiner Verantwortung vor Gott und den Menschen, von dem Willen beseelt, seine nationale und staatliche Einheit zu wahren und als gleichberechtigtes Glied in einem vereinten Europa dem Frieden der Welt zu dienen, hat das deutsche Volk in den Ländern Baden, Bayern, Bremen, Hamburg, Hessen, Niedersachsen, Nordrhein-Westfalen, Rheinland-Pfalz, Schleswig-Holstein, Württemberg-Baden und Württemberg-Hohenzollern, um dem staatlichen Leben für eine Übergangszeit eine neue Ordnung zu geben, kraft seiner verfassungsgebenden Gewalt dieses Grundgesetz der Bundesrepublik Deutschland beschlossen. Es hat auch für jene Deutschen gehandelt, denen mitzuwirken versagt war. Das gesamte deutsche Volk bleibt aufgefordert, in freier Selbstbestimmung die Einheit und Freiheit Deutschlands zu vollenden.
> (The German people in the states of Baden, Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Württemberg-Baden, and Württemberg-Hohenzollern, conscious of their responsibility before God and men, animated by the resolve to preserve their national and political unity and to serve the peace of the world as an equal partner in a united Europe, desiring to give a new order to political life for a transitional period, have enacted, by virtue of their constituent power, this Basic Law for the Federal republic of Germany. They have also acted on behalf of those Germans to whom participation was denied. The entire German people are called upon to achieve in free self-determination the unity and freedom of Germany.)

Whereas the situation in which the Basic Law was adopted instead of a constitution and the wording of the preamble express the desire for reunification, the text of the

normative part of the constitution is characterized by numerous protective mechanisms to prevent a repetition of a lawless National Socialist state. The text of the constitution thus resonates with the fear of Nazism. This is already evident in the structure of the Basic Law itself, or in the **order of the individual chapters**: the Basic Law begins with fundamental rights (human rights); fundamental rights were placed at the beginning of the Basic Law to show the limits and guidelines for the entire state and state power. From this derives the principle that these fundamental rights are to be understood as the citizen's right to defense against the state, where a protective mechanism against totalitarian regimes can again be seen.

Article 1 of the Basic Law reads as follows:

> (1) Die Würde des Menschen ist unantastbar. Sie zu achten und zu schützen ist Verpflichtung aller staatlichen Gewalt.
> (Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.)[5] [author's emphasis]

In this context, it is also worth mentioning the eternity guarantee (also known as the eternity clause, Germ.: *Ewigkeitsgarantie/-klausel*); this concerns a provision in Article 79, Paragraph 3, which prohibits alteration to the basic rights of Articles l (human dignity) and 20 of the Basic Law (a republic, democracy, a state governed by the rule of law, a welfare state). The writers of the constitution thus confronted and ensured the experience from the time of National Socialism, so that essential principles can never be shaken again (see https://de.wikipedia.org/wiki/Ewigkeits-klausel).

Furthermore, an explicit prohibition of aggressive war is encoded in the Basic Law, (specifically, in Article 26) and reads as follows (by way of comparison, the Weimar Constitution contains no similar provision; see below):

> Handlungen, die geeignet sind und in der Absicht vorgenommen werden, das friedliche Zusammenleben der Völker zu stören, insbesondere die Führung eines Angriffskrieges vorzubereiten, sind verfassungswidrig. Sie sind unter Strafe zu stellen.
> (Acts tending to and undertaken with intent to disturb the peaceful relations between nations, especially to prepare for a war of aggression, shall be unconstitutional. They shall be made a criminal offense.) [author's emphasis]

[5] The official translation of the Basic Law for the Federal Republic of Germany in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by the Act of 21 July 2010 (Federal Law Gazette I p. 944), available at: https://germanlawarchive.iuscomp.org/?p=212.

Verbal expression

As already noted, the text has a high ego-involvement of the authors (of the constitution), which is also expressed at the lexical level. Among other things, the inclusion of lexemes *Unantastbarkeit* 'sanctity' and *Unverletzlichkeit* 'inviolability' is interesting. Whereas *Unantastbarkeit* 'sanctity' is only collocated with *Menschenwürde* 'human dignity', *Unverletzlichkeit* 'inviolability' is also collocated with other lexemes such as housing and privacy of correspondence:

- die Unantastbarkeit der Menschenwürde (Sln. *nedotakljivost človekovega dostojanstva*) (the sanctity of human dignity),
- die Unverletzlichkeit der Wohnung/des Post- und Briefgeheimnisses (Sln.: *nedotakljivost stanovanja/poštne in pisemske tajnosti*) (the inviolability of the home/of privacy of correspondence).

The term *Unantastbarkeit* ('sanctity') is more powerful and expressive, and in my opinion, especially compared to the neutral *Unverletzlichkeit* ('inviolability'), charged with emotion. In the given context, terms such as *Angriffskrieg* ('war of aggression') and *Ewigkeitsgarantie* ('eternity guarantee') can be understood as emotional connotations (see the content aspect above, especially the reference safeguards against totalitarian regimes codified in the Basic Law).

For comparison, the Weimar Constitution, for example, begins with the form of government, which is also characteristic of many constitutions today:

Erster Hauptteil
Aufbau und Aufgaben des Reichs
Artikel 1
(1) Das Deutsche Reich ist eine Republik.
(2) Die Staatsgewalt geht vom Volke aus.
(Part One: Composition of the Reich and its Responsibility. Article 1. (1) The German Reich is a republic. (2) State authority derives from the people.)

Human rights are addressed in the second section (Part Two, Basic Rights and Obligations of the Germans), beginning with Article 109 and, among other things, discussing equality before the law and the equality of men and women.[6]

[6] Article 109 (1) Alle Deutschen sind vor dem Gesetze gleich. Männer und Frauen haben grundsätzlich dieselben staatsbürgerlichen Rechte und Pflichten. (2) Öffentlich-rechtliche Vorrechte oder Nachteile der Geburt oder des Standes sind aufzuheben. Adelsbezeichnungen gelten nur als Teil des Namens und dürfen nicht mehr verliehen werden. (3) Titel dürfen nur

Although the Weimar Constitution does not prohibit aggressive war or the inviolability of human dignity, in Article 114 it addresses the freedom of the person, where the term *Unverletzlichkeit* ('inviolability') is used instead of the expression *Unantastbarkeit* ('sanctity').

3.3 The Constitution of the Republic of Slovenia

The preamble of the Slovenian Constitution also has extremely emotional connotations, which is reflected at the linguistic level in expressions such as 'autonomy', 'independence', 'self-determination', 'national liberation', and 'independence'; these expressions are based on historical facts, and above all on the fact that the Slovenes first obtained their own state in 1991 (= the situational context):

The Preamble to the Constitution of the Republic of Slovenia (*Official Gazette of the Republic of Slovenia*, nos. 33/91-I, 42/97, 66/2000, 24/03, 69/04, and 68/06):

> *Izhajajoč iz Temeljne ustavne listine o samostojnosti in neodvisnosti Republike Slovenije, ter temeljnih človekovih pravic in svoboščin, temeljne in trajne pravice slovenskega naroda do samoodločbe, in iz zgodovinskega dejstva, da smo Slovenci v večstoletnem boju za narodno osvoboditev izoblikovali svojo narodno samobitnost in uveljavili svojo državnost, sprejema Skupščina Republike Slovenije Ustavo Republike Slovenije […].*
> (Proceeding from the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia, and from fundamental human rights and freedoms, and the fundamental and permanent right of the Slovene nation to self-determination; and from the historical fact that in a centuries-long struggle for national liberation we Slovenes have established our national identity and asserted our statehood, the Assembly of the Republic of Slovenia hereby adopts.[…]) [author's emphasis]

The main difference that emerges from the wording of the two constitutions (= content), is the following: whereas many protection mechanisms against a

verliehen werden, wenn sie ein Amt oder einen Beruf bezeichnen; akademische Grade sind hierdurch nicht betroffen. (4) Orden und Ehrenzeichen dürfen vom Staat nicht verliehen werden. (5) Kein Deutscher darf von einer ausländischen Regierung Titel oder Orden annehmen.
((1) All Germans are equal before the law. Men and women have in principle equal civic rights and duties. (2) Public legal privileges or disadvantages of birth or of rank are to be abolished. Titles of nobility simply form a part of the name, and may no longer be conferred. (3) Titles may be conferred only when they indicate an office or calling, academic degrees not being hereby affected. (4) Orders and badges of honor may not be conferred by the state. (5) No German is permitted to accept a title or order from a foreign government.)

renewed totalitarian regime such as the Nazis are seen in the Basic Law, the Slovenian Constitution resonates with a certain patriotism.

As part of the normative section of the Slovenian Constitution, patriotism is also seen at the lexical level (i.e., in linguistic expression), notably in the repeated use of the term 'state' (Sln: *država*). This intensity, with the particular content items in focus, can also be a signal for emotion. Among other things, intensity is reflected in repetition, which can be seen as a major stylistic expression of emotions; the author goes into detail and repeats certain issues that are connected with his or her emotions (see also Jahr 2001: 163).

For comparison: compared to some other European constitutions, but also to the Basic Constitutional Charter on the Autonomy and Independence of the Republic of Slovenia (which entered into force on 25 June 1991), the frequent use of the lexeme *država* 'state' is significant for the Slovenian Constitution, whereas for the Basic Constitutional Charter the consistent use of the phrase *Republika Slovenija* 'Republic of Slovenia' is characteristic.

At this point, it is interesting to make a brief comparison to the Italian Constitution created after the Second World War. The lexeme 'republic' commonly used in the constitution would very likely have the same emotional basis as the consistent use of the word 'state' in the Slovenian Constitution.[7]

3.4 The criminal code: the German and Slovenian criminal codes

As already stated, the legal code is a normative text type. Emotionally colored expressions or terms would therefore not be expected here. However, in both the Slovenian and German criminal codes lexemes are used (= linguistic aspect of expression) that already bear connotations; that is, in which connotations are already part of their content. Oksaar (1988: 106) points out "that important terms are defined by affective and value-stressed words in various legal systems." This has an especially pronounced effect with *Mord* 'murder' because this lexeme

[7] For the information on the Italian constitution, I thank my colleague, the graduate lawyer Sandro Paolucci, who has worked as an instructor in modern Italian at the University of Ljubljana's Translation Department.

contains the semantic component *vorsätzlich* 'intentional'; that is, a murder is always planned in advance (for certain reasons, etc.): for example:

> § 211 Mord (StGB)
> (1) Der Mörder wird mit lebenslanger Freiheitsstrafe bestraft.
> (2) Mörder ist, wer aus Mordlust, zur Befriedigung des Geschlechtstriebs, aus Habgier oder sonst aus niedrigen Beweggründen, heimtückisch oder grausam oder mit gemeingefährlichen Mitteln oder um eine andere Straftat zu ermöglichen oder zu verdecken, einen Menschen tötet.
> (§ 211 Murder under specific aggravating circumstances (German Criminal Code).[8] (1) Whosoever commits murder under the conditions of this provision shall be liable to imprisonment for life. (2) A murderer under this provision is any person who kills a person for pleasure, for sexual gratification, out of greed or otherwise base motives, by stealth or cruelly or by means that pose a danger to the public or in order to facilitate or to cover up another offence.) [author's emphasis]
>
> *Umor*
> 116. *člen (KZ-1)*
> *Kdor koga umori s tem, da mu vzame življenje*
> 1) *na grozovit ali zahrbten način;*
> 2) *zaradi ukrepanja pri uradnih dejanjih varovanja javne varnosti ali v predkazenskem postopku ali zaradi odločitev državnih tožilcev ali zaradi postopka in odločitev sodnikov ali zaradi ovadbe ali pričanja v sodnem postopku;*
> 3) *zaradi kršitve enakopravnosti;*
> 4) *iz morilske sle, iz koristoljubnosti, zato da bi storil ali prikril kakšno drugo kaznivo dejanje, iz brezobzirnega maščevanja ali iz kakšnih drugih nizkotnih nagibov;*
> 5) *z dejanjem, storjenim v hudodelski združbi za storitev takih dejanj,*
> *se kaznuje z zaporom najmanj petnajstih let.* [author's emphasis]
> (Murder. Article 116 (Slovenian Criminal Code).[9] Whoever murders another human being by taking his life 1) in a cruel or perfidious manner; 2) due to taking action in official acts to protect public security, or in a pre-trial criminal procedure, or due to decisions of state prosecutors, or due to the proceeding and decisions of judges, or due to criminal complaint, or testimony in a court proceeding; 3) because of violation of equality; 4) out of desire to murder, out of greed, in order to commit or to conceal another criminal offence, out of unscrupulous vengeance, or from other base motives; 5) with the act committed within a criminal organisation to commit such offences, shall be sentenced to imprisonment for not less than fifteen years. [author's emphasis]

Of particular interest is the fact that even according to Slovenian jurisprudence a number of terms in the Slovenian Criminal Code are considered to be expressive, to have emotional connotations, or to be "emotionally overloaded." Some legal theorists (see Bavcon / Šelih / Korošec / Ambrož & Filipčič 2009: 184) are of the

[8] German Criminal Code: https://www.gesetze-im-internet.de/englisch_stgb/.
[9] Slovenian Criminal Code (KZ-1): http://www.wipo.int/edocs/lexdocs/laws/en/si/si045en.pdf.

opinion that such expressions should be replaced by more neutral ones; for example:

- *spolna zloraba* 'sexual abuse' = *sexueller Missbrauch* → here a more neutral expression would be *spolno ravnanje* 'sexual behavior' = *sexuelle Handlung*; linguistically speaking, this involves a significant deficit;
- *krvoskrunstvo* 'incest' = *Blutschändung/Inzest* → a more neutral variation can be found in the German Criminal Code: *Beischlaf zwischen Verwandten* 'sexual intercourse with a consanguine descendant' (§ 173 StGB);
- *skrunitev groba/trupla* 'desecration of a grave/corpse' = *Grab-/Leichenschändung* → more neutral: *poškodovanje groba/trupla* 'damaging a grave/corpse' *(= ein Grab beschädigen)*; *Grabschändung*—Vandalism for various motivations—according to § 168 of the German Criminal Code, this is a criminal offense as *Störung der Totenruhe* 'disturbing the peace of the dead'; that is, the German Criminal Code also uses a more neutral term here;
- *umor* (*na grozovit in zahrbten način, nizkotni nagibi*) 'murder (in a cruel or vicious way, base motives)' = *Mord* (*heimtückisch und grausam, aus niedrigen Beweggründen*) → more neutral: *nekomu vzeti življenje* 'to take someone's life' = *jmdm. das Leben nehmen*.

In the uses described, such expressions are mainly foreign elements in the legal system and are almost always errors by the lawmakers. Because the law strives for rationality, such "stylistically unsterile" or connotated terms constrain the unimpeded functioning of the law (see Bavcon / Šelih / Korošec / Ambrož & Filipčič 2009: 184).

Some other lawyers take a different view: instead of expressions such as *jemanden ermorden* 'to murder someone', lawmakers could in fact use meaning-neutral designations such as *jemandem das Leben nehmen* 'to take someone's life', which could lead to a neutral vocabulary being better accepted by the general public. On the other hand, there is also the possibility that lawmakers deliberately used emotionally connotative expressions (which have greater weight) to highlight the base nature of a criminal offense; this segment also shows the instructional role and function of law – or, more precisely, the lawmaker (= the situational context).

For comparison: the Criminal Code of the Republic of Slovenia versus the Criminal Code of the Socialist Federal Republic of Yugoslavia and the Criminal Code of the Socialist Republic of Slovenia.[10]

[10] Until 1991, the Socialist Republic of Slovenia was one of the six socialist republics of the former Socialist Federal Republic of Yugoslavia.

As already mentioned, older acts are much more marked by a moral stance or an instructive intention, which is reflected in the design of some segments of the Criminal Code of the Socialist Federal Republic of Yugoslavia and the Criminal Law of the Socialist Republic of Slovenia (1992).[11] In the former Yugoslavia, the social ethos was much more involved in legislation, and so social values had greater importance in the former legal acts than did the rights of individuals. The individual had to contribute to the common good of society, which is reflected in the following offenses according the Criminal Code of the Socialist Federal Republic of Yugoslavia and the Criminal Law of the Socialist Republic Slovenia:

- *grabež v službi* 'greed at work' = *Bereicherungssucht am Arbeitsplatz* (§ 177);
- *razsipništvo na škodo družbenega premoženja* 'wastefulness to the detriment of social property' = *Verschwendung zum Nachteil des Gesellschaftseigentums* (§ 139);
- *zakotno pisaštvo*[12] 'unauthorized legal representation' = *Winkelschreiberei*[13] (§ 190); and
- *igranje na srečo* 'gambling' = *Glücksspiel* (§ 234).

At this point it should be noted that the Criminal Code of the Republic of Slovenia adopted in 2008 recognizes only the following measures:

- *prepoved opravljanja poklica* 'prohibition against performing a profession' = *Berufsverbot*;
- *odvzem vozniškega dovoljenja* 'loss of driver's license' = *Entziehung der Fahrerlaubnis*; and
- *odvzem predmetov* 'confiscation of property' = *Entziehung von Gegenständen*.

In contrast, the Yugoslav criminal code contained additional measures, such as *obvezno zdravljanje alkoholikov in narkomanov* 'compulsory treatment of alcohol and drug addicts' = *Zwangsbehandlung Alkohol- und Drogenabhängiger* (§ 65). In my opinion, this reflects the lawmakers' concern for general welfare.

[11] The 1992 edition (a reprint) was available to me; however, the act entered into force much earlier.

[12] The expression *zakotno pisaštvo* 'unauthorized legal representation' has a very negative connotation and is not used today in legal language or in general speech.

[13] ***Zakotno pisaštvo****: Kdor se za plačilo ukvarja s tem, da daje pravno pomoč, čeprav nima te pravice, se kaznuje z denarno kaznijo ali z zaporom do enega leta*. 'Anyone who performs legal assistance for a fee even though not authorized to do so shall be punished by a fine or imprisonment up to one year' = **Winkelschreiberei**: Wer gegen Bezahlung Rechtshilfe leistet, obwohl er hierzu nicht befugt ist, wird mit einer Geldstrafe oder Gefängnis bis zu einem Jahr bestraft.

4 Conclusion

Legal language is characterized stylistically as "cold and austere, without emotional elements or an author's personal touch" (Igličar 2004: 239), which is why it is all the more surprising that in the analysis of selected German and Slovenian normative texts some properties can be found that could be described as emotional elements – be it at the lexical, content, or stylistic level of language. Despite the fact that a larger corpus of normative legal texts was not studied (encompassing a wider range of normative texts in the hierarchical sense), on the basis of the texts analyzed it can be determined that hierarchically higher legal acts, such as constitutions, possess a greater degree of pathos. Last but not least, constitutions apply to a sovereign entity – the people – and not a few constitutions were adopted at historically significant moments (such as the Slovenian Constitution in 1991 with Slovenia's establishment of independence, or the German Basic Law in 1949 in the hope of reunification).

The emotions that are communicated in a legal text type are always connected with the particular society and with its historical, cultural, and sociological events. For example, a significant difference between the emotional attitudes in the German and Slovenian constitutions is evident: whereas a fear of a new totalitarian regime can be gleaned from the Basic Law, the Slovenian Constitution resonates with a certain patriotism. Emotionally connotated expressions are also evident in the two criminal codes. Although these terms may represent foreign elements in the legal system and a failure of the legislature, they reflect lawmakers' instructive role, whereby the German Criminal Code has several value-neutral terms in comparison to the Slovenian one (e.g. *Beischlaf zwischen Verwandten* 'sexual intercourse with a consanguine descendant' instead of *Inzest* 'incest' or *Blutschändung* 'blood desecration', etc.).

Although the present schematic representation is limited to only some aspects, I consider these results to nonetheless represent a solid foundation for a potential detailed and systematic investigation. In addition, it also seems appropriate for further studies on emotions in legal texts to examine diachronic comparisons (indicated in places in this article) because older acts (e.g., the criminal code of the Socialist Federal Republic of Yugoslavia and Socialist Republic of Slovenia) were

based on moral values to a greater degree and, it thus seems, played a greater role in society.

References

Basic Law. https://germanlawarchive.iuscomp.org/?p=212 (7 February 2018).

Baumann, Klaus-Dieter (2004): "Emotionen in der Fachkommunikation. Ein kommunikativ-kognitiver Untersuchungsansatz." In: *Baumann*, Klaus-Dieter / *Kalverkämper*, Hartwig [eds] (2004): *Pluralität in der Fachsprachenforschung.* Tübingen: Gunter Narr Verlag. 83 – 120. (= Forum für Fachsprachen-Forschung, 67).

Bavcon, Ljubo / Šelih, Alenka / Korošec, Damjan / Ambrož, Matjaž / Filipčič, Katja (2009): *Kazensko pravo – splošni del* (5th ed.). (*Criminal Law. General Part.*) Ljubljana: Uradni list RS.

Bednarek, Monika. *Emotion Talk across Corpora*. Basingstoke, UK: Palgrave Macmillan (2008).

Damásio, António R. (2000): *Ich fühle, also bin ich. Die Entschlüsselung des Bewußtseins*. München: Ullstein.

Die Verfassung des Deutschen Reichs *[Weimarer Reichsverfassung]*. http://www.documentarchiv.de/wr/wrv.html (10 February 2018).

Criminal Code of the Republic of Slovenia (KZ-1). http://www.wipo.int/edocs/lexdocs/laws/en/si/si045en.pdf (15 February 2018).

Ewigkeitsgarantie. https://de.wikipedia.org/wiki/Ewigkeitsklausel (15 February 2018).

Fiehler, Reinhard (1990): *Kommunikation und Emotion*. Berlin: de Gruyter.

Fries, Norbert (1996): Grammatik und Emotionen. In: *Li-Li – Zeitschrift für Literaturwissenschaft und Linguistik* 26.101, 37 – 69.

Fries, Norbert. *Sprache, Gefühle, Emotionen und Emotionale Szenen.* http://www2.rz.hu-berlin.de/linguistik/institut/syntax/docs/fries_em_2000.pdf (9 June 2012).

