

## THE TRANSLATION OF METAPHORS WITHIN THE STUDY OF LAW

Diana DĂNIȘOR\*

**Abstract:** Although, at first glance, the mono-referential aspect of legal language would not afford affiliation to the structure of the metaphor, as this belongs to the realm of poetry, imagination and invention, the presence of metaphors within the study of law poses a genuine challenge for translators. They have to choose between a literary translation and a procedural pattern based on analogy. This study aims at exposing and analysing the circumstances in which the translation of metaphors triggers difficulties with respect to the common metaphor or the complex metaphor.

**Keywords:** metaphor, legal translation, literary translation, translation via analogy, common metaphors.

According to the classical perception, beginning with Aristotle, the metaphor was considered “as a purely ornamental rhetoric structure”, while in the 20<sup>th</sup> century it is no longer regarded as a decorative instrument for poetic expression, being perceived as a generator of new forms of access to knowledge leading to “a new paradigm of semantic expression belonging to a new semantic and cognitive regime”<sup>1</sup>. It is therefore considered that nowadays the metaphor is no longer connected to the style of literary works, but it defines the ensemble of humanist studies<sup>2</sup>. Assal is the first scholar who, in 1994, defined the cognitive and semiotic mechanisms which regulate the metaphor in specialised language. According to him, “the metaphor of terminology is by no means a simple method of communication, it is essentially a manner of thinking. What is certain is the presence of imaginative transference, but once this transfer is reinvested within a social practice, once its significance is regulated in accordance with the actors

---

\* Associate Professor, PhD., University of Craiova, Faculty of Law; E-mail: danisordiana@yahoo.ro

<sup>1</sup> Micaela Rossi, *Terminologies et comparaison interculturelle: évolutions de quelques métaphores conceptuelles dans le domaine du droit de la famille*, in “Publif@rum”, no. 18/2013, available at [http://publiforum.farum.it/ezine\\_artic les.php?id=255](http://publiforum.farum.it/ezine_artic les.php?id=255)

<sup>2</sup> Sonia Branca-Rosoff, *La métaphore entre philosophie et rhétorique*, Nanine Charbonnel et Georges Kleiber, in “Langage et société”, no. 89/1999, pp. 141-144, available at [www.persee.fr/doc/lsoc\\_0181-4095\\_1999\\_num\\_89\\_1\\_2889](http://www.persee.fr/doc/lsoc_0181-4095_1999_num_89_1_2889)

involved in that practice, it becomes the expression of an entirely new beginning”<sup>3</sup>. Building on this idea, studies have multiplied, allowing the metaphor to be analysed as playing a paramount role in the expression of new scientific findings. The emphasis is therefore placed on the vulgarising role of the metaphor<sup>4</sup> and the communicative prowess of analogies<sup>5</sup>: “The metaphor plays an equally important part when it comes to touching, being just as precious”<sup>6</sup>.

### THE METAPHOR WITHIN THE STUDY OF LAW

The study of law is not excluded from this status quo. Though apparently intended as precise and mono-semantic, legal language is filled with metaphors appearing in all shapes and sizes starting from those forms closest to classical rhetoric (pleadings, peroration etc.), leading up to encoded texts (laws, decrees etc.) and finishing with customary law (apothegms, adages etc.). Jean Delisle notices that the metaphor “is also a form of translation, as it expresses an abstract reality with the help of precise terminology”, distinguishes three possible approaches relevant to the translation of metaphors “literal translation, the utilisation of a metaphor which has a close or equivalent meaning or the simple rendition of an underlying idea”<sup>7</sup>.

The primary function and the most evident role of the metaphor in the study of law is purely rhetorical, as it is used to manipulate the audience’s opinion, providing therefore linguistic trickery: Cornu<sup>8</sup> and Garavelli<sup>9</sup> attribute this ornamental function to oral jurisdictional discourse. Another accomplishment of the metaphor is the circumstance which deals with the fundamental terminology of the legal language which makes use of the terms that “have today lost, within the framework of legal language, their metaphorical value [...] their official utilisation by the legislator, judge and administration has become completely natural”<sup>10</sup>.

