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THE COMPARATIVE ELEMENT IN COMPARATIVE LEGAL LINGUISTICS

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Abstract: Fundamental legal-linguistic research includes next to monolingual approaches to the legal language also comparative approaches. Meanwhile, the epistemic value of comparative approaches is unclear in legal linguistics. Therefore, in this article different legal-linguistic comparative approaches will be scrutinized, and their perspectives made operational in legal linguistics. Especially, the traditional analysis of legal terminology gains momentum here in the context of discursive comparative approaches. The multilingual origins and the intertextual mode of existence and development of the legal language are identified as its characteristic features. They also shape processes in which the language of the global law emerges in the contemporary social reality.

Key words: comparative legal linguistics; legal terms and concepts in translation; aspects of meaning and understanding

ELEMENT KOMPARATYSTYCZNY W LEGILINGWISTYCE PORÓWNAWCZEJ

Abstrakt: Legilingwistyczne badania podstawowe dotyczą tak źródeł monolingwalnych jak i analiz porównawczych. Wartość poznawcza podejść porównawczych do języka prawa pozostaje niewyjaśniona w legilingwistyce. Dlatego też w niniejszym artykule analizowane są różne podejścia porównawcze do języka prawa. Użyte są one do analiz tekstów prawnych w kontekście dyskursywnym i w tradycji komparatystycznej. Wielojęzyczne korzenie i multilingwalny tryb bytu są cechami charakterystycznymi tych tekstów. Podejścia porównawcze pomagają również zrozumieć procesy, w których język prawa globalnego kształtuje się w dzisiejszej rzeczywistości społecznej.

Słowa klucze: legilingwistyka porównawcza; terminy i pojęcia prawne w tłumaczeniu; aspekty znaczenia i zrozumienia

Introduction

Legal linguistics is frequently construed as a monolingual scholarly enterprise (cf. Galdia 2017b). Valuable works on particular legal languages impress and structure the legal-linguistic research since its inception (cf. Tiersma 1999, Cornu 2005, Lizisowa 2016). Another, no less productive current is represented in legal linguistics by comparative undertakings. Until now, this dichotomy in the research was rarely problematized, especially in terms of legal-linguistic methodology. Meanwhile, fundamental legal-linguistic research includes next to issues of monolingual approaches to the legal language also the discussion of comparative approaches. The epistemic value of comparative approaches in legal linguistics remains unclear. Therefore, in the following, different legal-linguistic comparative approaches will be scrutinized and their perspectives made operational in legal linguistics. At this point, it is particularly important to ask how the method of comparative law could contribute or become integrated into the comparative legal-linguistic research. In such perspective, the traditional analysis of legal terminology may be repositioned in the

context of discursive comparative approaches. Its multilingual origins and intertextual existence are specific to its development. They also explain processes in which the language of the global law emerges in the contemporary social reality.

Comparative legal-linguistic approaches

For legal linguistics, the comparative study of law was essential to its development. All works on legal linguistics by one of its most renowned representatives, Professor Heikki E.S. Mattila, developed in a close relation to comparative law (cf. Mattila 2013, 2017). His comparative approach is distinct from the monolingual perspective adapted by other researchers, such as G. Cornu or P. Tiersma, who usually focused on the relation between the particular ordinary language and the legal language perceived as special register. Doubtless, comparative legal linguistics represents a strong current within legal-linguistic studies that comes next only to monolingual legal-linguistic analyses. Legal-linguistic comparison may also concern one language, for instance the legal Latin and the way in which Latin terminology is reflected in other legal languages (cf. Mattila 2002: 181). To illustrate, the Spanish constitution (La Constitución Española de 1978) includes a Latin borrowing that is apt to be analyzed in such an approach:

> Art. 17 (4) La ley regulará un procedimiento de "habeas corpus" para producir la inmediata puesta a disposición judicial de toda persona detenida ilegalmente. Asimismo, por ley se determinará el plazo máximo de duración de la prisión provisional. (Transl.: A habeas corpus procedure shall be provided for by law in order to ensure the immediate handing over to the judicial authorities of any person illegally arrested. Likewise, the maximum period of provisional imprisonment shall be determined by law.)

