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THE TRANSLATION OF LEGAL TEXTS: INTERLINGUISTIC AND INTRALINGUISTIC PERSPECTIVES

Abstract

The paper takes into consideration some aspects of the process of translation of legal texts, examined both from an interlinguistic and an intralinguistic perspective. As regards interlingual translation, specific linguistic constraints are discussed, as well as influences deriving from different drafting traditions and legal cultures. The paper also takes into consideration the phenomenon of intralinguistic translation with special attention devoted to the strategies of popularization often adopted in this process. The analysis carried out shows the complexity of the translation of legal texts, 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 specialized knowledge.

Key words

translation, legal texts, interlinguistic translation, intralinguistic translation, popularization.

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Sažetak

Rad se bavi pojedinim aspektima procesa prevođenja pravnih tekstova, koji se razmatraju i sa interlingvalnog i sa intralingvalnog stanovišta. Kad je reč o interlingvalnom prevođenju, bavimo se određenim jezičkim ograničenjima, kao i uticajima koji proističu iz različitih pravničkih tradicija i kultura. U radu se razmatra i fenomen intralingvalnog prevođenja, a posebna pažnja se posvećuje strategijama popularizacije u ovom procesu. Sprovedena analiza ukazuje na kompleksnost prevođenja pravnih tekstova, što je izrazito uslovljeno faktorima koji ne zavise samo od različitih kulturnih, jezičkih i pravnih okruženja u kojima se prevođenje odvija, već i od ciljnih korisnika sa sopstvenom pravnom kulturom i specijalizovanim znanjem.

Ključne reči

prevođenje, pravni tekstovi, interlingvalno prevođenje, intralingvalno prevođenje, popularizacija.

1. THE TRANSLATION OF LEGAL TEXTS

Legal translation has been in great demand in the last few decades around the world owing to globalization and increased contact and exchange between people and states (Gotti & Šarčević, 2006). Indeed, many of the texts in use at a local level nowadays are the result of a process of translation of more general documents formulated at an international level. This is the consequence of the fact that in the context of co-operation and collaboration at an international level, law too is fast assuming an international perspective rather than remaining a purely domestic concern. This phenomenon may have relevant consequences in an international context, which often involves documents written in one language but incorporating statutes and regulations issued by different countries.

The complexity of the interlinguistic rendering of a legal text is particularly due to the fact that the translation from one language to another is generally bijural, due to the differences in the source and the target legal and linguistic systems. This is the reason why a legal translation is mainly assessed on the basis of its adequacy to its communicative purpose in the target culture. This is also valid in many multilingual (but unijural) countries, in which all translations of a statute have the same authentic status and are considered parallel texts. Thus, the principle of legal equivalence (Beaupré, 1986) has emerged, which underlines the consideration of the legal effects that a translated text will have in the target culture. Šarčević (2000) emphasizes the need for legal translation not only of

achieving equal effect and equal meaning but also of preserving the original intent of the legal text.

Although legal documents in all languages address similar issues, they do so in distinctive ways, because of the different languages in which they are constructed and the cultural differences of the societies in question and of their legal systems. A legal translation is particularly challenging not only because of the culture-laden nature of legal discourse, but also because of a need for formal correspondence between equally authoritative versions of the same text. As Simms observes,

> […] the law must be seen to be *the law*, the same in all cases, regardless of the language in which it is expressed. This means that *both literality and functionality* are demanded of the translation: literality, because accuracy of semantic substitution is what lends the law credibility as a single entity; and functionality, since the law must (by definition of justice) perform the same function for all those who live under it. But […] literality and functionality tend to pull in opposite directions. (Simms, 1997: 19, emphasis in the original)

Legal translation is a very complex process, as it relies on many factors, the most important being linguistic and legal interpretation of the source legal text as a whole and its rendering in an appropriate equivalent text in another language. As Chromá rightly asserts:

> Translating legal texts means transferring legal information from one language and culture into another language and culture, considering the differences in the legal systems and the purpose of translation. […] Since the legal information contained in the source text (ST) is often vague, indefinite, and may also be ambiguous, it should be interpreted within the source language (SL) first, the interpreted information translated into the target language (TL), and, finally, the translated information conformed to the purpose of translation and genre of the target text (TT). (Chromá, 2007: 198-199)

Therefore the translator is required to undertake a process of conceptual analysis by means of which he is able to identify and assess the most important differences between the source and target legal systems as they are expressed in the text to be translated. This conceptual analysis will enable the translator to find the most suitable equivalent in the target language that will best serve the purpose of translation.