Fries, Norbert. *Emotionen in Texten.* http://www2.rz.hu- berlin.de/linguistik/institut/syntax/docs/Fries%20IZS.pdf (14 June 2012).

German criminal code. https://www.gesetze-im-internet.de/englisch_stgb/ (7 Febr. 2018).

GG (Grundgesetz für die Bundesrepublik Deutschland). http://www.bundestag.de/dokumente/rechtsgrundlagen/grundgesetz/index.html (7 February 2018).

Grad, Franc / Kristan, Ivan / Perenič, Anton (2004): *Primerjalno ustavno pravo*. (*Comparative Constitutional Law*). Ljubljana: Pravna fakulteta Univerze v Ljubljani.

Gruntar Jermol, Ada (2013):"Emotionale Engramme in normativen Rechtstexten." In: Baumann, Klaus-Dieter / Kalverkämper, Hartwig [eds] (2013): *Theorie und Praxis des Dolmetschens und Übersetzens in fachlichen Kontexten.* Berlin: Frank & Timme: 339 – 359. (= TransÜD, Arbeiten zur Theorie und Praxis des Übersetzens und Dolmetschens, 63).

Igličar, Albin (2004): *Zakonodajni procesi z osnovami nomotehnike*. (*Legislative Processes with the Basics of Legal Drafting*). Ljubljana: Pravna fakulteta.

Jahr, Silke (2005). "Die Effektivierung des Transfers von Wissen durch Kommunikation von Emotionen in juristischen Texten." In: Wichter, Sigurd / Antos, Gerd [eds] (2005): *Wissenstransfer durch Sprache als gesellschaftliches Problem*. Frankfurt am Main: Peter Lang. 126 – 134.

Jahr, Silke (2001): "Emotionale Einstellungen in wissenschaftlichen Texten." In: *Fachsprache* 23.3-4, 160 – 176.

Jambrek, Peter/ Perenič, Anton / Uršič, Marko (1988) [eds]: *Varstvo človekovih pravic. Razprave, eseji in dokumenti*. (*The Protection of Human Rights. Discussions, Essays and Documents.*) Ljubljana: Mladinska knjiga.

Kazenski zakonik Republike Slovenije (*Criminal Code of the Republic of Slovenia*). https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2012-01-2065?sop=2012-01-2065 (15 February 2018).

Nomotehnične smernice. Služba vlade Republike Slovenije za zakonodajo. Druga spremenjena in dopolnjena izdaja (2008). (*Regulatory technical guidelines. Government Office for Legislation.*) Second revised edition. Ljubljana: Uradni list.

Oksaar, Els (1988): *Fachsprachliche Dimensionen*. Tübingen: Gunter Narr Verlag. (= Forum für Fachsprachen-Forschung, 4).

Ripfel, Martha (1987): "Was heißt Bewerten?" In: *Deutsche Sprache* 15, 151 – 177.

Sandig, Barbara (2006): *Textstilistik des Deutschen*. 2nd completely revised and expanded edition. Berlin: Walter de Gruyter.

Šarčević, Susan (1997): *New Approach to Legal Translation*. The Hague: Kluwer Law International.

Sloterdijk, Peter (2010): *Scheintod im Denken. Von Philosophie und Wissenschaft als Übung*. Berlin: Suhrkamp.

Strafgesetzbuch. https://www.gesetze-im-internet.de/stgb/ (7 February 2018).

Stürmer, Anette / Oberhauser, Stephan / Herbig, Albert / Sandig, Barbara (1997): "Bewerten und Bewertungsinventar: Modellierung und computergestützte Rekonstruktionsmöglichkeiten." In: *Deutsche Sprache* 25, 272 – 288.

Temeljna ustavna listina o samostojnosti in neodvisnosti RS (*The Basic Constitutional Charter on the Autonomy and Independence of the Republic of Slovenia*). http://www.uradni-list.si/1/objava.jsp?urlid=19911&stevilka=4 (7 February 2018).

Ustava Republike Slovenije. (*The Constitution of the Republic of Slovenia.*) http://www.dz-rs.si/wps/portal/Home/PoliticniSistem/URS/UstavaRepublikeSlovenije/besedilo/ (8 February 2018).

Verfassung der Republik Slowenien. http://www.us-rs.si/media/vollstandiger.text.der.verfassung.pdf (14 February 2018).

Chapter 16

Formelhaftigkeit des Rechts: Zur Phraseologie in der Rechtssprache

Emilia Lindroos

Abstract
Formulaicity is an essential feature of the law which serves multiple purposes in a legal system. Among other things, it serves to ensure a fair trial and legal certainty. It concertizes itself in legal language in various linguistic formulae that can be viewed and analyzed from the perspective of phraseology. As the core area of legal text genres, codified laws contain numerous phraseological units, or phrasemes, which are reproduced in other legal text genres, such as judgments and contracts, both explicitly (that is, with explicit reference to the legal provision) and implicitly (that is, without reference to the legal provision). Such phraseological units in codes often have legal effects and special significance in law. This article deals with legal phrasemes in legislative language used in codes of law, in the translation of which both the identification of the word combinations and the recognition of their dependency on codes form possible stumbling blocks.

Keywords: legal language, legal phraseology, legal translation, asylum law

1 Einleitung

Formelhaftigkeit ist eine wesentliche Eigenschaft des Rechts, die in letzter Zeit in der rechtslinguistischen Forschung verstärkt zum Vorschein getreten ist. Dieses auf den Begriff *Formel*[1] zurückzuführende Merkmal des Rechts rührt aus der Natur des Fachgebiets und kann als eine gewisse Regelmäßigkeit bzw. Routinemäßigkeit bezüglich der juristischen Interpretations- und Entscheidungstätigkeit und der Abläufe in rechtlichen Verfahren aufgefasst werden. Es manifestiert sich auf der textuellen Oberfläche des Rechts in der Rechtssprache in Form von ähnlich strukturierten, einem bestimmten Textaufbau folgenden Texten, deren Inhalt sprachlich oft mittels formelhafter Wendungen zum Ausdruck gebracht wird.

[1] Der Begriff *Formel* (lat. *formula*) bzw. das Diminutiv zu lat. *forma* (d. h. kleine Gestalt) wurde laut Stein (1995: 11) im 16. Jahrhundert in der deutschen Rechtssprache zur Bezeichnung von feststehenden, sich wiederholenden sprachlichen Wendungen in juristischen Verfahren (Eides-, Schwur-, Strafformel) verwendet.

Das aktuell insbesondere im Kontext der Digitalisierung und der Automatisierungsbestrebungen bezüglich der Generierung juristischer Dokumente für das Gebiet des sog. *Legal Tech*[2] relevante Phänomen der Formelhaftigkeit im Recht ist bislang vorwiegend von Sprach- und Übersetzungswissenschaftlern untersucht worden (vgl. z. B. Kjær 1990, 1991, 1992, 1994, 2007, Grass 1999, Wirrer 2001, Lombardi 2007, Volini 2008, Szubert 2010, Krzemińska-Krzywda 2010, Pontrandolfo 2011, 2015, Hudalla 2012 Tabares Plasencia 2012, Goźdź-Roszkowski & Pontrandolfo 2015 und 2017, Biel 2015 und Solan 2017). Hierbei ist in erster Linie die sprachwissenschaftliche Disziplin der *Phraseologieforschung*[3] als Bezugsrahmen verwendet worden, die sich für solche in wiederkehrenden Kommunikationssituationen wiederholt auftretenden sprachlichen Einheiten als Phraseologismen interessiert, die folgende zwei Eigenschaften aufweisen: zum einen bestehen sie aus mehr als einem Wort (Merkmal der *Polylexikalität*) und zum anderen ist die Wortverbindung in der Sprachgemeinschaft in dieser Kombination von Wörtern bekannt und gebräuchlich (Merkmal der *Festigkeit*).[4] Die bisher im Fachbereich des Rechts angefertigten sowohl intralingualen als auch übersetzungsrelevanten interlingualen phraseologischen Untersuchungen haben unterschiedliche juristische Textsorten zum Gegenstand und beleuchten somit das komplexe Thema ‚Formelhaftigkeit im Recht' aus verschiedenen Blickwinkeln; allerdings ist wegen unterschiedlicher Schwerpunktsetzung und Methodologie, der Eigenheiten der einzelnen Rechtsgebiete und diverser Terminologie in der Klassifizierung der Phraseologismen noch kein vollständiges Bild von dem Phänomen in der Rechtssprache entstanden (vgl. Goźdź-Roszkowski & Pontrandolfo 2015).

[2] Vgl. z. B. die Webseite von *Legal Tech in Deutschland* unter https://www.legal-tech-in-deutschland.de/.

[3] Der Begriff *Phraseologieforschung* wird hier in Anlehnung an Gülich (1997: 170) als Oberbegriff für das ganze Forschungsgebiet verwendet, das sich mit *sprachlicher Vorgeformtheit* oder *Formelhaftigkeit* beschäftigt. Siehe hierzu z. B. die einführenden Publikationen von Fleischer (1997) und Burger (2010) sowie die Sammelbände von Burger / Dobrovol'skij / Kühn & Norrick (2007).

[4] Definition bei Burger (2010: 14). Eine absolute Festigkeit bei Phraseologismen ist nur selten gegeben, deshalb spricht man von einer *relativen* Festgkeit (z. B. *seine Hand/Hände im Spiel haben*). Mit der Erweiterung der Perspektive können mittlerweile neben der formelhaften Sprache auch *formelhafte Texte* zum Gegenstand der Phraseologieforschung gemacht werden; diese werden allerdings in diesem Artikel nicht behandelt. Zu formelhaften Texten siehe z. B. Gülich (1997), Gülich & Krafft (1998) und Dausendschön-Gay / Gülich & Krafft (2007).

Dieser Artikel, der auf frühere thematisch einschlägige Untersuchungen der Verfasserin (Lindroos 2015 und Ruusila & Lindroos 2016) aufbaut, befasst sich mit der Formelhaftigkeit des Rechts aus theoretischer Sicht als einer (nahezu) alle Rechtsordnungen der Welt durchdringende Eigenschaft, die nicht allein den einer *Rechtskultur*[5] eigenen *Konventionen*[6] geschuldet ist, sondern sich in erster Linie auf gesetzliche Vorschriften zurückführen lässt. Mit Bezug auf das Rechtsgebiet Asylrecht werden Beispiele aus einem aktuellen Forschungsprojekt dargestellt, in dessen Mittelpunkt die kontrastive Untersuchung von aus dem Gesetz stammenden, d. h. gesetzessprachlichen, Phraseologismen im deutschen und finnischen Rechtssystem steht. Wie von bereits existierenden vergleichenden phraseologischen Studien zu verschiedenen Sprachenpaaren belegt, stellt die sich an der Schnittstelle zwischen Recht und Sprache ereignende juristische Übersetzung von phraseologischen Elementen in der Rechtssprache eine erhebliche Herausforderung dar, die wegen des Mangels von mehrsprachigen phraseologischen Hilfsmitteln und Nachschlagewerken häufig zu einem Stolperstein für juristische Übersetzer und Dolmetscher wird (vgl. z. B. Grass 1999, Lombardi 2007, Krzemińska-Krzywda 2010 und Pontrandolfo 2011).

2 Gesetzessprachliche Phraseologismen als Kerngebiet der Phraseologie in der Rechtssprache

Die sprachliche Formelhaftigkeit im Recht, die in Form von Sprachritualen in Zeiten des archaischen Rechts verwurzelt ist[7] und somit an sich kein neues Phänomen darstellt, lässt sich im Rahmen der Phraseologieforschung insgesamt

[5] Der Begriff *Rechtskultur* verweist hier auf das aus drei Ebenen bestehenden Modells des modernen Rechts von dem finnischen Rechtstheoretiker Tuori (2000) anknüpfend auf die unter der textuellen Oberfläche des nationalen Rechts wirkende rechtskulturelle Ebene, durch die die einzelnen Rechtstexte geprägt sind. Nach Tuori (2000: 178–192) umfasst die Rechtskultur als „Gedächtnis des Rechts" u. a. die Lehre von den Rechtsquellen, verschiedene Argumentationsmodelle, die allgemeinen Lehren der einzelnen Rechtsgebiete und die allgemeinen Rechtsgrundsätze.

[6] *Konventionen* werden hier in Anlehnung an Reiß & Vermeer (1991: 183) als kulturgebundene sprachliche Verhaltensregularitäten verstanden, die – wie von Göpferich (1995: 159) festgestellt – „[…] nicht von einer höheren Instanz festgelegt werden, sondern sich unter gleichgestellten Partnern herausbilden".

[7] Im archaischen Recht, wie von Mattila (2013: 58 f.) und Tiersma (1999: 100-104) beschrieben, wurde die Wiederholung bestimmter Sprachformeln u. a. als Garantie für die Gültigkeit von rechtlichen Sprachhandlungen angesehen.

noch als eine weitgehend unerforschte Randerscheinung auffassen (vgl. z. B. Kjær 2007: 506). Schwierigkeiten bei der Betrachtung von phraseologischen Einheiten in der Rechtssprache werden nicht allein dadurch verursacht, dass die Analyse der Rechtssprache wegen ihrer Bindung an ein Rechtssystem[8] stets rechtliches Fachwissen voraussetzt, sondern auch dadurch, dass die von einzelnen Forschern vorgetragenen Klassifikationsversuche zu Phraseologismen in der Rechtssprache sich stark voneinander unterscheiden.

2.1 Funktionen und Klassifikation der Phraseologismen in der Rechtssprache

Phraseologismen in der Rechtssprache, die durch die Merkmale Polylexikalität und (relative) Festigkeit gekennzeichnet sind, erfüllen zahlreiche wichtige Funktionen in einer Rechtsordnung. Im Kontext der an die Terminologie- und Fachsprachenforschung anknüpfenden *Fachphraseologie*[9] (en. *LSP Phraseology*) dient ein fachsprachlicher Phraseologismus bzw. *Fachphraseologismus*, laut Gläser (2007: 487) zu verstehen als eine „[…] in einem bestimmten Bereich der Fachkommunikation lexikalisierte, usuell verwendete, verfestigte und reproduzierbare Wortgruppe, die in der Regel nicht idiomatisiert ist und keine expressiven oder stilistischen Konnotationen trägt", dem Ausdrücken des fachlichen Denkens und dem Repräsentieren des fachlichen Wissens. Zusätzlich zu dieser informativen Funktion als Wissensspeicher haben die rechtlichen bzw. juristischen Phraseologismen, hier aufgefasst nach Kjær (1991: 115) als „[…] Wortverbindungen, die in juristischen Fachtexten der Gegenwartssprache wiederholt in der gleichen festen Form auftreten und die *eine fachsprachlich spezialisierte Bedeutung bzw. eine fachlich bedingte Funktion haben*",[10] allerdings auch weitere wichtige Funktionen. Mit Bezug auf die Systemgebundenheit der Rechtssprache sind rechtssprachliche Phraseologismen als Träger und Ausdruck der nationalen rechtlichen Identität (vgl. Grass 1999) zu betrachten (z. B. historisch verwurzelte Bezeichnungen von Gerichten), die u. a. der zur Vermeidung von Willkür notwendigen Gewährleistung der Rechtssicherheit sowie der Stabilisierung und der Fixierung des Rechtssystems

[8] Zur Verbundenheit der Rechtssprache mit einem Rechtssystem siehe z. B. Sandrini (1996: 16, 18).
[9] Zur Entwicklung der Fachphraseologie siehe z. B. Gläser (2007: 483-488).
[10] Kursivsetzung von der Verfasserin.

(vgl. Kjær 2007 und Hudalla 2012) dienen. Zugleich werden mit ihnen performative Sprachhandlungen[11] durchgeführt (z. B. Verurteilung: *Der Angeklagte wird wegen [---] zu [---] verurteilt*) und hierdurch das Rechtssystem sprachlich konstituiert und ständig erneuert.

Die phraseologischen Einheiten in der Rechtssprache, deren bemerkenswerte Funktionen in Rechtsordnungen hier nur knapp vorgestellt werden konnten, lassen sich nach verschiedenen Kriterien in Klassen unterteilen. Für die Zwecke des vorliegenden Artikels wird von der Klassifikation Kjærs (2007) ausgegangen, die durch drei Klassen ergänzt worden ist: es sind 1) die Routineformeln (vgl. Pontrandolfo 2011: 219), 2) die formelhaften Kurztexte (vgl. Gläser 2007: 497 und Tabares Plasencia 2012: 325) sowie 3) die präpositionalen Phraseologismen (vgl. Wotjak 2005: 372 f.). Hieraus ergibt sich die folgende Klassifikation von Phraseologismen in der Rechtssprache:[12]

1. **Mehrworttermini:** Mehrworttermini werden in Anlehnung an Kjær (2007: 509) als oft aus der Kombination Adjektiv + Substantiv bestehende, durch absolute Stabilität gekennzeichnete Wortverbindungen verstanden. Beispiele: *elterliche Sorge*, *gesetzlicher Vertreter*, *eidesstattliche Erklärung*, *einstweilige Verfügung*, *rechtliches Gehör*.
2. **Lateinische Phraseologismen:** Hier handelt es sich um lateinische feste Wortkombinationen von unterschiedlicher Länge, denen eine absolute Stabilität eigen ist. Beispiele: *ex officio*, *ne bis in idem*, *nulla poena sine lege*, *audiatur et altera pars*.
3. **Fachwendungen:** Fachwendungen sind oft schwer voneinander trennbare Kollokationen (Adjektiv + Substantiv, Substantiv + Verb) und Funktionsverbgefüge (Substantiv + semantisch vages Funktionsverb, Präposition + Substantiv + Verb). Beispiele: *ein minderschwerer Fall*, *ein Testament errichten*, *ein Urteil erlassen*, *eine Strafanzeige erstatten*, *in Anspruch nehmen*, *in Kraft treten*, *unter Strafe stellen*.
4. **Paarformeln:** Paarformeln sind meistens zwei Wörter derselben Wortklasse, die durch eine Konjunktion oder eine Präposition miteinander verbunden sind. Beispiele: *Treu und Glauben*, *null und nichtig*.
5. **Phraseologismen mit unikalen Komponenten:** Diese sind, wie bei Kjær (2007: 510), Wortkombinationen mit archaischen Wörtern. Beispiele: *von Amts wegen*, *an Eides statt*.

[11] Zur *Sprechakttheorie* siehe Austin (1962) und Searle (1969).
[12] Siehe hierzu ausführlicher Lindroos (2015).

6. **Präpositionale Phraseologismen:** Diese Klasse umfasst rechtliche Nominalphrasen mit einer oder mehreren Präpositionen. Beispiel: *in Tateinheit mit*.
7**. Routineformeln:** Eine Untergruppe der satzwertigen Phraseologismen, die Routineformeln sind in Anlehnung an Liimatainen (2011: 116 ff.) solche situationsgebundenen, potenziell äußerungsautonomen Phraseologismen der geschriebenen Sprache, die in sich wiederholenden Kommunikationssituationen verwendet werden, um verschiedene sprachliche Handlungen durchzuführen. Beispiele: *Im Namen des Volkes*, *Das Rechtsmittel hatte keinen Erfolg*.
8. **Formelhafte Kurztexte:** Hierzu werden längere vorgefertigte Satzteile, die keine selbständige Äußerungen im Sinne der Routineformeln formen, sowie die Satzgrenze übersteigende komplexe formelhafte Einheiten gezählt. Beispiel: Phraseoschablonen in Anlehnung an Fleischer (1997: 130–134).

2.2 Die Gesetzesbedingtheit der Phraseologie in der Rechtssprache

In der heutigen Zeit des geschriebenen positiven Rechts formt die Phraseologie in der Rechtssprache vor allem aus Sicht ihrer Bedingtheit durch Gesetz ein interessantes Forschungsobjekt. Auf den Arbeiten von Kjær (1990, 1991, 1992, 1994, 2007) sowie ihrer Gedanken zur ‚*Normbedingtheit*' der juristischen Wortverbindungen aufbauend kann die Abhängigkeit des juristischen Sprachgebrauchs und die wiederholte Verwendung bestimmter Ausdrucksweisen in Rechtstexten auf gesetzliche Vorschriften zurückgeführt werden. Den Ausgangspunkt für diesen Artikel sowie die Basis für die Weiterentwicklung der Gedanken zur Phraseologie in der Rechtssprache stellt die grundlegende Beobachtung Kjærs (insb. 1992, 2007), dass formulierungsbezogene Formelhaftigkeit in der Rechtssprache nicht allein vor dem Hintergrund kommunikationserleichternder Ausgestaltungs- und Formulierungsroutinen in der Textproduktion aufzufassen ist (vgl. z. B. Kochrezepte oder Todesanzeigen), sondern dass sie zu einem wesentlichen Anteil durch Rechtsnormen bedingt ist.

Gesetze als „Kodifikationen von Normen, die der Etablierung und Stabilisierung gesellschaftlicher Ordnung und der Sicherung individueller Ansprüche dienen […]"[13] (Hoffmann, 1998: 522) nehmen unausweichlich eine besondere Rolle in

[13] Der gesamte Satz bei Hoffmann (1998: 522) lautet wie folgt: „Gesetze sind Kodifikationen von Normen, die der Etablierung und Stabilisierung gesellschaftlicher Ordnung und der Sicherung individueller Ansprüche dienen, sie sollten die Herstellung von Gerechtigkeit und

kontinentaleuropäischen Rechtssystemen (*Civil law*) ein, in denen geschriebene Gesetze als Rechtsquelle vor anderen Rechtsinstrumenten Vorrang genießen. In Anlehnung an Busse (1998: 1382 f.) lässt sich feststellen, dass in der textuellen Welt des Rechts Gesetzestexte und die darin vorkommende Gesetzessprache den ‚institutionellen und fachlichen Kern' darstellen, welches sich beispielsweise in Deutschland u. a. in der im Grundgesetz (GG) verankerten Gesetzgebundenheit der Staatsgewalt (Art. 20 Abs. 3 GG) – der Gesetzgebung, der vollziehenden Gewalt und der Rechtsprechung – konkret niederschlägt. Durch die Wiedergabe gesetzessprachlicher Formulierungen in weiteren rechtlichen Textsorten wird die dem Recht eigene *Intertextualität*[14] hervorgerufen: die für die juristische Interpretations- und Auslegungspraxis wichtigen gesetzessprachlichen Phraseologismen werden z. B. in Urteilen und Verträgen sowohl *explizit*, d. h. mit ausdrücklichem Verweis auf den Gesetzestext, als auch *implizit*, d.h. ohne Verweis auf den Gesetzestext, reproduziert. Durch die Herstellung intertextueller Beziehungen werden die Systematik und die innere Kohärenz im textuellen Netzwerk des Rechtssystems beibehalten. Als offensichtlichstes Beispiel lassen sich Urteile als gerichtliche Entscheidungstexte erwähnen, die auf gesetzlichen Normtexten basieren und auf diese – sowohl explizit als auch implizit – verweisen.