In this approach, the use of the Latin term *habeas corpus* may be analyzed also in its multilingual surroundings, for instance in English or German texts that include this borrowing. Consequently, quantitative as well as qualitative conclusions may be derived from such type of comparative legal-linguistic research.

Another aspect of comparative legal linguistics is represented in the Poznań school of legilinguistics. Illustrative of the whole

approach is the project by P. Kozanecka, A. Matulewska, and P. Trzaskawka (2017: 14). Their project, which is rooted in the parametrical approach to legal translation, relies on connections to comparative linguistic and comparative legal studies (cf. also Matulewska 2017). In their project, the authors dealt with two main hypotheses: 1) the more distant two languages are in respect of their belonging to a legal family, the greater will be the risk of loss of information in translation, 2) the more distant are two legal systems in respect to their belonging to a legal family, the more problems will appear in translation with finding equivalent terms (cf. Kozanecka et al. 2017: 15). Legal translatology may include further constellations discussed in the area of comparative law and thus expand the theory proposed to date. This concerns especially the constellation of bi- or multilingual legal systems that are expressed in genetically distant languages (cf. Dievoet 1987). Also G. R. de Groot (1987: 18, 25) stressed the specific case of translation in bi- or multilingual legal systems and underlined that the linguistic analysis also revealed that aspects important for comparative lawyers are not necessarily decisive from the perspective of translators as well as that the reception of law in many cases occurs in a different way than the development of languages themselves and that is why the global structure of legal systems in the world cannot be omitted in such a situation. Overall, comparative approaches to law may broaden the legal-linguistic perspective. However, while broadening the legal-linguistic perspective they may also methodically complicate the researched subject matter. This circumstance explains the necessity to research the methodical fundamentals of comparative legal linguistics.

Next to comparative methods also contrastive approaches are used. Contrastive methods rise awareness rather than really compare. They appear frequently in the context of translation studies. For instance, the structure of the civil law and of the common law contract as far as the element of *consideration* is concerned differs and the contrastive analysis clarifies this moment. As the civil law system does not know *consideration*, the application of strictly comparative approaches in such a situation may end up with comparing the incomparable, yet it provides useful knowledge for legal translators.

Comparative legal-linguistic approaches do not form any uniform perspective upon the legal language. Meanwhile, their common methodical denominator is the researchers' commitment to the analysis of more than one legal language and the conviction that this

approach supplies added value to the legal-linguistic enterprise. Jurists cherished the same hope when approaching the legal diversity in the world in their comparative studies.

Comparative study of law and its method

While comparative and contrastive methods in contemporary linguistics are relatively clearly defined, comparative law, which influences comparative legal-linguistic studies, questions its methods regularly and persistently (cf. Husa 2018a, Pargendler 2012, Siems 2016, Örücü 2004a and 2004b). The crisis of comparative law is deeply rooted in its conceptual frame of reference (cf. Husa 2018a: 411). In the recent debate, its main concepts such as legal family, legal tradition, and legal culture were scrutinized critically as much too superficial and inadaptable to the reality of the globalizing world. Under such circumstances, it is necessary to inquire whether legal comparison today is apt to uncover other than linguistically relevant features of law and to reach beyond comparative legal linguistics. And if this is the case, is the understanding of law by legal linguists not exhaustive? At this point, some legal-linguistic methodological assumptions could be formulated more precisely: First, as comparative legal linguistics cannot cope solely with the linguistic comparison of legal systems and especially with their terminology, one might ask what consequences the discussion in comparative law could have for the development of comparative legal-linguistic studies. The most relevant consequence seems to be the split in conceptual and terminological perspectives upon the language of law that results from the methodical understanding of legal comparatists. This is the more relevant as many researchers claim that legal translation is largely legal comparison. Second, the mentioned split allows also different levels of professional knowledge to emerge that finally enables legal translations by non-jurists. Therefore, legal and linguistic approaches to comparison in law are complementary, and not necessarily contradictory. They represent different modes of understanding law and display additional layers in the legal discourse. Meanwhile, the legal-linguistic perspective upon law enables the full understanding of the research object ‘law’. The above methodological assumptions will be clarified in the paragraphs that follow.