2. LINGUISTIC CONSTRAINTS

The lack of correspondence of specific features from different linguistic systems may create considerable problems in the formulation and interpretation of legal texts. For example, two linguistic features stand out in Chinese when compared with European languages:

1. The absence of inflection (e.g. plural = singular nouns / verbs)
2. The possible omission of grammatically significant indicators (e.g. definite / indefinite articles)

Therefore, when translating Chinese texts into English, important decisions have to be made as regards the articles to be inserted and whether nouns are to be rendered by a singular or plural form. Cao (2008: 114) gives the following example of a clause, which literally translated from Chinese would look like this: *cause serious environmental pollution accident*. This may be rendered in English in two different ways:

- → cause a serious environmental pollution accident
- → cause serious environmental pollution accidents

The adoption of either of these formulations is not at all neutral as it would imply a different kind of responsibility on the part of the offender: does a person have to cause more than one such accident to be criminally liable or just one accident is sufficient? The Chinese legal authorities are aware of this problem and have tried to cope with it by suggesting possible solutions. For example, section 7(2) of the Interpretation and General Clauses Ordinance (1997), Cap. 1 of the Laws of Hong Kong provides that "[w]ords and expressions in the singular include the plural and words and expressions in the plural include the singular". However, this does not totally solve the problem as this interpretation does not imply that the singular form of a word has exactly the same meaning of the plural form of that word, as in some cases the words and expressions in the singular do not include the plural, and vice versa. The choice of either a singular or a plural rendering is often based on the interpretation of the context. So it is not infrequent to find that the same Chinese word is translated in different ways in the same translated text. For example, the same Chinese word *renshi* is rendered as *persons* (e.g. "persons named", section 3(1) Cap. 159D) and *person* (e.g. "person with a disability", section 2(7) Cap. 487) in Bilingual Laws Information Systems. This alternation often depends on the translator's personal choice, and even suggestions coming from legal experts (such as the one given below) do not prove to be totally safe:

> It follows that the mere fact that the reading of words in a section suggests an emphasis on singularity as opposed to plurality is not enough to exclude

> plurality. Words in the singular will include the plural unless contrary intention appears. But in considering whether a contrary intention appears there need be no confinement of attention to any one particular section of an Act. It must be appropriate to consider the section in its setting in the legislation and furthermore to consider the substance and tenor of the legislation as a whole. (Hong Kong Privy Council, as cited in Cheng, Sin, & Cheng, 2014: 29)

Another translation problem caused by the linguistic structures of Chinese is that words in a noun phrase can be linked without using a conjunction such as the English *and* or *or*. This may create structural ambiguity. See, for example, the following literal translation from Chinese (Cao, 2008: 115): *resulting in serious loss to public private property*. Two interpretations of these words may be given, with very different legal consequences:

- → to public and private property
- → to public or private property

Another example of ambiguity is provided by the following words: *personal injury death* (Cao, 2008: 115), which could be rendered as *personal injury and death* or *personal injury or death.* This double possibility of translation is relevant when deciding whether death must be involved in committing the offence.

The different structural features of the source and target languages may also induce the translator to alter the phrasing and word order of the original formulation. For example, the alterations visible in the following quotations may be due to the syntactic differentiations existing between Italian and English:

(1) *manifesta infondatezza* [Adjective + Noun] *[della richiesta]* > *manifestly ill-founded* [Adverb + Adjective] *request*

(2) *grave o irreparabile* [Adjectives] *pregiudizio alle indagini* > *seriously or irrecoverably* [Adverbs] *compromised investigations.* (Gialuz, Lupária, & Scarpa, 2014: 80)

