

Terminological mismatches in English non legally-binding criminal law texts

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Abstract

EU non legally-binding texts provide us with evidence that the victim-related conceptual system at the European level is still evolving. The absence of a well defined conceptual system, combined with the multilingual requirement, gives rise to a situation in which different types of terminological mismatches are identified. The paper aims at providing a tentative insight into three types of mismatches: predominantly linguistic, predominantly conceptual and mixed terminological mismatches.

1 Introduction

In 2001, the Council of the European Union adopted Framework Decision 220/2001/JHA on the standing of victims in criminal proceedings¹, which is considered the milestone for the recognition of crime victims' rights throughout the EU. Since then, an ever-increasing number of proposals for new legislation and legally-binding documents on the status of victims in criminal proceedings and the rights they should be entitled to especially in cross-border situations have been published by different EU institutions in view of the harmonisation of the law in this specific legal subfield. The measures to be taken at the EU level are decided on the basis of extensive consultations with all Member States and interested parties, in which the already existing legal infrastructure in individual Member States is brought to light.

¹ OJ L 82, 22.3.2001, p. 1-4.

In the last two decades victim-related legislation has experienced a growing compenetration of EU and national rules. However, while national law is expressed in one or more official languages that are – in most cases – semantically rooted in each individual State, supranational law needs to express them in 23 different languages in order to meet the multilingual requirement. Subsequently, allegedly co-drafted multilingual documents influence the national law of any individual State, and consequently its official language(s).

Currently, a PhD research project is being conducted with the aim of describing the English and Italian terminology related to the subfield of criminal law concerning the role of crime victims in criminal proceedings and their rights. Thirty-eight terms were extracted manually from an English and Italian parallel corpus of EU documents of about one million word tokens starting from word lists automatically generated by AntConc and WordSmith Tools concordancers and validated by a field expert. A semasiological approach was then adopted in order to capture the prototypically-structured conceptual meaning the selected terms refer to on the basis of definitions and knowledge-rich contexts available in the corpus and expert consultation. The same approach is now being applied to two comparable corpora on Italian and British (English and Welsh) domestic law dealing with the same topic. The so-obtained national terminologies and conceptual frameworks are being compared to the EU terminology and conceptual system with the aim of identifying possible similarities and differences.

In this paper, some preliminary results of the ongoing project are presented. These results show that the EU conceptual system is character-

ised by some blurred areas, because the legislation concerning crime victims is only partially enacted, while more legal provisions are still being discussed at the supranational level. This discussion among EU institutions takes into account the provisions already existing within the Member States' legal systems and is made publicly available through a wide range of official reports, such as green papers and explanatory memorandums. This means that in this type of documents the concepts rooted in any individual national legislation need to be expressed in 23 languages, making translation inevitable for the terms designating those system-specific concepts. As in any other case where the translation of culture-bound concepts is needed, the passage from one legal language to another is not always straightforward.

This paper focuses on the description of some terms used in the English subcorpus of EU non legally-binding texts concerning victims of crime. The aim is to provide a tentative insight into the terminological mismatches that affect concepts for which the terminologisation process is still going on.

2 Terminological mismatches in victim-related non legally-binding texts

The compenetration of EU and national legislations is accompanied by the mutual influence of EU and national legal terminologies. By comparing the conceptual systems having developed out of different legislations, instances of misalignment can be recognised. These misalignments have been labelled differently by various authors and have attracted the interest of both legal translation experts² and ontologists³. Though a clear-cut distinction between the conceptual/ontological/semantic level on the one hand and the terminological/linguistic/lexical level on the other hand has been generally applied to misalignments, on the basis of the examples extracted from the above mentioned corpus this distinction cannot be applied to all the misalignments identified. The reason for this lies in the symbiotic relationship between legal terminology and legal concepts: a legal concept can only be expressed through language and a legal term has no reason to exist without a legal concept to

be hinged on. Though not being obviously unique to the relationship between language and law, it is in such a relationship that this tight connection plays a central role. Any attempt to impose a sharp separation between legal concepts and legal terms would lead to an artificial distinction having no connection to reality. Therefore, in this paper the examples of misalignments representing the preliminary results of the ongoing study are labelled as *terminological mismatches*. Due to the predominance of linguistic or conceptual factors causing discrepancies, they are further classified as *predominantly linguistic*, *predominantly conceptual* and *mixed terminological mismatches*.

