Terminological equivalence in European, British and Italian criminal law texts: A case study on victims of crime

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Abstract

Since the entry into force of the Maastricht Treaty in 1993, cooperation in the fields of justice and home affairs has become a matter of high priority for all Member States of the European Union. This cooperation finds its concrete expression in a number of important legal instruments adopted by EU institutions, which are already, or are currently being, implemented in the Member States. EU legal instruments represent sources of law used to approximate the laws and regulations of the Member States. However, the EU's intervention in different legal subfields cannot prevent differences from being identified among the legal systems involved (EU's supranational and Member States' national legal systems). A terminological analysis of an English-Italian corpus of EU texts dealing with the legal subfield of the standing of victims in criminal proceedings and their rights allows the identification of differences in the Italian and British implementation strategies and in their way of conceptualising even relevant key elements such as "victim". This paper, which is part of an ongoing PhD research project, illustrates the main characteristics of bilingual legal terminology in a multi-judicial framework (conceptual asymmetries, different degrees of equivalence, synonymy and polysemy) and presents the current research work by showing a few examples of legal/cultural gaps, which necessarily need to be taken into account when translating or mediating between the two cultures/languages.

1. Introduction

EU legislation derives from legal systems already existing in the Member States and pertaining to Civil Law and Common Law, from which it has adopted and adapted a number of different concepts and principles. For this reason, it is to be considered a unique *sui generis* supranational legal system, with its own legal rules and sources, institutions and procedures for making, interpreting and enforcing EU rules. The set of common rights and obligations mutually binding the Member States within this hybrid system is known as *acquis communautaire*. The *acquis* is not limited to EU law in the strict sense, i.e. EU primary and secondary legislation and the case law of the European Court of Justice, but it also comprises the legal instruments associated with the former second and third pillar, which are governed by intergovernmental relations. Therefore, the *acquis* also includes what used to constitute the third pillar, i.e. Justice and Home Affairs, which has been called Police and Judicial Cooperation in Criminal Matters since 2003. With the entry into force of the Lisbon Treaty and the subsequent abolition of the pillar structure in 2009, the provisions related to police and judicial cooperation in criminal matters – consisting in the cooperation between Member States' police forces, custom services and judicial authorities – have been dealt with in Title VI of the EU Treaty which, combined with Title IV of the EC Treaty, forms the legal basis for an area of freedom, security and justice. Within this area, police and judicial cooperation has two main aims: firstly, to ensure a high level of safety for EU citizens by preventing and combating racism, xenophobia and organised crime, and secondly, to achieve a sufficient degree of approximation of rules on criminal matters in the Member States and to develop mechanisms for the mutual recognition of judicial decisions in this legal field.

In order to promote multilingualism and to recognise parity among the EU official languages, in line with the equal authenticity principle governing the whole *acquis communautaire*, the provisions regarding police and judicial cooperation in criminal matters need to be expressed in all the EU official languages. As a consequence, the ideal situation which the EU multilingualism policy pursues is that of a single EU conceptual system designated (for the time being) by 23 different languages. However, given the assumption of the economy principle in language and bearing in mind the derivational nature of the EU legal system, it seems quite likely that the lexical items used to refer to concepts pertaining to the EU conceptual system cannot always be created afresh nor can they always be the result of a deliberate linguistic policy. The terminology used at EU level may actually be determined by usage or result from different naming strategies adopted both by drafters and translators. The linguistic and conceptual consequences of such a situation may vary: there may be either cases in which a term used to designate a concept within the national legal system of a specific Member State is also used to refer to a concept pertaining to the *acquis* or cases in which more than one term is used to designate the same concept even within the same conceptual structure.