3. DRAFTING TRADITIONS

Important elements of a particular legal system are its drafting tradition and its stylistic conventions. These may influence legal discourse significantly, as can be seen in the differentiation between civil law and common law texts: the former are mainly characterized by generality, while the latter prefer particularity (Driedger, 1982). This stylistic difference derives from a basic conceptual differentiation underlying the two legal systems: in the civil law system the judiciary is entrusted with the task of applying the general principles outlined in the civil code to specific real-life situations; this requirement therefore privileges stylistic choices such as

generality of expression. The common law system, instead, is based on the principle of precedence, by means of which the decisions taken by one judge become binding on all subsequent similar cases; this system therefore regards certainty of expression as the most valued quality in legal drafting (Tiersma, 1999). This differentiation between the two legal systems implies that the rendering of a text from one system to the other requires a procedure that does not correspond to mere translation but to a more complex process of 'legal transposition' (Šarčević, 2000). An evident differentiation in drafting conventions can be seen, for example, in the way juridical obligation is signalled. This concept is traditionally expressed by modal *shall* in English legal discourse:

(3) 1. States Parties *shall* respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties *shall* take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. (CRC[1] 2, emphasis added)

In other languages (e.g. French and Italian) instead, legal discourse often adopts a present indicative to state legal provisions, thus emphasizing the actuality and applicability of the legal provision and also implying that the law draws its force from the natural order of things rather than expressing an order imposed by human agents:

(4) 1. Gli Stati parti *si impegnano* a rispettare i diritti enunciati nella presente Convenzione ed a garantirli ad ogni fanciullo che dipende dalla loro giurisdizione, senza distinzione di sorta ed a prescindere da ogni considerazione di razza, di colore, di sesso, di lingua, di religione, di opinione politica o altra del fanciullo o dei suoi genitori o rappresentanti legali, dalla loro origine nazionale, etnica o sociale, dalla loro situazione finanziaria, dalla loro incapacità, dalla loro nascita o da ogni altra circostanza.
2. Gli Stati parti *adottano* tutti i provvedimenti appropriati affinché il fanciullo sia effettivamente tutelato contro ogni forma di discriminazione o di sanzione motivate dalla condizione sociale, dalle attività, opinioni professate o convinzioni dei suoi genitori, dei suoi rappresentanti legali o dei suoi familiari. (CDF[2] 2, emphasis added)

The great concern present in legal texts to avoid ambiguity and guarantee maximum precision of interpretation explains the high degree of conservatism typical of the law. Fear that new terms may lead to ambiguity favours the

[1] CRC = UN's *Convention of the Rights of the Child* (1989), available at http://www.unicef.org/crc.
[2] CDF= *Convenzione sui diritti del fanciullo*, available at http://www.unicef.it/Allegati/Convenzione_diritti_infanzia_1.pdf.

permanence of traditional linguistic traits, which are preserved even when they disappear from general language. Old formulae are preferred to newly-coined words because of their centuries-old history and highly codified, universally accepted interpretations. These 'frozen' patterns of language – which are sometimes referred to as 'routines' (Hatim & Mason, 1997) – allow little variation in form and can only be rendered by means of similar routines in the target language, as can be seen in the following examples: *salvo che la legge disponga altrimenti* > *unless otherwise provided by law* / *salvo quanto previsto dall'art. […]* > *without prejudice to the provision of Article […]* (Gialuz et al., 2014: 77).

Another case of divergence in drafting traditions may be seen in the high level of redundancy which characterizes some legal languages, generally due to the pleonastic use of lexical items. For example, English legal drafters often employ two interchangeable terms for the same concept: e.g. *new and novel*, *false and untrue*, *made and signed*, *terms and conditions*, *able and willing*. This phenomenon is specific to the English tradition, so it may cause some problems to translators into other languages that are not so richly equipped with synonymic terms. This is the case, for example, of Czech law, in which no such concept as expressed by the quasi-doublet of *execute and deliver* exists (Chromá, 2014).

