

Ingrid Simonnæs/Marita Kristiansen (eds.)
Legal Translation



Forum für Fachsprachen-Forschung

Hartwig Kalverkämper (Hg.)

in Zusammenarbeit mit Klaus-Dieter Baumann

Band 149

Ingrid Simonnæs / Marita Kristiansen (eds.)

Legal Translation

Current Issues and Challenges
in Research, Methods and Applications

FFrank & Timme
Verlag für wissenschaftliche Literatur

ISBN 978-3-7329-0366-5
ISBN E-Book 978-3-7329-9662-9
ISSN 0939-8945

© Frank & Timme GmbH Verlag für wissenschaftliche Literatur
Berlin 2019. Alle Rechte vorbehalten.

Das Werk einschließlich aller Teile ist urheberrechtlich geschützt.
Jede Verwertung außerhalb der engen Grenzen des Urheberrechts-
gesetzes ist ohne Zustimmung des Verlags unzulässig und strafbar.
Das gilt insbesondere für Vervielfältigungen, Übersetzungen,
Mikroverfilmungen und die Einspeicherung und Verarbeitung in
elektronischen Systemen.

Herstellung durch Frank & Timme GmbH,
Wittelsbacherstraße 27a, 10707 Berlin.
Printed in Germany.
Gedruckt auf säurefreiem, alterungsbeständigem Papier.

www.frank-timme.de

Table of contents

Acknowledgements..... 9

Introduction 11

INGRID SIMONNÆS AND MARITA KRISTIANSEN

Part I Legal translation in an EU and international setting

1. Theoretical and methodological challenges
in researching EU legal translation 25

LUCJA BIEL

2. Das Europäische Referenzsprachenmodell:
Rechtspraktische Übersetzung, Brexit und europäische Identität 41

KARIN LUTTERMANN UND CLAUS LUTTERMANN

3. Legal transplant and legal translation:
how language impacts on the reception of foreign legal models..... 65

BARBARA POZZO

4. Terminological innovation and harmonization at international organizations:
Can too many cooks spoil the broth? 87

FERNANDO PRIETO RAMOS AND ALBERT MORALES MORENO

Part II Interdisciplinary approaches to legal translation

5. Terminologische Herausforderungen bei Gesetzesänderungen
am Beispiel des Familienrechts..... 113

ELENA CHIOCCHETTI, FLAVIA DE CAMILLIS UND ISABELLA STANIZZI

6. Beyond Descriptive Legal Translation Studies:
towards engaged research, towards critical practices 129

ROSARIO MARTÍN RUANO

7. Discursive constraints in legal translation:
a genre-based analytical framework..... 155

GIANLUCA PONTRANDOLFO

Part III Recently adopted translation training curricula and didactics

8. Future-proofing legal translation:
a paradigm shift for an exponential era..... 187

ANABEL BORJA ALBI AND ROBERT MARTÍNEZ-CARRASCO

9. Collocations, para-synonymie et polysémie:
incertitudes en traduction juridique..... 207

CHRISTINA DECHAMPS

10. Rechtstexte unter der Lupe: Lesen Übersetzer anders als Juristen?
Eine empirische Untersuchung der Rezeption von Textstrukturmarkern
in der institutionalisierten Textsorte
des französischen Kassationsgerichtsurteils 221

CORNELIA GRIEBEL

11. Specifying Levels of (C)overtness in Legal Translation Briefs 243

JULIETTE SCOTT

12. Training turnkey legal translators: fiction or fact? 263

CATHERINE WAY

13. Zum Nutzen von ausgangssprachlichen Korpora
beim Verstehen und Übersetzen von Rechtstexten..... 279

EVA WIESMANN

Part IV Specific features of legal language

14. Dilemmas in Translating Legal Terms between Chinese and English 301

DEBORAH CAO

15. Emotions in Normative Legal Texts	315
<i>ADA GRUNTAR JERMOL</i>	
16. Formelhaftigkeit des Rechts: Zur Phraseologie in der Rechtssprache	333
<i>EMILIA LINDROOS</i>	
17. Wrong Rights: On Chinese ‘Improper Rights and Interests’ (<i>bu zhengdang quanyi</i> 不正当权益).....	349
<i>MICHELE MANNONI</i>	
18. Die translatorische Perspektive des Rechtsübersetzers – Verknüpfung von Inhalt und Form	373
<i>RADEGUNDIS STOLZE</i>	
Notes on the contributors	391
Index	397

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

Gianluca Pontrandolfo

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: - <i>habitus</i> - 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 interlinguistic 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 genre³ (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 anysomorphyism (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
<p><i>Judgment</i>: A court's final determination of the rights and obligations of the parties in a case (Black's Law Dictionary 2009: 918).</p> <p><i>Opinion</i>: 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).</p>	<p>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).</p>	<p>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).</p>