With the aforesaid assumptions in mind, the aim of this research project is to explore the properties of terminological equivalence in a specific subfield of police and judicial cooperation in criminal matters, i.e. the standing of victims

of crime in the framework of criminal law and proceedings. Terminological equivalence is observed from a multilingual perspective by comparing the English and Italian versions of the relevant EU documents. On the grounds that EU legislation is implemented and enforced within the increasingly harmonised but not completely homogeneous Member States' domestic legislations, the terminological analysis also encompasses UK and Italian national documents on the same topic. It follows that two variants for each language will be scrutinised, i.e. the national and the EU variant.

2. Previous research work

The choice of terminological equivalence in (supra)national criminal law documents as a research topic followed the author's Master's thesis (Peruzzo 2007), which was a terminographical analysis of Italian and English texts on Europol and Police Cooperation in Europe. Aimed at populating the University of Trieste terminological databank TERMit, the study highlighted the need for clear-cut definitions in order to make the conceptual differences between the EU, Italian and British legal systems comprehensible to potential non-expert users. Such definitions necessarily called for both a deeper insight into intra- and interlingual conceptual equivalence issues and the identification of the degree of equivalence between individual terms. However, the study partly failed to pay due attention to the coexistence of a multilayered legal structure within the same territory, and consequently the resulting terminological records suffered from a lack of systematicity in presenting the data concerning equivalence issues. Nevertheless, the results yielded by the study provide some useful evidence of the difficulties in dealing with legal terminology. In the following subsections some concrete examples of the main results are presented under the following headings: conceptual mismatches and degrees of equivalence, synonymy and polysemy.

2.1 Conceptual mismatches

As Šarčević (1997: 232) pointed out, being "[t]he product of different institutions, history, culture, and sometimes socio-economic principles, each legal system has its own legal realia and thus its own conceptual system and even knowledge structure". For example, the Italian and the British classifications of offences clearly show that the conceptual differences between the two legal systems depend on the different discriminating factors considered. On the one hand, in Italy offences (*reati*) are distinguished into two main groups, *delitti* and *contravvenzioni*, according to the kind of punishment imposed in case of violation of the Italian Criminal Code. However, it is also possible to classify offences taking the right to legal action as a differentiating factor: in the case of the so-called *reati perseguibili d'ufficio*, legal action is undertaken as soon as the Italian judicial authority is informed that a crime has been committed, while for the *reati perseguibili a querela* the police is authorised to prosecute the offence only after the victim reports a crime. The classification of offences is totally different

in the British legal system, where they can firstly be divided according to the legal source they relate to, leading to a distinction between *common law offences* and *statutory offences*. Secondly, the action police or other authorised people can undertake when an offence has been witnessed makes it possible to distinguish between *arrestable* and *non-arrestable offences*. Finally, offences differ according to the kind of trial the accused is supposed to undergo: *summary offences* are dealt with by lower courts with no jury, while *indictable offences* are tried by a jury. However, in English law a third category of offences is possible, i.e. *triable-either-way offences*, where the accused has the right to choose between the two above-mentioned types of trial.

2.2 Degrees of equivalence

As can be seen from the examples provided, though the concept of *offence* within the British legal system can be considered equivalent to the concept of *reato* within the Italian system, the different way offences are classified in the two systems may lead to a terminological gap. When there are no lexical equivalents to designate a concept bound to a foreign legislation, the terminologist or translator necessarily examines the concept in order to bridge the terminological gap and assesses the degree of conceptual equivalence between the two systems in order to identify the most appropriate translation equivalent. Different scholars have addressed the issue of degrees of conceptual equivalence or, as Rogers (2008: 103) prefers to call it, "denotational equivalence". However, for the purposes of this article only authors dealing with this kind of equivalence in legal terminology specifically from a translational perspective are taken into account. Among them, Sandrini (1999: 102) distinguishes two types of equivalence. The first type, which the scholar calls "absolute or total equivalence", is given when "two legal concepts are identical with respect to all their conceptual features as well as their conceptual extension", but "is possible only if both concepts refer to the same legal system." Conversely, when two concepts pertain to different legal systems, "absolute equivalence is no longer possible" and the second type of equivalence applies, which Sandrini refers to as "partial, relative or near equivalence".

