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Comparative Law in the Eyes of Translation Scholars. Is Legal Translation Really an Exercise of Comparative Law?

Abstract

The confrontation of the laws and languages of different legal systems that occurs in the process of legal translation has naturally inspired interest in comparative law among translation scholars. However, while references to comparative law in legal translation literature are abundant, they tend to be somewhat superfluous and selective, focusing mainly on the traditional functional method and saying little about how exactly legal translators can use comparative law in their practice. Nor is there much in-depth theoretical discussion of how both fields relate. Hence, the present paper aims to discuss the various approaches to comparative law and its role in legal translation adopted by legal translation scholars and to juxtapose them with a comparative account of the goals and processes of legal translation and comparative law. Taking a closer look at the oft-repeated statement that legal translation is *an exercise in/of comparative law*, the author demonstrates that, despite its rhetorical value, it actually misrepresents both fields. The results of the present research lead to the conclusion that, while comparative law and legal translation are clearly related and potentially useful for each other, the mutual recognition of autonomy could improve understanding between comparatists and legal translation professionals and allow them to learn more from each other.

Keywords:

legal translation studies; legal translation; comparative law; comparative law method; comparative law research; functional method; translational comparative legal analysis

1. Legal translation as an exercise of comparative law?

To paraphrase a well-known statement by Harvey (2002, p. 177), bold claims have been made about the relationship between legal translation and comparative law. It has been argued that "legal translation and comparative law are, and must be, the very same thing" (Schroth, 1986, p. 53) and that "translating legal texts is comparative law in practice" (de Groot, 1987, p. 189). Some authors claim that "there is no doubt that legal translation is an exercise in comparative law" (Künnecke, 2013, p. 246), or that it is "an exercise in comparative law" "most often" (Badea, 2014, p. 315). For others, legal translation "involves" or "entails" "an exercise in/of comparative law" (Galli, 2021, p. 5; Prieto Ramos, 2011, pp. 13, 16). It is asserted that the role of a legal translator can be considered "a specific variety of a comparative lawyer" (Gortych-Michalak, 2013, p. 69, this author's translation). According to slightly more nuanced statements, "on a general level, functional comparative law and legal translation could partly be seen as the same thing" (Husa, 2011, p. 224), and "legal translation becomes an exercise of comparative law" when the latter, in its applied perspective, is treated "as a tool for translators of legal texts" (Soriano-Barabino, 2016, p. 19). At the same time, some scholars (notably, including some of the authors of the statements cited above) have pointed out that the goals or interests pursued by comparative law and legal translation are different (Doczekalska, 2013, p. 70; Dullion, 2015, p. 99; Engberg, 2020, p. 279; Pommer, 2006, pp. 154–155; Prieto Ramos, 2014, p. 267; Soriano-Barabino, 2016, pp. 19–20).

The above are just some of the numerous references to comparative law made in the broadly understood legal translation literature over the last few decades. They demonstrate that the

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confrontation of the laws and languages of different legal systems that occurs in the process of legal translation has naturally inspired interest in comparative law among translation scholars and, to some extent, encouraged comparatists to engage in research on legal translation. Wagner and Matulewska (2023, s. 5) refer to this phenomenon as "**a comparative law turn**" in translation studies.

Despite this increased interest in comparative law, surprisingly little is said about how exactly legal translators can use comparative law in their translation practice. With a few notable exceptions (Doczekalska, 2013; Engberg, 2020; Pommer, 2006; Soriano-Barabino, 2016), there is not much in-depth theoretical discussion of how both fields relate. References to comparative law theory by translation scholars tend to be somewhat superfluous and selective, focusing mainly on the functional method, adapted for legal translation by Šarčević (1997, pp. 235–249) through the concept of *functional equivalent*. In contrast to its picture in legal translation studies (hereinafter: LTS), comparative law has been a rich and vibrant field in the last few decades – with a growing body of theoretical and methodological literature (Samuel, 2014, pp. 3, 16), accompanied by "new mentality and spirit" (Husa, 2015, p. 3). The above considerations make the actual relationship between legal translation and comparative law – as well as the accuracy of the perceptions of the latter in LTS – unclear and thus worth further exploration.

