Sotiria Skytioti

National and Kapodistrian University of Athens

Greece

e-mail: sotirialaw@gmail.com

COMPARATIVE LAW AND LANGUAGE WITH REFERENCE TO CASE LAW

Abstract. Comparative law is necessary in the modern era in which legal systems absorb ideas and elements from other legal systems and customary legal classifications are altered. Comparative law is closely intertwined with language because the research of different legal systems presupposes the study of legal texts written in different languages. Even if translation exists, a totally crucial issue arises: can the legal essence of the case law of a country be interpreted appropriately in any language but the original?

The link between law and language constitutes an absolutely essential relation, since language – through translation – is often the only way of accessing foreign law of foreign countries with different languages. So, the aforementioned relationship as well as its results in case law will be the main topic of this article.

First of all, the use of language is of outmost importance to any legal system, as it serves as the means of enforcing written legal rules and contributes to their dissemination, codification and evolution. Both law and language are cultural phenomena and this is why they must be studied taking into account the temporal and social circumstances. Living in the era of multicultural societies and immigration, the need of not just translating but rather transferring the legal essence of the jurisprudence among the different countries with different cultures give prominence to the essential link between comparative law and language systems.

Studying case law is regarded as a possibility to redirect judges and lawyers' attention to the fact that the interpretation of the legal judgement is the cornerstone of a whole legal system of another country. The dynamic relationship of law and language dictates the result of the translation and interpretation of the case law of a specific country in relation to the case law of another country. Thus, comparative law comes out to serve as the guardian of the legal essence in order to transfer the legal point of the judge among different societies with different languages.

Keywords: legal language, legal translation, Comparative Law, case law, English language, culture, Company Law.

1. Introduction

Comparative law is necessary in the modern world in which legal systems absorb ideas and elements from other legal systems and legal classifications are altered. Of course, law is determined very largely by the ideas

of those who are practicing it and their ideas are very largely governed by the quality of their education (Monateri, 2012; Yntema & Batiffol, 1957). So, interdisciplinary movements in law and especially in comparative law are absolutely essential as law can learn from the discipline conjointly with which it is brought forward in the discourses denoted as “Comparative law and language” (Monateri, 2012).

2. Comparative Law and the languages of case law

Comparative law is closely intertwined with language because the research of different legal systems presupposes the study of legal texts written in different languages. The ignorance of the relevant foreign languages is a major obstacle to the accessibility of foreign law by the comparatists. Even if translation exists, a totally crucial issue arise: can the mentality of a legal text be studied in any language but the original (Glanert & Legrand, 2013)? More than this, can the legal essence of the case law of a country be interpreted appropriately in any language but the original?

Examining the possible answers to the questions stated above, it is observed that language – the key tool of comparative law – triggers the shift from social science to literary theory. More precisely, the link between law and language constitutes a fundamental relation, since language – through translation – is often the only way of accessing foreign law of countries with different languages. Hence, the focus of this study will be concentrated on the aforementioned relationship, as well as its results in case law.

Language serves as one of the most powerful instruments whose actual performance is the translation of the imagination into reality. In other words, the use of language is of utmost importance to any legal system, as it serves as the means of enforcing written legal rules and contributes to their dissemination, codification and evolution. Besides this, as Mellinkoff elegantly stated in his work *The Language of the Law*, law is “*a profession of words*” (Mellinkoff, 2004).

Analyzing the aforementioned statement, it is obviously shelf-explained that *ius* pre-exists the linguistic wording it describes. Both law and language are cultural phenomena and this is why they must be studied taking into account the temporal and social circumstances in interrelation with the economic as well as political surroundings.

Moreover, it must not be omitted that the legal utterance in each culture differs in its structure and in the spirit from which it is held and shapes the essence of the case law (Mattila & Goddard, 2013). Admittedly, if it

is desirable to suggest translation as a paradigm for thinking about the grammar of this plural world, then it is self-evident that law as well as the case law of different legal systems represent a privileged field of application for this paradigm (Ost, 2014). Beside this, the linguistic structure of laws of each state differs according to the state's priorities and basic principles so as these basic principles to be implanted in the society. (Moustaira, 2012; Nafziger & Moustaira, 2017). So, what should be underlined is that language is not just the way of expression of the foreign law but the passage of the general social background to the legal framework, the passage of the mentality of a whole society to its legal system.

Legal linguists and comparatists argue on the way language affects law and if communication contributes to an exchange of law concepts. – Of course, the priorities and the role of language are different in each society and legal culture. Analogously, in comparative law, theories on how to define law vary: in some legal orders there is too little equivalence and this is why they are not mutually communicable. In some other legal orders, legal cultures has similar structures. Also, analogously to language, the status of law is not the same in all societies (Curran, 2006). This is why Legal Linguistics is an absolutely necessary blooming science that scrutinizes the development, characteristics and usage of legal language studying the vocabulary (the terminology), the syntax and semantics of the language.