Comparative law or more precisely the comparative study of law (cf. Husa 2018a: 411) emerged probably due to differences that were identified between civil law and common law such as the contractual element of *consideration* that was mentioned above (cf. Stanzione 1973: 877). Other, more general goals such as understanding the phenomenon law more fully, especially beyond the limits of domestic legal systems and against the rigidity of the legal doctrine followed suit. One may also assume that for some jurists the attractiveness of the comparative study of law was rooted in its manifested liberty and openness to broader deliberation of legal problems that the traditional, positivist or neo-positivist legal doctrine viewed skeptically, if at all. However, this openness to new contents and liberty of thought proved also problematic in the sense of the comparative undertaking as an academic activity. A global vision of law was adapted in the comparative research that step by step comprised all laws that are applicable in the world. This moment in time marks also the emergence of the research into foreign law that is frequently confused with the comparative study of law and that in legal-linguistic studies could be qualified as contrastive rather than comparative.

Thus, the question as to what the comparison of laws is, imposed itself as an inevitable prerequisite for whatever comparative study of laws. Traditionally, in the history of thought a tool for comparison was present in form of *tertium comparationis*, a criterion or benchmark to confront two or more related phenomena. It would suffice, as it seemed, to define precisely the *tertium comparationis* and the comparison of laws would follow more or less automatically. Meanwhile, this issue caused interminable debates in the comparative research and every step in the comparative activity was questioned, sometimes vehemently. Especially in the twentieth century the comparative method was exposed to criticism due to the emergence of the socialist law. Comparatists asked themselves whether traditional law, civil and common, can be compared with the socialist law that stressed its transitory nature and its otherness both in form and in content (cf. Stanzione 1973: 875, David 1978: 170, 215-216). Is contrasting both types of law actually comparison? Is meaningful comparison possible only between largely homogeneous laws such as civil and common law that in one way or another refer to their Roman roots? A problem-oriented approach was proposed as central to whatever scholarly reasoning to alleviate this methodological intricacy. This approach is definitely right, yet it is also very general, as whatever

intellectual activity can be labelled problem-oriented. Additionally, functional and systemic, casuistic versus dynamic approaches followed in comparative studies (cf. Stanzione 1973: 884). The available research into the fundamental question of comparison or comparability of laws enables jurists, in the view of many legal comparatists, to speak about the comparative study of law as an autonomous legal discipline, even if it to a large extent dealt with itself and much less with its object, especially when voluminous works on foreign law are deducted from the corpus of the comparative study of law.

Within the traditional comparative paradigm, legal families were composed and legal traditions analyzed by comparatists. Later on, legal culture was proposed as one more concept to balance the deficits in the traditional comparison. The traditional way of comparison was embedded in the research paradigm that focused on the laws of the world that were neatly divided in legal families. This systematics allowed for exchanges in form of legal implants between different domestic laws, which were perceived as basically independent. It remains open what this research actually accomplished in terms of general knowledge about law, when the image of plurality in unity in the laws of the world is set apart. In fact, the traditional comparative study of law showed that notwithstanding many differences of form and content, the laws of the world in force today remain anchored in the conceptual framework of the Roman law, notwithstanding numerous updates to this conceptual base. Domestic laws emerged in this type of comparison as composed of legal substrates, superstrates, and adstrates like whatever language that is the result of contacts between groups of speakers. It also showed that laws evolve, but this dynamic feature they share with all other social phenomena, language most expressly included. This conclusion holds true even if some comparatists engaged in their research with the opposite goal in mind and alleged that fundamental structural differences would exist between the traditional dominant and the dominated legal systems of the world.