The vitality of conceptual dynamics is expounded by the interaction between the source domain and the target domain generating related terminology<sup>11</sup>, in

<sup>3</sup> J. Ph. Assal, *La métaphorisation terminologique. Terminologie et traduction*, no. 2/1994, pp. 235-242.

<sup>4</sup> D. Jacobi, *De la recherche à la vulgarisation; itinéraires du texte scientifique*, in “Annales de l’Université de Besançon et les Belles Lettres”, Paris, 1986.

<sup>5</sup> Idem, *La communication scientifique. Discours, figures, modèles*, Presses Universitaires de Grenoble, 1999.

<sup>6</sup> Gaudin François, *La socioterminologie*, in “Langages”, no. 157/2005, pp. 80-92.

<sup>7</sup> Jean Delisle, *La Traduction raisonnée: manuel d’initiation à la traduction professionnelle de l’anglais vers le français*, Les Presses de l’Université d’Ottawa, 1993, pp. 406-419.

<sup>8</sup> G. Cornu, *Linguistique juridique*, Paris, Montchrestien, 2000.

<sup>9</sup> Bice Mortara Garavelli, *Le parole e la giustizia*, Torino, Einaudi Publishing, 2001.

<sup>10</sup> G. Cornu, *op. cit.*, p. 86.

<sup>11</sup> M. Prandi, *A Plea for Living Metaphors: Conflictual Metaphors and Metaphorical Swarms*, in “Metaphor and Symbol”, no. 27(2)/2012, pp. 148-170.

connection with common use objects which become technical terms of the domain in question. Conflictual metaphors are those metaphors which stimulate inferential competence, providing a challenge for specific conditions of logical coherence, thus generating new theories and epistemological paradigms which resort to this figure of style in order to properly relay the new concept, making it indefinite, for example, as in the expression “head of the family”<sup>12</sup>.

### THE LITERAL TRANSLATION OF LEGAL METAPHORS OR THE ABSTRACT INTERPRETATION VIA ANALOGY

It is well known, that the Romanian language prefers abstract interpretation, a fact which is verified in translation. For instance, in the following examples, the original metaphor is erased in translation for the benefit of a more abstract term: *thin skull doctrine* (doctrina vulnerabilității victimei / the doctrine of victim vulnerability); *clean hands* (conduită ireproșabilă / exemplary conduct); *long-arm statute* (extraterritorialitatea legii / the jurisdiction of the law); *poisonous tree doctrine* (inadmisibilitatea probelor obținute ilegal / evidence obtained illegally will be inadmissible in court)<sup>13</sup>.

There are other situations where translation through adaptation is the best if not the only possible course of action. Therefore, “Of course, after an accused has once let the cat out of the bag by confessing, no matter what the inducement, he is never thereafter free of the psychological and practical disadvantages of having confessed. He can never get the cat back in the bag. The secret is out for good. In such a sense, a later confession always may be looked upon as fruit of the first.” (United States v. Bayer), can be best translated as “Bineînțeles, din moment ce s-a compromis trecând la mărturisiri, acuzatul (...) trebuie să-și asume atât consecințele psihologice, cât și cele practice. El nu mai poate retracta (...)”. Literal translation is not the best choice, unless the intention is to underline the specificity of the foreign concept translated, maintaining it between brackets or provided in the source language via footnotes, for which a literal translation would be more suitable. It is preferable to avoid literal translation without making reference to the original text, in order to avoid confusion. For the expression *piercing the corporate veil*, a number of different translations can be used: the version “a ridica voalul personalității juridice” makes no sense in Romanian, a better translation would be “a face abstracție de personalitatea morală”, which makes use of a contrasting reflection linked to the analogy between concepts. According to scholars, literal

---

<sup>12</sup> L. Morra, C. Bazzanella, *Considerazioni sul “buon padre di famiglia”*, in “Rivista critica del diritto privato”, XX, 4/2002, pp. 529-563.

