

European English terms for Italian legal concepts: the case of the Italian Code of Criminal Procedure

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ABSTRACT

The translation of the Italian Code of Criminal Procedure into English, published in 2014, represents a way of explaining the functioning of the Italian criminal procedure to a wide English-speaking audience. Given the different varieties of English available, the translation team chose European English as the target language of the translation. After a brief overview of the central role played by English in the European supranational and international context, the paper presents a classification of translation equivalents used for the translation of the Code and illustrates it by concrete examples. Such classification is based on two criteria, namely the availability of European English translation equivalents in the reference corpus of European documents used by the translation team and the degree of embeddedness of the underlying concept in the national legal system. The resulting classification is threefold and comprises European English translation equivalents for Italian terms designating legal concepts shared by both national and supranational/international legal systems, European English translation equivalents for Italian terms designating legal concepts embedded in the national legal system only, and Italian terms designating legal concepts embedded in the national legal system with no European English translation equivalent.

KEYWORDS

Italian Code of Criminal Procedure, European English, legal terminology, legal translation, secondary term formation.

1. INTRODUCTION

Ever since the 1950s, we have been witnessing an increasing convergence of jurisdictions within the European context due to both the surrender of sovereignty to a common set of institutions, namely the European Union (EU), and the influence of other international bodies, such as the Council of Europe. Since then, EU laws have turned into a large, complex and heterogeneous body of legislation that covers several different topics. One of these is the so-called “area of freedom, security and justice”, whose main aims are to ensure the free movement of persons and to offer a high level of protection to EU citizens. This area is therefore very wide and covers policy sectors such as asylum, immigration, customs cooperation, fight against crime (terrorism, organised crime, trafficking in human beings, drugs), etc. Among others, it also deals with judicial cooperation in both civil and criminal matters and police cooperation. The policies adopted in the area of freedom, security and justice, such as the right to information in criminal proceedings,¹ and the increased movement of persons within the EU area, have brought about the need for tools that allow a better understanding of the functioning of the national legal systems in Europe. One such tool also consists in laws and codes available in languages different from the national one(s). The recently published English translation of the Italian Code of Criminal Procedure (Gialuz, Lupária & Scarpa, 2014) is an example of such tools and constitutes a step towards facilitating judicial cooperation by making the content of the Code more widely accessible to an English-speaking audience.

This paper is meant to discuss three types of English translation equivalents of Italian terms found in the Code of Criminal Procedure. The Italian terms under discussion designate legal concepts developed and embedded in the Italian national legal system which may or may not be shared also by European supranational and international legal systems. It follows that, while examining the possible English translation equivalents for the Italian terms, particular attention was needed in order to prevent the possibility of establishing erroneous correspondences between Italian legal concepts and legal concepts developed, for instance, in common law jurisdictions, which are generally expressed in English. Moreover, an eye was kept on guaranteeing access to the content of the Italian Code

1 See Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, *Official Journal of the European Union*, L 142, 1.6.2012.

of Criminal Procedure to the widest audience possible. Therefore, the variety of English selected for the translation of the Code was European English.²

2. EUROPEAN ENGLISH AND TERMINOLOGY

It is undeniable that Europe is a multilingual area. However, it is also undeniable that in this multilingual area English has lost its role as an exclusively native language and acquired the role of Europe's *lingua franca* as "it serves as a cross-linguistic or international medium of communication" (Seidlhofer, Breiteneder & Pitzl, 2006: 7). This means that, in the European context, English is used by both native speakers and non-native speakers and the use by the latter is "motivated by communicative needs, not linguacultural factors" (Seidlhofer, Breiteneder & Pitzl, 2006: 7). The growing centrality of English in continental Europe has led to what is nowadays known as 'European English' or 'Euro-English', although in the course of time "the Euro- element has become shorthand for the European Union rather than for Europe as a whole" (McArthur, 2003: 57). In this paper, however, the focus is on European English at large, i.e. the variety of English developed mainly in continental Europe not only within the institutions of the European Union, but also by other international organisations of European interest, such as the Council of Europe and the European Court of Human Rights, as well as the English used "in the translations of the Codes of Criminal Procedure of other European countries" (Scarpa, Peruzzo & Pontrandolfo, 2014: VII) and in European studies carried out by experts in criminal justice. One of the aims envisaged by the translation team³ was to make the translation of the Italian Code of Criminal Procedure (hereinafter simply called 'the Code') accessible to a wide and diverse audience of mainly European citizens with different cultural, linguistic and legal backgrounds, for whom English "may function as a direct mediator [...] in a discourse who would otherwise have to rely on translation or a third party" (Breidbach, 2003: 20). Therefore, European English in its broadest meaning has been chosen as the target language of the translation.