2.1 Predominantly linguistic terminological mismatches

Traditionally, mismatches can occur at two different levels: the language level on the one hand, in which, according to Klein (2001, 54), “mismatches [occur] between the *mechanisms* to define classes, relations”, and the ontology level on the other hand, in which case mismatches are “difference[s] in the way a domain is modelled” (*ibid.*). As stated earlier, this distinction seems to be too clear-cut to suit the phenomena observed in the corpora taken into consideration. On the basis of such a distinction, mismatches at the language level only would entail that the concept underlying a set of synonyms is unique, whereas language use proves that perfect synonyms are rare and usually designate a concept within a single conceptual system only. In the present study, however, the supranational system analysed results from the merging, adaptation and elaboration of at least 27 legal systems. This is why, at a deeper level, the mismatches that at first sight may seem to affect the linguistic surface only show in fact a connection with the underlying concepts.

For instance, in the subcorpora of non legally-binding texts on the right to compensation for victims in cross border situations, the types of damage a crime victim may sustain are subdivided according to the possibility or impossibility to economically assess the damage. In the English EU subcorpus, these two groups are most frequently termed as ‘material losses’ and ‘immaterial damage’. However, a whole nebula of synonyms gravitates around these two terms, such as ‘pecuniary’ vs. ‘non-pecuniary loss’, ‘economic loss’, ‘moral damage’, and so on. As

² See, for example, Cao, 2007, Šarčević, 1997.

³ See, for example, Ajani et al., 2009, Despres et al., 2004, Klein, 2001.

noted earlier, due to the mutual influence of national legal languages, the ongoing process of conceptual consolidation is inevitably accompanied by terminological instability. Moreover, the synonyms found in this type of texts are the result of the transfer of terms from the national level to the supranational one. Consequently, terms progressively undergo a process of semantic neutralisation (Ferrarese 2007, 179), losing their strictly national connotation and acquiring a more general meaning to include all the possible manifestations of an abstract concept in real life. However, even in the consciously-driven transfer process, any legal term may be subject to the conceptual filters imposed by the readers' previous knowledge and experience, giving rise to a transitional period in which very similar but not totally overlapping concepts still exist.

Leaving aside the synonyms that are closely linked to specific national systems⁴, a closer look at the features of the two most frequent terms in the English EU subcorpus will reveal that they can be ascribed to the EU legal terminology for two reasons. Firstly, the two concepts are never provided with clear-cut definitions according to which a specific instance of damage can be attributed to either of the two categories. Rather, either specific reference is made to the definitions provided by each Member State or the semantic extension of the concept is specified through exemplification⁵. It can therefore be stated that, within EU legal terminology, 'material losses' and 'immaterial damage' are umbrella terms with a meaning broad enough to include all the concepts elaborated by individual Member States which, though sharing very similar features, do not necessarily perfectly overlap. Secondly, the terms do not coincide with national-bound terms, as the terminology specific to any national legal system needs to be used with care⁶, especially when no reference to the specific national framework is made.

The example above provides evidence of the (probably temporary) coexistence of synonyms

at the EU level which, due to their different legal sources, may still maintain some connection with their original source. The relatively higher frequency of non national-specific terms, however, makes it possible to acknowledge the loosening link between the selected terms and the national legal systems they originally derive from and establish a conceptual connection between the broader meaning of the non national-specific main term (identified on a frequency principle) and its synonyms.

2.2 Predominantly conceptual terminological mismatches

Apart from predominantly linguistic terminological mismatches, in the English corpus under examination terminological mismatches with mainly conceptual implications can also be detected. In this regard, the most evident conceptual terminological mismatch is still related to the use of already existing terms both at the national and the EU level, though in this case no European alternative to the national-specific term is provided.