Furthermore, supposing that the familiarity with the language system of the target legal culture is a precondition for comparative research, comparatists will be imperatively restricted to the variety of legal cultures they examine by the foreign languages they are familiar with. Even if English language is the most popular language of the field, the target problem is how translations should be completed where legal concepts has no exact equivalent in other language systems. Therefore, comparative law is closely related with legal translation as different perspectives of the same matter: what are the similarities and differences of different legal cultures and why they exist.

The task is thus to take the measure of the translation phenomena that appear in the juridical field. The first thought that springs to mind in this regard is the zone of contact where national law encounters foreign law, resulting more often than not in a difficult confrontation between different languages. Going further with this issue, the problematic soon broadens and grows singularly complex, bringing into its purview the law in its entirety: translation is by no means limited to interlinguistic exchanges but extends to include the communication occurring within the same linguistic community.

As it can be observed, the issue mentioned above situate both comparative law and language between mutually contradictory ideas of universalism and pluralism. The insistence on multilingualism both for legal comparatists and legal linguists springs from the thought that knowing another language is a powerful entry into another worldview and standpoint of universe. As Umberto Eco notes: “*a language always is a prison ... because it imposes a certain vision of the world*”. Consequently, the knowledge of different languages liberate legal thought and understanding. (Curran, 2006).

3. Translation of case law and English language

The translation of the case law of a country in the language of another country is the cornerstone of its interpretation and of the communication of the legal principles of one country to another (Glanert & Legrand, 2013). The languages used in translating judicial decisions are specific and even when the translator denies it, the choices in words and phrases express a linguistic culture that appears to be dominant.

It is indisputable that the case law of a country can be a totally beneficial legal text, an absolutely influential judicial choice for another country. The communication of the case law between countries with similar or different legal environment raises the issue of the case law in a widely spoken language, ie. English language.

The spread of English is a special issue for both comparative law and language. Endeavors to change the frequency of use of the English language during the translation of the most important judicial decisions of a country or of the European Union are inefficient.

The main question which refers to the dominance of English language in the field of the translation is if the legal mentality of each country is lost, altered or reset when the case law is translated in English language. More precisely, English is altered as it is combined with other languages. Language evolution is inevitable as host languages absorb foreign words and foreign linguistic forms. The foreign imports are modulated in a strongly complicated transformation process similar to the process Watson describes for the legal transplants (Watson, 1975). In contrast, the host language is altered by the importation foreign (Curran, 2006). Moreover, in law, English legal language has certain limitations in expressing ideas that cross the boundaries of common law context. The accumulation process that happens during the use of English legal language leads to an alteration of English in the form of new terminology derived from con-

cepts of civil law. Consequently, where a dominant legal language gains the primacy among other languages, it must modify its vocabulary and structure to hug the legal culture clash, altering itself during this process (Curran, 2006).

The translation of the foreign into the familiar unveils that the familiar is also foreign. Even as far as the English language is concerned – that has the primacy between the languages – when the case law is translated it is essential translator to have in his thought that linguistic diversity and legal mentality of each society are counterparts that are not dissociated.

The majority of legal translation research focuses on the outcome, which is the translation. Of course, equivalence requires high degree of accuracy of transfer and skillful mediation of legal knowledge between and within legal systems. Since legal terms are units of legal knowledge, their rendering is often critical for establishing equivalence between a source and target text, as well as for accuracy. This is why during the mechanical or technical process of translation of the case law, the key words of the judicial decision and the main point of it must be translated taking into account that some phrases or words have not exact equivalence in other languages as legal framework of every country is crucially different.

In conclusion, the case law is a dynamic field of translation but the process is problematic at its heart: The legal texts can be understood completely only in the original language. The primacy of English legal language during the translation of the jurisprudence is of course necessary as it's the most popular language. However, as plurilinguism requires interdisciplinarity so the translation of the jurisprudence in English language needs comparative law so as using its instruments and its interdisciplinary methods to save the authenticity of the meaning of the foreign case law (Ost, 2014).

4. Translation and interpretation of case law

The search for the meaning of “law” has long been an important part of Western thought but most contemporary jurists appear profoundly uninformed by historical and comparative analyses (Curran, 2006). Seeking universal concepts of law, legal philosophers often seem ignorant of, or uninterested in, conceptual universes beyond their own time. Translation is straight away accompanied by a recognition of the difference of the other and of the wish to undertake with that other an interaction on the basis of the reciprocal admission of the limits of each other's own language (Samuel, 2014).

The target issue is totally crucial if we transfer our thoughts connecting comparative law and language with case law. Living in the era of multicultural societies and immigration, the need of not just translating but transferring the legal essence of the jurisprudence among the different countries with different legal and social culture emerges the determining link between comparative law and language (Sacco, 1991). The modern world of confusing legal transformations as well as the increasing rate at which alterations happen augments comparative law's challenges (Curran, 2006).

Moreover, from a perspective of language theory, reading case law is regarded as a possibility to redirect judges and lawyers' attention to the fact that the interpretation of the legal judgement is the cornerstone of a whole legal system of another country. The dynamic relationship of law and language dictates the result of the translation and interpretation of the case law of a specific country in relation to the case law of another country. Thus, comparative law comes out to serve as the guardian of the legal essence in order to transfer the legal point of the judge among different societies with different languages.