The choice of European English as the target language of the translation of the Code has been made bearing in mind the following considerations. First, European English is considered Europe's *lingua franca*. The reason for this lies in the function it performs in the European context, since it is used "as a tool for interpersonal communication among speakers with no single language in common" (Berns, 2009: 192). In line with Berns (2009: 192), "form follows function", which

2 For an overview of the recognition of European English as a variety of English, see Mollin, 2006, pp. 4-13.

3 The interdisciplinary translation team was composed by both jurists (Mitja Gialuz, Luca Lupària, Andrea Cabiale, Anna Cignacco, Silvia Fabbretti and Martina Jelovcich) and linguists (Federica Scarpa, Katia Peruzzo, Gianluca Pontrandolfo and Sarah Tripepi Winteringham).

means that “the development of a new linguistic system derives from the need for a common means of communication that will enable intelligibility, comprehensibility, and interpretability among speakers of mutually unintelligible languages” (Berns, 2009: 198). Therefore, since European English is all-pervasive and used to cover all sorts of domains, its development is relentless. Consequently, its “form” is in constant change and subject to ongoing revision. This means that, although a reference corpus (see Scarpa, Peruzzo & Pontrandolfo, 2014: 57-59) has been used to identify both the terminology and the structures typical of European English texts, not all the information needed for the translation was available in the corpus itself. This is especially true if we consider the following fact: nowadays English plays the role of “hypercentral language” (Humbley & García Palacios, 2012) in that it is the language in which new knowledge is first expressed and then disseminated. However, contrary to this current mainstream way of dissemination of knowledge, in the translation of the Italian Code of Criminal Procedure, English is used for an informative purpose, whereas the language in which the knowledge to be disseminated was originally expressed is Italian. It follows that the functioning of the criminal justice system as regulated by the Code was originally conceived as and remains part of the Italian legal system as a whole. The legal concepts designated by the terms found in the Code are linked to the Italian conceptual system and, despite the change in the language in which they are expressed when the Code is translated, they maintain their original relationship with it. In other words, the terms used in the target language serve as a point of access to the Italian legal system and particular care is needed in order not to establish connections with concepts specific to any other legal system expressed in English.

For the reasons mentioned above, the translation team decided to use a reference corpus of European texts from which to extract the terminology to be used in the translation of the Code. However, the existence of terms in European English to designate Italian national legal concepts is not to be taken for granted. Indeed, for instance, one of the guidelines of the *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation* reads as follows: “concepts or terminology specific to any national legal system are to be used with care” (European Parliament, Council of the European Union & European Commission, 2003: Guideline 5). Hence, it would be reasonable to expect that in texts published by EU institutions the terminology used designates concepts embedded in the EU supranational legal system only rather than concepts developed nationally. As said earlier, in order to avoid this possible shortcoming, the reference corpus used by the translation team included European English rather than Euro-English texts only, given that there are international bodies such as the European Court of Human Rights which necessarily deal with national cases but need to follow the multilingual principle and thus translate the necessary texts into English as well. However, even EU texts cannot be said to be free from national terminology which must

be translated in all the 24 EU official languages. On that account, the existence of suitable translation equivalents for the terms found in the Italian Code of Criminal Procedure in the reference corpus of European texts depends on two factors. First, the possibility of finding a translation equivalent in European English is subordinate to the fact that the underlying concept is not relevant to the Italian legal system only but is shared by supranational/international legal systems. Second, it depends on whether the underlying concept has already been discussed at the supranational or international level and therefore a translation equivalent has already been used to refer to it. This means that the availability of translation equivalents in European English for Italian terms may change over time, since the nationally-bound legal concepts are under constant revision also by supranational and international organisations within the European context. Such revision is carried out in two different moments and settings. On the one hand, national legal concepts enter a large-scale discussion during the negotiations necessary for the supranational and international law-making process and can be reflected especially in the preparatory documents for new legislation. Even though such documents are not legally binding, they need to be translated in all the official languages of the institutions involved in the process and therefore a first attempt to provide translation equivalents is made in this phase. On the other hand, national legal concepts can be said to cross the national borders and reach the supranational or international level and therefore undergo a translation process also when the compliance of national legislation with European obligations needs to be verified or when national courts and tribunals request the European Court of Justice to interpret EU law by means of preliminary rulings.