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
<p>form:</p> <ul style="list-style-type: none"> oral (ex tempore) written* (handed-down judgments) 	<p>forma:</p> <ul style="list-style-type: none"> - escrita (art. 248.3 LOPJ) - oral (art. 245.2 LOPJ) 	<p><i>forma</i>:</p> <ul style="list-style-type: none"> - scritta (art. 544-548 CPP)
<p>content:</p> <ul style="list-style-type: none"> - of acquittal - of conviction <p>* dissenting vs. concurring opinion</p>	<p>contenido:</p> <ul style="list-style-type: none"> - absolutoria - condenatoria 	<p><i>contenido</i>:</p> <ul style="list-style-type: none"> - 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	<i>Sentenza della CSC:</i> - 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 superstructure 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 ^e F ^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 “apropiación” 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 challenges⁸ 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
<p>Types of proceedings:</p> <ul style="list-style-type: none"> - summary offences [Magistrates' Court] - indictable offences [Crown Court] - either-way offences [Magistrates' Court] 	<p>Tipos de procedimientos:</p> <ul style="list-style-type: none"> - ordinario - abreviado - juicio de faltas - procedimiento ante el Tribunal del Jurado 	<p>Tipi di procedimenti:</p> <ul style="list-style-type: none"> - ordinario - speciali (direttissimo, immediato, abbreviato, davanti al tribunale monocratico, davanti al giudice di pace, davanti al tribunale per i minorenni)
<p>Actors/parties:</p> <ul style="list-style-type: none"> - Police (Chief Officer) - Crown Prosecutor - Custody Officer - Magistrate's Court - Crown Court - + other courts (Court of Appeal, Supreme Court) <p>- defendant / defence vs.</p> <p>- prosecution/prosecutor</p>	<p>Protagonistas/partes:</p> <ul style="list-style-type: none"> - Juez de Instrucción - Ministerio Fiscal - Policía judicial + los órganos judiciales (Audiencia Provincial, Tribunal Supremo, etc.) <p>- imputado (procesado, acusado, reo) / defensa vs.</p> <p>- acusación</p>	<p>Protagonisti/parti:</p> <ul style="list-style-type: none"> - Pubblico Ministero - Polizia giudiziaria - Giudice dell'Udienza Preliminare (GUP) - Giudice per le Indagini Preliminari (GIP) <p>- indagato (persona sottoposta alle indagini preliminari) / imputato / difesa vs.</p> <p>- pubblica accusa/MF</p>
<p>Stages:¹⁰</p> <ul style="list-style-type: none"> - <u>Preliminary phase</u> - <u>Preparatory phase</u> - <u>Final phase</u> <p>- <u>Appeals</u></p>	<p>Fases (procedimiento ordinario, pena privativa de libertad superior a 9 años):</p> <ul style="list-style-type: none"> - fase preliminar (de instrucción o sumarial) - fase intermedia (o preparatoria) - fase final del juicio (o fase decisoria) <p>- recursos</p>	<p>Fasi del procedimento ordinario:</p> <ul style="list-style-type: none"> - indagini preliminari - udienza preliminare - dibattimento o giudizio <p>- ricorsi</p>

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

¹⁰ The three stages are not officially foreseen 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 web¹¹ 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 anisomorphism (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	neologism	paraphrase	functional equivalent	
	<i>Audiencia Provincial</i>	*Provincial Hearing	∅	Provincial Court	Spanish Court of Appeal having its seat in the capital of each province. For some offences, it has the same functions of a first-instance court.	Court of Appeal	

	<i>Audiencia Provincial</i>	*Udi- enza Pro- vinciale	∅	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 system¹² (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
<i>writ of habeas corpus</i>	petición escrito mandamiento/mandato procedimiento recurso + de habeas corpus [<i>calque</i>]	istanza di habeas corpus [* diritto angloamericano] [<i>calque + borrowing</i>] > riesame (CPP: 606-628) o ricorso per cassazione [<i>functional equivalent</i>]

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 nº8, 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
<i>falta* de hurto</i>	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
<i>juicio de faltas</i>	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 *querrela* 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	
<i>acusador particular</i>	accusatore privato costitutosi per reato perseguibile a querela di parte [<i>neologism</i>]	[the victim of a crime or his representative who files a private criminal complaint and enter the criminal proceedings as a private prosecutor] [<i>paraphrase</i>]	
<i>acusador privado</i>	accusatore privato [<i>calque</i>] persona offesa dal reato [<i>functional equivalent</i>]	private prosecutor [<i>calque</i>]	
<i>acusador popular</i>	accusatore popolare [<i>calque > neologism</i>]	private citizen acting as a prosecutor [<i>paraphrase</i>] <i>actio popularis</i> [<i>loan word: Latin*</i>]	

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
<i>libertad provisional/libertad condicional bajo fianza</i>	libertà provvisoria (*) su cauzione [<i>calque</i>] liberazione su cauzione [<i>functional equivalent</i> + <i>calque</i>]	Release on bail or parole [<i>functional equivalent</i>]

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
<i>incidente probatorio</i>	vista oral mediante práctica anticipada de la prueba [<i>paraphrase</i>]	special evidentiary hearing [<i>paraphrase</i>] pre-trial hearing [<i>paraphrase</i>]

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 colloquialism¹⁴ 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. responsable 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 L O <i>Condeno al acusado Jose Enrique como autor criminalmente responsable de [...]</i>	PQM <i>rigetta il ricorso e condanna il ricorrente al pagamento delle spese processuali [...]</i>
	Debo condenar y condeno / absolver y absuelvo	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 lines¹⁷ 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, Christopher 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 anisomorphism 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 Llingua 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. (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 (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 (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] (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*. Clevedon: Multilingual Matters.
- Schiffirin, 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/lo6-1985.11t4.html