By failing to acknowledge other possible types of equivalence, Sandrini's distinction between absolute and partial equivalence seems somewhat unsatisfactory. Moreover, Šarčević (1997: 237-239) argues against the existence of absolute equivalence and the possibility of considering identical those SL and TL terms that share all the essential conceptual characteristics and a few of the accidental conceptual characteristics. Considering also Lane's choice of the term "identity" (1982: 224-225) "misleading since not all characteristics of the two concepts coincide" (Šarčević 1997: 238), in her classification she proposes near equivalence as the maximum degree of equivalence, which occurs in either cases of intersection, i.e. "when concepts A and B share all of their essential and most of their accidental characteristics", or inclusion, i.e. "when concept A contains all of the characteristics of concept B but concept B only most of the essential and some of the accidental characteristics of concept A" (Šarčević 1997: 238). In addition to near equivalence, Šarčević acknowledges two other types of

equivalence: non-equivalence and partial equivalence. Non-equivalence occurs when "only a few or none of the essential features of concepts A and B coincide" or "concept A contains all of the characteristics of concept B but concept B only a few or none of the essential features of concept A", but also "in cases where there is no functional equivalent in the target legal system for a particular source concept" (Šarčević 1997: 239). Partial equivalence occurs whenever neither near equivalence nor non-equivalence are the case: "the acceptability of a functional equivalent usually depends on context, thus requiring the translator to analyze each textual situation before deciding whether a functional equivalent is acceptable in that particular context" (Šarčević 1997: 241).

As can be seen from Šarčević's explanation of both non-equivalence and partial equivalence, the degree of equivalence depends on the acceptability of functional equivalents, i.e. terms "designating a concept or institution of the target legal system having the same function as a particular concept of the source legal system" (Šarčević 1989: 278-279). However, it should be noted that supranational law, and EU law in particular, differs from the situation to which Sandrini and Šarčević apply their classifications of equivalence. As a matter of fact, EU law is an individual supranational legal system with its own characteristics, which is expressed in all the Member States' "EU languages of the law" (Doczekalska 2007: 59) and implemented within all the Member States' national legal systems. Therefore, concepts pertaining to the EU legal system need to be ideally designated by totally equivalent terms and not by functional equivalents, since "[i]n the case of multilingual translation there is only one legal system in play – source text and target text refer to the same legal system" (Kjær 2007: 69). As for EU legal texts, for the sake of multilingualism EU instruments follow the "principle of absolute language equality" (Šarčević 2007: 36), also known as the "equal authenticity rule" (Cao 2007: 73), from which the "principle of equality of authentic texts" (Doczekalska 2007: 60) derives. According to the latter, every single language version is an original version and thus no single text should prevail in case of ambiguity or textual discrepancy. However, based on the fact that EU terminology originates in Member States' national terminology and all language versions are to be understood as originals rather than translations, absolute equivalence within EU terminology in many cases can be considered a legal fiction.

For the purposes of the terminographical analysis of documents on Europol and Police Cooperation in Europe, a simplified tripartite classification of equivalence, resulting from the combination of Sandrini's and Šarčević's categorisation, was adopted. The term *absolute equivalence* was used to refer to the relationship between terms designating concepts of an exclusive EU origin, i.e. which are not derived from national legal systems, such as *EUROPOL*, where the referent designated by the term is univocal and unambiguous. The second degree of equivalence was subsumed under the umbrella term *partial equivalence*: the terms falling into this category are terms already existing in Member States' national legal systems which, when used in EU texts, have undergone a semantic shift or a broadening/narrowing of their meaning. These terms are usually used to refer to legal concepts that "are generally lacking the deep level structure of meaning otherwise characteristic of legal semantics" (Kjær 2007: 81), and their