In order to illustrate the complex situation that has just been described, three practical cases extracted from the translation of the Code are considered in the following sections, focusing first on two cases where one or more translation equivalents were available in European English, then looking more specifically at a case where no equivalent was available and existing linguistic material has been used to create a 'European English neologism'.

3. EUROPEAN ENGLISH TRANSLATION EQUIVALENTS FOR ITALIAN TERMS DESIGNATING SHARED LEGAL CONCEPTS

The national legal systems developed in the European continent belong mainly to two legal families, i.e. civil law and common law. However, despite this outward division, two considerations can be made in this regard. First, more generally, the gap between common law and civil law traditions is no longer seen as irreconcilable and is undergoing a slow and gradual convergence. Second, more specifically, some essential concepts of criminal procedure are shared by both traditions and possess common traits. Given the central role they play in criminal law, the legal concepts that are shared are designated by terms in different

languages and therefore equivalence relations may be established among them. This point is further explained by means of the event template in Figure 1 derived from Frame-Based Terminology (Faber et al., 2006; Faber et al., 2007; Faber, Márquez Linares & Vega Expósito, 2005) and applied also to the translation of the Italian Code of Criminal Procedure.

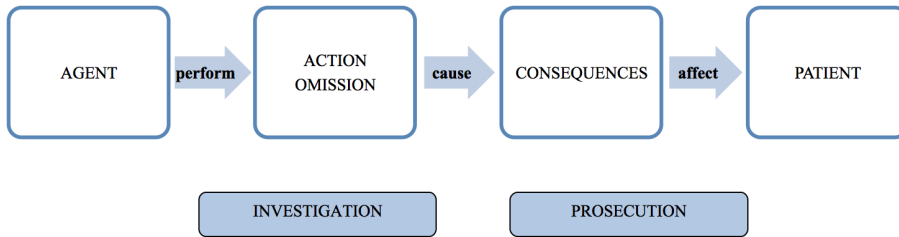


FIGURE 1. Event template for the commission of an offence

The event template in Figure 1 represents the prototypical, and thus simplified, situation related to the commission of an offence. Despite being expressed in English, the event template is considered as a “non-language-specific representation” (Faber, 2009: 121) of the situation, since the categories and the relations among them can be applied to all the languages used by societies regulated by criminal justice systems. In this event template, the agent (the offender) performs an action or omission which is classified as criminal conduct (an offence) according to the relevant legal system and has consequences (e.g. harm, suffering, damage to property) for a patient (the victim). In any legal system in Europe, the act or omission that constitutes an offence can be followed by the investigation phase and, if charges are brought against the alleged offender, he or she undergoes prosecution.

Taking a closer look at the Code, it can be observed that in Italian the alleged offender is designated by two different terms according to the procedural phase, i.e. “indagato” during the investigative phase and “imputato” once charges have been filed and he or she has been put on trial. The conceptual distinction between these two procedural phases can be found also in other legal systems and, in order to maintain it and determine the right and duties of the parties in the different phases, two terms are used also in European English. As a matter of fact, the terms “suspected person” (and its short form “suspect”) and “accused person” have been extracted from the relevant corpus as the equivalents of “indagato” and “imputato” respectively. In particular, the documents in which these terms have been found are *Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings*,⁴ and *Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012*

4 Official Journal of the European Union, L 280, 26.10.2010, 1-7.

on the right to information in criminal proceedings,⁵ which are fundamental for the development of harmonised criminal law within the EU. Indeed, there are several other European documents in which the Italian terms appear and, whereas the usage of “indagato” and “suspected person” is consistent in them, there are two different terms in place of “imputato” in the English version of these documents, i.e. “accused person” and “defendant”. However, although the underlying concepts can be said to almost coincide in their core, the two terms have a different origin, since “defendant” is typical of national rather than supranational/international law. Why is it, then, that the term can be found in European documents, even if national terminology should be avoided or used with care (see Section 2)? The fact is that the European documents in which the term “defendant” is used are generally not legislative, since their function is not to make law, but rather pertain to case law, which is intended to apply legislation. The different text type thus affects the terminology used.