2.3 Das phraseologische System in der Rechtssprache

Aus dem oben Gesagten lassen sich bestimmte Folgerungen für das phraseologische System in Rechtssprachen kontinentaleuropäischer Rechtsordnungen ziehen. Die Rechtssprache als Fachsprache basiert auf der Allgemeinsprache (vgl. z. B. Mattila 2013: 1) und bedient sich des allgemeinsprachlichen Wortschatzes und der Grammatik der Allgemeinsprache. Somit beinhaltet das phraseologische System der Rechtssprache zum einen *allgemeinsprachliche Phraseologismen*, zu

die Kontrolle von Herrschaft ermöglichen. Ihre verlässliche Geltung beruht auf der Autorität ihrer Quelle (Legitimität), sprachlicher Fixierung (Wortlaut), diachronischer wie diatopischer Zugänglichkeit (Tradierung als Text) und verbindlicher Anwendung (durch Richter, im ordentlichen Verfahren, in kollektiver Auslegungspraxis)".

[14] Der Begriff der *Intertextualität* als einer der Kriterien der Textualität verweist nach de Beaugrande & Dressler (1981: 12 f.) auf „[…] die Faktoren, welche die Verwendung eines Textes von der Kenntnis eines oder mehrerer vorher aufgenommener Texte abhängig macht".

denen viele präpositionale Phraseologismen[15] gehören (z. B. *in Bezug auf*),[16] deren Bedeutung in der Rechtssprache und in der Allgemeinsprache identisch ist. Zusätzlich zu diesen sprachlichen Bausteinen sind in der Rechtssprache solche sich aus allgemeinsprachlichen Wörtern zusammensetzenden Phraseologismen enthalten, denen im Kontext des Rechts eine besondere rechtliche Bedeutung bzw. rechtliche Funktion zukommt und die sich somit in Anlehnung an die Definition Kjærs (1991: 115) als *rechtliche* bzw. *juristische Phraseologismen* bezeichnen lassen (z. B. *bewegliche Sache*). Diese haben sich teilweise als Konventionen in der juristischen Sprachgemeinschaft herausgebildet und etabliert (z. B. *es wird für Recht erkannt*, fi. *yhdessä ja yksissä tuumin*, vgl. Lindroos 2015); zum Teil handelt es sich bei diesen Phraseologismen aber um mit rechtlichen Wirkungen verbundenen *gesetzesbedingten,* d. h. *gesetzessprachlichen Phraseologismen*, denen als Bestandteil von Rechtsnormen eine besondere rechtliche Funktion zukommt und die der hiesigen Meinung nach den Kern des phraseologischen Systems der Rechtssprache bilden (z. B. Straftatbezeichnungen wie *schwere Körperverletzung*, fi. *törkeä pahoinpitely*). Hieraus folgt zugleich, dass bezüglich der Verwendung der Bezeichnung „juristische/rechtliche Phraseologie" für das ganze phraseologische System in der Rechtssprache Vorsicht geboten ist (vgl. Ruusila & Lindroos 2016: 130).

3 Zur Übersetzung von gesetzessprachlichen Phraseologismen

Die Phraseologie stellt ein wichtiges Merkmal juristischer Texte dar; Phraseologismen können laut Hudalla (2012: 97) sogar anstelle von Einzeltermini als bevorzugte Sprachelemente der Rechtssprache angesehen werden. Obwohl zu der Übersetzung rechtssprachlicher Phraseologie zurzeit erst fragmentarische wissenschaftliche Erkenntnisse vorliegen, lässt sich bereits wegen der Systemgebundenheit der nationalen Rechtssprachen feststellen, dass Äquivalenzlücken zwischen Rechtssystemen eher die Regel als die Ausnahme sind (vgl. Kjær 1992, 1994, 2007 und Grass 1999). Zudem kann konstatiert werden, dass bei der Übersetzung rechtlicher Textsorten allgemeinsprachliche Phraseologismen, wie manche

[15] Siehe hierzu auch die Studie von Biel (2015).
[16] Vgl. allerdings präpositionale Phraseologismen aus dem Strafrecht mit spezifisch rechtlicher Bedeutung: z. B. „*in Tateinheit mit*" und „*in Tatmehrheit mit*".

präpositionale Phraseologismen (z. B. *mit Bezug auf*), im Vergleich zu den aus dem Gesetz stammenden, oft mit einer fachsprachlich spezialisierten Bedeutung bzw. einer fachlich bedingten Funktion verbundenen Phraseologismen eine geringere Herausforderung darstellen.

Der hier vertretenen Meinung nach setzt das adäquate Übersetzen rechtssprachlicher Phraseologismen zunächst eine *phraseologische Sensibilität* (so auch Krzemińska-Krzywda 2010: 147 f.) voraus, die dem Übersetzer bei der Wiedererkennung einer Wortverbindung als phraseologisch hilft und die Wortverbindung sich sodann auch als eine semantische und funktionale rechtssprachliche Einheit übersetzen lässt. Wird die Zusammengehörigkeit von Wörtern (z. B. *elterliche Sorge*) und deren phraseologischer Status vom Übersetzer nicht erkannt, so kann das Zusammenfügen der womöglich anhand eines (juristischen) Wörterbuchs separat übersetzten Wörter zu stilistischen Auffälligkeiten oder sogar zu Missverständnissen führen (siehe Ruusila & Lindroos 2016). Zusätzlich ist nach der Identifizierung der Wörter als Phraseologismus das Verständnis von der *Gesetzesbedingtheit* der Phraseologie in der Rechtssprache vom Belang, weshalb bei der Übersetzung rechtlicher und insbesondere gesetzessprachlicher Phraseologismen der juristische Wissensrahmen des Übersetzers als eine Art *Vorverständnis* von erheblicher Bedeutung ist.

Bei der Übersetzung rechtlicher bzw. juristischer Phraseologismen, die eine besondere rechtliche Bedeutung bzw. rechtliche Funktion im Rechtssystem haben, kann als hauptsächliches Ziel die Erreichung der funktionalen Äquivalenz zwischen den jeweiligen Rechtssystemen festgelegt werden.[17] Hierbei können die Rechtssysteme auf das Vorhandensein von *parallelen Phraseologismen*, wie sie bei Pontrandolfo (2015: 153) benannt werden, untersucht werden, die das Übersetzen des ausgangssprachlichen Phraseologismus mit einem funktional entsprechenden zielsprachigen Phraseologismus ermöglichen. Im Falle der gesetzessprachlichen Phraseologismen setzt dies eine rechtsvergleichende Betrachtung der einschlägigen

[17] Vgl. z. B. Stolze (2009: 203) und Wiesmann (1999: 155–156). Zu den drei Graden der Äquivalenz bei der Übersetzung von Phraseologismen – der *totalen Äquivalenz* im Sinne einer Eins-zu-Eins-Entsprechung, der *partiellen Äquivalenz* im Sinne einer Eins-zu-Teil-Entsprechung und der *Null-Äquivalenz* im Sinne einer Eins-zu-Null-Entsprechung, siehe z. B. Koller (2007: 605 f.).

Gesetze voraus: nachdem zwei oder mehrere Wörter der Ausgangssprache als eine (relativ) feste Wortverbindung und als aus dem nationalen Gesetz stammend erkannt worden sind, ist eine kontrastive Analyse zu den nationalen Gesetzen notwendig, um mögliche parallele Phraseologismen aufzudecken.

Sind solche einander funktional entsprechenden parallelen Phraseologismen in den jeweiligen Rechtssystemen z. B. wegen sprachenbezogener struktureller Unterschiede oder Divergenzen in rechtlicher Denkweise nicht vorhanden, so kann der in einem Rechtssystem auftretende gesetzessprachliche Phraseologismus im anderen Rechtssystem eine funktional entsprechende gesetzessprachliche Ein-Wort-Entsprechung haben (vgl. Tabares Plasencia 2010: 286). Als Beispiele aus dem Asylrecht können der finnischsprachige Phraseologismus „*kolmannen maan kansalainen*“ (Kapitel 1 § 3 *Ulkomaalaislaki*[18] (301/2004), en. „*third-country national*“[19]), dem im deutschen Rechtssystem das zusammengesetzte Wort *Drittstaatsangehöriger* (§ 1 Abs. 1 Nr. 2 Asylgesetz) funktional entspricht, und der finnischsprachige Phraseologismus „*vapaa liikkuvuus*“ (Kapitel 2 § 11 *Ulkomaalaislaki*), dem im deutschen Rechtssystem der Terminus *Freizügigkeit* (§ 1 Abs. 2 Nr. 1 Aufenthaltsgesetz) entspricht, genannt werden. Ist auch eine Ein-Wort-Entsprechung nicht vorhanden, so kommen je nach Übersetzungszweck andere Übersetzungsstrategien in Betracht.

In der früheren Untersuchung zur Phraseologie in deutschen und finnischen Strafurteilen (Lindroos 2015) wurde festgestellt, dass in den analysierten Urteilen kaum solche gesetzessprachlichen Phraseologismen vorkommen, für die parallele Phraseologismen im jeweils anderen Rechtssystem existieren. Diese Beobachtung wurde unter anderem auf die systembedingte Natur der gesetzessprachlichen Phraseologismen (z. B. *Im Namen des Volkes, große Strafkammer*) auf dem durch das nationale Rechtsdenken und die nationale Rechtskultur stark geprägten Rechtsgebiet des Strafrechts zurückgeführt. Im aktuell laufenden Forschungsprojekt zur kontrastiven Analyse der gesetzessprachlichen Phraseologie auf dem Rechtsgebiet des Asylrechts (*PHRASYL*) ist hingegen nach vergleichender rechtslinguistischer

[18] Auf Deutsch „*Ausländergesetz*“, Übersetzung der Gesetzesbezeichnung von der Verfasserin.
[19] Die englischsprachige Übersetzung stammt aus dem asylrechtlichen Online-Vokabular des finnischen Migrationsbüros (*Maahanmuuttovirasto*, *Finnish Immigration Service*), zugänglich im Internet unter http://migri.fi/sanasto.

Analyse einschlägiger deutscher und finnischer Gesetze – im deutschen Rechtssystem in erster Linie das *Asylgesetz* (AsylG) und das *Aufenthaltsgesetz* (AufenthG), im finnischen Rechtssystem unter anderem *Ulkomaalaislaki* (301/2004) – festgestellt worden, dass zwischen dem deutschen und dem finnischen Rechtssystem zahlreiche gesetzessprachliche parallele Phraseologismen existieren, die das Übersetzen von deutschen asylrechtlichen Phraseologismen mit funktional entsprechenden Phraseologismen des finnischen Rechtssystems ermöglichen, wie aus den Beispielen in der Tabelle unten hervorgeht:

Originaler asylrechtlicher Phraseologismus im deutschen Gesetzestext	**Originaler asylrechtlicher Phraseologismus im finnischen Gesetzestext**
einen Asylantrag stellen (Abschnitt 4 § 14 Abs. 1 Asylgesetz)	hakea turvapaikkaa (Kapitel 6 § 94 Ulkomaalaislaki)
einem Asylantrag stattgeben (Abschnitt 4 § 24 Abs. 1 Asylgesetz)	antaa turvapaikka (Kapitel 6 § 87 Ulkomaalaislaki)
eine Aufenthaltserlaubnis beantragen (Kapitel 2 § 20c Abs. 2 Nr. 5 Aufenthaltsgesetz)	hakea oleskelulupaa (Kapitel 4 § 60 Ulkomaalaislaki)
eine Aufenthaltserlaubnis erteilen (Kapitel 2 § 25 Abs. 3 Aufenthaltsgesetz)	myöntää oleskelulupa (Kapitel 4 § 45 Ulkomaalaislaki)
rechtmäßiger Aufenthalt (Kapitel 3 § 45a Abs. 2 S. 3 Aufenthaltsgesetz)	*laillinen oleskelu* (Kapitel 4 § 40 *Ulkomaalaislaki*)
befristeter Aufenthaltstitel (Kapitel 2 § 7 Abs.1 Aufenthaltsgesetz)	*tilapäinen oleskelulupa* (Kapitel 4 § 33 *Ulkomaalaislaki*)
unbefristeter Aufenthaltstitel (Kapitel 2 § 9 Aufenthaltsgesetz)	*jatkuva oleskelulupa* (Kapitel 4 § 33 *Ulkomaalaislaki*)
internationaler Schutz (Abschnitt 1 § 1 Abs. 1 Nr. 2 Asylgesetz)	*kansainvälinen suojelu* (Kapitel 6 *Ulkomaalaislaki*, Überschrift)
die Flüchtlingseigenschaft zuerkennen (Abschnitt 1 § 3 Abs. 4 Asylgesetz)	*myöntää pakolaisasema* (Kapitel 4 § 34 a *Ulkomaalaislaki*)
freiwillige Rückkehr (Kapitel 7 § 75 Nr. 7 Aufenthaltsgesetz)	*vapaaehtoinen paluu* (Kapitel 9 § 147 a *Ulkomaalaislaki*)
offensichtlich unbegründeter Asylantrag (Abschnitt 4 § 30 Asylgesetz)	*ilmeisen perusteeton hakemus* (Kapitel 6 § 101 *Ulkomaalaislaki*, Überschrift)
subsidiärer Schutz (Abschnitt 1 § 4 Asylgesetz)	*toissijainen suojelu* (Kapitel 1 § 3 Nr. 12 a *Ulkomaalaislaki*)
sicherer Herkunftsstaat (Abschnitt 4 § 29a Asylgesetz)	*turvallinen alkuperämaa* (Kapitel 6 § 100 *Ulkomaalaislaki*)

Originaler asylrechtlicher Phraseologismus im deutschen Gesetzestext	**Originaler asylrechtlicher Phraseologismus im finnischen Gesetzestext**
beschleunigtes Verfahren (Abschnitt 4 § 30a Asylgesetz)	*nopeutettu menettely* (Kapitel 6 § 104 *Ulkomaalaislaki*)
biometrische Daten (Abschnitt 4 § 16 Asylgesetz)	*biometrinen tunniste* *(*Kapitel 1 § 3 *Ulkomaalaislaki*)
Blaue Karte EU (Kapitel 2 § 19a Aufenthaltsgesetz)	*Euroopan unionin sininen kortti* (Kapitel 5 § 81 *Ulkomaalaislaki*)
begründete Furcht vor Verfolgung (Abschnitt 1 § 3e Abs. 1 Nr. 1 Asylgesetz)	*perusteltu pelko joutua vainotuksi* (Kapitel 6 § 87 b *Ulkomaalaislaki*)

Abb. 1: Parallele asylrechtliche Phraseologismen in einschlägigen deutschen und finnischen Gesetzen

Die Existenz und Anzahl gesetzessprachlicher paralleler Phraseologismen zwischen zwei Rechtssystemen ist rechtsgebiets- und textsortenbedingt. Die hier als Beispiele angeführten parallelen Phraseologismen sind Denkeinheiten, die als Mehrworttermini und Fachwendungen (Adjektiv + Substantiv) grundlegende asylrechtliche Sachverhalte und juristische Handlungsweisen beschreiben. Im Asylrecht ist die Existenz paralleler Phraseologismen in kontinentaleuropäischen Rechtssystemen unter anderem durch den Einfluss der EU-Gesetzgebung zu erklären, die ihre Wirkungen auf das nationale Recht der EU-Mitgliedsstaaten sowie zugleich auf deren Rechtssprachen entfaltet (z. B. *Blaue Karte EU* – Richtlinie 2009/50/EG). In den nationalen asylrechtlichen Gesetzestexten sind manche Phraseologismen somit als implizite Verweise auf die europäische Gesetzgebung aufzufassen, die als sprachliche Manifestationen von den europaweiten Harmonisierungsbestrebungen in Bezug auf das Asylrecht zeugen. Für das phraseologische System der Rechtssprache bedeutet dies, dass gerade das aus gesetzessprachlichen Phraseologismen bestehende institutionelle Kerngebiet den Internationalisierungstendenzen des Rechts unterliegt.

Das Asylrecht ist wegen seiner internationalen Natur ein Rechtsgebiet, in dem die Existenz multilingualer Übersetzungsressourcen von besonderer Bedeutung ist. Bereits in der persönlichen Anhörung von Asylsuchenden (fi. „*turvapaikkapuhuttelu*“) – geregelt im deutschen Recht in §§ 17, 24, 25 Asylgesetz und im finnischen Recht in § 97a *Ulkomaalaislaki* – ist laut Gesetz bei Bedarf ein Sprachmittler, d. h. ein Dolmetscher oder ein Übersetzer, zur Verständigung hinzuzuziehen. Probleme mit der Qualität von Dolmetschleistungen in Asylverfahren als

Folge der ab 2015 stark gestiegenen Antragszahlen haben gezeigt, dass weitere Maßnahmen unbedingt notwendig sind, um qualifizierte Dolmetscher und Übersetzer in verschiedenen Sprachenpaaren auszubilden. Um die Frage beantworten zu können, welche Empfehlungen in der Ausbildung bezüglich der Übersetzung juristischer bzw. rechtlicher Phraseologismen und insbesondere gesetzessprachlicher Phraseologismen zu geben sind, bedarf es noch weiterer tiefgründiger rechtsvergleichender und vergleichender rechtslinguistischer Analysen. Auf der Grundlage der bisherigen Beobachtungen lässt sich jedoch bereits erkennen, dass in der Ausbildung zumindest Wissen um die Bedeutung der Phraseologie im Recht, Sensibilisierung für das Formelhafte sowie Gesetzesbedingtheit der Phraseologie vermittelt werden sollte.

4 Abschließende Bemerkungen

Die Erörterungen zum phraseologischen System in der Rechtssprache sowie die hier genannten Beispiele zeigen, dass das zur Kompetenz eines Fachübersetzers gehörende Wissen über den Einsatz von phraseologischen Einheiten und über die Gesetzesbedingtheit rechtssprachlicher Phraseologie als ein wesentlicher Faktor im Übersetzungsprozess dient. Mangelt es hieran, so leidet nicht nur die Qualität der Übersetzung, vielmehr können auch unerwünschte rechtliche Folgen resultieren, insbesondere wenn der juristische Sinn und Zweck eines ausgangssprachlichen Phraseologismus nicht adäquat in die Zielsprache übertragen wird. Aus rechtsvergleichender, rechtslinguistischer und übersetzungswissenschaftlicher Sicht sind weitere empirische Untersuchungen notwendig, um ein vollständigeres Bild von der Phraseologie in der Rechtssprache und von den gesetzessprachlichen Phraseologismen auf diesem Rechtsgebiet zu erhalten. Nur durch rigorose korpusbezogene Analysen zu verschiedenen Textsorten, Sprachenpaaren und zugleich Rechtssystemen lässt sich das Ausmaß der aus dem Gesetz stammenden, einander funktional entsprechenden parallelen Phraseologismen feststellen und systematisch bearbeiten. Darüber hinaus bleibt als nächsten Schritt zu wünschen, dass vergleichende Untersuchungen zu der Erstellung phraseologischer Online-Datenbanken führen, durch die die tägliche Arbeit juristischer Übersetzer und Dolmetscher erheblich erleichtert werden kann.

Literaturverzeichnis

Austin, John L. (1969): *How to do things with Words*. Cambridge: Cambridge University Press.

Biel, Łucja (2015): "Phraseological profiles of legislative genres: complex prepositions as a special case of legal phrasemes in EU law and national law." In: *FACHSPRACHE — International Journal of Specialized Communication* 37, 3-4, 139 – 160.

Beaugrande, Robert-Alain de / Dressler, Wolfgang Ulrich (1981): *Einführung in die Textlinguistik.* Tübingen: Max Niemeyer.

Burger, Harald (2010): *Phraseologie. Eine Einführung am Beispiel des Deutschen*. Berlin: Erich Schmidt.

Burger, Harald / Dobrovol'skij, Dmitrij / Kühn, Peter / Norrick, Neal R. [Hrsg.] (2007): *Phraseologie: Ein internationales Handbuch zeitgenössischer Forschung*. Halbbände 1 und 2. Berlin: Walter de Gruyter.

Busse, Dietrich (1998): "Die juristische Fachsprache als Institutionensprache am Beispiel von Gesetzen und ihrer Auslegung." In: Hoffmann, Lothar / Kalverkämper, Hartwig / Wiegand, Herbert E. [Hrsg.] (1998): 1382 – 1391.

Dausendschön-Gay, Ulrich / Gülich, Elisabeth / Krafft, Ulrich (2007): "Phraseologische/formelhafte Texte." In: Burger/ Dobrovol'skij / Kühn / Norrick [Hrsg.] (2007): 468 – 481.

Fleischer, Wolfgang (1997): *Phraseologie der deutschen Gegenwartssprache*. Tübingen: Max Niemeyer.

Gläser, Rosemarie (2007): "Fachphraseologie." In: Burger/ Dobrovol'skij / Kühn / Norrick [Hrsg.] (2007): 482 – 505.

Goźdź-Roszkowski, Stanislaw / Pontrandolfo, Gianluca [Hrsg.] (2017*): Phraseology in Legal and Institutional Settings. A Corpus-based Interdisciplinary Perspective.* Routledge.

Goźdź-Roszkowski, Stanislaw / Pontrandolfo, Gianluca (2015): "Legal phraseology today: Corpus-based applications across legal languages and genres." [Editorial Preface of the Special Issue of Legal Phraseology Today. A Corpus-based View]. In: *FACHSPRACHE — International Journal of Specialized Communication* 37, 3-4, 130 – 138.

