

THE LAW AND LANGUAGE PROGRAM (FACULTY OF LAW, TRENTO UNIVERSITY, ITALY).

LEGAL EDUCATION FOR LEGAL TRANSLATION.

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1. *The background to the Law and Language Program.*

Nowadays in Europe the close relationship between law and language can be taken for granted¹.

This relationship may be considered as one of the cornerstones of the harmonisation and unification process of the law in Europe: since language is the means of expressing the law², any attempt at harmonisation or unification of the law in Europe must inevitably go through a translation process.

However, it is well known that translating legal terms causes more difficulty than translating information to do with other sciences³: since words express concepts, the translation of a word with another word is possible to the extent that the two words express the same concept. But, as distinct from what happens in sciences such as biology or medicine, in law there is not necessarily a correspondence between a word and a concept in all the different European legal systems⁴ and frequently within a single language there is not just one uniform legal jargon⁵.

Furthermore, legal terms of European Community Law (EC law) often are not translated literally, but by means of a neologism, that's to say a new word which has been expressly created by the translators at Community level, in all the official languages of the European Community, with the scope of introducing the same legal concept in all the Member States.

Because of the system-bound character of legal language, it is clear that the difficulties of legal translation can be managed only by jurists trained on the basis of a proper methodology⁶.

¹ R. SACCO, *Langue et Droit*, in *Les Multiples Langues du Droit Européen Uniforme*, Torino, 1999, p. 163. R.L. Creech, *Law and Language in the European Union. The Paradox of a Babel "United in Diversity"*, Europa Law Publishing, 2005.

² R. SACCO, *Einführung in die Rechtsvergleichung*, 2001, p. 34; V. Heutger, *Law and language in the European Union*, *Global Jurist Frontiers*, 2003, Vol 3, Issue 1.

³ G. R. DE GROOT, *Language and Law*, in *Netherlands Report to the Fifteenth International Congress of Comparative Law*, Atwerp/Groninge, 1998, p. 22. The problems of legal translation have stimulated an increase in both legal and linguistic literature in this field. See for references in M.J. CAMPANA, *Vers un langage juridique commun en Europe*, *European Review of Private Law*, 2000, p. 37, footnote n. 13.

⁴ B. POZZO, *Harmonising of European Contract Law and the Need of Creating a Common Terminology*, *European Review of Private Law*, 2003, p. 756 ff. Finally, as an example the concepts of offer and acceptance see S. CHATILLON, *Droit et Langue*, R.I.D.C., 2002, 3, p. 692.

⁵ See G. R. DE GROOT, *The quality of bilingual legal dictionaries*, (Editorial), *Maastricht Journal of Comparative Law*, 2000, p. 331.

⁶ R. SACCO, *Entry "Traduzione giuridica"*, in *Digesto IV*, ed., Vol. Aggiornamento, Torino, Utet, p. 726. From a linguistic point of view, translation implies the research of the meaning of the word to be translated and the simultaneous search of a word suitable of rendering that meaning in the language of the translation. It has been underlined that in the case of legal translation, both the first and the second operation can be done by a jurist, but the two operations together have to

Given the increasing importance of supranational law, a basic knowledge of the techniques and instruments of legal translation should be part of the core curricula of any European jurist.

In fact European supranational integration and the globalization of social, economic and cultural relations require jurists to have an appropriate background, and they must achieve a basic ability to handle all the current legal terminologies in legal relationships: national, foreign, EC and international.

These brief observations on the relationship between legal translation and legal education are intended to contribute to the understanding of the background and structure of the specific education program at the University of Trento's Faculty of Law – the "Law and Language Program" – and of the different choices which underlie this methodology, reflecting different levels of complexity and the different techniques which should be distinguished in teaching legal translation.

2. The basis of the Law and Language Program.

Since its creation, the educational philosophy central to Trento University's Faculty of Law has been inspired by the idea that studying and understanding legal phenomena must also include comparison with other legal systems and supranational organisations; therefore foreign language instruction has always played an important role in the curricula of Trento's law students. This cultural choice has also been influenced by the geographical location of the University in Trentino Alto Adige, an Italian region where four different languages are currently spoken (Italian, German, Ladino and Mocheno-Cimbri).

The knowledge of at least one foreign language is compulsory for Trento's Law students, who can choose between French, Spanish, English, German, Russian and Chinese.

Besides the language courses, a specific legal language program has been created in cooperation with the Interfaculty Language Center in order to offer students the chance to attend courses in legal French, Spanish, German English and, so far as foreign students attending Trento Faculty are concerned, Italian for law. Each of these courses is offered entirely in the relevant foreign language by a teacher who is a native speaker and provides a general overview of the specificity of legal terminology (or of the legal terminologies) of each legal language.

3. The structure of the Law and Language Program.

After an initial introduction to language and legal language, the program focuses more specifically on legal translation.

Teaching this important but, at the same time rather new, subject means being aware of its special features.

a) A significant point concerns the different categories of legal translation, depending on the kind of legal information which is to be transferred: the rules of a national system in a different language or the different types of EC rules into the language of the Member States.