4. LEGAL TERMINOLOGY

Legal terminology is so culture-bound (the reasons being at the same time historical, sociological, political and jurisprudential) that a satisfactory translation of all the legal terms of a text from one context to another is at times impossible. David underlines this difficulty with a few examples:

> To translate into English technical words used by lawyers in France, in Spain, or in Germany is in many cases an impossible task, and conversely there are no words in the languages of the continent to express the most elementary notions of English law. The words *common law* and *equity* are the best examples thereof; we have to keep the English words […] because no words in French or in any other language are adequate to convey the meaning of these words, clearly linked as they are to the specific history of English law alone. (David, 1980: 39)

Even the interpretation of such common legal terms as *contract*, *consumer* and *damage* may differ from country to country. As regards the latter term, Heutger (2008) points out that the type of damage which qualifies for compensation in one jurisdiction is not necessarily recognized as such in another, even in legal systems that are closely related and share the same language, such as Austria and Germany. Another example provided by Heutger of a common term having various meanings is *guarantee* / *garantie* / *garanzia* / *Garantie*, a term of frequent usage in many European countries, which may however have several interpretations:

> warranty, legal rights, extra rights of a buyer in case of defective goods added to the buyer's legal rights, a security, a pure consumer guarantee, or a confirmation that something will not change. (Heutger, 2008: 9-10)

The adoption of a particular term instead of another may give rise to ambiguity and misinterpretation. Several examples of this are given by Fletcher (1999), who examines the translation into various languages of the English text of the European Convention on Human Rights. For instance, the translation provided for the expression *fair and regular trial* into *juicio justo y imparcial* (Spanish) and *procès juste et équitable* (French) is not satisfactory, as the use of the non-equivalent adjectives *regular* (English) / *imparcial* (Spanish) / *équitable* (French) can easily show. The same could be said for the rendering of the concept of *reasonableness*, basic in common law systems, where expressions such as *reasonable steps*, *reasonable measures*, *reasonable person* and *proof beyond a reasonable doubt* frequently occur. This concept, instead, when translated into languages spoken in countries adopting a civil law system is considered too vague and its rendering as *ragionevole*, *raisonnable* or *vernünftig* often gives rise to criticism and dissatisfaction.

Other excellent examples of translation discrepancies can easily be found in texts relating to the process of building a common European legal framework. For example, translators into English find it difficult to express such culturally-specific French collocations as *acteurs sociaux, acteurs économiques, acteurs institutionnels, acteurs publics, acteurs politiques*, which have no direct equivalent in the target language (Salmasi, 2003: 117), and they sometimes transliterate terms or create calques from one language into another, relying on the false premise of a very close relationship between similar lexemes in different languages (see the examples of *transmettre* / *transmit* and *prévoir* / *foresee* in Seymour, 2002). Another case of translation divergence which implies important conceptual differentiations is the following, which occurs in the Preamble to the UN's *Convention of the Rights of the Child* (1989) and its Italian translation:

(5) Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in *fundamental human rights* and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom […]. (CRC Preamble, emphasis added)

Tenendo presente che i popoli delle Nazioni Unite hanno ribadito nello Statuto la loro fede nei *diritti fondamentali dell'uomo* e nella dignità e nel valore della persona umana ed hanno risolto di favorire il progresso sociale e di instaurare migliori condizioni di vita in una maggiore libertà […]. (CDF Preambolo, emphasis added)

The general concept of 'human rights' is here translated as *diritti dell'uomo* [man's rights] where the reference to the masculine form may arouse the wrong inference

that the rights mentioned in the text only refer to male children and do not apply to female ones.

Sometimes terms from different legal contexts are only partially equivalent, as they cover a mere part of the meaning of the 'corresponding' term and are thus not to be considered fully interchangeable. This is the case, for example, of the French term *droit des obligations*, which – although it is often rendered as *contract law* in English – indeed covers a broader semantic area regarding not only contract law, but also restitution law and the law of torts (Mac Aodha, 2014). This is the reason why the search for a functional equivalent requires a certain amount of legal knowledge of both the source and the target legal systems in order to assess whether the functions of a terminological unit in the source legal system and that in the target text are identical. Chromá (2007) illustrates this point by means of three examples:

(6) The Czech terminological phrase *ve znění pozdějších předpisů* should be translated into English with the phrase 'as amended' having the same function in Anglo-American legislation as the Czech phrase in Czech legislation; semantically, the explicit Czech phrase is replaced by the implicit participle phrase in English. The English term 'arraignment' is usually translated into Czech as *zahájení hlavního líčení* (literally 'commencement of criminal trial') since there is no pleading at the beginning of the trial under Czech law; however, the stage of procedure is identical; the concrete English term is replaced with a generalizing Czech phrase. The Czech term *hmotná odpovědnost* (to be found in employment law) should be translated into English as 'liability to indemnify', i.e. the cause expressed in the Czech term is replaced with the consequence determined by the English term. (Chromá, 2007: 215-216).