While some universalist comparatists scrutinized legal morphology in order to identify the elementary particles of law, for instance *offer* and *acceptance* as elements of *contract*, they did not accomplish any legal grammar composed of such elements that would make clear the contemporary structure of law and enable its more systematic development worldwide. However, in its problem-oriented studies comparatists identified ways of interrelation of legal systems such as unification, approximation, harmonization, and coordination of

laws. Finally, the issue of globalization of law that has its intellectual origin in the comparatists' idea of *ius unum* began to dominate the work of numerous comparatists (cf. Domingo 2010, Husa 2018b). This is an understandable concern as the total or partial disappearance of traditional laws of Asia and Africa, the approximation of civil law and common law that for some researchers comes close to their merger, the dismantlement of most socialist states as well as the subsequent disappearance of the divide into Eastern and Western jurists, and the presence of numerous elements borrowed from civil and common law in the Islamic law renders differentialist perspectives upon laws less attractive. Therefore, the impression emerged that macrocomparative approaches to laws do not offer any deeper insights as laws nowadays, for instance the Finnish and the Indonesian private laws, are much too close to each other to enable any substantial contrastive or comparative conclusions to be drawn from their comparison (cf. Mattila 2014). It remains, as always, the microcomparative approach that sometimes provides details that may be useful for governments when they prepare drafts of legislation. Such drafts are often based on foreign solutions to legal problems.

In the newer discussion, the decomposition and recomposition of the conceptual frame of reference in form of a reload was proposed in order to reshape the comparative study of law in times of the ongoing, although sluggish, legal globalization (cf. Husa 2018a: 412). This is a procedure that proved its usefulness in critical times in any area of knowledge and it was advocated also in other disciplines (cf. Kaag 2009). It is probable that in the main current of contemporary comparative studies the focus upon legal culture in times of legal globalization will reshape comparatists' understanding of legal families and other traditional concepts. Jaakko Husa proposed to "accept commensurable overlapping conceptualizations" on the macrocomparative level (cf. Husa 2018a: 410). He also readjusted the concepts of legal family, legal tradition, and legal culture that he treated within a multivalent thinking where "everything is a matter of degree" and not of strict taxonomy (cf. Husa 2018a: 440). For instance, the domestic law of Hong Kong can be perceived as simultaneously belonging to the common law legal family, yet in terms of legal culture "it bears clear Asian legal cultural characteristics," (cf. Husa 2018a: 446). What is more, differentialist comparative perspectives will continue to play a role only in ideologically more pronounced research and the sociological and anthropological perspectives upon the

globalization of law will definitely gain momentum in the future. Yet, the biggest problem of the comparative study of law is its weak anchorage in methods of social sciences as many comparatists continue to cherish the idea of an autonomous, and apparently inherent rather than explicit comparative method, which they are ready to enrich with conceptual puzzles from other social sciences that are borrowed rather inconsistently. It seems that the crisis will not be overcome without a step toward full integration of the study of law into social sciences. This step would facilitate the use of methods and results reached in the comparative study of law also in legal linguistics. Finally, from the legal-linguistic perspective it can be maintained that the impact of legal comparison would further increase through the shift of attention to comparing legal-linguistic operations. It could be used primarily in order to elucidate the question whether legal-linguistic operations such as legal interpretation or legal argumentation are actually ubiquitous (cf. Galdia 2017a: 201). Such undertaking could be carried out under a common, integrative legal-linguistic comparative label.