meaning is therefore fuzzier than that of their homonyms in the national context. For example, in the EU context the Italian term *polizia scientifica* is almost exclusively used to refer to the activity carried out by the forensic police department rather than to the department itself, while in the Italian national context the term is polysemous and may convey both meanings. In the terminographical analysis of the Italian and British national legal systems, partial equivalence was also applied to describe the relationship between terms specific to the two systems. In the case of *polizia scientifica* and *scientific support department*, the two concepts may be said to share all the essential features, as both departments fulfil the same function, encompassing a variety of similar services to support the police forces during investigations. Nevertheless, their internal and external structure is completely different, making them only partially equivalent. The last type of equivalence encountered in the terminographical analysis of national law texts was *non-equivalence*. For example, while the Italian term *querela* is also used within the EU legal system, its meaning within the Italian system is more specific and refers to a report made by crime victims to law enforcement authorities enabling them to take legal action, which would otherwise be impossible because of the specific nature of the offence the victims suffered from. At the European level, the Italian term *querela* is translated by different terms, such as *report*, *complaint* or *accusation*, which, owing to the lack of an identical concept in the British legal system, are generally followed by a specification that these legal actions are filed by the victims themselves.

2.3 Synonymy

The last example introduces another linguistic phenomenon highlighted by the terminographical analysis of texts on Europol and Police cooperation in Europe, i.e. synonymy, which in the ISO standard 1087 is defined as "the relation between or among terms in a given language representing the same concept" (ISO 1087 2000: 8). However, in the case of the English translation of *querela*, the existence of synonyms – as opposed to only one correspondent – within the EU corpus is due to the lack of an absolutely equivalent concept and thus of an established term to designate it, which leads to the production of new terminology in the form of paraphrases. Going back to the example used to illustrate absolute equivalence, the term *Europol* can also be used to illustrate synonymy within EU criminal law texts, as the analysis has shown that there are two different English lexical units to refer to the same concept, i.e. *Europol* (with its graphic variant *EUROPOL*) and its extended/descriptive form *European Police Office*. Nevertheless, it needs to be said that synonymy is itself a matter of degree, and that total synonyms are rare compared to quasi-synonyms, i.e. synonyms which can substitute the main term only under certain circumstances (ISO 1087 2000: 8). For example, whilst both in EU and British texts the person against whom a crime has been committed is designated by the term *victim*, in EU texts it is also possible to find the Civil-law driven synonym *person subjected to the offence*, which is obviously appropriate only to EU contexts as it does not conform to British legal language.

2.4 Polysemy

Another linguistic phenomenon highlighted by the terminological analysis is polysemy. In legal translation theory, the interdependence of law vis-à-vis language and culture is generally given considerable attention, with the major cause of translation problems being attributed precisely to such an interdependence (see, for example, Cao 2007: 28; Gémar 2006: 71-74; Gotti 2007: 22). As EU law is a "system of incoherent legal rules and principles developing into a more coherent legal system" (Kjær 2007: 70) and it allegedly disregards the discrepancies between the legal systems involved, the translation of EU law does not receive sufficient recognition in this respect. However, the very fact that EU law is drafted drawing inspiration from both domestic and international law means that EU texts are constantly contaminated by domestic and international terminology, "a fact which makes translation in the EU particularly complicated" (Kjær 2007: 70): as Tabory envisaged decades ago, "[t]he probability of confusion, errors and discrepancies is multiplied in direct proportion to the number of authentic texts" (Tabory 1980: 146). This is why Guideline 5 of the *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions*[1] (2003) suggests that "concepts or terminology specific to any one national legal system are to be used with care". The same remark can be found in Kjær, who claims:

> Both the source text and the target text refer *per definitionem* to the concepts of the EU legal system, and must be understood independently from any national legal system. Therefore, the translators should avoid as much as they possibly can using terminology which is rooted in the national laws of the Member States (Kjær 2007: 83).