<sup>13</sup> Frédéric Houbert, *Caught in the Web of the Law. Le traducteur juridique face à la métaphore*, available at <http://www.initem.net/public/langues%20de%20sp%C3%A9cialit%C3%A9/m%C3%A9taphores/Caug>

translation cannot be justified unless we deal with the introduction of a concept in its specificity - the American idiom “sweat of the brow” (“sudoarea frunții”) refers to “the one who worked, even if he didn’t produce an original creation, should be rewarded for his efforts from which the artistic creation benefitted”<sup>14</sup>.

Literal translation is best used when the historical context needs to be taken into consideration. For instance, in the collocation *Chancellor’s foot*, the image of the chancellor’s foot will be considered only if we need to make reference to the historical aspect of the notion related to the ‘*length of the Chancellor’s foot*’, otherwise this aspect will be omitted, translating the phrase as “an arbitrary norm” or as absolute discretionary power”<sup>15</sup>.

A viable option for a literal translation ensures the preservation of the original imagery, especially in the case of metaphors common to both legal cultures (the source language and the target language).

### THE TRANSLATION OF COMMON METAPHORS

If the metaphors which operate discourse are common to both legal cultures, their translation should not raise any issues. This is indeed the case with body metaphors<sup>16</sup>: eyes, hand, arm, mouth etc. which have been successfully employed in formulas such as: “*the judge as the mouth of the law*” / „judecătorul gură a legii”<sup>17</sup>, “*body separation*” / „separație de corp”, “*administration was handed over*” / „administrare în mână comună”, “*a strong guiding hand*” / „politică de mână forte”, “*he was dealt a bad hand*” / „mână moartă”, „brațul justiției” / *the long arm of the law*, „ochiul justiției” / “*the eye of the law*” etc.

Another category of common metaphors, which are easily translatable, is that of maritime metaphors pervading the study of law. We will only mention the metaphor of “piracy” which transcends the maritime domain into the legal language, the image of the pirate being presented and analysed in almost all contemporary discussions pertinent to the evolution of intellectual property<sup>18</sup>: “Counterfeiting and piracy [...] are terms traditionally coined for the designation of illicit activities linked to copyright infringement industry and respectively, all the

<sup>14</sup> Benoît Galopin, *Jeux vidéo et droit d’auteur*, 2003 available at <http://www.glose.org/mem022-htm.htm>.

<sup>15</sup> Louis Beaudoin, *Traduire la common law en français: rebelle ou fidèle?*, in “Actes du colloque La traduction juridique, Histoire, théorie(s) et pratique”, Université de Genève et ASTTI, 2000.

<sup>16</sup> Octavian Istrătoaie, Manuela Lavinia Istrătoaie, *Legal language, the metaphorical transposition of the human body and its parts*, in “Journal of Romanian Literary Studies”, no. 8/2016.

<sup>17</sup> Montesquieu, *De l’esprit des lois*, ediție electronică a cărții realizată de Laurent Versini, Paris, Éditions Gallimard, 1995, available at [http://www.ecole-alsacienne.org/CDI/pdf/1400/14055\\_MONT.pdf](http://www.ecole-alsacienne.org/CDI/pdf/1400/14055_MONT.pdf)

<sup>18</sup> P. Loughlan, *Pirates, Parasites, Reapers, Sowers, Fruits, Foxes... The Metaphors of Intellectual Property*, in “Sydney Law Review”, no. 28/2006, p. 211.

reserved rights of the author”<sup>19</sup>, „the unauthorised copy of a copyright protected product for commercial purposes, as well as the unauthorised distribution of illegal copies, are known as piracy”<sup>20</sup>.