Legislative texts are conceptualised and drafted within the European supranational environment. Their linguistic form, and thus the terminology they contain, is subject to a thorough revision before (but also after) publication (see, for instance, Robertson, 2008, 2010), since several checks are carried out in the law-making process, from the first version of a legislative document as a proposal to its final version or even its amendments. Therefore, it comes as no surprise that there may be some differences in the terminology used in legally and non legally binding texts and in legislative and case law texts. On the contrary, case law texts (e.g. references for preliminary rulings) originate in national legal systems and are brought before the European Court of Justice only after an issue of European interest is raised. It follows that the first type of texts is drafted according to European requirements, which implies that they are as far from national connotations as possible and at the same time as easy to be applied by national legal systems as possible, while the second type holds a very close relationship with the national context from which such texts come and the influence of national language is undeniable. Therefore, although in the European corpus two translation equivalents for “imputato” have been found, the term “accused person” has been chosen on account of its embeddedness in legislative texts rather than case law texts.

4. EUROPEAN ENGLISH TRANSLATION EQUIVALENTS FOR ITALIAN TERMS DESIGNATING LEGAL CONCEPTS EMBEDDED IN THE NATIONAL LEGAL SYSTEM

The case illustrated in the previous Section leads the discussion to a second type of terms identified in the Code, i.e. Italian terms that designate legal concepts developed within the national legal system which are not shared by the supranational or international legal system. For these terms several possible English

5 Official Journal of the European Union, L 142, 1.6.2012, 1-10.

equivalents can be found in the European corpus. This type of terms is here exemplified by the term “incidente probatorio”. Contrary to the example discussed in Section 3, where the concept underlying the term “imputato” is embedded in national and European legal systems alike, “incidente probatorio” refers to a concept that is specific to the Italian legal system. This means that such a concept does not fall into one of the categories that constitute an event template as general as the one represented in Figure 1. Therefore, it would be rightful to think that, being specific to the Italian reality, the term has no European English equivalent. However, as stated in the previous Section, case law texts of European concern originate in national legal systems and are subsequently brought before European courts, serving as a ‘means of transfer’ of terminology.

As regards the term “incidente probatorio”, it appears in three different references for a preliminary rulings, all of which presented by an Italian court. Given the embeddedness of this notion in the Italian legal system, the term has posed quite a challenge to the English translators who opted for different solutions, namely the borrowing (“incidente probatorio”), multi-word terms (“immediate expert’s report”, “special procedure for taking evidence early”, “Special Inquiry procedure”), and verbal paraphrases (“hear evidence” and “take evidence under special arrangements”). To the translators and the legal experts involved in the translation project, however, all of the solutions encountered in the European corpus seemed inappropriate for translating the Italian term. The verbal paraphrases, for example, would not be adequate for translating the headline of Title VII, while some multi-word terms are partially incorrect, such as “immediate expert’s report”, or not concise enough, such as “special procedure for taking evidence early”. Therefore, after close examination of the pros and cons of the possible translation equivalents found in the European corpus, the translation team decided to resort to secondary term formation (Sager, 1990: 80), i.e. the phenomenon that “occurs as a result of (a) the monolingual revision of a given terminology [...], or (b) a transfer of knowledge to another linguistic community, a process which requires the creation of new terms in the target language” (Sager, 2001: 251). According to Sager (2001: 253), secondary term formation includes several methods, such as borrowing, loan translation, paraphrase, parallel translation, adaptation and creation *ex nihilo*, which “can be used simultaneously or sequentially and often give rise to several alternative or competing new terms. It can therefore take time before a terminology stabilizes in this field.” In this specific case, the translation team opted for a newly formed multi-word term, i.e. “special evidentiary hearing”. This neologism was obtained by combining existing lexical material without employing a loan translation of the Italian term, which would probably be incomprehensible for the target reader. Instead, the new formation allowed to establish a cross-reference between two legal concepts that in Italian have no formal but only conceptual correspondence, i.e. “incidente probatorio” and “istruzione dibattimentale”. Indeed, these terms designate two phases of the criminal proceedings in which evidence is taken.

However, since they take place at different times, the translation team decided to translate these two terms so as to create a cross reference and make it clear that the “incidente probatorio” is carried out only if certain requirements are met (this is why the adjective “special” was used), while in the “istruzione dibattimentale” evidence is taken during trial, therefore the term “trial evidentiary hearing” was used in the English translation.