Identifying the comparative element in comparative legal linguistics

Thus, comparative legal-linguistic approaches share the fate of the comparison in law, where comparison is the domain of comparative law. They also depend on linguistics proper, where comparative linguistics can be perceived as a special area or a method. Methodologically, comparison definitely requires a *tertium comparationis*, i.e. a set of categories or parameters that form the background of the comparative activity. From the perspective of general linguistics, comparative efforts may appear circular as they finally prove that the scrutiny of linguistic diversity, which is their point of departure, uncovers general linguistic patterns, which the diversity of languages masks for an unprepared observer. Yet, for many linguists such a result is rather obvious. In linguistics, comparative methods gained momentum also in relation to translation, as the conventional character of language becomes better visible in comparison. In comparative law, the result is no different. There, the multitude of legal systems can be combined into several groups and these, finally, can

form a system of fundamental legal elements that constitute the law as an abstract structure or model, and not the multitude of legal systems.

As mentioned, comparative efforts in linguistics help uncover universal structures. It goes without saying that the same structures could have been uncovered also in the monolingual research, yet most linguists have their pains with such a procedure. Some of such universal structures are rather elementary.

We may distinguish terminological or textual parallelism and comparison, for instance in related provisions of the Polish and the German penal codes:

The Polish Criminal code (Kodeks karny) says:

> Art. 148. § 1. *Kto zabija człowieka*, podlega karze pozbawienia wolności na czas nie krótszy od lat 8, karze 25 lat pozbawienia wolności albo karze dożywotniego pozbawienia wolności. (emphasis added),

while the German penal code (Strafgesetzbuch) stipulates:

> § 212 Totschlag. (1) *Wer einen Menschen tötet*, ohne Mörder zu sein, wird als Totschläger mit Freiheitsstrafe nicht unter fünf Jahren bestraft. (2) In besonders schweren Fällen ist auf lebenslange Freiheitsstrafe zu erkennen. (emphasis edded).

As far as the emphasized parts of the two provisions are concerned their comparison shows that they are literally identical. This linguistic or textual parallelism has reasons that are rooted in the drafting tradition of legal texts, i.e. in their intertextual mode of existence. Identifying such parallelisms is a by-product of the comparative approach. Legal intertextuality facilitates the emergence of the language of the global law and it is also evidence for the ongoing process of the globalization of legal language. As we deal with a universal elementary structure, its propositional content can be neglected at this point.

Terminological or textual parallelism is frequent in statutory texts:

Art. 1156 French Code civil saying:

> On doit dans les conventions rechercher quelle a été la commune intention des parties contractantes, plutôt que de s'arrêter au sens littéral des termes,

and Art. 1362 Italian Codice civile:

> Nell'interpretare il contratto si deve indagare quale sia stata la comuna intenzione delle parti e non limitarsi al senso letterale delle parole,

are that close as to their content and linguistic form that one may assume that the one is the translation of the other.

Furthermore, the formulation of the Art. 1161 French Code civil (in force until 2016):

> Toutes les clauses des conventions *s'interprètent les unes par les autres*, en donnant à chacune le sens qui résulte de l'act entier,

corresponds literally to Art. 1363 Italian Codice civile:

> Le clausole del contratto *si interpretano le une per mezzo delle altre*, attribuendo a ciascuna il senso che risulta dal complesso dell'atto (emphasis added).

As this resemblance cannot be coincidental because it even comprises legal phraseologisms, it can be posited that they stand to each other in a relation of intertextuality, i.e. that the one has been developed because the other existed already. As the French Civil code dates from 1804 and the Italian Codice civile entered into force only 1942 one can claim that the Italian provision is the translation of the French.

Basic legal comparison in legal-linguistic perspective

From the legal-linguistic perspective the art of comparison practiced by legal comparatists is concept-oriented. Linguists, in turn, often start their comparative work with terms. This finding concerns also legal translators who mainly focus upon legal terms and only rarely upon legal concepts. Traditional legal comparison may look as follows:

A jurist interested in comparative law may research eligibility conditions for the offices of the U.S. President and for the President of Latvia. First, she will determine the relevant provisions in the legal acts of both countries. These will be Art. II of the U.S. Constitution and Art. 3 of the Latvian Constitution (*Satversme*). The mentioned constitutional provisions say:

> No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of the President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States. (U.S. Constitution, Art. II, Sec.1),

and,

> Par Valsts Prezidentu var ievēlēt pilntiesīgu Latvijas pilsoni, kurš sasniedzis četrdesmit gadu vecumu. Par Valsts Prezidentu nevar ievēlēt pilsoni ar dubultpilsonību. (LR Satversme III/37) (Trans. A major citizen of Latvia who has accomplished forty years of age can be elected President of the State. A citizen with double citizenship cannot be elected President of the State.)