Grass, Thierry (1999): "Phraseme des Zivilrechts in einem zweisprachigen elektronischen Wörterbuch französisch–deutsch." In: Sabban, Annette [Hrsg.] (1999): *Phraseologie und Übersetzen.* Bielefeld: Aisthesis Verlag. 119 – 130.

Gülich, Elisabeth (1997): "Routineformeln und Formulierungsroutinen. Ein Beitrag zur Beschreibung 'formelhafter Texte'." In: Wimmer, Rainer / Berens, Franz-Josef [Hrsg.] (1997): *Wortbildung und Phraseologie.* Tübingen: Gunter Narr. 131 – 175.

Gülich, Elisabeth / Krafft, Ulrich (1998): "Zur Rolle des Vorgeformten in Textproduktionsprozessen." In: Wirrer, Jan [Hrsg.] (1998): *Phraseologismen in Text und Kontext*. Bielefeld: Aisthesis. 11 – 38.

Göpferich, Susanne (1995): *Textsorten in Naturwissenschaften und Technik. Pragmatische Typologie – Kontrastierung – Translation*. Tübingen: Gunter Narr.

Hudalla, Inge (2012): "Phraseologismen der deutschen Rechtssprache und ihre Übertragung ins Französische – ein Buch mit sieben Siegeln? Plädoyer für ein juristisch orientiertes, pragmatisches Übersetzungskonzept." In: *Beiträge zur Fremdsprachenvermittlung* 52, 97 – 114.

Hoffmann, Ludger (1998): "Fachtextsorten der Institutionensprachen I: Gesetz." In: Hoffmann, Lothar / Kalverkämper, Hartwig / Wiegand, Herbert E. [Hrsg.] (1998): *Fachsprachen: Ein Internationales Handbuch zur Fachsprachenforschung und Terminologiewissenschaft*. Berlin: Mouton de Gruyter. 522 – 528.

Kjær, Anne-Lise (1990): *Normbetingede ordforbindelser i tysk juridisk sprog*. København: Copenhagen Business School Press.

Kjær, Anne-Lise (1991): "Phraseologische Wortverbindungen in der Rechtssprache?" In: Palm, Christiane [Hrsg.] (1999*): EUROPHRAS 90. Akten der internationalen Tagung zur germanistischen Phraseologieforschung Aske/ Schweden 12.–15. Juni 1990*. Uppsala. Almqvist & Wiksell International. 115 – 122.

Kjær, Anne-Lise (1992): "Normbedingte Wortverbindungen in der juristischen Fachsprache (Deutsch als Fremdsprache)". In: Henrici, Gert / Zöfgen, Ekkehard [Hrsg.] (1992): *Fremdsprachen Lehren und Lernen* 21, 46 – 64.

Kjær, Anne-Lise (1994): "Zur kontrastiven Analyse von Nominationsstereotypen der Rechtssprache deutsch – dänisch." In: Sandig, Barbara [Hrsg.] (1994): *EUROPHRAS 92. Tendenzen der Phraseologieforschung.* Bochum: Universitätsverlag Brockmeyer. 317 – 348.

Kjær, Anne-Lise (2007): "Phrasemes in legal texts." In: Burger / Dobrovol'skij / Kühn / Norrick, [Hrsg]. (2007): 506 – 515.

Koller, Werner (2007): "Probleme der Übersetzung von Phrasemen." In: Burger / Dobrovol'skij / Kühn / Norrick [Hrsg]. (2007): 605 – 613.

Krzemińska-Krzywda Joanna (2010): "Juristische Phraseologie und Formulierungsmuster als Übersetzungsproblem." In: Maliszewski, Julian [Hrsg.] (2010): *Posener Beiträge zur Germanistik, Volume 25: Diskurs und Terminologie beim Fachübersetzen und Dolmetschen.* Frankfurt am Main: Peter Lang. 137 – 149.

Liimatainen, Annikki (2011): "Ach du Donnerschen! Voi herran pieksut! Zur Wiedergabe der emotiven Formeln in deutschen und finnischen Übersetzungen." In: Hyvärinen, Irma / Liimatainen, Annikki [Hrsg.] (2011): *Beiträge zur pragmatischen Phraseologie.* Frankfurt am Main: Peter Lang. 113 – 145.

Lindroos, Emilia (2015): *Im Namen des Gesetzes. Eine vergleichende rechtslinguistische Untersuchung zur Formelhaftigkeit in deutschen und finnischen Strafurteilen*. Acta Universitatis Lapponiensis 297. Rovaniemi: Lapland University Press.

Lombardi, Alessandra (2007): "'Rechtswidrige Taten fördern'. Usuelle Wortverbindungen in strafrechtlichen Texten (deutsch vs. italienisch) ." In: Heller, Dorothee / Ehlich, Konrad [Hrsg.] (2007): *Studien zur Rechtskommunikation*. Bern: Peter Lang. 115 – 151.

Mattila, Heikki E. S. (2013): *Comparative Legal Linguistics. Language of Law, Latin and Modern Lingua Francas.* Farnham: Ashgate.

Palm, Christine (1997): *Phraseologie. Eine Einführung.* Tübingen: Gunter Narr.

Pontrandolfo, Gianluca (2011): "Phraseology in Criminal Judgments: A Corpus Study of Original vs. Translated Italian." In: *Sendebar, Revista dela Facultad de Traducción e Interpretación de Granada 2*2, 209 – 234.

Pontrandolfo, Gianluca (2015): "Investigating judicial phraseology with COSPE: A contrastive corpus-based study." In: Fantinuoli, Claudio / Zanettin, Federico [Hrsg.] (2015): *New directions in corpusbased translation studies*. Berlin: Language Science Press. 137 – 160.

Reiß, Katharina / Vermeer, Hans J. (1991): *Grundlegung einer allgemeinen Translationstheorie*. Tübingen: Max Niemeyer Verlag.

Ruusila, Anna / Lindroos, Emilia (2016): "Conditio sine qua non: On Phraseology in Legal Language and its Translation." In: Coulthard, Malcolm / Sousa-Silva, Rui [Hrsg.] (2006): *Language and Law - Linguagem e Direito* 3.1, Translating and Interpreting in Legal Contexts. Faculdade de Letras da Universidade do Porto, 120 – 140.

Sandrini, Peter (1996): *Terminologiearbeit im Recht. Deskriptiver begriffsorientierter Ansatz vom Standpunkt des Übersetzers. Internationales Institut für Terminologieforschung – Series Nr. 8.* Wien: Internat. Network for Terminology.

Searle, John R. (1969): *Speech Acts.* Cambridge: Cambridge University Press.

Solan, Lawrence M. (2017): "Patterns in Language and Law." In: *International Journal of Language & Law, JLL* 6, 46 – 66.

Stein, Stephan (1995): *Formelhafte Sprache. Untersuchungen zu ihren pragmatischen und kognitiven Funktionen im gegenwärtigen Deutsch*. Frankfurt am Main: Peter Lang.

Stolze, Radegundis (2009): *Fachübersetzen. Ein Lehrbuch für Theorie und Praxis.* Berlin: Frank & Timme.

Szubert, Rafał (2010): "Juristische Phraseologie – lexikalisierte Benennungseinheiten der Rechtssprache." In: Korhonen, Jarmo / Mieder, Wolfgang / Piirainen, Elisabeth / Piñel, Rosa [Hrsg.] (2010): *EUROPHRAS 2008. Beiträge zur internationalen Phraseologiekonferenz vom 13.–16.8.2008 in Helsinki*. Helsinki: Universität Helsinki. 237 – 248.

Tabares Plasencia, Encarnación (2012): "Analyse und Abgrenzung rechtssprachlicher phraseologischer Einheiten im Spanischen und Deutschen und ihre Bedeutung für die Übersetzung." In: *Lebende Sprachen* 57.2, 314 – 328.

Tiersma, Peter (1999): *Legal Language*. Chicago: University of Chicago Press.

Tuori, Kaarlo (2000): *Kriittinen oikeuspositivismi*. (*Kritischer Rechtspositivismus*). Helsinki: WSOY.

Volini, Marchilia (2008): "Phrasemes in EU Framework Decisions." In: Bhatia, Vijay K. / Candlin, Christopher N. / Evangelisti Allori, Paola [Hrsg.] (2008): *Language, Culture and the Law. The Formulation of Legal Concepts across Systems and Cultures*. Bern [etc.]: Peter Lang. 245 – 257.

Wiesmann, Eva (1999): "Berücksichtigung von Textsortenkonventionen bei der Übersetzung von Rechtstexten am Beispiel der Übersetzung italienischer Atti di citazione ins Deutsche." In: Sandrini, Peter [Hrsg.] (1999): *Übersetzen von Rechtstexten. Fachkommunikation im Spannungsfeld zwischen Rechtsordnung und Sprache*. Tübingen: Narr. 155 – 182.

Wirrer, Jan (2001): "'vry vnde quith myt aller rechticheit vunde tobehoringe' Bremen 1474: Die Beurkundung einer Auflassung. Zur Formelhaftigkeit in mittelniederdeutschen Rechtstexten." In: Häcki Buhofer, Annelies / Burger, Harald / Gautier, Laurent [Hrsg.] (2001): *Phraseologieae Amor. Aspekte europäischer Phraseologie. Festschrift für Gertrud Gréciano zum 60. Geburtstag*. Baltmannsweiler: Schneider Verlag Hohengehren. 253 – 262.

Wotjak, Barbara (2005): "Routineformeln im Lernerwörterbuch." In: Barz, Irmhild / Bergenholtz, Henning / Korhonen, Jarmo [Hrsg.] (2005): *Schreiben, Verstehen, Übersetzen, Lernen. Zu ein- und zweisprachigen Wörterbüchern mit Deutsch*. Frankfurt am Main: Peter Lang. 371 – 388.

Chapter 17

Wrong Rights: On Chinese 'Improper Rights and Interests' (*bu zhengdang quanyi* 不正当权益)

Michele Mannoni

Abstract
'Improper rights and interests' (*bu zhengdang quanyi*) is a legal phrase that is not used in any statutory laws of China, but is sometimes used in court decisions. In Western countries and jurisdictions, there is no such thing as improper rights and interests, and even uneducated people tend not to use such a phrasing, which is intrinsically contradictory to Western knowledge. This essay uses textual analysis to study the legal and pragmatic meanings that the phrase has in judgements from the Chinese courts, discussing the alienability of the rights and interests involved, as well as their nature, and the reasons for their improperness. The essay reveals that the meaning of *bu zhengdang quanyi* is not settled yet and varies contextually. It mostly means unjust profit, but it is also used to indicate any kind of right or interest deriving from a false declaration, or any advantage obtained disregarding the laws in force, circumventing the regular procedures, or a proper standard of conduct. It may also mean rights one is illegitimately entitled to, a term which does not make sense in Western legal jurisdiction, but which does in China due to the etymological meanings of *quan* and *yi* attached to *quanyi*, today's usage. Finally, a discussion on the possible translations of the phrase into English as well as the possibility for *bu zhengdang quanyi* to be recognised as a formal legal term is also offered.

Keywords: *Bu zhengdang quanyi* (不正当权益); improper and illegitimate rights and interests; Chinese legal language; Chinese legal meaning; Chinese legal translation

1 Introduction

In the Chinese legal language as used in Mainland China, two adjectives, 'proper' (*zhengdang*) and 'lawful' (*hefa*) often qualify the noun phrase for 'rights and interests' (*quanli he liyi*), sometimes appearing in its abbreviated form *quanyi*. When one of these adjectives and the noun phrase combine together, they form the terms 'proper rights and interests' and 'lawful rights and interests', either in its abbreviated or extended form. Notably, as opposite to what we find in Western legal languages and jurisdictions, these two affirmative phrases have also a negative form, 'illegal rights and interests' (*feifa quanyi* or *feifa de quanli he liyi*) and 'improper rights and interests' (*bu zhengdang quanyi* or *bu zhengdang de quanli he liyi*), the subject of this paper. Whilst the negative forms of the phrases do not

appear in any statutes of China, the affirmative forms do. For instance, they appear together in article 50 of the Constitution of the People's Republic of China (1982, 2018 amendment), which sets the following:

> **第五十条**
> 中华人民共和国保护华侨的*正当的权利和利益*，保护归侨和侨眷的*合法的权利和利益*。
> **Article 50** The People's Republic of China protects the *proper* [*zhengdang*] *rights and interests* of overseas Chinese and the *lawful* [*hefa*] *rights and interests* of returned overseas Chinese and of their relatives residing abroad.[1]

Laws do not clarify what is the difference between proper and lawful rights and interests. The same phrases, either in their abbreviated or extended form, can be found in other laws including local regulations. For instance, the Jiangsu Province Regulations on the Protection and Promotion of Investments of the overseas Chinese (2016) states in article 3:

> **第三条** 华侨投资者的人身权、财产权、其他*正当的权利和利益*受法律保护。任何组织或者个人不得侵占、损害华侨投资者的投资和投资收益。华侨投资者应当遵守法律、法规，不得损害国家利益、社会公共利益和其他公民的*合法权益*。
> **Article 3** The law protects the personal and property rights, and other *proper rights and interests [zhengdang de quanli he liyi]* of overseas Chinese investors. No legal entity or natural person is entitled to violate or infringe upon their investments or profit from investments. They shall observe the laws and regulations in force, and shall not damage the interest of the State, the social interest, and the *lawful rights and interests [hefa quanyi]* of other citizens.

It is difficult to ascertain what the difference between lawful and proper rights and interests may be, and it is even more difficult to say in what such lawfulness or properness may consist. All these adjectives (i.e., lawful, unlawful, proper, improper) carry information on the head-noun *quanyi* that are not directly comprehensible by just understanding the ordinary meaning attributed to them. In fact, in many European languages, including English, one cannot speak of illegal or improper rights, and such phrases do not have a legal meaning. You either have a right, or you do not, and the properness or lawfulness of a bundle of rights is never in doubt, since rights are the basis of both common and civil law-based jurisdictions, and thus they are by definition to be protected.

[1] Unless otherwise stated, all the translations into English are the Author's.

This essay focuses on the negative form 'improper rights and interests' (*bu zhengdang quanyi*), and aims to understand what such legal notion indicates with a view to clarify in what the 'improperness' of *quanyi* consists. Since the negative form of the phrase cannot be found in statutes, but appears in court decisions, the study is based on the pragmatic meaning that such phrase has in judgements available on the China Judgments Online database run by the Supreme Court (hereinafter SPC). Additionally, since the literal translation into English of the modifier *bu zhengdang* as 'improper' does not clarify the meaning of the phrase, this paper further aims to show other possible translations that may clarify its use in legal context and international communication.

The essay reveals that the meaning of *bu zhengdang quanyi* is not settled yet, and varies contextually. It mostly means unjust profit, but is also used to indicate any kind of right or interest deriving from a false declaration, or any advantage obtained disregarding the laws in force, circumventing the regular procedures, or a proper standard of conduct. It may also mean rights one is not entitled to, a term which does not make sense in Western legal jurisdiction, but which does in China due to the etymological meanings of *quan* and *yi* attached to *quanyi*, today's usage. Finally, a discussion on the possible translations of the phrase into English as well as the possibility for *bu zhengdang quanyi* to be recognised as a formal legal term is also offered.

2 Linguistic Meaning of *Bu Zhengdang Quanyi*

Linguistically, the phrase *bu zhengdang quanyi* (不正当权益) is made of three components, of which the first two are modifiers, and the latter is the head-noun they modify. These are adverb and modifier *bu* (no, not), modifier *zhengdang* (proper), and the head-noun *quanyi* (rights and interests). So, *bu zhengdang* literally means 'not proper' and thus 'improper'. *Zhengdang* per se is not a new legal term. It has existed since ancient times in China, although it had not a legal acceptation. For instance, its literal meaning as 'correct and appropriate' is found with relation to one's physical position in the Book of Changes.[2]

[2] The I Ching (or Yi Jing), also known as Book of Changes or Classic of Changes, is an ancient Chinese divination text and the oldest of the Chinese classics, probably written in the late 9th

As to today's usage of *zhengdang*, the relevant concept of 'properness' of rights or rights and interests has no clear meaning, and so far has not been comprehensively addressed by contemporary Chinese scholarship – which similarly overlooked the related matter of lawfulness and unlawfulness of Chinese rights (Mannoni 2018). When *zhengdang* is found with *quanyi* in statutes and a quasi-official translation is provided, it is translated as 'legitimate' (such is the case of the instances in the English version of the Constitution of China, accessible at The National People's Congress of the People's Republic of China website available at www.npc.gov.cn). Yet, it is not clear what makes *quanyi* legitimate, and what makes them illegitimate. As to the presence of *zhengdang* in other legal usages beside the one under analysis and its translation into English, there is *zhengdang fangwei* (legitimate defense), *zhengdang jingzheng* (fair competition), and *zhengdang chengxu* (due process) (Sun Dawei et al. 2013). In these three examples, translation of *zhengdang* into English does not sound unusual, for both in China and in Anglo-American jurisdictions where English is spoken, the 'properness' of the defense, process, and competition may be questioned, and thus there is an adjective (i.e. legitimate, due, fair) that does convey the meaning of such properness. With the notable exception of improper rights and interests, which is intrinsically contradictory in Western legal systems, the negative form of all other legal usages containing *zhengdang*, e.g. unfair competition, does not create an oxymoron in English.

As to the head-noun *quanyi,* it is a disyllable word literally made of *quan* and *yi*. *Quan* (权) is an ambiguous word, and is not a legal one *per se*. It has been used for centuries to mean 'to weigh', and then it was used metaphorically to indicate the activity carried out by a person who could weigh and evaluate the pros and cons of important matters. By extension, it thus started to mean 'authority' and 'power', for these were the qualities that a person who could evaluate matters had, and such person was generally the ruler. In modern legal language, *quan* can be either intended as 'power', 'right', or 'privilege', and the ambiguity between the possible intended meanings cannot be definitively resolved according to a rule[3] The

century BC. The translation of the Yi Jing and other ancient texts can be accessed online through the Chinese Text Project database.

[3] For the connection between the two notions of 'power' and 'rights' in the legal Chinese language, see for instance Svarverud (2001), Cao (2004: 71-93; 2017: 101-16), and Mannoni (2018).

ambiguity is further enhanced by the lack of difference in pronunciation between *quanli* (权力) 'power' and *quanli* (权利) 'rights', and *quan* can be intended to be the abbreviation of either of the two. In the phrase *bu zhengdang quanyi*, *quan* is generally assumed to be the abbreviation of *quanli* 'right' (权利). The Western notion of 'right' is an introduced concept in China, and W.A.P. Martin (1817-1916) was the one credited with first having used the word *quanli* as a semantic equivalent for 'rights' in the mid-nineteenth century when in 1864 (Martin, 1864) he translated into Chinese Wheaton's *Elements of International Law* (Wheaton, 1836/1878). Interestingly, Zhang Qianfan (2016: 269) noted that modifiers for the word *quanyi* such as 'proper' may be used to set some limitations to the *quan* that is now exceptionally attributed to the citizens, rather than to the ruler, and that consequently needs to be limited:

> 中国宪法也规定公民权利的限制。首先，宪法所规定的公民义务本身就是对权利的直接限制。第33条规定：「任何公民享有宪法和法律规定的权利，同时必须履行宪法和法律规定的义务。」其次，少数条款也明确规定了权利的界限。第51
> 条明确规定:「公民在行使自由和权利的时候，不得损害国家的、社会的、集体的利益和其他公民的合法的自由和权利。」[…]
> 另外，某些权利通过前缀而加以限制。例如第50条规定，国家保护华侨的「正当」权利和利益。
> The Chinese Constitution sets limits to the rights [*quanli*] of the citizens. Firstly, the obligations set forth by the Constitution are themselves limits imposed to rights. Article 33 states: "Every citizen is entitled to enjoy the rights set forth by the Constitution and the laws in force, and at the same time shall fulfil the relevant obligations." Furthermore, a small number of articles clearly imposes limits to rights. According to article 51, "In executing their freedom and their rights, citizens shall not harm the interest of the State, the society, or the community, as well as the lawful [*hefa*] freedom and rights." […] Additionally, some rights are further limited by means of a prefix. This is the case with article 50, stating that the State protects the "proper" [*zhengdang*] rights and interests of the overseas Chinese.

Such need for a limitation to people's right can be better understood if we think of the word *quan* not as the semantic equivalent of Western rights, but with all its Chinese meanings, including that of power, privilege, and advantage etymologically and traditionally attributable to the ruler only. Hence, in a Chinese perspective, it is reasonable to think that the extent of power-rights of ordinary people has to be limited (Mannoni 2018).

Yi, the second syllable appearing in the head noun *quanyi*, is not a legal word either. It is the second syllable appearing in the word *liyi* (利益), which is made of two quasi-synonymic components, i.e. *li* and *yi*, both meaning 'advantage', 'benefit', 'profit'. Since *yi* in *quanyi* stands for *li*, the meaning of *li* is that on which we need to focus our attention. Ancient China has been described as a society where visible pursuit of individual interest (*sili*, 私利) was suspect (Emerson cited in Defoort 2008: 158), and this was especially true with Mencius and the Confucians (Defoort 2008: 159). Of course, *li* also could carry positive meanings in some circumstances, especially when it was related to public interest, or when interest was shared (*gongli*, 公利) (Defoort 2008: 158), but first and foremost, *li* was negatively connoted. As this study is going to show, the semantic value of *yi*, which stands for *li*, is not necessarily a legal interest, but it may be any kind of negatively connoted benefit or advantage.