Notwithstanding such warnings, the terminological analysis carried out in the Europol and police cooperation subdomain found some instances where Guideline 5 was not fully followed. For instance, a few terms that have reasonably clear-cut meanings in their national legal domains have been attributed (partially) different meanings in the EU context, such as in the case of the British term *police authority*. This term in England and Wales refers to committees with no right to exercise operational or managerial control, responsible for maintaining adequate and efficient police forces and, in county forces, for appointing chief constables. Vice versa, in EU law the same term is used to designate the authorities responsible for maintaining law and order and enforcing the law, i.e. the term may be considered synonymous with *police force*.

3. Current research work

Building on the results provided by the terminographical analysis in the Europol and police cooperation subdomain, the ongoing PhD research project aims at emphasizing the particular complexity of EU multilingual translation and, in so doing, addressing the silence of translation studies on "accounting

1 Available at http://eur-lex.europa.eu/en/techleg/pdf/en.pdf.

theoretically for the special features and difficulties of translating EU law" (Kjær 2007: 69). More specifically, the project focuses on a different EU criminal law subdomain which has been given increasing attention since the entry into force of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, i.e. the position of crime victims in the framework of criminal law and procedure. The aim of the project is to try and answer three key research questions, which are presented in the following three subsections.

3.1 Research Question 1: Do differences in European and national conceptual systems also apply to other sub-fields of criminal law and procedure?

Given the evidence that in the Europol and police cooperation subfield the EU system and national conceptual systems differ and that such conceptual discrepancies result in different linguistic phenomena such as synonymy and polysemy, the PhD project aims at verifying the presence of analogous conceptual mismatches with terminological implications in the subdomain of the position of victims in the framework of criminal law and procedure. In order to do so, two different corpora have been built: a bilingual parallel corpus containing Italian and English aligned versions of the same EU victim-related documents, and a bilingual comparable corpus of Italian and UK national victim-related texts. Semi-automatic term mining is applied to the parallel corpus and the extracted term candidates are then validated manually. The so-obtained terminological data are then compared to the properties of key terms extracted from the comparable corpus and used to compile terminographic entries that will populate the TERMit terminological database. The commonalities and differences between national and supranational conceptual systems are then examined.

The study conducted so far has confirmed this first research question, as can be seen from the following example concerning the term *victim*. As already illustrated in Section 2.2, absolute equivalence in the legal domain can only be found within an individual conceptual system. This is the case of the English term *victim* and the Italian term *vittima* within the EU legal system, in which the two terms designate the same concept and hence can be considered absolute equivalents. However, the term *victim* can also be an example of partial equivalence. From a comparison between the definition provided by the *Council Framework Decision 2001/220/JHA*[2] and the definition in the *Victims' Code of Practice*,[3] it becomes apparent that the meaning of the EU term is only similar – i.e. not identical – to the meaning of *victim* in the Code of Practice. Whilst the violation of a Member State's criminal law is a requisite for a conduct to be considered as a crime within the EU law, the Code of Practice requires the offence to be qualified as such according to the National Crime Recording Standard, thus

2 Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:082:0001:0004:EN:PDF.

3 Available at http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_073647.pdf.

narrowing the concept of *victim* only to a person subjected to criminal conduct under the national law. By its very nature, the EU tries to find a compromise between all Member States' legal systems in order to make the adoption and implementation of the *acquis communautaire* an easier process. It therefore tends towards providing its system-specific terms with meanings which are broad enough to include Member States' specific concepts.