5. TRANSLATION STRATEGIES

As was seen above, similar terms do not always refer to the same principles or standards in different jurisdictions. A good example is the requirement of *good faith* as a criterion for assessing the (un)fair character of consumer contracts. The concept is also present in most continental civil law systems: e.g. *bonne foi* or *buona fede*. However,

> "although the principle of good faith is derived from common sources in Roman law, there are significant differences in how the notion is interpreted by national case-law and legal scholars even in the civil law countries […]. On the other hand, English contract law does not recognize a general legal requirement of good faith, as a result of which the UK was 'forced' to introduce the concept in its national transposing statute for the purpose of the Directive [93/13/EECC]". (Šarčević, 2010: 29-30).

When it is impossible to single out an exactly corresponding concept in the target language that is immediately insertable in the translation, the translator may decide to recur to a functional equivalent (Nida & Taber, 1982). A relevant example is given by Garzone and Catenaccio (2013) as regards the word *arrondissement,* which refers to an administrative area in many French-speaking countries. The word used in the English version of the Montreal Charter of Rights and Responsibilities is *borough.* Although this word has a variable meaning across the English-speaking world, in the case of Montreal it is perfectly equivalent to *arrondissement* because in the Canadian system the correspondence between the two words has been conventionally established. In the Italian version, instead, the expression used is *zona amministrativa*, as this is the term commonly used to refer to a city's administrative area.

In cases in which there is no synonymic equivalent in the two languages involved, the translator may decide to coin a calque, thus filling a semantic gap in the target language. This is the case, for instance, of the expression *minorités visibles* or *visible minorities*, strictly connected with the Canadian political tradition, which – as aptly pointed out by Garzone and Catenaccio (2013) – is defined in the Canadian *Employment Equity Act 1995* (last amended on 29/06/2012) as "persons, other than Aboriginal people, who are non-Caucasian in race or non-white in colour", in contrast with *invisible minorities* which are determined by invisible traits, such as language or nationality. This expression was transferred into the Italian translation of Canadian texts as *minoranze visibili*, and has then spread also in EU documents to refer to minorities and empowerment.

However, recourse to a calque is not always a viable solution. An example is provided by Garzone and Catenaccio (2013) with the French word *âgism*, a term which is also present in American English as *ageism*, originally referring to prejudice against older adults and now used to refer to all forms of discrimination based on age. While these two words (*âgism* and *ageism*) are used in the French and English versions of the Montreal Charter of Rights and Responsibilities, the Italian version recurs to a periphrasis (*la discriminazione per età*) as the English-derived calque *ageismo* would not have been easy to understand for Italians as it has not yet appeared in dictionaries of the Italian language.

There are hidden problems and complexity even when translating some seemingly simple words. As mentioned by Beaupré (1986), in a Canadian case (*Olavarria v Minister of Manpower and Immigration* [1973]) the Court was asked to decide whether the word 'counsel' included non-lawyers. Indeed, the French version of the relevant act referred to a stricter right to an *avocat*. Eventually, the Court decided that the word 'counsel' in the English language has a sense that is wide enough to include an adviser whether or not he is a lawyer, and that therefore in the Act in question the word had been used in this wider sense. A similar case is reported by Cheng, Sin, and Cheng (2014) as regards the translation into Chinese of the English terms *barrister* and *solicitor*:

> Until 1989, the Chinese version for 'barrister' had been *da lvshi* (literal back-translation: 'big lawyer') and the Chinese version for 'solicitor' *lvshi* (literal back-translation: 'lawyer'). BLAC, in the discussion during 1989-1990, suggested *songwu Ivshi* ('litigation affairs lawyer') for 'barrister' and *shiwu lvshi* ('general affairs lawyer') for 'solicitor'. But the bar association, which is the association of barristers, was unhappy about the proposed official translation and was seeking to have the old version retained (Sung and Lee 1991: 23). After years of dispute, Legislative Council and the Bilingual Laws Information System sustained by the Department of Justice reverted to the very first version, that is, *da lvshi* for 'barrister' and *lvshi* for 'solicitor', which is the effective and authentic version in present Hong Kong. However, the disputes and misunderstandings arising out of the translation have gone on. Many people believe that barristers have a higher degree of qualification and a higher status in society even though that is not necessarily true (Cheung 1997: 332). (Cheng et al., 2014: 30)

An interesting lexical issue that exemplifies how ideological problems may affect translation decisions regards the rendering of gender-related terms. Garzone and Catenaccio (2013) discuss this issue when they comment on the translation of the expression *les citoyennes et les citoyens*, recurring in the Montreal Charter of Rights and Responsibilities. According to these scholars, the use of both feminine and masculine nouns indicates the drafter's clear intention to avoid recourse to the masculine in order to highlight the mention of women as independent subjects. As English does not have two gender-specific words for this concept, the translator decided to use the neutral term *citizen*. Although it would not have been impossible to translate *les citoyennes et les citoyens* as *female and male citizens*, the translator probably considered this choice too unnatural and thus avoided it. This is not the case of the Italian version, which presents *le cittadine e i cittadini* as the two gender-related words exist in this language.

At times some explicitation strategies have to be adopted, particularly in those cases in which relevant cultural distances exist between the two juridical systems. This is the case, for example, of the translation into English of the Italian *Codice di Procedura Penale* (Gialuz et al., 2014) in the making of which the translators have disambiguated the polysemy of several Italian terms by providing different words in English. Here are a few examples:

(7) - *camera di consiglio*, translated as *in chambers* to mean 'simplified proceedings which shall take place without presence of the audience', but as *in closed session* when referring instead to the physical place where the decision of the court is delivered; […]
- *fatto/fatti*, translated as either *criminal act, alleged offence, event, fact* or *offence* depending on its specific meaning in the context of occurrence; […]
- the verb *pubblicare*, translated as *publish* when meaning 'print' […] but as *deliver* when meaning 'make public, express in words' […];

- the verb *procedere* (when referred to the judge), translated either as *order* […] or as *decide on* + the specification *the aforementioned issue* (or a repetition) […]. (Gialuz et al., 2014: 71-72)

In the translation of the same text, explicitation strategies also became necessary whenever there was a need to disambiguate potentially ambiguous pronouns or gender-neutral nouns. An example of the former case is the following, where the ambiguity of the pronoun *stesso* was made explicit through the repetition of the noun *pardon*:

(8) Il pubblico ministero computa altresì il periodo di pena detentiva espiata per un reato diverso, quando la relativa condanna è stata revocata, quando per il reato è stata concessa amnistia o quando è stato concesso indulto, nei limiti dello *stesso*.

The public prosecutor shall also calculate the period of custodial penalty which has been served for a different offence, if the related conviction has been revoked, if amnesty and pardon have been granted for the offence, within the limits of the *pardon*. (Gialuz et al., 2014: 61, emphasis in the original)

Another type of strategy that translators may adopt is to change the syntactic structure of a clause in order to facilitate the decoding of the target text. Such strategy may lead them to break a long sentence into two separate sentences or to alter the syntactic structure of a particular clause. In the following quotation, for example, a parenthetical restrictive clause interrupting the main sentence of the Italian text has been substituted with a subordinate *if*-clause in the English text:

(9) Il pubblico ministero, *quando non propone impugnazione*, provvede con decreto motivato da notificare al richiedente.

If the Public Prosecutor *does not submit an application for appellate remedy*, he shall issue a reasoned decree to be served on the applicant. (Gialuz et al., 2014: 66, emphasis in the original).