To sum up the foregoing section, *quanyi* is hence the combination of the two syllables *quan* and *yi* that we just saw, and when they appear together, they are considered to be the shortened form of the phrase *quanli he liyi* (rights and interests). In some cases the extended form appears in statutes where *quanyi* also appears, thus suggesting that the two forms are in fact the same legal notion, one the abbreviation of the other. This can also be seen in article 3 of the Jiangsu Province Regulations on the Protection and Promotion of Investments of the overseas Chinese (2016) cited above, where 'proper rights and interests' is *zhengdang quanli he liyi*, and 'lawful rights and interests' is *hefa quanyi*. Thus, *bu zhengdang quanyi* is the abbreviated form of *bu zhengdang de quanli he liyi*, literally 'improper or illegitimate rights and interests', a phrasing which has no precise meaning in English and which is intrinsically contradictory. Etymo-logically, *quanyi* indicates power, privilege, advantage, and negatively-connoted profit. As a matter of law, it is not clear what the qualification of such *quanyi* as improper (*bu zhengdang*) implies. In the next section we are going to see how the legal meaning of the phrase under analysis is contextually construed in the decisions from the Chinese courts.

3 Legal Meanings of *Bu Zhengdang Quanyi*

For the purpose of our study, we used the SPC database run by the Supreme Court, a large database containing court decisions from China. It is noted that the database contains only final decisions, i.e. *res judicatae* for which any further claim is precluded. The website makes it possible to identify judgments by keywords. Searches of the database enabled me to retrieve all the court decisions containing the phrase *bu zhengdang quanyi*.[4] The SPC was accessed on June 15, 2017 and retrieved 31 results, of which 1 was a broken file that could not be opened, and 5 were copies of the same judgment, erroneously uploaded to the SPC database under different docket numbers. Of the remaining 26 court decisions, one of them is the appeal of another and the phrase appears in the appeal decision citing the decision of the court at first instance. Consequently, only 1 of the 2 decisions could be considered, that of the appellate court. Additionally, another 2 decisions contain a typo error in the phrase under analysis.[5] Hence, out of the 31 decisions downloaded, 22 judgments could in fact be consulted. They are decisions from courts of various jurisdictions from all over China, both courts at first instance and appellate courts. Importantly, they are all fairly recent, since the majority of them refer to cases decided in the years 2014 (26.09%), 2015 (30.43%), and 2016 (30.43%). It should be noted that the fact that the phrase appears in the decisions does not directly imply that it has been used by a judge: in fact, only in a minority of cases (21.75%) the phrase is referred to or used by the court, whereas it is mostly (ca. 74%) used by litigants as an argument against their opponents.

For our purpose, it is worth noting that the meaning we could most frequently attribute to *bu zhengdang quanyi* in the cases we considered was 'unjust enrichment'. This means that the 'improperness' implied by the modifier *bu zhengdang* could be paraphrased as 'unjust', and the head noun *quanyi* mostly meant 'profit', rather than 'rights', despite its literal and ordinary acceptation as

[4] Decisions containing the non-abbreviated form of the phrase (i.e. *bu zhengdang de quanli he liyi*) were also searched, but as of September 12, 2017, no decision containing such phrase was found.

[5] In the two court decisions considered for analysis that contained a typo error, *bu zhengdang quanyi* should be *zhengdang quanyi* and *bu zhengdang liyi*.

'rights and interests'.[6] In other words, the semantic emphasis was on *yi* (interest, profit) rather than on *quan* (right). Additionally, and importantly, in many of the decisions in which *bu zhengdang quanyi* was used to mean 'unjust enrichment', the phrase appeared to be closely related to *bu zhengdang liyi* (不正当利益), literally meaning 'unjust profit', a phrase appearing in various statutes, including articles 389 and 390 of the Criminal Law (1979, 1997 amendment; hereinafter CL). To illustrate we can use *Ma Dacheng v Fuquan Direction of Public Prosecution, Guizhou* (2014) criminal appeal case, involving bribery and corruption of civil servants. Importantly, in the relevant decision, the concept of properness (*zhengdang xing* 正当性) is explicitly addressed by defendant to indicate that the money he was accused to have given as bribe was in fact clean, for it was not related to bribery or any other illicit behaviour. This is an interesting and rare explanation of the notion of properness, that we are generally unable to find in the decisions by the Chinese courts or scholarship. In *Ma Dacheng v Fuquan Direction of Public Prosecution, Guizhou* case, according to the court at first instance (hereinafter CFI), between April 2009 and October 2010 Defendant Ma Dacheng (as appellant at second instance) sought help from Deputy Director of the Power Supply Bureau of Luodian, Zhang Lianbin, so that he could help him to obtain contracts for electricity network projects. Ma promised Zhang that should he have obtained the contracts, he would have given Zhang money as recompense for his help. Ma obtained the contracts, and then paid Zhang 857,620.93 Yuan by transferring the sum to different bank accounts under different names – including that of three companies directly under the Bureau –, of which 283,620 Yuan (around 43,500 US Dollars) was actually proved by CFI to be bribe, whereas the residual amount was proved to be not. CFI invoked articles 389, 390, 67 par. 3, and 47 of the Criminal Law, and sentenced Ma to five-year imprisonment for bribery. Based on the fact that CFI recognised Ma only as partial culprit – since only part of the money transferred was in fact bribe –, Ma used this to challenge the relevant decision, alleging that the entire amount of money for which he was accused to have bribed Zhang was in fact lawfully paid to the companies under the Bureau, and did not constitute bribery. Importantly, he said that the sum in question did have 'properness' (*zhengdang*

[6] This, inter alia, seem to be a counterexample to Benney's hypothesis (2013: 42-43) that *quanyi* is more similar to ordinary rights, rather than to 'rights and interests'.

xing), and civil servant Zhang's clean behaviour was not infringed (廉洁性未受侵犯). The inspector taking part in the hearing stated that Ma obtained the contracts without taking part in the regular bidding procedure, and decision of CFI was to be upheld. Court at second instance confirmed that Ma should be held criminally liable for bribe, and made various references to the unjust enrichment he provided to Zhang by using the phrase *bu zhengdang liyi*:

> 但马的行为属"违背公平、公正原则，在经济活动中谋取竞争优势的"的行为，该行为具有刑法上的违法性，属谋取*不正当利益*的行为，因该行为而获得的利益属*不正当财产性利益*。据此，张连斌所得系基于张利用职务便利为马大成谋取*不正当利益的行为*[…]，马大成为*谋取不正当利益*而给予张连斌以财物，属行贿犯罪行为。
>
> Yet, Ma's behaviour is to be classified as "violating the principles of fairness and correctness to obtain an unfair advantage in economic activities", and the person having this behaviour is liable to criminal prosecution, for it was aimed to obtain an *unjust enrichment* (*buzhengdang liyi*). Consequently, the profit obtained through such behaviour is *unjust material profit* (*buzhengdang caichan liyi*). Hence, the profit obtained by Zhang Lianbin was obtained by abusing of his office to seek unjust enrichment (*buzhengdang liyi*) for Ma Dacheng […], and Ma Dacheng giving money to Zhang Lianbin in order to obtain *unjust enrichment* (*buzhengdang liyi*) constitutes bribery.

The Court further decided that CFI was wrong in ascertaining the amount of money used as bribery by Ma, yet it was given by Ma to Zhang to seek *bu zhengdang quanyi*. Thus, the original conviction was upheld:

> 上诉人承接该两家公司的工程款虽由张控制，张最终获得的574000元亦属上诉人为谋取*不正当权益*而给予国家工作人员的财物，故上诉人将该574000元分给张的行为亦构成行贿罪。原判认定上诉人对该574000元不构成行贿罪，属适用法律错误，本院予以纠正。[…] 综上所述，原判适用法律部分错误，但量刑基本适当。驳回上诉，维持原判。
>
> Even though it was Zhang who enabled appellant to make an income from the contracts with the two companies, the 574,000 Yuan amount that Zhang eventually gained is money that appellant gave to a civil servant to seek *bu zhengdang quanyi*, and thus appellant giving part of that money to Zhang constitutes bribery. The court at first instance decided that appellant's behaviour about the 574,000 Yuan sum was not bribery, and this is a judicial error which this court needs to redress. […] Now therefore, decision by court at first instance is partly wrong, yet measurement of penalty is fundamentally appropriate. This court thus rejects the appeal, and original conviction is upheld.

It is evident that in the case we just saw, *bu zhengdang liyi* and *bu zhengdang quanyi* are used interchangeably in two quasi identical sentences, with both meaning

'unjust profit' or 'unjust enrichment'. The notion of 'improperness' is hence strictly connected to the concept of lack of legitimacy of profit, and to the corruptibility of the civil servant. Such unjustness is set forth and described in law in various provisions, including article 389 of the Criminal Law (1979, as amended in 1997), also referenced by the court in the case we just discussed:

> **第三百八十九条** 为谋取*不正当利益*，给予国家工作人员以财物的，是行贿罪。在经济往来中，违反国家规定，给予国家工作人员以财物，数额较大的，或者违反国家规定，给予国家工作人员以各种名义的回扣、手续费的，以行贿论处。因被勒索给予国家工作人员以财物，没有获得*不正当利益*的，不是行贿。
> **Article 389** Whoever, for the purpose of securing *illegitimate benefits* [*bu zhengdang liyi*], gives money or property to a State functionary shall be guilty of offering bribes. Whoever, in economic activities, violates State regulations by giving a relatively large amount of money or property to a State functionary or by giving him rebates or service charges of various descriptions shall be regarded as guilty of offering bribes and punished for it. Any person who offers money or property to a State functionary through extortion but gains no *illegitimate benefits* [*bu zhengdang liyi*] shall not be regarded as offering bribes. (English translation from http://www.npc.gov.cn)

In the case we just saw, there is a strict correlation to the phrase *bu zhengdang quanyi* appearing in the decision, as used by the court, and *bu zhengdang liyi* (illegitimate benefits, unjust profit) appearing in article 389 CL. It seems that, reasonably, the CL functions as the prototext[7] on which the court decision (metatext) discussed above is based: in other words, there is a semiotic correlation between prototext and metatext produced by the sign '*bu zhengdang*', and such correlation implies what is stated by the prototext, i.e., when money are given to change a civil servant's behaviour is bribery, and such crime is to be punished by the law. Hence, the phrase *bu zhengdang quanyi* in the court decisions has semiotically the same meaning as *bu zhengdang liyi* we find in Art. 389 CL.

We are now going to see a different case in which *bu zhengdang quanyi* means 'rights and interests arising from false statements or false declaration.' This is the

[7] In this paper, the words 'prototext' and 'metatext' are used in their etymological meanings as used by text theoretician and semiologist Anton Popovič (1975), being them construed by the Greek prefixes 'proto' (primary) and 'meta' (after). Thus, a metatext is a text whose words, content or information is based on other text, the prototext. The text that is created earlier is called prototext (literally: primary text), the one created after the first is called metatext (secondary text). For instance, a contract signed between two parties in a civil-law based country may mention some articles of the Civil Code, and it may hence be written accordingly. Thus, the contract can be said to be the metatext, and the Civil Code the prototext.

second most frequent meaning that could be attributed to the phrase in the cases under consideration. In the relevant cases, the 'improperness' implied by the modifier *bu zhengdang* does not solely refer to violation of the laws in force, but also indicates that the origin of *quanyi*, i.e. the basis upon which 'rights and interests' are created, is a false basis, and such falseness may consist also in false statements or disclosure of false information. In *Kunshan Branch Office of Shanghai Lucky Boat Building Maintenance Co. v Li Hu* case, plaintiff is a company operating in the building maintenance business. On December 2011, plaintiff signed two contracts with defendant, a Li Hu, owner of one of the apartments located in a building maintained by the company, to do maintenance works at an agreed price. Plaintiff claimed that defendant did not pay the amount for the work they did, so the company resorted to court proceeding to have Li pay the amount due, for such an infringement of contract agreement violated Company's *hefa quanyi* (lawful rights and interests). Defendant had a room on the building maintained by plaintiff that s/he rented. In August and September 2011, water started to leak from the roof inside the room, so Li asked the company to repair it. The Company refused to repair the leak, so Li decided not to pay the amount due for the year 2011, as s/he thought that repairing the leak was part of maintenance works the company should do. S/he believed that the company was resorting to legal proceedings only to protect their *bu zhengdang quanyi* and that their request was "*not based on true facts*, *and it was unlawful"* (既不合情也不合法; Author's emphasis):

> 原告没有尽到义务使我遭受经济上的损失，却用法律手段维护自己的不正当权益，这是对法律的蔑视;
> By not fulfilling its obligations, Plaintiff caused me economic losses, yet resorted to legal proceedings to protect their *bu zhengdang quanyi*, which is so disrespectful to the law!

The court accepted plaintiff's claim, and ordered defendant to pay the amount due in 2011, as the judge deemed that defendant did not bring sufficient evidence to prove that s/he was entitled not to pay; additionally, according to the laws in force, including Art. 107 of the Contract Law and Art. 7 par. 5 and Art. 42 par. 1 of the Building Maintenance Law, owners shall pay maintenance fees regularly. Thus, defendant's allegations were rejected.

It can be noted that the possibility that plaintiff's allegations could be *bu zhengdang* was not considered nor mentioned by the court. As anticipated earlier, this is often the case in the decisions under analysis, in which *bu zhengdang quanyi* is most frequently used by different opponents as an argument against each other, rather than as a legal principle ruled by the court. As to the meaning of the phrase, in epistemological terms, *bu zhengdang* seems to refer to the premise on which *quanyi* (rights and interests) are created: since the premise is not correct, the conclusion drawn may be in error. To put this in legal terms, this seems to confirm what seems to be a basic principle in common and civil law-based jurisdictions, i.e. that no right arises from false declarations and false statements. In linguistic and semiotic terms, *bu zhengdang* gives us information on the cause that created *quanyi*. The text itself seems to explain what *bu zhengdang quanyi* means, i.e. 'not based on true facts, and unlawful.' This has also a linguistic explanation, for the relationship between the modifier and the modified very often can be understood only by looking at the context, as Li & Thompson noted (1989), and, to a further extent, by considering prototexts and metatexts of the text in which the phrase is found. In this connection, Li & Thompson (1989: 24) underlined that sometimes there is a causative relation between the modifier and modified:

> For example, imagine a speech context in which you and your friends are eating hot dogs with mustard, and you notice a yellow spot on the shirt of your friend. You may say "You've got a mustard stain on your shirt." The nominal compound mustard stain, then, means a stain caused by mustard. Words such as *you ji* 油迹 (oil stain) or *dou chuang* 痘疮 (smallpox-pustules) are formed this way, by using a modifier indicating how the head-noun is created: *you ji* means in fact stain caused by oil, whereas smallpox-pustules indicate pustules caused by smallpox.

In the case we just discussed, *bu zhengdang* does not qualify the head noun 'rights and interests', as it happens, for instance, with the English words 'moral' or 'imperceptible' when modifying 'rights', but it gives us information on the bases upon which such rights and interests are created. Similarly, this causative relations between modifier and modified is found in the meanings of another phrase referred to earlier, i.e. *feifa quanyi* (illegal rights and interests), in which *feifa* (illegal) indicates the way through which *quanyi* is obtained (i.e., through illegal methods, through illegality), the subject of a separate study (Cao & Mannoni 2017).

We are now going to see a similar, yet slightly different case, in which the phrase *bu zhengdang quanyi* is used to very generally indicate any kind of interest, benefit or advantage that is obtained either disregarding the laws in force, or infringing them, or not complying with a standard of proper conduct. Similarly to what we saw in Li Hu's case, there is a causative relation between the modifier and the head noun it modifies: *bu zhendang* indicates that *quanyi* – here mainly meaning 'advantage' – is obtained through illegality or immorally and unfairly. This is strictly connected with the meaning *zhengdang* had in ancient times, when it was used to indicate the proper conduct a person should have.

The *Direction of Public Prosecution of Baoshan, Yunnan v Yang Jun* criminal case involves fraud for *bu zhengdang* purposes that defendant Yang Jun could obtain through his *guanxi* (Chinese social networks of influence, recommendations; see next) and bribery. For background information, *guanxi* (关系) indicates the relationships that the Chinese individuals cultivate with other individuals. This largely originates from the Chinese social philosophy of Confucianism, which stresses the importance of maintaining social order by creating relationships between individuals based on obligations, reciprocity, and trust. In recent years, the ethical and legal consequences of *guanxi* have been questioned. For instance, returning a favour to somebody by giving them money or goods may not be necessarily seen as bribery out of the legal perspective, but as a subset of *renqing* (maintaining human feelings).[8] With this regard, a connection between guanxi and corruption has also been observed (Aßländer & Hudson 2017: 79-passim). In the case we are going to discuss next, the phrase 'create *guanxi*' (*da dian guanxi* 打点关系) is used as a synonym for bribe.

According to prosecution, in January 2015, Yang Jun (defendant) rented an apartment for military housing to Zhang (victim) for 5,500 Yuan, which constituted rental fraud. A few months later, Yang further obtained 25,000 Yuan by fraud from his friends and another person, a Diao (victim), claiming he was under investigation, and that he needed to create *guanxi* with civil servants, i.e. bribe civil servants, as he also urgently needed to go to visit his parents. Similarly, from March to August

[8] For *guanxi* in China, see, for instance, Gold *et al.* (2002). For the possible connections between *guanxi* and bribery, see Li (2011), Zhan (2012), and, importantly, Harding (2014).

2015, he met Lan (victim), he became her boyfriend, and obtained another 40,000 Yuan with almost the same excuses. Yang squandered all the money, including 22,200 Yuan which he used to pay back a debt he had made with a tobacco shop to buy cigarettes. Lan was later returned 38,000 Yuan by Yang's parents. Yang was caught using drugs, and was then detained while waiting for trial. In jail he met other people, used drugs with them, and promised them he had *guanxi* at the Public Security Department, and he could help them not to go to community rehabilitation for drug misusers. He thus obtained another 21,000 Yuan. The same happened with other victims, including one from whom Yang obtained 2,000 Yuan so that he could help them to renew their driving license. After being detained for illegal gambling, Yang Jun promised he could help one of the person he met in jail not to appear in court and obtained 2,100 Yuan. In November of the same year, Yang promised another person, a Yang, he had *guanxi* in a factory in Changning city and could help his son to get a job there. Finally, he promised another victim, a Wang, he could help him and his family to have documents approved for the building of a construction, and to the purpose Yang could '*create some guanxi'*, to the purpose of which he needed – and later obtained – 3,000 Yuan. Court at first instance charged Yang Jun for fraud and sentenced him to five-year imprisonment, fined him 500,000 Yuan (around 76,500 American dollars) and ordered that money should be returned to the victims. Defendant appealed to Intermediate People's Court of Baoshan in the Yunnan, and alleged that some of the money he obtained was in fact a loan between individuals, and that he could bring evidence to prove his allegations. Additionally, he said, part of the money he obtained was given to him to pursue *bu zhengdang quanyi* for the lenders, who thus were guilty as well, and so he claimed for lighter punishment for him. Intermediate court upheld the original conviction, and further specified that the fact that the victims were offenders, too, did not change defendant's crime and penalty measurement, for he knew he did not have the money to repay his debts, and consequently his allegation that some of the money he obtained was to be regarded as borrowed could not be accepted, for defendant fraudulent intention to fraud his victims was evident.

In this decision, the phrase *bu zhengdang quanyi* is used by defendant to indicate the various purposes that his victims wanted him to seek for them. Thus, in order

to understand the meaning of the phrase, we need to consider what these aims were and what kind of ‘improperness’ could be seen in them.

Firstly, Yang offered some drug misusers he met in jail the possibility of avoiding appearing in court, or going to community rehabilitation. This seems to be a way to circumvent the court decision that probably sentenced them to rehabilitation. By giving money to Yang, they were trying to avoid executing the decision by the court. In other words, they were seeking an advantage to which they were not entitled. The *bu zhengdang*-ness, so to say, consists in not executing the sentence, which constitutes an infringement of the law. Thus, in this example, *bu zhengdang quanyi* may mean any advantage obtained through illegal method, that is to say, by not paying the verdict.

Secondly, Yang offered one of his victims to obtain the renewal of the driving license for them without them having to undergo all the examinations and tests prescribed by law, and this again represents a way to circumvent the standard procedures to obtain an advantage. In fact, driving itself is rather a privilege than a right, and, as discussed earlier, the notion of privilege is very much connected to the classical meanings of the word *quan*. Thus, here, *bu zhengdang quanyi* is used to refer to the obtaining of a driving license without following the regular procedure, and it thus means ‘advantage or privilege obtained disregarding the procedures set forth by law’.

Thirdly, and importantly, defendant promised one of the victims he could find a job for their child thanks to his *guanxi* in a workplace. This is not necessarily an illegal method, and does not constitute the ground for illegality: it may be deplorable or disreputable in some cultures, but it is not illegal. Hence, *bu zhengdang* is evidently an indication of the infringement of the standard of proper conduct that the Chinese people is expected to adopt, and *quanyi* mostly refers to the advantage. Hence, the *bu zhengdang quanyi* implied here is an unethical advantage or, with a more familiar term in English, an ‘unfair advantage’. An interesting and relevant definition of ‘unfair advantage’ can be found in the US Legal Dictionary:

> Unfair advantage is a subjective term that *is measured by a standard of proper conduct* for persons in similar positions. Unfair generally means unjust, and typically involves acts deemed unethical. Any attempt to acquire an advantage or to impose a disadvantage in a manner which violates such a standard of conduct is unfair. It may

> involve exploiting another person's vulnerability for personal, social or objective gain, or using unethical methods to achieve some benefit.

It is evident that in Yang's case, finding a job through *guanxi* is regarded as an act that violates the principle of equality and fairness, and as such leads to an unfair advantage, which is the meaning we could hence attribute to *bu zhengdang quanyi*.

Finally, the last person Yang promised to help was trying to obtain the approval of the application for the building of a construction. There is no indication as to whether that was an illegal construction, or whether they just wanted to speed up the regular procedure. In both cases, the meaning of the phrase *bu zhengdang quanyi* as used by Yang to indicate that he could help his victim obtaining the approval of documents for the construction of a house, was, again, 'advantage obtained disregarding the regular procedures'.

To sum up the foregoing discussion of *Direction of Public Prosecution of Baoshan, Yunnan v Yang Jun* case, it seems that *bu zhengdang quanyi* can be sometimes used to indicate an advantage of any kind obtained either infringing the law, circumventing the regular procedures as set forth by the laws in force, or not complying with a standard of proper conduct, in which case, the phrase can also be translated into English as 'unfair advantage'.