Second, the comparative lawyer will find out that the comparison of elements relevant to eligibility in the above provisions shows differences in the age limit, residency, naturalization, and double citizenship. Based on these textual elements, the legal comparatist can develop an argument concerning the eligibility conditions in both constitutions. The legal linguist would be additionally interested in the way the U.S. and the Latvian legislators state the eligibility conditions and in the legal argumentation in texts that apply these provisions. Full understanding of law comprises both the functional-comparative and the legal-linguistic analysis.

Meanwhile, the above comparative approach is formal, if not formalistic as the role of the President in the U.S. and in the Latvian constitutional law is different. What remains is the commonality of terms as *president* equals *presidents* in Latvian. Not much knowledge follows from this sort of comparison of the incomparable.

The more the compared texts differ structurally, the more difficult is the comparative inquire. Even a relatively small modification in the structure of a legal text may methodically complicate its comparison with other texts. For instance, Art. 127 (I – III) of the Polish Constitution establish a broader textual framework:

> (1) Prezydent jest wybierany przez Naród w wyborach powszechnych, równych, bezpośrednich i w głosowaniu tajnym. (2) Prezydent Rzeczypospolitej jest wybierany na pięcioletnią kadencję i może być ponownie wybrany tylko raz. (3) Na Prezydenta Rzeczypospolitej może być wybrany obywatel polski, który najpóźniej w dniu wyborów kończy 35 lat i korzysta z pełni praw

> wyborczych do Sejmu. Kandydata zgłasza co najmniej 100 000 obywateli mających prawo wybierania do Sejmu. (Transl. (1) The President of the Republic shall be elected by the Nation, in universal, equal and direct elections, conducted by secret ballot. (2) The President of the Republic shall be elected for a 5-year term of office and may be re-elected only for one more term. (3) Only a Polish citizen who, no later than the day of the elections, has attained 35 years of age and has a full electoral franchise in elections to the Sejm, may be elected President of the Republic. Any such candidature shall be supported by the signatures of at least 100,000 citizens having the right to vote in elections to the Sejm.)

The complete text of Art. 127 comprises seven paragraphs. It makes clear that the Polish provision structures the issue of eligibility of the president differently. Therefore, it would necessitate a more nuanced methodology to be explored within our context of comparison of the above U.S. and Latvian provisions. It is understood that basic legal comparison does not cover all comparative intricacies of law, yet it allows the first insight into the way the legal comparatists work. This enables a better understanding of the legal-linguistic activities, especially in terms of the theory of legal translation.

Concepts and terms in legal linguistics

The previous paragraphs seem to indicate that the comparison of legal and legal-linguistic approaches to law also contributes to our understanding of the topics related to the difference between legal terms and legal concepts. Indeed, one of the most fundamental questions in the legal-linguistic research is the elucidation of the relation between concepts and terms in the legal language (cf. Galdia 1999, Mattila 2018). The linguistically marked difference between concept and term requires a thorough scrutiny from the legal-linguistic perspective. In daily experience, we can imagine a dog without expressing the term *dog*. We can also imagine some abstract concepts such as *triangle*, yet not prototypically, i.e. exclusively within its mathematical definition. Meanwhile, already more complex concepts such as *liberty* cause problems in this respect. Doubtless, however, we cannot imagine the *promissory estoppel* without using its linguistic expression in one way or another. Basically, in the area of law there is no legal concept without

a corresponding legal term. Apparently, it would be impossible to think about a legal concept were a term not at the speaker's disposal. The linguistic expression of a concept is the term, which means that both are united like two sides of the same coin. One could therefore ask why legal theory still operates with the split of one thing in two. The reason may be practical, as shown on the example of the coin. *Adverse possession* in the American law and *Ersitzung* in the German law refer to the same concept, yet express it with different linguistic means. Certain linguists and comparative lawyers perceive this superficial difference of term formation as substantial. They will say that two terms correspond with one concept. The divide between concept and term is used to mark this difference. From the pragmalinguistic perspective, the content of the terms is the same, no split in term and concept is necessary.