The metaphors related to climate phenomena are extremely frequent in English and American Law, as well as in French and Romanian Law. For instance, the metaphor of the tree is encountered in *fruit of the poisonous tree* or *living tree*, in addition to the recurrent use in French and Romanian Law of the terms „branche” and „ramură” in order to define different areas of Law.

### THE TRANSLATION OF COMPLEX METAPHORS<sup>21</sup>

“A structured series of metaphors which exploit, to a larger or a smaller extent, the elements of the same semantic field”<sup>22</sup>, the complex metaphor could not be used in legal texts according to some scholars<sup>23</sup>, but reality contradicts this restriction. Because the translator must maintain its coherence and unity, the complex metaphor raises a considerable amount of issues in translation whether or not we are dealing with a limited or extended translation. The option between the literal translation and the abstract one sees the balance tilt towards the first procedure. For instance, “The Honourable Leader of the Government says that the Constitution *is a living tree, not a dead end*, and that the court has the responsibility to interpret it”<sup>24</sup> will be translated as „Primul ministru spune că *Constituția este în evoluție, și nu stagnantă*, și că tribunalul are răspunderea s-o interpreteze”, resorting to an adapted translation that is more abstract (the metaphor in not complex), and “If indeed our Constitution is as the court has stated, *a living tree*, then it must be considered that *this tree is rooted* in fundamental and historic values”<sup>25</sup> will justify resorting to a literal translation (the enhanced complex metaphor) and the translation will be as follows: „Dacă, așa cum au indicat

<sup>19</sup> For more details, see “Studii privind elaborarea mecanismului de monitorizare a pieței obiectelor de proprietate intelectuală din Republica Moldova”, available at [http://agepi.gov.md/sites/default/files/2015/11/studiu\\_monitorizare\\_a\\_pietei.pdf](http://agepi.gov.md/sites/default/files/2015/11/studiu_monitorizare_a_pietei.pdf)

<sup>20</sup> Ionela Cecilia Sulea, *Methods to Prevent the introduction of pirated merchandise on european market*, in Iulian Boldea (coord.), *Studies on Literature, Discourse and Multicultural Dialogue*, Târgu Mureș, Arhipelag XXI Publishing, 2013, p. 322.

<sup>21</sup> Ioan Milică, *Trăsături, tipuri și funcții ale metaforei în discursul științific*, in “Lumi discursive. Studii de lingvistică aplicată”, Iași, Junimea Publishing, 2013, available at [https://www.academia.edu/8264659/Metafora\\_stiintifica\\_extras\\_din\\_Lumi\\_discursive\\_](https://www.academia.edu/8264659/Metafora_stiintifica_extras_din_Lumi_discursive_)

<sup>22</sup> Trésor de la Langue Française Informatisé, available at <http://atilf.atilf.fr/>.

<sup>23</sup> Bryan A. Garner, *A Dictionary of Modern Legal Usage*, Oxford University Press, 2001.

<sup>24</sup> Frédéric Houbert, *Caught in the Web of the Law. Le traducteur juridique face à la métaphore*, available at <http://www.initerm.net/public/langues%20de%20sp%C3%A9cialit%C3%A9/m%C3%A9taphores/Caug>

<sup>25</sup> *Ibidem*.

tribunalele, Constituția noastră este *un arbore viu*, trebuie atunci să ținem cont de faptul că acest *arbore este înrădăcinat* în valori fundamentale și istorice”.

### CONCLUSION

The translation of metaphors shall be performed with great responsibility, especially in the study of Law, an area so problematic as it can create rights and obligations for involved parties: “Of all the figures of discourse, none stands so closely related to painting as the metaphor; its special effect is to grant clarity and force to descriptions, to enable the visualisation of intellectual ideas, bestowing upon them colour, substance and sensible qualities; yet in order to produce this effect, an able and delicate hand is needed, for the slightest inconsistency in precision could produce confusion instead of shedding light on relevant issues”<sup>26</sup>.

---

<sup>26</sup> A. Varinot, *Dictionnaire des métaphores françaises*, 1818, préface.