Taking the term 'criminal injury' as an example, the EU knowledge-rich contexts it occurs in show that it is used in a broad sense, meaning any kind of injury – be it a damage, a loss or a personal injury – resulting from a crime. Hence it could be said that, as in the previous example, the meaning of the term needs to be inferred from the contexts rather than from any official definition. However, by comparing the EU and the British legal systems, what can be noted is that this term does not always coincide with the same concept. Indeed, the homonymous national-specific term refers to a concept with a much narrower meaning, as the victim's health must be injured or life endangered for an injury to be considered as a criminal injury. Therefore, in spite of the lack of a linguistic mismatch – which may be taken to assume a straightforward transposition of the concept elaborated at the EU level into the domestic legal system – the interpretation of the European concept may be distorted by the interpreter's filters.

2.3 Mixed terminological mismatches

In both the predominantly linguistic and conceptual terminological mismatches exemplified above, the mismatches regarded concepts and terms which have been re-elaborated at the EU level but already exist in a similar form within

⁴ By way of example, the two types of damage, distinguished on the basis of the economical assessment of the *quantum*, are generally referred to as 'pecuniary loss' and 'non-pecuniary loss' in British legal English.

⁵ See, for example, Green Paper – Compensation to crime victims, COM 2001 536 final, 28.9.2001.

⁶ See, for example, Guideline 5 of the Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions, 2003.

the British national system. However, another type of terminological mismatch can be found in which a predominance of the linguistic aspect over the conceptual one, or vice versa, is impossible to establish. This particular case occurs when the EU concept is drawn from a concept shared by only a number of the Member States and no concept even only partially similar can be retrieved in the other national legal systems.

Due to the differences between legal families, it goes without saying that the typical features characterising, for example, Civil Law jurisdictions, usually fail to have an equivalent in Common Law jurisdictions. Therefore, the lack of a concept in a legal system determines a conceptual vacuum that is generally accompanied by a terminological vacuum. The combination of these two factors gives rise to the most striking case of terminological mismatch. An example will help to illustrate the point.

Going back to victim compensation, comparative research has been carried out on the ways victims can apply for compensation in individual Member States. In Civil Law jurisdictions, crime victims sustaining damage are entitled to bring a civil action in criminal courts to obtain compensation from the offender. When they do so, they are recognised as parties in the criminal proceedings and, as such, are assigned a specific term to indicate their role, which is, for example, 'parte civile' in Italian. In Common Law jurisdictions, however, victims are not granted the same right. Therefore, when discussing compensation options in the Member States, EU institutions are also required to express a concept that is alien to some jurisdictions and the need for new terminology becomes more pressing. In this very case, the English texts analysed offer two solutions: either the alien concept is rendered with a borrowing from French, i.e. 'partie civile', or the reference to a non familiar notion is simplified using a combination of the terms 'victim' and 'party', such as 'victim as party'. Even though in both cases no clue to the specific meaning of the concept is provided, in one⁷ of the texts analysed the need to distinguish between the countries in which this role is recognised in criminal proceedings and those in which it is not was felt, as the

following statement proves: "Common law countries do not have partie civile proceedings..."

3 Conclusion

When dealing with EU and national legal language, terminological mismatches are generally assumed to occur in the implementation phase of EU legal provisions into national legal systems. However, it has been argued in this paper that terminological mismatches may occur at an earlier stage, i.e. during the review of existing national-bound legal provisions carried out at the supranational level by EU institutions and reflected in non-legally binding documents published in the 23 EU official languages. The paper presents some preliminary results of the comparison of English and Italian EU and national terminology and provides an attempt to distinguish between three types of mismatch: predominantly linguistic, predominantly conceptual and mixed terminological mismatches. Further research is clearly necessary before the advisability of such a classification may be determined and a more detailed methodology for their analysis can be proposed.

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⁷ Report from the Commission pursuant to Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), 20.4.2009.