In the context of this problem, G. R. de Groot (1987: 20) dealt with the problematic equivalence between the Dutch *moord* (murder) and *doodslag* (homicide) as well as the German *Mord* (murder) and *Totschlag* (homicide). He says significantly that *Mord* is defined in Art. 211 of the German criminal code. Meanwhile, the code mentions the *murder* only in the headline of Art. 211 and actually regulates the question who is a *murderer* (cf. *Mörder ist, wer aus Mordlust*…,i.e. *Murderer is who out of desire to murder*…) and it in its wording does not characterize explicitly the act of *murder*. De Groot's challenging remark is significant because it enables to grasp the difference between concept and term in the legal language. Jurists think in concepts, linguists identify terms. Therefore, the jurist perceives the *murder* in the provision that deals explicitly with the *murderer*. This perception is not irrational, and it is also justified by syntax and semantics of the provision in question. In fact, the linguistic transformation of the provision in the sense of de Groot's perception is easy: (1) *Mörder ist, wer aus Mordlust*…can be transformed into (2) *Einen Mord begeht, wer aus Mordlust*…as this content is inherent in the language of the original. Hence, the provision, while explicitly referring to the *murderer* regulates the *murder*. Linguists understand the possibility of such transformations, yet for them language starts with terms, not with concepts, as terms are uncontroversially present in the language. Jurists accept in their work on legal texts the approximate approach to language and proceed intuitively. This approach is justified by the fact that they are native speakers of the language in question. Yet, complex legal questions that involve semantic intricacies cannot be solved with

the intuition of a native speaker. In our case of the *murderer* the prerequisite of the *murder* that he might have committed is a.o. the action *aus Mordlust* (i.e. out of desire to murder) that necessitates a legal-linguistic analysis in cases where it might be applicable. For such questions, jurists set up a methodology including, for instance, interpretation canons (cf. Galdia 2014). These canons have, however, proven deficient in theory and in practice. It is the task of legal linguistics to describe and to set up a method of legal interpretation that would replace jurists tentative and occasionally even fitting statements about the meaning of laws. This is necessary because modern law requires court decisions that are rationally justified and fulfill the requirement of certainty of law. Attempts to grasp meaning intuitively will not satisfy these requirements.

Legal-linguistic understanding and comparative legal linguistics

The above discussion of the split in the perspectives to legal language that depend on the term-centered or on the concept-centered approaches clarifies the problem of understanding of legal texts in comparative legal linguistics. As a matter of fact, translatorial understanding of texts and their underlying subject matters is rarely exhaustive. Heuristic barriers and economic constraints of the exercise of a practical profession impose restrictions upon translators' inquisitive approaches to texts. These problems manifest themselves in translations in several ways. I limit myself to two types of problems that appear to me essential. The first is purely textual, the second uncovers methodical presuppositions of legal-linguistic understanding of legal texts.

Understanding is a multifaceted concept as there are several ways to understand a subject matter. For instance, a medical doctor understands medicine that he studied during many years in a specific way, a nurse also understands medicine, yet differently. Both represent the understanding of a subject matter that is typical of their profession. Neither of them is exhaustive and neither can fully replace the other. Also, levels of understanding may differ. To understand may mean to be able to use the remote control of a TV set, yet also the knowledge of equations that state physical fundamentals of the steering process

behind the remote control. Levels of knowledge are different, yet different levels of knowledge are necessary to exercise a profession. The split between concept and term corresponds also to different sorts of knowledge that is involved in applying concepts and terms. There is a difference between my knowledge of IT technology that is limited to simple know how (for instance how to use basic functions of the Word program) and an IT specialist's knowledge, who is able to write the Word program code. Terms appear in this context as the use of a ready program, but concepts require programming skills. The first type of knowledge enables the translator to survive professionally, the second makes of her a professional translator.