In the last case that is going to be discussed next, *bu zhengdang quanyi* is used to similarly indicate *quanyi* that does not comply with the law, but that, interestingly, are deliberately protected by the court. Notably, in *Wang v Li* civil case, involving property dispute after divorce, *quanyi* refers to a share of property attributed to defendant by court at first instance. Such attribution was explicitly contested by the appellate court, yet it was protected.

Wang (appellant, as plaintiff at first instance) was Li's former wife (appealed, as defendant at second instance). Court at first instance recognised that after their marriage, they had a child in 1981, Li †[9], who was already married at the time of dispute. According to the court, in 2008 the three of them built six rooms with northern exposure, whilst Li † built rooms with eastern exposure. Court at first

[9] The *crux desperationis* <†> is used to indicate that the name of the person in question is not revealed in the judgment under analysis. Thus, the † is used to distinguish Li † from his father, Li.

instance affirmed that property rights of the citizens shall be protected by the law, and so do the weakest part of them and women. Thus, considering that Wang had no fixed residence when she started the legal proceedings, she should be given the right to use a share of the house, i.e. two rooms with northern and western exposure. Court at first instance rejected all other claims by plaintiff. Wang challenged the decision, for she said that the court had neglected some facts on the property. In fact, she alleged that the house was built partly in 1997 and partly in 2004, and at that time their child Li † did not have any income, and was not married yet. Thus, recognition of property shares as made by court at first instance was wrong. Secondly, and importantly, appellant alleged that 'the court at first instance had deliberately protected the *bu zhengdang quanyi* of the appealed' (一审法院有意保护被上诉人的不正当权益), for the court gave her a share of the property (*caichan* 财产) bigger than what she had a right to. Appealed did not appear in court and did not file a defendant's claim, and did not make any attempt at defending from such allegation. Notably, court at second instance affirmed that recognition of property shares by court at first instance was partially wrong, as it violated, inter alia, Art. 21 par. 1 of Interpretation (II) of the Supreme People's Court of Several Issues on the Application of Marriage Law; nevertheless, it did protect the habitation needs of the appellant, and consequently the original decision was upheld.

In this case, *bu zhengdang quanyi* is used to refer to the division of a property that the court at first instance made, thus it is strictly related to the notion of *caichan* (property), which primarily refers to rights (i.e., property rights), rather than interests. Property rights are hence indirectly said to be *bu zhengdang* by the appellant as they did not comply with the relevant laws on division of property. Interestingly, the case we just saw is the only case among the ones we could consider in which *bu zhengdang quanyi* is not only used as an argument by one of the opponents, but also referred to and protected by the court. In upholding the original decision, court at second instance protected the 'improper rights' of the appealed in order to protect the fundamental rights of women. Thus, it seems that 'improper rights' can be sometimes protected when other fundamental rights are to be protected. As to the translation of *bu zhengdang quanyi* in the case we just discussed, the phrase can be paraphrased in English with an oxymoron as 'rights one is not entitled to'. Even though such paraphrase seems to have no legal meaning

in English, it does have a meaning if understood in the Chinese legal context, in which the notion of rights is construed differently from the one we are used to in most Western legal jurisdiction, for, as said, *quan* is etymologically connected to the concepts of 'power' and 'privilege', rather than to that of 'rights'.

4 Discussion

As a matter of legal meaning and legal translation, *bu zhengdang quanyi* reveals the Chinese perception and sinicisation of Western rights and interests. The research as documented in this study shows the very Chinese nuance that the Chinese have attributed to Western "rights and interests", translating the phrasing with words that already had an established tradition in China, such as *quan* and *li*. Part of this nuance is evident in the very presence of the affirmative form of the adjectives *zhengdang* (proper) and *hefa* (lawful) that qualify *quanyi* in many statutes: the qualification of rights and interests as either proper/legitimate or lawful in statutes makes sense only if the negative form of the phrase also exist, and whilst the properness or lawfulness of rights is never at stake in the West, it is in China. The fact that *bu zhengdang quanyi* can largely be intended and translated as advantage that is obtained either disregarding the laws in force or circumventing the regular procedures, or the conduct one is expected to have, is further evidence to this: the traditional meanings attached to *quanyi* are more evident than the Western idea of inalienability of rights.

In this study, we have seen that so far the position of the Chinese courts as to whether *bu zhengdang quanyi* is to be protected or not is not settled yet, and in the vast majority of the cases we considered, the allegation that the other party was claiming 'improper rights and interests' was ignored by the court. Very rarely did the court choose to protect *bu zhengdang quanyi*, and that happened when by protecting the 'improper rights' of one party, other fundamental rights that were at stake were deemed as needing protection.

As to the meaning and the possible translations of this legal usage, its literal translation 'improper rights and interests' is generally insufficient to understand its legal meaning in the legal context and in the court decisions. So far it seems that the meanings of the phrase mostly vary according to the context and, more

specifically, to the metatexts on which the phrase is based, for the concept of improperness is a broad one, and it may include either lack of compliance with the laws in force, regular procedures, or a standard of proper conduct. From the legal translation theory perspective, this confirms that the meaning of legal terms cannot be simply understood by combining the ordinary meanings attached to the words of which terms are composed, but it semiotically depends on the signs that are in the text in which the phrase is used, as well as in its prototexts and metatexts, including both contemporary and ancient texts. Consequently, the phrase does not seem to have a single translation into English that can be used throughout the texts in which it is found. According to the research as documented in this study, the most frequent meaning we could attribute to the phrase is *bu zhengdang liyi* (unjust enrichment), in which case, the improperness implied by *bu zhengdang* consisted in the achieving of money by violating statutory laws (i.e., the Criminal Law). It seems that, generally, the modifier gives us information on the ground on which *quanyi* is created or the methods through which *quanyi* is obtained. Thus, one may have rights and interests arising from false declaration or false statements, or, in a broader perspective, any kind of advantage that is obtained either disregarding the laws in force or circumventing the regular procedures, or the conduct one is expected to have. Whilst the semantic meaning of *quanyi* seemed to be mostly related to *yi* (advantage, benefit), rather than to *quan*, we found one case in which *bu zhengdang quanyi* actually referred to 'rights to which one is not entitled'. Despite it being an oxymoron in most of the Western languages, such phrase is not a contradiction in the Chinese legal language, for the notion of *quan* is still etymologically related to the notions of power and privilege.

I now want to address an interesting comment made by an anonymous peer reviewer.[10] A question was put to me that *bu zhengdang quanyi* is not a formal and accepted legal term, and that its use may come from just a few individuals, who may not have sufficient legal knowledge. This may be true to some extent, although the answer to such proposition is not as straightforward as it would be for Western jurisdictions such as, saying, the Italian or Anglo-American one, and some remarks

[10] The Author wishes to thank the anonymous peer reviewer for her/his input.

are warranted with respect to the understanding of rights in China, and Chinese legal language in general.

Firstly, the number of court decisions in the SPC database containing the phrase *bu zhengdang quanyi* is low if we consider that, as of today's date, i.e. one year after judgements for the purposes of this paper were downloaded, only 41 decisions contain the phrase out of 52,631,084 decisions in the database. Nevertheless, this proportion per se is not meaningful if not compared with other figures, and cannot lead us to assume that the phrase *bu zhengdang quanyi* is not part of the legal jargon. In fact, a search for the affirmative form of the phrase (*zhengdang de quanli he liyi*), which does exist in statutes such as, importantly, the Constitution, retrieves *no* results at all in the SPC database. This shows that absence of a phrase in court decisions cannot be taken as an indication of whether the phrase exists, and thus the seemingly insufficient instances of *bu zhengdang quanyi* in the decisions uploaded to the SPC similarly does not prove that the phrase is not part of the accepted legal terminology.

Secondly, and relevantly, as prominent legal scholar Stanley Lubman indicated many years ago, China does not have a specialised legal terminology (Lubman 1970: 230), although more recently a standardization process has been observed (Qu 2015). This was true at the time of Lubman's statement in the '70s, and it is still true nowadays, and is opposite to what we find in many Western languages, including Italian or English, in which many legal terms are evidently legal and clearly recognised as such by both educated and uneducated people. For instance, although the plain English reform has made legal English plainer, and thus more understandable for non-specialists, many terms for specific legal notions or legal entities are still remarkably legal. Relevantly, the very term *quan* that we saw in the foregoing discussion is both ambiguous and non-exclusively legal, in that it first and foremost means power and authority in Chinese, and very rarely does it mean right –and attribution of such meaning to the word is difficult and not always possible, not even looking at the context, not even to Chinese native speakers.

Thirdly, and consequently, there is no exclusive and precise way to ascertain whether a Chinese phrase such as *bu zhengdang quanyi* is formally accepted or not. It is true that Chinese legal scholarship has not addressed the phrase, yet it has not

addressed another similar phrase referred to earlier, *feifa quanyi* (illegal rights and interests), for which we find hundreds of court decisions in the SPC database (Cao & Mannoni 2017; Mannoni & Cao forthcoming). In fact, Chinese legal scholarship is both younger and very different than Western legal tradition: from the time perspective, the current civil law-based legal system was imported to China a century ago, whilst Roman legal tradition is two thousand year longer and thus, as a matter of quantity, Western legal works largely outnumber those produced in China; From the quality perspective, Chinese imperial law was mostly penal or administrative law, and scarce – if any – attention was given to legal meaning or legal interpretation, and legal terminology. The same cannot be said to be true for Western tradition, in which legal doctrine is as old as law is. Thus, absence of *bu zhengdang quanyi* or *feifa quanyi* in scholarship does not immediately rule out the possibility for these phrases to be considered legal terms.

Fourthly, and finally, whether *bu zhengdang quanyi* is a formally accepted legal term or not, it does exist either in the mouth of the litigants, or in that of the judges who settled the disputes. Although the legal skills and legal knowledge of Chinese professionals and lawmakers have been questioned (Cao 2017: 163 – 4; Peerenboom 2002: 252), it is a fact that both terms ‘improper rights and interests’ and ‘illegal rights and interests’ do appear in some final decisions from the Chinese courts. Thus, I believe that the existence of such a phrasing reflect the interpretation the Chinese made of Western rights and interests, interpreting them with the concepts they were more familiar with, i.e. that of power, profit and advantage attached to *quan*, *li* and *yi*. Moreover, if we were to establish whether the phrase in subject is a correct legal term by relying on the opinion of professionals, it should be noted that during the conferences where I could present this or any relevant research, never have I been told by Chinese legal scholars that illegal (*feifa*) or improper (*buzhengdang*) rights and interests in Chinese is incorrect. Whilst this surely does not guarantee that the phrasing is correct, it does show that the idea of improperness or unlawfulness of rights does not sound so controversial to the Chinese. The predominant presence of such a phrasing in the words of the litigants is also indication to this. Whilst ‘improper or illegitimate rights and interests’ is nonsense in the West, both in formal legal terms and in common knowledge, it does exist in contemporary China and is evidence of the very Chinese interpretation of

Western notions, which were – and to some extent still are – culturally unclear to the Chinese.

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References

Aßländer, Michael S. / Hudson, Sarah (2017): *The Handbook of Business and Corruption: Cross-Sectoral Experiences.* Bingley: Emerald Group Publishing.

Benney, Jonathan (2013): *Defending Rights in Contemporary China*. Oxon (USA): Routledge.

Cao, Deborah (2004): *Chinese Law: A Language Perspective*. Aldershot: Ashgate.

Cao, Deborah (2017): *Chinese Language in Law - Code Red*. Maryland: Lexington Books.

Cao, Deborah / Mannoni, Michele (2017): "Are There 'Illegal Rights' in Chinese Law? On the Meanings of Feifa Quanyi." In: *The Chinese Journal of Comparative Law* 5.1, 190 – 204.

Chinese Text Project (Zhongguo Zhexueshu Dianzihua Jihua 中国哲学书电子化计划) (n.d.). CTEXT. http://ctext.org (June 2017 onwards)

Defoort, Carine (2008): "The Profit That Does Not Profit: Paradoxes with Li in Early Chinese Texts." In: *Asia Major* 21.1, 153 – 81.

Direction of Public Prosecution of Baoshan, Yunnan v Yang Jun (云南省保山市隆区人民检察院 v 杨军) (2016). In: *Zhongguo Caipan Wenshu Wang* 中国裁判文书网 ['China judgements database'] (n.d.). http://wenshu.court.gov.cn (15 June 2017).

Gold, Thomas / Guthrie, Doug / Wank, David (2002): *Social Connections in China: Institutions, Culture, and the Changing Nature of Guanxi*. Cambridge: Cambridge University Press.

Harding, Jacob (2014): "Corruption or Guanxi? Differentiating Between the Legitimate, Unethical, and Corrupt Activities of Chinese Government Officials." In: *Pacific Basin Law Journal* 31.2, 127 – 46.

Jiangsu sheng Baohu he Cujin Huaqiao Touzi Tiaoli 江苏省保护和促进华侨投资条例 (Jiangsu Province Regulations on the Protection and Promotion of Investments of the overseas Chinese). (2016). http://www.jsrd.gov.cn/zyfb/sjfg/201601/t20160119_271271.shtml (9 November 2017). In: *Zhongguo Caipan Wenshu Wang 中国裁判文书网* ['China judgements database'] (n.d.). http://wenshu.court.gov.cn (15 June 2017).

Kunshan Branch Office of Shanghai Lucky Boat Building Maintenance Co. v Li Hu (上海海鸿福船物业管理有限公司昆山分公司 v. 李沪) (2014). In: *Zhongguo Caipan Wenshu Wang 中国裁判文书网* ['China judgements database'] (n.d.). http://wenshu.court.gov.cn (15 June 2017).

Li, Charles N. / Thompson, Sandra A. (1989): *Mandarin Chinese: A Functional Reference Grammar*. California: University of California Press.

Li, Ling (2011): "Performing Bribery in China: guanxi-practice, corruption with a human face." In: *Journal of Contemporary China* 20.68, 1 – 20.

Lubman, Stanley B. (1970): "Methodological Problems in Studying Chinese Communist Civil Law." In: Cohen, Jerome A. [ed.] (1970): *Contemporary Chinese Law: Research Problems and Perspectives.* Cambridge: Harvard University Press. 230 – 60.

Ma Dacheng v Fuquan Direction of Public Prosecution, Guizhou (马大成 v 贵州省黔南布依族苗族自治州中级人民法院) (2014). In*: Zhongguo Caipan Wenshu Wang 中国裁判文书网* ['China judgements database'] (n.d.). http://wenshu.court.gov.cn (15 June 2017).

Mannoni, Michele (2018): "Hefa Quanyi: More than a Problem of Translation. Linguistic Evidence of Lawfully Limited Rights in China." In: *International Journal for the Semiotics of Law*. https://doi.org/10.1007/s11196-018-9554-0.

Mannoni, Michele / Cao, Deborah (forthcoming). "On the meaning of feifa quanyi in Chinese legal language: A semiotic and corpus analysis." In: *Linguistics and the Human Sciences.*

Peerenboom, Randall (2002): *China's Long March toward Rule of Law*. Cambridge: Cambridge University Press.

Popovič, Anton (1975, 2006). *Teória Umeleckého Prekladu* ['Theory of artistic translation']. Bratislava: Tatran. In: Osimo, Bruno [trans.] (2006): *La Scienza della Traduzione: Aspetti Metodologici, la Comunicazione Traduttiva.* Milan: Hoepli.

Qu, Wensheng (2015): "Compilations of Law Dictionaries in New China and Their Roles on Standardization of Translated Legal Terms." In: *International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique* 28.3, 449 – 67.

Sun Dawei 孙大为 et al. [eds] (2013). *Xinbian Changyong Falü Cidian 新编常用法律词典* ['Legal Dictionary'- New Edition]. Beijing 北京: Zhongguo Fazhi Chubanshe 中国法制出版社.

Svarverud, Rune (2001): "The Notions of 'Power' and 'Rights'." In: Lackner, Michael / Amelung, Iwo / Kurtz, Joachim [eds] (2001): *New Terms for New Ideas: Western Knowledge and Lexical Change in Late Imperial China*. Leiden: Brill. 125–143.

The National People's Congress of the People's Republic of China. (n.d.): www.npc.gov.cn.

US Legal Dictionary (n.d.). https://definitions.uslegal.com (15 September 2017).

Wang v Li (王某 v. 李某甲) (2015). In: *Zhongguo Caipan Wenshu Wang 中国裁判文书网* ['China judgements database'] (n.d.). http://wenshu.court.gov.cn (15 June 2017).

Zhan, Jian Vivian (2012): "Filling the gap of formal institutions: the effects of Guanxi network on corruption in reform-era China." In: *Crime, Law and Social Change* 58.2, 93–109.

Zhang Qianfan 張千帆 (2016): *Xianzheng Changshi 憲政常識* ['The basis of constitutionalism']. Hong Kong: City University of HK Press.

Zhonghua Renmin Gongheguo Xianfa (1982) 中华人民共和国宪法(1982) ['1982 Constitution of the People's Republic of China, 2018 amendment']. www.npc.gov.cn (June 2017 onwards).

Zhonghua Renmin Gongheguo Xing Fa (1979) 中华人民共和国刑法(1979) ['1979 Criminal Law of the People's Republic of China']. www.npc.gov.cn (June 2017 onwards).

Chapter 18

Die translatorische Perspektive des Rechtsübersetzers – Verknüpfung von Inhalt und Form

Radegundis Stolze

Abstract
The article shows how the legal translator, in dealing with his or her texts, combines the observation of content and form. Adequate translation is based on an appropriate understanding of the original text, and on functional language proficiency in the target language. Law is part of the respective culture where language as a medium is central, since legal ideas are passed down in writing. Legal translation competence includes knowledge of various legal orders with their essential concepts, but also the awareness of linguistic specificities that often constitute a translation problem, such as, for instance, speech acts. For the understanding of legal texts as a preparation for their translation it is important to observe how legal notions show in certain words for concepts, how legal fields appear in individual text types, and how procedural elements are reflected in stylistic forms. Regarding the notions, translation aims at a transparency that makes visible the source cultural legal order, and it also follows in style the rhetorical conventions of the language of law as specialized communication. The translator's task, then, is to interlink the various details in a specific way.

Keywords: understanding, meaning dimension, levels of abstraction, speech acts, structuring signals

1 Recht und Sprache

Die Rechtsübersetzung stellt eine Dienstleistung dar, die im Zuge der Globalisierung, wo unterschiedliche Rechtssysteme miteinander in Berührung kommen, immer wichtiger aber auch komplexer wird. Personen, die rechtlich gebundene Texte in eine andere Sprache übertragen, um damit Menschen zu ermöglichen, ein Recht in einem anderen Staat wahrzunehmen oder einfach rechtlich gebundene Informationen verstehen zu können, haben eine große Verantwortung. Sie greifen in ihrer Übersetzungskompetenz (Stolze 2015: 339) auf ein vielfältig vernetztes Wissen zu Rechtsordnungen und Sprache zurück. Im Lichte gegebenen Vorwissens werden die Texte verstanden, wobei die zunächst intuitive Evidenz der Textaussage durch gezielte Recherche zu präzisieren ist. Das Ziel des Übersetzens im Recht ist

hohe Genauigkeit in der Wiedergabe der Textaussage, damit auch Leser in ihrer Zielkultur den rechtlichen Fachtext verstehen und in ihre Welt einordnen können.

Gegenstand des Rechts sind Regeln, „durch die das Verhältnis einer Gruppe von Menschen zueinander oder zu den übergeordneten Hoheitsträgern oder zwischen diesen geregelt ist“ (Creifelds 1992: 924). Übersetzer juristischer Texte müssen sich daher mit verschiedenen Rechtssystemen und der aktuellen Rechtsentwicklung auskennen. Hier geht es nicht nur um ein sprachliches Verständnis, sondern es muss das Handlungsumfeld sowie die Einbettung des Textes im Rahmen der involvierten Rechtsordnung miteinbezogen werden.

Aus historischen Gründen ist der Aufbau des Rechts in vielen Ländern unterschiedlich, denn das Rechtssystem ist wie die Sprache ein Teil der Kultur. Rechtsordnungen werden aufgrund gemeinsamer Merkmale, wie etwa ihre historische Herkunft, eine spezifische juristische Denkweise, besondere Rechtsinstitute oder der Rangordnung der Rechtsquellen zu übersichtlichen Gruppen, den „Rechtskreisen“ zusammengefasst. „Die wichtigsten Rechtskreise sind der romanische, deutsche und nordische Rechtskreis in Europa, der anglo-amerikanische Rechtskreis, der fernöstliche Rechtskreis, das Hindu-Recht in Asien und das islamische Recht“ (Šarčević 1999: 10). Dabei ist die Sprache als Medium zentral, denn die Vorstellungen, welche eine Rechtsordnung konstituieren, sind nur über die Sprache zugänglich, sie werden schriftlich über die Sprache tradiert (vgl. Arntz 1986: 286).

Die Rechtssprache hebt sich in ihrem Streben nach Effizienz und Konkordanz deutlich von den Standardsprachen ab. Trotz vieler gemeinsprachlicher Elemente ist sie vergleichsweise abstrakt und arbeitet mit eigenen Nuancen, was schon Muttersprachler überfordern kann, wenn sie nicht rechtlich geschult sind.

Das besondere Charakteristikum der Rechtssprache liegt darin, dass sie im Juristen und im Rechtsbefolger zwei unterschiedliche Adressaten hat. Die juristische Fachsprache unterscheidet sich von technischen Fachsprachen vor allem dadurch, dass sie Ausdrücke enthält, die der Form nach mit denen der Gemeinsprache übereinstimmen, auf der Inhaltsebene aber von der bekannten semantischen Struktur abweichen können.

Zwar kann eine spezifische Terminologie die Zwecke des Rechts durchaus optimal erfüllen, doch es gilt auch, daß das Recht an der Allgemeinsprache anknüpfen muß,

weil es auf konkrete Lebenszusammenhänge bezogen ist. Da Rechtssicherheit aber nur durch möglichst eindeutige Begriffe gewährleistet ist, müssen die ‚natürlichen' Begriffe der Gemeinsprache durch Legal-Definitionen eingeengt werden. (Fuchs-Khakhar 1987: 39).