3.2 Research Question 2: How can criminal law terminology be represented?

As "[t]he discipline of terminology is widening its scope towards knowledge representation and knowledge management" (Temmerman & Kerremans 2003: 1), due to its interdisciplinarity and to the need to store conceptual as well as linguistic data in a single repository, traditional terminological collections, although in electronic format, are increasingly deemed unsuitable to fulfil their task. The reasons are to be found in their generally reduced storage capacity and/or lack of a sufficiently flexible structure to comprise all the information needed by the end users. Therefore, since the early 1990s term bases have started evolving into the so-called *terminological knowledge bases* (see, for example, Meyer *et al.* 1992: 956; Faber 2009: 119), which are nowadays also referred to as *ontologies* (see, for example, Temmerman & Kerremans 2003: 3), whose main data are of both a linguistic and conceptual nature. The specific form of a repository should always depend, among other factors, on the complexity of the conceptual structure and the domain, and should always be conceived bearing in mind the needs of its actual end-user. What is interesting about the choice of the term *ontology* to designate terminological repositories is that, although there probably are as many definitions of "ontology" as there are authors studying it, a key element of all ontologies is a structure that allows for the implicit specifications of a conceptualisation to be made explicit. As Temmerman and Kerremans (2003: 3) put it, an ontology is "a knowledge repository in which categories (terms) are defined as well as relationships between these categories". Consequently, a need that should be satisfied by terminological databases – no matter how they are called – is the explicit specification of the relationships between the concepts stored in them, a point which is confirmed by Faber *et al.* (2006: 191): "[t]he specification of the conceptual structure of specialized domains is a crucial aspect of terminology management". What the research project aims to investigate in this respect are the benefits that terminology management in the law domain can expect from the application of an ontology-based approach and the advantages that a cross-fertilisation between ontology and terminology (Temmerman & Kerremans 2003: 3-4) may bring to language professionals.

3.3 Research Question 3: How do terms behave in context?

The answers to both the first and the second research questions are tightly linked to the last question, which is concerned with the actual behaviour of terms in context. In the past, the prevailing idea was that terms "bring their

context with them" (Newmark 1988: 194) and that they are labels used for naming concepts pertaining to a language- and culture-independent system. However, as we have seen in Section 2, different linguistic phenomena affect LSPs, and are even more prominent in legal language. Also in the limited area of interest of the third research question, i.e. the multilingual translation process within the EU, the validity of Sandrini's statement is unquestionable:

> [m]uch of the responsibility for the textual equivalent rests with the translator who is the only one able to judge the particular communicative situation, to assess the role of the target text and the overall aim of his translation effort (Sandrini 1999: 102).

This means that, even when translators are provided with tools to support their translation activity – e.g. terminological databases and translation memories – as is the case of EU translators, it is their responsibility to carefully evaluate each individual case and select the most appropriate translation solution. This is why the last phase of the study focuses on textual equivalence rather than on conceptual equivalence, i.e. the way equivalence is reached at both the inter- and intratextual levels in equally authentic EU texts. The analysis therefore implies a comparison of different terminological units in order to ascertain whether there is any variation within EU texts. The result of a preliminary study confirms that variation is to be considered a feature of EU terminology. An example is represented by the Italian designations for the concept *state compensation to crime victims* in the *Green Paper on Compensation to Crime Victims*.[4] While in the English version of the text the term occurs ten times with no modification, in the Italian version as many as five different variants can be found, namely *risarcimento da parte dello Stato alle vittime di reati*, *risarcimento da parte dello Stato delle vittime di reati*, *risarcimento statale delle vittime di reati*, *risarcimento da parte dello Stato alle vittime di reato* and *risarcimento delle vittime di reati da parte dello Stato*.

4. Conclusion

Based on the results of the previous research work on the EU criminal law subfield of Europol and police cooperation in Europe, a terminological analysis of EU, Italian and British victim-related texts is being carried out in order to gain insight into the difficulties encountered by terminologists and translators with regard to conceptual and textual equivalence. The present paper shows the results of the earliest phase of the PhD research project, consisting in the terminological analysis of EU, Italian and British victim-related texts. These results are twofold. Firstly, linguistic and conceptual phenomena such as synonymy and conceptual mismatches are frequently found also in the terminology of a "semi-controlled" language. Secondly, the fact that terms in context behave differently from what was generally recommended by traditional terminology theories leads to the search for an appropriate form of representation of terminological and (con)textual data.

4 Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0536:FIN:EN:PDF.

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