In the area of legal linguistics, the understanding what *promissory estoppel* means in the common law does not equal the knowledge how to translate it into Polish. The translator needs, next to the knowledge of the concept also the explanation of the term and its equivalent term in the target language. Yet, full understanding of law is acquired only in the legal-linguistic perspective. The example below may illustrate this full understanding of the legal language. The Finnish law about the public access to trials (Laki oikeuskäynnin julkisuudesta, 21.12. 1984/945) provides in its Art. 5:

> Tuomioistuin voi asianosaisen vaatimuksesta tai erityisestä syystä muutenkin päättää, että suullinen käsittely toimitetaan kokonaan tai osaksi yleisön läsnä olematta,…3) kun alle 18-vuotias henkilö on *syytteessä rikoksesta*.

The translation into German of Art. 5 is risky, yet possible because of the same conceptual background of both provisions that are rooted in the same tradition of penal law. Due to conceptual differences between Finnish/German and English penal laws and their languages, the translation into English would be possible only with a detailed commentary. The translation into German, which is easier may read as follows:

> Das Gericht kann auf Antrag des Beteiligten oder beim Vorliegen besonderer Gründe beschießen, dass die mündliche Verhandlung teilweise oder gänzlich unter Ausschluss der Öffentlichkeit stattfindet, wenn…3) eine Person unter 18 Jahren *wegen einer Straftat angeklagt wird*. (emphasis added)

The regimen of Finnish *syyttää* and German *anklagen* differs. The authoritative dictionary of the Finnish language clarifies the Finnish regimen: "Nostaa jtkt syyte, vaatia jklle rangaistusta jstak. *Syyttää jkta murhasta, lahjonnan ottamisesta. Joutui oikeuteen kavalluksesta syytettynä*" (cf. Grönros et al. 2012, vol. 3, p. 209). As in the source text, the object appears as *accused of a crime*, its complete translation into German seems unavoidable, although *wird angeklagt/is accused* would be correct in German as in English. Meanwhile, the Finnish criminal law abandoned the differentiation of crimes that were previously divided in *rikomus* and *rikos*, like the German penal law that still knows *Verbrechen* and *Vergehen* (cf. also *crimes* and *misdemeanors* in the common law), As a translatorial compromise, *rikos* can be translated here by the general German term *Straftat*. However, this compromise causes problems in the application of the provision as the question could come up as to the necessity to differentiate in degree of the crime committed in the application of the provision. Terms are unproblematic in this case, yet their translation requires a conceptual analysis. This analysis is anchored in comparative criminal law.

Finally, the comparative legal-linguistic approach is the methodological requirement of insights such as those presented above. It presents legal terms in their broader conceptual settings and takes into consideration the discursive prerequisites of meaning emergence in legal texts.

Conclusions

Comparative legal linguistics and comparative law are closely related areas of knowledge that differ in their methods and research interests. A closer scrutiny of their methodological fundamentals would allow for better integration of their approaches and results. Especially, the approach to the legal language that in comparative law is centred on legal concepts and in comparative legal linguistics is dominated by terminological analysis constitutes a challenge for legal linguists. Yet, this split in interests and perspectives may also facilitate our understanding of the way how certain legal linguists, mainly translators of legal texts, understand the underlying subject matter of their

translations. It may also explain the legal-linguistic understanding of legal texts. The above analyses of elementary comparative constellations display structural problems that can be identified and solved only with the help of legal-linguistic methods. Last but not least, the above analyses illustrate processes in which the language of the emerging global law comes about and the discursive anchorage of legal terminology that is rooted in legal intertextuality.

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