Zu Unrecht wird immer wieder gefordert, Rechtstexte und auch Rechtsübersetzungen müssten „allgemein verständlich", oder zumindest für den Empfänger eines solchen Textes verständlich sein. Dies berührt den alten Konflikt bezüglich der Rechtssprache zwischen dem Anspruch auf Fachsprachlichkeit als Kommunikationsmittel unter Juristen und dem auf öffentliche Zugänglichkeit von Gesetzestexten, es ist also ein soziolinguistischer Konflikt. Dieser kann nicht durch den Versuch gemeinsprachlichen Formulierens aufgelöst werden. Und Susan Šarčević (1997: 71) blickt auf die Wirkung der Übersetzungen im Recht und stellt fest, dass Juristen von Übersetzern nicht erwarten könnten, dass sie bedeutungsgleiche Paralleltexte produzieren, aber sie dürften erwarten, dass sie Paralleltexte mit vergleichbarem rechtlichem Effekt im Zielbereich erschaffen.

Die Gültigkeit auch des übersetzten Textes verbleibt in der Rechtsordnung des Ausgangstextes. Um aus der Rechtsordnung des Ziellandes heraus interpretiert werden zu können, soll die Übersetzung transparent ein „Hindurchblicken auf die ursprüngliche Situation ermöglichen" (Stolze 2014: 242), also das Fremde auch sichtbar werden lassen. Diese Aufgabenstellung hat Konsequenzen für die Rechtsübersetzung im Bereich von Semantik, Textsortenlinguistik und Funktionalstilistik, Bereiche, mit denen das translatorische Formulieren beschrieben werden kann.

2 Textsorten im Recht

Institutionen im Rahmen des Rechts sind neben dem Gesetzgeber unter anderem Gerichte, Staatsanwaltschaften und Notariate. Nach der Funktion von Rechtstexten können vier Textkategorien unterschieden werden (Stolze 2014: 283). Im Rahmen dieser Kategorien gibt es dann wieder viele verschiedene Textsorten:

- *Texte mit Normfunktion*, das sind Gesetze, Satzungen öffentlicher Träger, Rechtsverordnungen, Vorschriften, Erlasse, Gesetzeskommentare, usw.
- *Texte im Justizbereich*, das sind Gerichtsurteile, Beschlüsse, Verfügungen, Rechtshilfeersuchen, Klageschriften, Ladungen, Vernehmungsprotokolle, Einlassungen von Parteien, Anwaltsschriftsätze, Gutachten, Schriftwechsel zwischen internationalen Kanzleien, usw.

- *Texte von Behörden*, wie z. B. Bescheide, Verwaltungsakte, Gebührensatzungen, Formulare aller Art, Schulzeugnisse, Personenstandsurkunden, Polizeiprotokolle, usw.
- *Texte im interpersonalen Austausch*, wie etwa Vereinbarungen mit bilateraler Geltung, z. B. Verträge, Allgemeine Geschäftsbedingungen, Versicherungspolicen mit Kleingedrucktem, Verpflichtungserklärungen, Arbeitszeugnisse, Kündigungen, Krankmeldungen, rechtswissenschaftliche Aufsätze, usw.

Die Funktion der Textsorte schränkt deren Adressatenbereich ein, sodass keineswegs alle genannten Textformen, die gelegentlich auch übersetzt werden müssen, gleichermaßen allgemein gültig sind. Eine transparente Übersetzung wird die ausgangssprachliche Makrostruktur des Textes bewahren, um eben anzudeuten wohin der Text in seiner Bedeutung gehört, und nicht etwa ein ausgangskulturelles Zeugnis in ein zielkulturelles umschreiben. Es liegt nämlich keine außersprachliche Identität vor, auch wenn ein solcher Text in seiner intendierten Funktion auch im Zielbereich Geltung gewinnen kann und soll, aber dies ist dann nicht die Entscheidung des Übersetzers, sondern der entsprechenden Institutionen.

Die Begrifflichkeit im Rahmen der verschiedenen Textsorten weist eine besondere Struktur auf.

3 Abstraktionsebenen der juristischen Begrifflichkeit

Im Rahmen der verschiedenen Textsorten gibt es verschiedene Ebenen juristischer Fachausdrücke, nämlich abstrakte, unbestimmte und bestimmte sowie definierte Rechtsbegriffe, die sprachlich bezeichnet werden. Abstraktionsebenen der juristischen Begrifflichkeit sind:

1) Es gibt „spezifizierte Rechtsbegriffe“, das sind spezifisch eingeengte gemeinsprachliche Wörter für Personen und Gegenstände des Rechtslebens: *Mann, Frau, Vater, Haustier, Verwandtschaft, Sache, Geburt, Ehe* usw. Ein *Haustier* ist z. B. nicht nur ein geliebtes Tier, sondern auch eine Sache, die im Schadensfall zu ersetzen ist. Ein *Vater* hat nicht nur ein Kind gezeugt, er ist rechtlich zu dessen Unterhalt verpflichtet, die Rechte von *Eheleuten* sind in den Ländern verschieden geregelt, obwohl das Wort *Ehe* überall verstanden wird.

2) Es gibt „unbestimmte Rechtsbegriffe“ für Rechtsgüter und Grundrechte, deren Bezeichnung zunächst verständlich wirkt, aber eben abstrakt ist, wie *Treu und*

Glauben, wichtiger Grund, hoher Wert, Schutz der Persönlichkeit, Gleichbehandlung, Sicherheit und Ordnung, Privatsphäre, Freiheit des Eigentums, Stand der Technik, Wahrung der Nachtruhe, angemessene Vergütung usw. Interessant ist, dass hier sprachlich jeweils eine Spezifizierung durch Adjektiv oder Komposition erfolgt. Die Interpretation dieser Begriffe variiert freilich, und gegebenenfalls gibt es darüber Gerichtsurteile zur Streitschlichtung. Was heißt z. B. *höhere Gewalt*? Dies könnte im Einzelfall einer Erläuterung in der Übersetzung bedürfen, wenn etwa das Konzept in Ländern unterschiedlich definiert ist und damit Haftungsgründe variieren. Oder: was ist ein *wichtiger Grund*, wann und wie herrscht die *Nachtruhe*? Der Übersetzer sollte die spezifischen Regelungen kennen.

3) Sogenannte „bestimmte Rechtsbegriffe" aus der Gemeinsprache bezeichnen rechtserhebliche Handlungen und Beziehungen im Zusammenleben, indem die relevanten natürlichen Merkmale gesetzlich definiert werden (vgl. BGB). Es handelt sich um Wörter wie *Kauf, Tausch, Miete, Erbschaft, Opfer, Diebstahl, Betrug, Leihe, Darlehen, Gut, Besitz, Eigentum*, usw. Entsprechende Rechtsbestimmungen können in den Ländern verschieden sein, was das Übersetzen erschwert, da die terminologische Äquivalenz wichtig ist.

4) Die „definierten Rechtsbegriffe" bezeichnen gedanklich definierte Konzepte, legalistische Ideen in ihrer rechtlichen Bedeutung. Diese Begriffe sind nicht unbestimmt, sondern durch Rechtsvorschriften genau definiert und haben den Status von Termini als Benennungen für einen exakt festgelegten Begriff.[1] Sie werden in der juristischen Fachausbildung gelernt, wie etwa *Beförderungserschleichung* für Schwarzfahren, oder *tatsächliche Sachherrschaft* für Besitz und *rechtliche Verfügungsmacht* für Eigentum, oder Termini wie *Rechtsnachfolger, Nötigungstatbestand, Gläubigerverzug, Mangelhaftung, Widerspruch, Buchgrundschuld, Auflassungsvormerkung* usw. Auffällig ist hier die fachsprachliche Wortbildung durch Nominalkomposition im Deutschen. Auch wenn Laien oftmals

[1] Für den Schutz eines Berufstitels hat das Bundesverfassungsgericht (BVerfG) zum Beispiel eine sog. Dreistufenlehre entwickelt und unterscheidet dabei zwischen drei verschiedenen Eingriffsarten: den Berufsausübungsregelungen, den subjektiven Zulassungsvoraussetzungen und den objektiven Zulassungsschranken. Die höchste Stufe der objektiven Zulassungsschranken für die Wahl eines Titelschutzes ist nur zulässig, wenn eine konkrete Gefahr für ein überragend wichtiges Gemeinschaftsgut sie erforderlich macht, z. B. Schutz von Leib und Leben der Bürger (vgl. Bauch & Cremerius 2017: 25). So sind bislang die Titel „Übersetzer" oder „Dolmetscher" in Deutschland nicht geschützt, da keine konkrete Gefahr ersichtlich ist.

die Bedeutung dieser Wörter nicht kennen, muss dies in einer juristischen Übersetzung, die für Juristen bestimmt ist, nicht eigens gemeinsprachlich erläutert werden. Es ist vielmehr der zielsprachlich richtige Terminus zu verwenden.

5) Schließlich sind die Konzepte des Europarechts zu erwähnen, welches ja den nationalen Rechtsordnungen übergeordnet ist. Sie werden mit Wörtern aus den Sprachen bezeichnet, die aber manchmal eine andere Bedeutung haben.

Die beschriebenen Wörter kommen in konkreten Texten nebeneinander vor und müssen differenziert werden. So stellen die juristischen Fachausdrücke ein Übersetzungsproblem fürs Verstehen und Formulieren dar. Wie geht man nun translatorisch mit einem vorgefundenen Ausdruck um, den man als Rechtsbegriff erkannt hat? Hier gibt es verschiedene Möglichkeiten, die zunächst sprachwissenschaftlich benannt werden (Stolze 2014: 273):

- Wörtliche Übersetzung des Ausdrucks oder Lehnübersetzung (wenn dies verständlich ist)[2]
- Ersetzung durch eine zielsprachlich übliche Bezeichnung, sofern diese keinen direkten Bezug zum ZS-System hat und also nicht verwechselt werden kann[3]
- Ersetzen durch eine zielsprachlich übliche Bezeichnung, deren ältere Bedeutung dem ausgangskulturellen Konzept entspricht, weil dies dann gut verständlich ist[4]
- Verwendung eines allgemeineren Ausdrucks, denn der Oberbegriff impliziert den unteren immer (wobei die Aussage dann weniger spezifisch ist)[5]

[2] Hier lauern allerdings Gefahren, wenn übersetzerisch zum Beispiel nicht zwischen *Trennung* und *Scheidung* unterschieden wird. „Ein gerichtliches Trennungsurteil, mit dem die Ehe noch nicht aufgelöst wird, das also noch keine neue Ehe zulässt, gibt es in mehreren spanischsprachigen Ländern. Dafür finden sich die Bezeichnungen *separación judicial* oder *separación de cuerpos*“ (Schlüter-Ellner 2017: 263). Hier ist also Fachwissen gefordert. „Es kommt auch vor, daß der durch wörtliche Übersetzung formulierte Begriff im Zielrechtssystem zwar existiert, aber eine andere Bedeutung hat als der zu übersetzende Begriff des Ausgangsrechtssystems“ (De Groot 1999: 210). Dann ist eine wörtliche Übersetzung abzulehnen.

[3] De Groot (1999: 210) stellt fest, es sei vertretbar, bei Englisch als Zielsprache „in die Rechtsterminologie des Rechtssystems von England und Wales zu übersetzen. Mangels annähernder Äquivalente in diesem Rechtssystem kann man aber auf z.B. die Terminologie des schottischen Rechts oder die englische Terminologie für das Recht Quebecs oder Louisianas zurückgreifen, und zwar wegen der systematischen Nähe der betreffenden Rechtssysteme zu der kontinental-europäischen Tradition.“

[4] Ein französisches Beispiel ist die Übersetzung von frz. *attentat aux mœurs,* einem Rechtsbegriff des französischen Verwaltungsrechts. Die Übertragung mit dt. *Erregung öffentlichen Ärgernisses* wäre eine rechtsspezifische Übertragung nach dem gemeinsamen Bedeutungsminimum der „Verfehlung“. Dagegen wirkt die allgemeinere Formulierung *Verstoß gegen Sitte und Ordnung* oder *Verstoß gegen die guten Sitten* eher für ein verbindliches Rechtsverständnis in der Öffentlichkeit (Stolze 2014: 270).

[5] In einem amerikanischen Urteil findet man etwa die Gerichtsbezeichnungen *Superior Court* oder *Circuit Court* oder *District Court*. Das ist jeweils ein erstinstanzliches Gericht eines amerikanischen Bundesstaates, das auch Familiensachen entscheidet. Es entspricht in etwa dem

- Übersetzung als explikative Erweiterung (führt zu speziellerem Ausdruck, was für die Rechtssicherheit wichtig sein kann)[6]
- Ergänzung der ZS-Bezeichnung einer Institution mit dem AS-Ausdruck in Klammern (zwecks Referenzbezug)[7]
- Beibehaltung der AS-Benennung (Lehnwort oder Neologismus) nebst Erläuterung oder Fußnote.[8]

Ziel ist es, die ausgangskulturelle Rechtsordnung transparent zu machen, und nicht etwa die Aussage des Textes in eine zielkulturelle Ordnung zu überführen.

4 Sprechakte und deren Nominalisierung

In den juristischen Institutionen hat sich auch ein besonderer Sprachstil herausgebildet, was ein Übersetzungsproblem darstellen kann. Der sogenannte juristische Stil bezieht sich syntaktisch auf die Satzkonstruktionen, und diese haben eine spezifische Funktion. Es gelten auch hier die allgemeinen Funktionen der Fachsprachen, nämlich Abstraktion, Sachlichkeit, Explizitheit (Gläser 1998: 206). Sie werden mittels syntaktischer Konstruktionen wie Attributsatz, Passiv, unpersönlichem Ausdruck und Nominalisierung erzielt. Dies führt oft zu langen, nicht für jedermann leicht verständlichen Sätzen, die aber eben unzweideutig sein sollen.

Rechtliche Aussagen finden sich in vielen Textsorten in Form von Sprechakten. Sprechakte sind verbale Äußerungen, die in einer bestimmten Situation eine kommunikative Funktion erfüllen, zum Beispiel Aussage, Frage oder Aufforderung. Die Theorie der performativen Leistung gewisser Verben (wie *versprechen, warnen, bitten, versichern, verbieten, verkaufen*) wurde weiterentwickelt von John R. Searle. Es geht dabei um das komplexe Verhältnis zwischen

dt. *Landgericht* i s t aber kein solches. Die Bezeichnung *Kreisgericht* würde ein zu kleines Gebiet suggerieren und überschneidet sich zudem mit der Gerichtsbezeichnung in der früheren DDR, die dem bundesdeutschen *Amtsgericht* entsprach, und das Landgericht war dort ein *Bezirksgericht.* Ein *Distriktgericht* ergibt im Deutschen auch wenig Sinn. Daher wird in einem entsprechenden Text übersetzt mit *Gericht,* allenfalls *erstinstanzliches Gericht*, oder *ordentliches Gericht*, um diese Information über die Funktion explikativ mitzuliefern.

[6] Die Bezeichnung „Richter" ist nicht immer ungeprüft zu übersetzen. In Spanien z. B. unterscheidet man Gerichte mit Einzelrichtern (*Juzgados* mit *jueces* als Richtern) und Gerichte, an denen die Richter als Kollegium entscheiden (*Tribunales,* bestehend aus *magistrados*).

[7] Beispielsweise Übersetzung de-en: „Local Court Darmstadt (Amtsgericht)".

[8] Ein bekanntes Beispiel ist der *Ombudsmann/-frau*, eine Übernahme aus dem Schwedischen. Das ist eine Person, die die Rechte von Bürgern gegenüber Behörden wahrnimmt.

kommunikativer Funktion und sprachlicher Form, wobei John R. Searle (1976: 12-17) fünf Textfunktionen unterscheidet: die Informationsfunktion, die Appellfunktion, die Obligationsfunktion, die Kontaktfunktion und die Deklarationsfunktion. Dies führt zu verschiedenen Sprechaktklassen: Als „Repräsentativa" benennt er Äußerungen, die einen informativen Wahrheitswert haben, also zum Beispiel Beschreibungen, Tatsachendarstellungen. Als „Direktiva" bezeichnet er Äußerungen, mit denen Hörer zu einer Handlung veranlasst werden sollen, wie das Anweisen oder Befehlen. Ferner gibt es die Sprechaktklassen „Kommissiva" (zur Bindung an etwas, zur Selbstverpflichtung), „Expressiva" (zum Ausdruck von Empfindungen und um eine Beziehung zum Empfänger zu halten) und „Deklarativa" (für verbindliche Erklärungen, die eine neue Realität schaffen wie etwa ein Gesetz, ein Testament oder ein Urteil). Weil das Erkennen entsprechender Ausdrucksformen in Rechtstexten ein Übersetzungsproblem darstellt, ist eine Anwendung der Sprechakttheorie interessant.

In Gesetzestexten mit ihrer allgemeingültigen Bedeutung sind vor allem Repräsentativa und Deklarativa (im Präsens Indikativ) sowie Direktiva (imperativischer Infinitiv) festzustellen. Beispiel:

> Die Wertminderung wegen Alters *bestimmt sich nach* dem Alter des Gebäudes im Hauptfeststellungszeitpunkt und der gewöhnlichen Lebensdauer von Gebäuden gleicher Art und Nutzung. Sie *ist in* einem Hundertsatz des Gebäudenormalherstellungswertes *auszudrücken*. (§ 86 BewG)

In Urteilstexten finden sich Deklarativa im Sinne gültiger Festlegungen:

> Die am (...) vor dem Standesbeamten in N.N. geschlossene Ehe der Parteien *wird geschieden.* – Die Verfahrenskosten *werden* gegeneinander *aufgehoben*. (Dt. Scheidungsurteil BRD)
> Die Kosten des Verfahrens *hat* die Klägerin zu 1/3 und der Verklagte zu 2/3 *zu tragen* (Dt. Scheidungsurteil DDR)

In Verträgen sind folgende Arten der Sprachhandlung festzustellen:
(A) „Kommissiva" als *Verpflichtung* oder *Obliegenheit,* die einer Vertragspartei von der anderen auferlegt wird, also eine Verhaltensregelung mittels *Verbot*, oder Rechte, die Vertragsparteien einander *gewähren* oder *absprechen*, auch die Sprechakte der *Selbstverpflichtung* oder *Zusicherung* kommen hier vor. Auf das übersetzungsrelevante Problem der sprachlichen Gestaltung solcher vertraglichen Vereinbarungen als Sprechakt im Englischen hat Anna Trosborg (1994: 312)

hingewiesen. So erscheinen hier Sprechaktausdrücke mit *shall, grant, agree, undertake, acknowledge, warrant, accept*, wobei auch die Verneinungen zu beachten sind, die dann nämlich zum Verbot werden:

> This agreement *shall not* be assigned by the Owner without the prior written consent of the Distributor. – Dieser Vertrag *darf* vom Eigentümer *nicht* ohne vorherige schriftliche Zustimmung des Händlers abgetreten werden.

(B) „Repräsentativa" sind demgegenüber Darstellungen der vertraglichen oder gesetzlichen Rahmenbedingungen, wie sie auch in solchen Texten vorkommen. Diese erscheinen im Indikativ und nicht mit *shall*.

> Die Gesellschaft *führt* die Firma: (…) *(HRG)* – The Company **shall operate* under the name of (…) *(Versuch)* – The company *has* the firm name of (…) *(Korrektur).*
> It *is* a felony to commit murder. – Mord stellt ein Verbrechen dar.

In der Kommunikation ist aber auch die Unterscheidung zwischen dem lokutionären Akt als solchem und der Handlungsbezeichnung des illokutionären Aktes, also zwischen dem Sprechakt im Vollzug und der Rede über denselben wichtig, zum Beispiel:

> Der Verkäufer *verkauft* hiermit (...); Die Parteien *ermächtigen* den Notar (...); Auf Ansuchen von Verkäufer und Käufer *beurkunde* ich (...)
> Der *Kauf* wurde getätigt am (...); Diese *Vollmacht* erlischt am (...); Bezugnehmend auf die *Beurkundung* (…)

Mit Hilfe der *Nominalisierung* können im Deutschen sehr präzise juristische Aussagen gemacht werden, die in der Übersetzung nicht verwässert werden sollten:

> Die *Erteilung* der Genehmigung bedarf der notariellen Beglaubigung. (Nicht die Genehmigung selber, sondern dass sie erteilt wurde).
> Notwendig ist eine *Verständigung* über die Höhe des Kaufpreises. (Anstatt: „Sie müssen sich über den Kaufpreis einigen.")
> Ich werde den weiteren *Schriftwechsel* mit Ihnen führen. (Statt: „Ich werde Ihnen schreiben.") Es geht um den Inhalt dieser Schriftsätze, und nicht um die Tatsache, dass geschrieben wird.

Bei der Übersetzung ist allgemein auch die stärkere Tendenz im Deutschen zu einer nominalisierten Ausdrucksweise in den Fachsprachen (Ziel *Explizitheit*) zu beachten, was jedoch die Sprechakte als solche nicht verfälscht. Im folgenden Übersetzungsbeispiel wurde die Unterscheidung zwischen juristischen Sprechakten und anderen beschriebenen Handlungen nicht gesehen:

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> *Wir gewähren Ihnen eine nicht-exklusive Lizenz zur Verwendung, Speicherung und Sichtung in Ihrem internen Rechnernetzwerk und erstellen (!) bis zu 10 Kopien zur ausschließlich angemessenen Nutzung im Rahmen Ihrer Geschäftstätigkeiten oder persönlichen Verwendung des Ihnen zur Verfügung gestellten Teils der Materialien. Die Materialien dürfen nicht anderweitig verwendet, kopiert oder übertragen werden ohne unsere vorherige schriftliche Zusage. (Übersetzung zur Prüfung vorgelegt)
>
> Wir gewähren Ihnen eine nicht-exklusive Lizenz zur Verwendung, Speicherung und Sichtung in Ihrem internen Rechnernetzwerk sowie zum Ausdruck von bis zu 10 Papierkopien zur angemessenen Nutzung – ausschließlich im Rahmen Ihrer Geschäftstätigkeit oder zur persönlichen Verwendung – des Ihnen zur Verfügung gestellten Teils der Materialien. Die Materialien dürfen ohne unsere vorherige schriftliche Zustimmung nicht anderweitig verwendet, kopiert oder übermittelt werden. (Korrektur)

Die relevanten Textabschnitte in Urteilen enthalten oft verbale Sprechakte. Bei der Tatbestandsaufnahme etwa müssen die Parteieinlassungen dargelegt werden.