5. ITALIAN TERMS DESIGNATING LEGAL CONCEPTS EMBEDDED IN THE NATIONAL LEGAL SYSTEM WITH NO EUROPEAN ENGLISH TRANSLATION EQUIVALENT

The last category of terms discussed in this paper are Italian terms found in the Code which designate concepts embedded in the Italian legal system for which no European English equivalent has been extracted from the reference corpus. An example that falls within this category is the Italian term “*persona civilmente obbligata per la pena pecuniaria*”, i.e. either the person or the institution who is obliged to pay the financial penalty to which the accused person is condemned if he is insolvent in certain circumstances. This concept is specific to the Italian legal system and the relevant term has not been translated into English yet. This means that the translation team could not rely on an existing translation equivalent nor select among a series of equivalents, but needed to create a new translation equivalent via secondary term formation (see Section 4). Since a new English term was needed for a known Italian concept to fill in a specific terminology gap in the target language, secondary term formation here constituted “an isolated process” (Sanz Vicente, 2012: 106). Moreover, contrary to what is generally assumed to be the future of newly coined terms, i.e. either stabilization or necrology (see, for instance, Picton, 2011), the translation of the Code represents a different situation, since the term to be created is not intended to be implanted both in the English language and in a legal system expressed in this language, but is rather to be seen as a bridge, an access point to a legal concept that is inextricably intertwined in the Italian legal system. In order to build this bridge, the translation team coined a new terminological unit by using morphosyntactic and semantic resources of the target language, namely “person with civil liability for financial penalties”. Also in this case, particular attention was paid when selecting the target language variety. Indeed, to create the translation equivalent different linguistic material available in European texts has been combined. Therefore, the Italian term has been broken down into semantically meaningful segments and each segment has then been translated by using meaningful segments already existing in European English. The segment “*persona civilmente obbligata*” has been translated by resorting to the noun “person” followed by the prepositional phrase “with civil liability”,⁶ which

6 See, for instance, Reference for a preliminary ruling by the Pretura Circondariale di Pinerolo (TO) by order of 13 January 1999 in the criminal proceedings against Manuele Arduino,

is used in EU texts to refer to the person who is generally considered to have civil liability for damages in criminal proceedings and is a concept typical of civil law jurisdictions. However, by adding the segment “for financial penalties”⁷ which translates “per la pena pecuniaria”, its meaning was narrowed down so as to convey the meaning of the Italian term.

CONCLUSION

Within the European context, national jurisdictions have been experiencing an increasing convergence ever since the middle of the previous century. The “area of freedom, security and justice” developed by the European Union calls for a greater judicial cooperation in both civil and criminal matters and police cooperation. This implies also an increased attention towards a better understanding of how the national legal systems in Europe work, which is possible also by translating national laws and codes in languages other than the national one(s). The translation of the Italian Code of Criminal Procedure into European English published in 2014 is an example of such codes.

In this paper, the types of translation equivalents used for the translation of the Code are discussed and illustrated by examples. Given that the translation team used a reference corpus of European documents in order to extract relevant terminology, the Italian terms can be broadly subdivided into two basic categories, i.e. terms with and terms without European English translation equivalents in the reference corpus. However, given the multilayered nature of the European legal setting, a further classification criterion has been used, namely the degree of embeddedness of the underlying concept in the national legal system. The resulting classification is thus threefold and comprises European English translation equivalents for Italian terms designating legal concepts shared by both national and supranational/international legal systems, European English translation equivalents for Italian terms designating legal concepts embedded in the national legal system only and Italian terms designating legal concepts embedded in the national legal system with no European English translation equivalent, for which the translation team created *ad hoc* neologisms. The examples provided in the paper served to show that, within the European context, even though a legal concept is rooted in a national legal system, the term(s) designating it may be used also at the supranational/international level due to either the need for negotiation in the law-making process or national cases being brought before Eu-

with the intervention of Diego Dessi, plaintiff in the civil action, and the parties with civil liability, Giovanni Bertolotto and Compagnia Assicuratrice RAS SpA, having its registered office in Milan (Case C-35/99), *Official Journal of the European Communities*, C 100, 10.4.1999.

7 See, for instance, Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, *Official Journal of the European Union*, L 81, 27.3.2009.

ropean courts. On the grounds of the linguistic regime in Europe, when such terms reach the supranational/international level, they need to be translated also in English, given the central role this language plays in Europe.

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