5. The mentality of language – the mentality of law

It has been claimed that “the distance between the same and the other is the gap in which language stands ...” (Levinas, 1998). The difficulty of translating case law is at heart the mentality of each language. Because each language carries the historic, cultural and social background of the people that speak it. The reality is understood in different ways by each person. Various “world versions” and different “noetic systems” form the case law which influences the legal order and the application of law (Nafziger & Moustaira, 2017).

The mentality both of each language and each country's case law is influenced, developed, transformed and finally shaped through the time, the social circumstances and the people who use them. Unless two languages have the same mentality and the spiritual procedure of translating the case law is indistinguishable, any endeavor at translation is inefficient if no emphasis is placed on the complete dissimilation of the legal concept to be “transplanted” (White, 1990). This necessitates the invention of an innovative concept of law, a culture in the space between cultures, resulting more in the creation of a new language, a new universe, than in a “translation” from one language to another. Hence, the key function of comparative law and language in the field of case law is the really creative activity of trans-

lation and interpretation: during this procedure the mentality of the legal system, culture and history of the state or union of states – where the case law is formed – is revealed.

Translation and interpretation of the case law refer to the original legal text and remind to their reader that this text is there. The difference between them is that the translation appears as a kind of substitute for the source text and undertakes to have a similar structure, while the interpretation does not. However, the existence of two texts and the making of a connection between them is the essence of both translation and interpretation. So, the really essential task of the translator and interpreter of the case law is to connect two different worlds, two different ways of being and seeing, in his own mind, in his own perceptions and feelings (Baude & Sachs, 2017).

6. The paradigm of Greece and Cyprus case law in Company Law

Analyzing the sincerely crucial matter of translation and interpretation, the paradigm of Greece and Cyprus case law in relation to Company Law features the strong connection between the mentality of the language and the mentality of the culture – legal and social – of each state. Two States with so many elements, even the language, in common have so different judicial decisions.

More precisely, studying the Greek corporate and bank law, it is obvious that every corporation or entity has to be governed by a physical person. This is to say that the President, the Chief Executive Officer or the Director has to be a physical person. Furthermore, all the documents and the contracts concerning the bank account and the bank transactions of Greek corporations, either these are companies or entities, are signed by the beneficial owner of these corporations or entities. Even if these documents are signed on behalf of the legal person, it is always declared the physical person who is the beneficial owner. So, studying Greek case law it is apparent that it is acceptable a crack in the principle of the autonomy of the legal person in order Greek Authorities to prevent or fight against any possible tax evasion, avoidance or abuse. This is the way that Greece has integrated the European guideline in Greek Law so as to fight tax fraud.

On the other hand, studying Cyprus Company and bank law, it is observed that a corporation or entity may be governed by another legal person. This legal choice has its roots in the priority that Cyprus Authorities give to the self-regulation of the economy. Given that Cyprus has a mixed legal

system including the legal principles of both common law and civil law, the regulations in its Company Law give the precedence to the liberal economy with limited state interventionism. This legal choice is widespread in the Cyprus case law underlining the foreign – friendly investment environment of Cyprus.

If Cyprus case law is translated in Greek language and vice versa, the result of this translation seems incomprehensible and illogical if the legal and social background of these two countries has not been adequately examined. Only replicating the mentality of the social and cultural background of each State one can understand the result of the translation of the case law of the foreign State in his language. Otherwise, the aforementioned translation ends to be a barren replacement of words without transfer of the legal equivalence and without metaphor of the case law meaning (Pozzo, 2010).

Consequently, when fact and law are brought together the juridical procedure gives the result of the double operation of qualifying the fact and interpreting the law (Ost, 2014). This result, case law, is absolutely the extract of the mentality of a whole society with its cultural and historical background. Beginning from the roots of the legal system of each country, ie. common law or civil law, and continuing with examining the historical and social framework, it is well understood that even countries with so many matters in common have such a distance among their legal priorities. So, the case law of each country must be examined not as a way of conveying an idea but as a gesture the meaning of which is indissolubly tied to its immediate and unique context: to its language and culture, to the social relations out of which it emerges and upon which it acts (Levinson & White, 1991).

7. Conclusion

Comparative law is needed urgently in contexts of unrecognized metamorphosis so as through language and the comprehension of its mentality to metamorphose the murky areas of different “worlds” case law in knowledge for the other, the foreign and finally to produce a dynamic field of brainstorm and creative solutions to legal reality. Like language inevitably opaque and eternally blending, comparative law cannot be paused permanently, to be recorded for future use if only it is enhanced with sufficient acuity and perspicacity. Given that world is incorrigibly plural, case law reveals the legal and cultural horizons of each State or Union of States.

Of course, comparative law shares with language the problems of misapprehension, as well as the promise of learning to communicate, to understand and to interpret that slippery, changing and ever-readjusting area that, like language, it is established between the same and the other (Curran, 2006). Given that law can only be articulated in words, the interpretation of case law enhances awareness of the study of the dynamic relationship of comparative law and language which mixes, analyzes and compares the legal, political and social system of the culture in which this is produced.

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