So erscheinen Aussagen von Prozessparteien, über die berichtet wird, im Deutschen eingeführt durch Berichtsverben wie *vorbringen, geltend machen, ausführen, anführen, darauf hinweisen, argumentieren, darlegen, sich stützen auf*, *sich berufen auf*. Die aufgezählten Argumente der Parteien erscheinen dann als indirekte Rede, vorzugsweise im Konjunktiv I. Im Englischen werden solche Darlegungen gleichfalls mit bestimmten Berichtsverben eingeleitet, wie *to submit, to assert, to contend, to suggest, to argue, to point out, to rely on*.

Bei Aussagen in der Vergangenheit erscheint in englischen Urteilen das Simple Past Tense, genauso wie die berichtete Rede. Bei der Wiedergabe der Parteienargumente folgen dann auf einen Satz mit eingeleiteter indirekter Rede oft mehrere Sätze oder ganze Absätze mit berichteter Rede ohne einleitendes Verb.

Aussagen des Richters und die Wiedergabe der Parteistandpunkte wechseln sich im Textteil zu den Erwägungen ab. Eigene Richteraussagen stehen im Englischen meist in der direkten Rede im Indikativ Präsens: *I think, I am in no doubt, I prefer the argument (…), I am persuaded that (...), I am satisfied (...), it seems to me (...)*

In deutschen Gerichtsurteilen wären dagegen unpersönliche Wendungen zu finden: *es leuchtet ein, zweifellos, das Argument überwiegt, es liegt auf der Hand, zur*

Überzeugung des Gerichts steht fest, dass (...), die bei der Übersetzung auch an die Stelle der persönlichen Aussagen gesetzt werden könnten.

Die Argumentationsstruktur in Form der Sprechakte ist, besonders bei langen unübersichtlichen Passagen, eine Übersetzungsschwierigkeit, da u. U. richterliche und parteiliche Argumentation fälschlicherweise vermischt werden. Es ist wichtig, die indirekte Rede also solche modal zu kennzeichnen. Beispiel:

> Unsurprisingly, counsel for both Mr J. and Mr H. adopted the arguments of the Secretary of State. Each *pointed out that* the two men also *had* a right to respect for their private lives, and that if Mrs E.'s and Mrs H.'s rights *were* engaged, so *were* theirs. There *needed*, accordingly, *to be* a balance of the competing rights. The interference by the State in the rights of Mrs E. and Mrs H. *was, they submitted, justified* on the basis that it *sought* to protect the rights and freedoms of the male gamete holders. (Aus einem Gerichtsurteil.)
>
> **ÜB:** Erwartungsgemäß übernahmen die Anwälte für Herrn J. und Herrn H. die Argumente des Staatssekretärs. Sie *wiesen beide darauf hin, dass* die beiden Männer auch das Recht auf Achtung ihres Privatlebens *hätten*, und dass, wenn die Rechte von Frau E. und Frau H. betroffen *seien*, dies auch auf ihre Rechte *zuträfe*. Es *sei* somit *notwendig*, eine Interessenabwägung vorzunehmen. *Sie machten geltend,* der Eingriff des Staates in die Rechte von Frau E. und Frau H. *sei* insofern gerechtfertigt, als er die Rechte und Freiheiten der männlichen Keimzellenspender schützen *wolle*.

5 Sprachenpaarspezifische Übersetzungsprobleme

Bei der Bezeichnung von Handlungen im Deutschen ist auch die spezifische Phraseologie zu beachten. Es finden sich im Deutschen vor allem Akkusativobjekte, die in Kollokationen mit entsprechenden Verben als sogenannte Funktionsverbgefüge erscheinen: *eine Vollmacht erteilen (*einräumen, *gewähren), ein Verbot auferlegen (*äußern, *erlassen, *erteilen), eine Tätigkeit ausüben (*ausführen), einen Auftrag ausführen, erledigen (*durchführen), Einzahlungen vornehmen (*ausführen), eine Entscheidung annehmen (*übernehmen)*. Dies ließe sich noch fortführen. Hier ist eine besondere Übersetzungsschwierigkeit dadurch gegeben, dass andere Sprachen gleichfalls diskursfeldspezifische Phraseologien kennen, die jedoch meist nicht in einem wörtlichen 1:1-Äquivalenzverhältnis zum Deutschen stehen.

Zudem gibt es sprachspezifische Fokussierungsformen, und der englischen Substantiv-Negativierung entspricht beispielsweise im Deutschen die Verb-Verneinung:

> Nothing in this Agreement shall preclude the use of controls (...) / Aucune des dispositions du présent accord n'aura pour effet d'interdire le recours (…) à des contrôles / Dieses Übereinkommen schließt nicht aus, dass (...) Kontrollen anwendet.
> Nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between us. / Diese Vereinbarung darf in keiner Hinsicht so ausgelegt werden, dass damit eine Partnerschaft oder ein Gemeinschaftsunternehmen zwischen den Parteien begründet würde.

Das juristische Übersetzen verlangt auch besondere Präzision im Blick auf semantische Unterschiede, die sich in grammatischen Strukturen auf der Textebene spiegeln, die man sehr genau beachten muss. Denn Satzzeichen und Kasus sind auch Bedeutungsträger, wie zum Beispiel die Interpunktion. Zwischen den Sätzen

> „Der Rechtsanwalt versprach, dem Vorsitzenden einen Brief zu schreiben."
> „Der Rechtsanwalt versprach dem Vorsitzenden, einen Brief zu schreiben."

besteht ein deutlicher Unterschied. In ersterem Beispiel geht es darum, wem ein Brief geschrieben wird, im zweiten, wem das Schreiben versprochen wird, also um zwei verschiedene Sprechakte, wobei dies im Schriftlichen durch ein einziges Komma angezeigt wird. Im Mündlichen bemerkt man den Unterschied an der Intonation.

Ein Merkmal des juristischen Stils im Deutschen ist oft auch die Tatsache, dass Sätze nicht mit dem Subjekt beginnen, sondern mit dem, was der Verfasser betonen möchte:

> „Der Tat waren monatelange Beobachtungen vorausgegangen."
> „Dem Käufer sind die Feuchtigkeitsschäden in mehreren Räumen des Hinterhauses bekannt."
> „Zur Sicherung des dem Käufer zustehenden Anspruchs auf Übertragung des Eigentums aus diesem Vertrag bewilligt der Verkäufer und beantragt der Käufer (...)"
> (*Aus einem Kaufvertrag.*)

Bei einer Übersetzung werden solche Sätze meist umkonstruiert in Subjekt – Prädikat – Objekt. Ein wichtiges Charakteristikum der deutschen Rechtssprache ist ferner die Linksattribution statt Relativsatz, z. B.:

> Dinglicher Arrest ist die Sicherung der Zwangsvollstreckung einer Geldforderung oder eines möglicherweise in eine *sich gegen das Vermögen des Schuldners richtende* Geldforderung *übergehenden* Individualanspruchs."

Dieser Satz kann, wie Isabelle Thormann (2017: 243) darlegt, auch mit einer etwas weniger komplexen Satzstruktur formuliert werden: „Dinglicher Arrest ist die

Sicherung der Zwangsvollstreckung einer Geldforderung oder eines *Individualanspruchs, der möglicherweise in eine Geldforderung übergeht, die sich gegen das Vermögen des Schuldners richtet*."

6 Formelhafte Ausdrucksweise und Gliederungssignale in Texten

Nicht zu vernachlässigen ist schließlich das Problem der juristischen Standardformeln. Standardformulierungen kommen meist in *Verträgen* und *Urteilen* vor, weniger in Gesetzestexten, welche eher durch eine Alleinstellung der Paragraphen, den Verzicht auf Pronominalisierung und die Verwendung indikativischer Präsensformen gekennzeichnet sind (Stolze 2014: 293). Daher ist auch die Textsorte beim Übersetzen zu beachten. Eine häufig zu beobachtende formelhafte Ausdrucksweise ist auf die jeweilige institutionelle Rechtstradition[9] zurückzuführen, wo vergleichbares Verhalten durch Zitieren der Gesetzestexte oder von Präzedenzurteilen immer wieder gleich versprachlicht wurde.[10] Dies dient zur Vereinfachung interner Information, weil es durch den Rückgriff auf bereits vorliegende Formulierungen und Präjudizien Gleichbleibendes indiziert und das Wiedererkennen von Verfahrensaspekten unterstützt, was für die Rechtssicherheit sehr wichtig ist.

Bei internationalen *Abkommen* und *Resolutionen* stellt die in den meisten Präambeln enthaltene deklarativ gestanzte Aufzählung von „Beweggründen" altüberliefertes Formgut im Sinne fertiger Textbausteine dar. Sie werden meist mit bestimmten herkömmlich verwendeten Partizipien, Gerundien und ähnlichen Formulierungen eingeleitet.

Solche Partizipialkonstruktionen sind etwa: *acknowledging, affirmant, reconnaissant, affirmando, aware of, constatant, conscientes, constatando, convinced, convaincus, convencidos, rappelant les dispositions*, wobei im Deutschen eher Präpositionalphrasen mit Verbalsubstantiv charakteristisch sind: *In Anerkennung,*

[9] Es gibt auch unterschiedliche Bezeichnungen: ein „*Gesuch*" ist der Antrag eines Bürgers an die Verwaltung, ein „*Ersuchen*" der Antrag einer Behörde an eine andere, z. B. bei *Rechtshilfeersuchen*.

[10] Gerne werden Formulierungen aus dem Gesetz übernommen, wie z. B. zur *Beaufsichtigungspflicht* aus dem BGB. Jemandem, dem das Essen verbrannt ist, „da er seiner Beaufsichtigungspflicht des Backofens nicht nachgekommen ist" (*Darmstädter Echo* 4.12.2017, S. 36), droht ein Ordnungswidrigkeitsverfahren.

in Anbetracht, in dem Bewusstsein, in Kenntnis, angesichts, in der Überzeugung, unter Hinweis auf die Bestimmungen.

Hier hat der Übersetzer keine Formulierungsfreiheit, jedoch die Aufgabe, solche institutionellen Sprechakte zu erkennen und zielsprachlich adäquat zu realisieren. Fachsprachliche Forschungsergebnisse, wie ein systematischer Parallelvergleich von Standardformeln in einzelnen Sprachen, wären hier hilfreich.

Typisch für Common-law-Verträge im Englischen sind auch Archaismen wie *aforesaid, herein, therefore, therein, hereby, as follows*. Diese Adverbien haben die referentielle Funktion des gliedernden Verweises innerhalb eines Absatzes, und dies ist auch wichtig, da vielfach Nebensätze und Interpunktion fehlen. Der Übersetzer sollte solche langen Paragraphen vorsichtig analysieren, um keinen Sinnverfälschungen zu erliegen. Hierbei hilft auch die formale Strukturierung der Vertragstexte im Ganzen durch Textanfänge in Großbuchstaben: *THIS ... AGREEMENT ... BETWEEN ... AND ... WHEREAS ... NOW THE PARTIES AGREE ... IN WITNESS WHEREOF*. Diese Stilistika selbst müssen in der Übersetzung nicht unbedingt formal nachgebildet werden (z. B. als „Präambel"), nur deren semantische Information soll erhalten bleiben. Bei einer Übersetzung deutsch-englisch können sie sinnvoll eingesetzt werden.

In englischen Gerichtsurteilen finden wir ebenfalls lange Nebensatzreihungen: *The court finds that (...) and that (...)*. Auch wird normalerweise zuerst der Sachverhalt beschrieben, und dann werden im Teil der Erwägungen die anwendbaren Normen zitiert und fallspezifisch interpretiert, wobei die Klagegründe nacheinander geprüft und verworfen oder bestätigt werden. Am Schluss steht der Urteilsspruch mit der Entscheidung, oft in der ersten Person Singular verfasst, wie dies in englischen Gerichtsurteilen üblich ist (Lashöfer 1992: 14-19). Ein langer Urteilstext kann dabei mit Zwischentiteln untergliedert werden, was jedoch nicht systematisch gehandhabt wird (Lashöfer 1992: 30).

Gerichtsurteile weisen allerdings interlingual stark divergierende Strukturen auf (Arntz 1992: 116), denn innerhalb der einzelnen Rechtskreise haben sich spezielle Formen des Argumentierens herausgebildet. In deutschen Urteilen steht der Urteilsspruch (Tenor) schon direkt nach dem Urteilseingang am Anfang, sodass Tatbestandserhebung und Entscheidungsgründe eine Begründung hierzu liefern.

In Urteilen der romanischen Länder wird oft die Ordnungsmäßigkeit des Verfahrens erst durch ausführliche Beschreibung der einzelnen Schritte nachgewiesen, der Urteilsspruch erscheint dann am Ende, quasi als Herleitung aus den verschiedenen Gründen und Gesetzesverweisen. Bei französischen Urteilen der ersten Instanz werden die einzelnen Urteilsargumente zum Tatbestand jeweils eingeführt mit *attendu que* und *dès lors*. Die Formel *considérant que (...)* oder abgekürzt *cons. que (...)* verweist dagegen auf eine verwaltungs- oder verfassungsrechtliche Instanz (etwa bei einem „Arrêt"). Die dazugehörigen Hinweise auf die Prozessunterlagen oder Rechtsvorschriften werden stets mit *vu (...)* (übersetzt *aufgrund*) eingeführt (Krefeld 1985: 100), auch so zum Beispiel in Zeugnisdokumenten. Die Argumente der Begründung werden meist in einem Satz aneinandergereiht und das Satzgefüge syntaktisch mit *que* beliebig lang erweitert, wobei unhandliche Nebensatzreihen entstehen. So ist ein französisches Gerichtsurteil eine kanonisierte Textsorte mit der Besonderheit, dass der gesamte Text, wie umfangreich er auch immer sein mag, in einen einzigen Satz gezwängt wird (Krefeld 1985: 60-95).

Unsere Diskussion hat gezeigt, dass funktionalstilistische Merkmale eines institutionellen Sprachgebrauchs in Texten keineswegs nur ein rhetorisches Dekor darstellen, sondern inhaltliche Relevanz haben und daher für das präzise Übersetzen wesentlich zu beachten sind.

7 Priorisierung aus der Komplexität

Es ist oben schlaglichtartig dargestellt worden, dass juristische Übersetzungstexte stets vielfältige Einzelaspekte auf den Ebenen von Semantik, Syntax und Textlinguistik aufweisen, die freilich in jedem Text zusammenwirken. Ihre Bedeutung und ihr Effekt als Übersetzungsproblem ist allerdings jeweils spezifisch verschieden, es hängt auch vom Wissen des Übersetzers ab. Dieser versucht, den vorgelegten Text angemessen zu verstehen und die besonderen Merkmale zu erkennen und in ihrer Bedeutung zu hierarchisieren. Zu diesem Zweck wendet der Rechtsübersetzer sinnvollerweise eine translatorische Doppelperspektive auf Inhalt und Form an (Stolze 2014: 351), indem er Fragen an den Text stellt: Woher kommt der Text? Welche Textsorte ist es? Welche Begrifflichkeit ist relevant? Die

Textsituierung unterstützt ein genaueres Verständnis, und die Übersetzungsstrategie beachtet dann rhetorische Kriterien. Diese Orientierungsfelder können wie folgt dargestellt werden:

Verstehen	**Textsituierung**	**Textanalyse**
	Rechtsraum	Rechtskreis, Kultur mit eigenem Rechtssystem, Land
	Rechtsordnung	Common Law/kontinentales Recht/supranationales Recht
	Rechtsgebiet	Privatrecht oder öffentliches Recht: Straf-, Zivil-, Verwaltungs-, Arbeits-, Völker-, Familienrecht, usw.
	Textsorte	Makrostruktur der Textsorte (Gesetzesparagraph, Anklageschrift, Urteil, Zeugnis, Bescheinigung, Vertrag, etc.)
	Begrifflichkeit	Abstraktionsstufen rechtlicher Begriffe und Mischung auf der Textebene
	Rechtssprache	Präzision und Anonymität im kontinentalen Recht, Individueller Stil im Common Law, Standardformeln, Sprechakte, Textgliederung
Formulieren	**Rhetorik**	**Übersetzen**
	Textfunktion	Transparenz für ausgangstextuelle Funktion, dokumentarische Übersetzung, Übersetzungsauftrag
	Terminologie	Äquivalenzstatus durch Rechtsvergleich, Übersetzungsprinzip des „gemeinsamen Minimums“, wörtliche Übersetzung, Institutionsbezeichnungen, fachsprachliche Wortbildung
	Texttyp	Urkundenart, Makrostruktur, Gliederungssignale, Tempusgebrauch, geschlechtsneutraler Ausdruck
	Sprachinformation	Sprechakte, Satzperspektive (personalisiert, passiv), funktionale Phraseologie, Kondensationsformen
	Standardisierung	Archaischer Stil, Verfahrensformeln, Floskeln

Tabelle: Orientierungsfelder für Verstehen und Formulieren

Nicht jeder Text enthält freilich alle möglichen Schwierigkeiten in gleicher Weise, dies ist vielmehr stark von der jeweiligen Textsorte abhängig. Priorisierung verlangt die Bestimmung der jeweiligen Hauptschwierigkeit in einer bestimmten Übersetzung. In der Praxis wendet der Rechtsübersetzer sowohl fachliches wie linguistisches Wissen an.

Literaturverzeichnis

Arntz, Reiner (1986): "Terminologievergleich und internationale Terminologieangleichung." In: Snell-Hornby, Mary [Hrsg.] (1986): *Übersetzungswissenschaft – Eine Neuorientierung.* Tübingen: Francke (= UTB 1415). 281 – 310.

Arntz, Reiner (1992): "Interlinguale Vergleiche von Terminologien und Fachtexten." In: Baumann, Klaus-Dieter / Kalverkämper, Hartwig [Hrsg.] (1992): *Kontrastive Fachsprachenforschung.*Tübingen: Narr. (= Forum für Fachsprachen-Forschung, 20). 108 – 122.

Bauch, Hermann J. / Cremerius, Theresa (2017): "Schutz der Berufsbezeichnungen ‚Dolmetscher' und ‚Übersetzer'." In: *MDÜ – Mitteilungen für Dolmetscher und Übersetzer* 4, 24 – 28.

Creifelds Carl (1992): *Rechtswörterbuch Deutsch.* 20. Aufl. München: Beck.

Darmstädter Echo vom 4.12.2017

De Groot, Gerard-René (1999): "Zweisprachige juristische Wörterbücher." In: Sandrini, Peter [Hrsg.] (1999): *Übersetzen von Rechtstexten. Fachkommunikation im Spannungsfeld zwischen Rechtsordnung und Sprache.* Tübingen: Narr. (= Forum für Fachsprachen-Forschung, 54). 203 – 227.

Fuchs-Khakhar, Christine (1987): *Die Verwaltungssprache zwischen dem Anspruch auf Fachsprachlichkeit und Verständlichkeit.* Tübingen: Stauffenburg.

Gläser, Rosemarie (1998): "Fachsprachen und Funktionalstile. Art. 16." In: Hoffmann, Lothar / Kalverkämper, Hartwig / Wiegand, Herbert Ernst [Hrsg.] (1998): *HSK – Fachsprachen – Language for specific purposes I.* Berlin: de Gruyter. 199 – 208.

Krefeld, Thomas (1985): *Das französische Gerichtsurteil in linguistischer Sicht: Zwischen Fach- und Standessprache*. Frankfurt: Lang.

Lashöfer, Jutta (1992): *Zum Stilwandel in richterlichen Entscheidungen.* Münster / New York: Waxmann.

Šarčević, Susan (1997): *New Approach to Legal Translation*. The Hague / London / Boston: Kluwer Law International.

Šarčević, Susan (1999): "Das Übersetzen normativer Rechtstexte." In: Sandrini, Peter [Hrsg.] (1999): *Übersetzen von Rechtstexten. Fachkommunikation im Spannungsfeld zwischen Rechtsordnung und Sprache*. Tübingen: Narr. (= Forum für Fachsprachen-Forschung, 54), 103 – 118.

Schlüter-Ellner, Corinna (2017): "Scheidung in deutsch- und spanischsprachigen Ländern – eine rechtsvergleichende Übersicht." In: Hoffmann, Roland / Keßler, Norma / Mallon, Denise [Hrsg.] (2017): *Sprache und Recht. Übersetzer und Dolmetscher als Mittler zwischen Sprachen und Rechtssystemen.* Berlin: BDÜ Fachverlag. 262 – 269.

Searle, John R. (1976): "A Taxonomy of Illocutionary Acts." In: *Language in Society* 5, 1 – 23.

Stolze, Radegundis (2014): *Praxishandbuch Urkundenübersetzung. Fertigkeiten, Terminologie, Rechtssprache.* Tübingen: Stauffenburg.

Stolze, Radegundis (2015): *Hermeneutische Übersetzungskompetenz. Grundlagen und Didaktik.* Berlin: Frank & Timme. (= TRANSÜD. Arbeiten zur Theorie und Praxis des Übersetzens und Dolmetschens, 70).

Thormann, Isabelle (2017): "Juristische Personen, Verfahrensrecht, Linksattribution statt Relativsatz – Wer braucht denn sowas? Einblick in die Inhalte von Rechtssprache-Kursen." In: Hoffmann, Roland / Keßler, Norma / Mallon, Denise [Hrsg.] (2017): *Sprache und Recht. Übersetzer und Dolmetscher als Mittler zwischen Sprachen und Rechtssystemen.* Berlin: BDÜ Fachverlag. 240 – 244.

Trosborg, Anna (1994): "'Acts' in contracts: Some guidelines for translation." In: Snell-Hornby, Mary / Pöchhacker, Franz / Kaindl, Klaus [Eds] (1994): *Translation Studies: An Interdiscipline.* Amsterdam / Philadelphia: Benjamins. 309 – 318.

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