The translation of a legal system into a different language, with the aim of rendering this system understandable to all the other foreign jurists, is an operation which has been called “transposition”: this operation implies not only the translation, but also the shift from one system to a different system and the consequent judicious use of comparison⁷. Frequently, specific techniques must be adopted in order to overcome the different meaning of a concept in two or more legal systems, such as homologation⁸.

These techniques are taught to students from their second year onwards, as part of a compulsory course – “Comparative legal systems”, whose content specifically includes comparative law methodology and legal translation.

b) A further level of complexity is the case of the transposition of the EC rules into national law.

While most EC legislation falls within the so-called “technical sectors”, which deal with harmonisation and uniformisation of branches of law containing mainly factual concepts (e.g. the agricultural market), the terms contained in the directives and regulations enacted in the area of private law, and particularly contract law, contain culture-bound concepts: given the specific features of private law, which deals with basic social relationships, these concepts are very abstract⁹ and represent different meanings related to the presence in Europe of two distinct legal families, the Civil tradition and the Common Law. Therefore, translating EC legislation in the area of contract law means confronting the problems arising from the absence of legal categories common to all European legal systems¹⁰.

As a consequence, a new legal terminology has been created at European level, consisting of words (neologisms) expressed in all the official languages, which have new or different meanings when compared to the national legal terminology of the Member States: for example the *habitual residence* - *residenza abituale* in Italian, *résidence habituelle* in French, *gewöhnlicher Aufenthalt* in German - is a new concept with a specific Community meaning, which does not coincide, for example, with the Italian concept of “residenza” (art. 43 Italian civil code).

This new terminology is imparted to students in the course of some practical language workshop sessions, during which, with the aim of ensuring fuller understanding of the problems and techniques of legal translation of EU law, the teaching activity is complemented by seminars held by a professor of linguistics, a translator and a lawyer-linguist of the Council of the EU. Lectures are offered on EC terminology relating to either French or English.

⁷ E. DIDIER, *La traduction juridique en Europe. État et perspective del la Common Law en Français (CLEF) et du Droit Civil en Anglais (DCA)*, in *Les multiples langues du droit européen uniforme*, Torino, 1999, p. 37.

⁸ R. SACCO, *Legal Formants: a Dynamic Approach to Comparative Law (Instalment II of II)*, *American Journal of Comparative Law*, 1991.

⁹ A. GAMBARO, *The Plan d'Action of the European Commission – A Comment*, *European Review of Private law*, 2003, p. 774.

¹⁰ *Ibidem*. See also A. GAMBARO, *Interpretation of Multilingual Legislative Texts*, in *European Journal of Comparative Law*, 2007.

2) Secondly, an education program for legal translation cannot be efficient unless it is based on the reality of language use in European and International contexts.

It is indisputable that nowadays English is the most widely-used language in Europe both by the citizens¹¹ and also by two of the European Institutions (the Commission and the European Council). According to Fletcher¹² this language is also becoming the dominant source of the new world-wide legal terminology. Even if the spontaneous trend towards English as the language of European and international legal relationships is a reality – and as legal professions in Europe¹³ are still mainly organised on a national basis – the legal language program is currently offered not only in English but also in French.

For example: students who choose French as their first foreign language may start learning the general language, as well as French legal language, during their first and second years of studies. Still in the course of the second year, while attending the course in Comparative legal systems, students can acquire a preliminary understanding of the general problems of legal translation and can continue their studies in this field by following the practical language workshop sessions on French Community terminology.

In the near future, the complete program could be extended to include Spanish and German, by adding practical language workshop sessions of EC law terminology as expressed in these languages.

Students can further explore issues relating to legal translation theory by following a series of lectures offered in the framework of the PhD School of Comparative and European Legal Studies. Lectures are intended for PhD students but are also open to students of the Law School. Single topics are offered by foreign experts in different languages and concern mostly the methodology of legal translation and the connexion between translation and interpretation.

Moreover, seminars and conferences on legal translation are organised every year (La traduzione del diritto comunitario ed europeo: <http://www.jus.unitn.it/dsg/convegna/2006/traduz/home.html> Interpretazione ed traduzione del diritto: ed <http://www.jus.unitn.it/dsg/convegna/2007/interpretazione/home.html>) also in collaboration with lawyers employed within the EC institutions.

¹¹ According to the European Commission, (http://europa.eu.int/comm/education/policies/lang/languages/index_en.html) after the enlargement of May 1st 2004, the total proportion of European citizens speaking English in the EU (as mother tongue or as a foreign language) is 47%. Therefore this language still remains the most widely spoken one in the European Community. When asked what language the European citizens find most useful, beside their mother tongue, most people answered English (69%), followed by French and German. It is also interesting to note that 45% of European citizens can take part in a conversation in a language other than their mother tongue.

¹² G.P. FLETCHER, *Fair and Reasonable. A Linguistic Glimpse into the American Legal Mind*, in *Les multiples langues du droit européen uniforme*, Harmattan, 1999, p. 60.

¹³ See R. TONIATTI, *The European lawyer: phantom and reality?*, *International Journal of the Legal Profession*, vol.9, n. 2, 2002, p. 95 ff.