6. INTRALINGUAL TRANSLATION

The information process established by popularization has often been compared to that of translation (Liao, 2013). Both of these involve the transformation of a source text into a derived text. It is impossible to conceptualize the target of a translation without a source and, similarly, every popularization implies the presence of a specialized text. The popularization process is a kind of redrafting that does not alter the disciplinary content – object of the transaction – as much as its language, which needs to be remodelled to suit a new target audience. In the process, information is transferred linguistically in a way similar to periphrasis or to intralingual translation. Indeed, intralingual translation consists in replacing a

verbal text with another one belonging to the same language (Jakobson, 1959). The similarity between intralingual translation and the rewording of concepts found in popularization is also favoured by the widespread use of metaphor and simile in popularizing processes. Both techniques establish a direct link with the public's general knowledge, which makes the content easier to identify.

A trial by jury represents a typical example of the knowledge asymmetries that may exist among the various participants, some of whom are legal experts and some non-experts. The former category comprises professionals such as lawyers and judges, while jurors and witnesses usually have a non-legal background. As jurors and witnesses play a relevant role in a trial, it is of the utmost importance that they should be able to understand all the communication going on in court, including the legal terms used and their implied concepts. As Anesa's (2012) analysis has shown, there are various moments in which both the judge and the lawyers devote time and efforts to explain the legal jargon the jurors come across.

One of such moments is at the beginning of the trial, when the jury is instructed about the various procedures used in court. The great importance of this phase has often been underlined, as misunderstanding of legal principles may have a detrimental effect on the outcome of the trial. This explains the vast literature related to the formulation of jury instructions, aiming in particular at the improvement of their comprehensibility (Dumas, 2000; Ellsworth & Reifman, 2000; Heffer, 2008; Tiersma, 2010). As the understanding of these instructions is crucial, the judge often offers to supply further information in case of doubt or incomprehension:

(10) THE COURT: The next phase of the trial is another orientation. This orientation, however, is a little more specific, because it now deals with some of the dos and don'ts of this new job that you have. Like everything else in this state, this has been reduced to a script for me to read. When you realize that this script was prepared by lawyers and judges, it will soon become very apparent to you that this is not only not the most entertaining material you've ever heard, but, in addition to that, it might sound confusing and a little convoluted. Don't worry about it. We're going to be talking about very basic concepts, and I will try to interject where all the legalese is some common-sense approach to this. (Anesa, 2012: 131)

As can be seen, in offering to popularize the legal jargon, the judge adopts a kind of language which is very different from the very formal style typical of his role. The language he uses is simple and the tone is conversational and humorous, comprising sarcastic remarks ("Like everything else in this state, this has been reduced to a script for me to read") and euphemistic comments ("this is not […] the most entertaining material you've ever heard"). The judge is aware of performing a popularizing task and likens his present function to that of a law lecturer:

(11) THE COURT: (…) and so I've never personally taught any law school class, but I'm going to give you a judge's version of legalese 101. Whenever … we are ruled, the lawyers and I are ruled by what we call objections. Basically the ground rules for how

> a trial is conducted. And they are rules of evidence. And from time to time a question might be asked and the one lawyer will think that the answer to that question might be objectionable for some reason. So that lawyer is going to say objection and will give me a reason why I should either sustain or overrule the objection. Now, the reason I'm basically here is sort of the referee of this match that's going on. So my job is to make the call. If I overrule the objection, what that means is you're going to hear the question and you will hear the answer. (Anesa, 2012: 137)

As can be seen in the quotation above, to make his words more understandable the judge uses figurative language, comparing his role to that of a referee and using sports expressions ("I'm basically here […] sort of the referee of this match that's going on. So my job is to make the call"). Furthermore, the judge provides definitions in simple language, usually recurring to everyday paraphrases:

(12) THE COURT: So overruled means that you get to hear the question and the answer. Sustained means you'll hear the question but no answer. Don't dwell on it, worry about it, or hold it against one or the other lawyers. They're doing their jobs. In other words, that's just part of the process by which we control the trial. (Anesa, 2012: 138)

Also during the trial, the judge inserts explanations of procedures or legal terms whenever he deems it necessary to facilitate the jurors' work. Again in doing this he adopts a colloquial tone and a figurative language rich in sports metaphors:

(13) THE COURT: Ladies and gentlemen, since this is the first of probably many of these sidebar conferences, I think we ought to talk about that. The purpose of a sidebar conference is very simple. I have a choice when the lawyers want to talk to me before something that doesn't directly deal with you. And that is, I can have all of you leave the courtroom or I can make Ophelia here come over here and sit on a step, and we have a little football huddle and we discuss it. Now, don't strain an ear trying to hear what it is we're talking about, because if it's meant for you to hear you're going to hear it, and if you don't hear it, you weren't going to hear it anyway. (Anesa, 2012: 139)

This popularizing task is often performed by lawyers too, who are anxious to make sure that the legal terms employed are understood correctly. In fulfilling this function, they too recur to figurative language and analogies with personal experiences. For example, to explain the difference between 'simple negligence' and 'gross negligence' a lawyer might provide the following exemplification based on an everyday situation: "Simple negligence occurs when you are eating a plate of beans and you spill a bean on your tie. When you spill a whole knifeful of beans on your tie, that's gross negligence" (as cited in Aron, Fast, & Klein, 1996: 12). Analogies and exemplifications are often used by lawyers to explain abstract legal principles and to make elusive legal concepts more easily understandable. To increase its effectiveness, figurative language is often used in a personalized way, commonly involving the jurors themselves, as can be seen in the following explanation of the notions of 'actual possession' and 'constructive possession':

(14) MR. DUSEK: And you heard there was actual possession and constructive possession. You are in possession of the badge that's on you now. You have active control of that. These water bottles in front of you, you have constructive possession of them. You have control over them, but you do not have active control of them. It's not in your possession right now. (Anesa, 2012: 177)

Particularly in the concluding phase of the trial, when the attorneys in their closing arguments are trying to convince the jury of their own theses, the explanation of terms is sometimes made more vivid and personal by reference to a particular tragic moment in one's life. This can be seen in the following quotation, where the defendant's lawyer is trying to make sure that the concepts of 'proof beyond reasonable doubt' and 'abiding conviction' are perfectly clear to the jurors:

(15) MR. FELDMAN: And you have to take those words and feel whether you're so convinced that the conviction will never, never go away. It's so strong that it's the kind of belief you have that if you've got a loved one on a respirator, a terrible decision to have to make, somebody dying, it's on you to make the decision to pull the plug. Only with an abiding conviction would you do so. (Anesa, 2012: 190-191)

The use of striking figures of speech such as the ones seen here also has a very important argumentative function and this explains why they are so frequently and skilfully employed by lawyers in their speeches not only to clarify terms and concepts but also to persuade the jury.

7. CONCLUSION

As can be seen from the investigation carried out above, the translation of legal texts is a very complex procedure, greatly conditioned by specific factors strictly depending on the different cultural, linguistic and legal environments in which it takes place. The discussion of certain linguistic and textual aspects of legal texts carried out in this paper has provided interesting insights into how translation procedures may be influenced by different target users with their own legal culture and drafting traditions.

This process of adaptation to audiences having different degrees of legal competence can be seen at work also in intralinguistic contexts, as shown by the analysis carried out in this paper as regards the popularization strategies adopted in jury trials. In this case, the communication of knowledge implies important changes in the cognitive dimension, deriving from the interaction between specialized knowledge and its popularization. This explains the adoption of carefully-chosen strategies of knowledge management on the part of the various professionals involved, which presupposes important effects in terms of

understanding of the legal procedures and of the interpretation of the criminal facts and intentions being discussed at the trial.

The analysis reported here also highlights the need for a better understanding of linguistic and textual phenomena closely linked to a cross-cultural perspective. Indeed, translations of legal texts have often been shown to display significant traces of the adjustment and adaptation of the source documents to the legal language and culture of the target users. The rendering of the final text is the result of conscious and deliberate decisions taken by translators, thus confirming the important conditioning role that local constraints play in the translation of legal texts. As globalization trends intensify, the role of national legal systems is likely to be diminished by transnational legal frameworks. However, contrary to the general expectation, legal translation has not been simplified, as a complex scheme of reference has become necessary that includes both legal and linguistic competence on various levels.

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