Given the above research problem, the present paper aims to discuss the views on comparative law and its role in legal translation taken in legal translation literature and to juxtapose them with a comparative account of the goals and processes of legal translation and comparative law. Hence, the research question this paper seeks to answer is whether legal translation can justifiably be considered to be, or to involve, *an exercise in/of comparative law*, as some of the statements cited above suggest. While this very question might seem controversial if one perceives the interrelationship between legal translation and comparative law as self-evident, it is the present author's firm belief that science is also about putting some widely held assumptions – 'bold claims', to quote Harvey (2002, p. 177) once again – to the test, thus stirring a thought-provoking and, hopefully, fruitful debate. This is precisely this paper's intention.

To answer the above research question, it is first necessary to establish basic facts about the nature, goals and processes of comparative law (Section 2) and legal translation (Section 3). Then, references to comparative law in legal translation literature will be examined to find out in more detail how comparative law is perceived by legal translation scholars (Section 4). This will be followed by a comparative account of legal translation and comparative law, intended to establish the nature of the relationship between both fields (Section 5). The paper ends with a summary of the research results and some general conclusions (Section 6).

2. Comparative law

The wealth of comparative law literature is demonstrated by even a cursory look at the bibliography of any introductory book to the field (e.g. Kischel, 2019; Siems, 2019). Hence, the below account does not make any claim to comprehensiveness. Instead, it is intended to provide an outline of comparative law so that it can later be contrasted with the fundamentals of legal translation.

2.1. Definition(s) of comparative law

Admittedly, comparative law may mean different things to different people (Bussani & Mattei, 2012, p. 3). A classic textbook defines it as "an intellectual activity with law as its object and comparison as its process" focused on "the comparison of the different legal systems of the world" (Zweigert & Kötz, 1998, p. 2). Comparative law can also be considered "a shorthand for various ways to study and explain the differences and similarities between (broadly understood) legal systems" (Husa, 2022, p. 1). It has also been described as "the hermeneutic explication and mediation of different forms of legal experience within a descriptive and critical metalanguage" (Legrand, 1997, pp. 122–123). Obviously, the simple definitions may not capture the complexity of the field, leaving

unanswered such questions as what the law is, and what it actually means to compare (Samuel, 2014, pp. 10–13). While the present paper does not intend to adopt a single definition of comparative law – as it seems reasonable for LTS to remain open to the various ways of its understanding by comparatists – it is worth noting the key elements emerging from the above definitions. These include the following: reference to more than one legal system; an act of comparison; searching for similarities and differences; formulating explanations.

2.2. Comparative law: a discipline or a method?

An important discussion among comparatists – to some extent reflected in legal translation literature (see Subsection 5.5) – concerns the question of whether comparative law is an independent field or just a method of studying law. Depending on the answer, the name *comparative law* itself can be considered accurate or misleading (Örücü, 2004, pp. 7–18). While the answer to the above question depends on answers to a range of other theoretical questions (Kischel, 2019, p. 28), it is argued that such methodological considerations are not without practical importance. The perception of comparative law as a method implies its truncated and unidimensional view (Legrand, 1995, pp. 264–265), failing to recognise that comparative law offers a comparative perspective of the legal institutions it studies, different from a national perspective (Ancel, 1979, pp. 57–60), and that its special knowledge base sets it apart from research focused on domestic law (Husa, 2015, pp. 29–30). While a translation scholar might not be in a position to resolve the discipline/method conundrum, it is clear that comparative law as it stands today cannot simply be reduced to nothing more than a method, tool or technique. A number of sophisticated works on its theory and methodology published in recent years (e.g. Husa, 2015; Kischel, 2019; Legrand, 2022; Monateri, 2021; Samuel, 2014; Siems, 2019) convincingly demonstrate that such a picture of comparative law would be distorted.

2.3. The goals and applications of comparative law

Comparative law textbooks typically offer a list of functions, uses or aims of comparative law. Comparative law can make a contribution to such diverse areas as transnational communication (Kischel, 2019, pp. 47–50), legal education (Husa, 2015, p. 93; Kischel, 2019, pp. 50–51), legislative activities (Tokarczyk, 1999, pp. 206–209; Zweigert & Kötz, 1998, p. 16), legal unification projects (Siems, 2019, p. 5; Zweigert & Kötz, 1998, pp. 24–27), legal interpretation (Kischel, 2019, pp. 69–75; Peat, 2019, pp. 220–221), international law (Demarsin & Pieters, 2023, pp. 8–9; Kischel, 2019, pp. 83–85), other legal and comparative disciplines and, notably, legal translation (Demarsin & Pieters, 2023, pp. 25–28, 38). The above shows that information obtained through comparative law research can be given different roles – depending on the user of the results. At the same time, however, comparatists emphasise that comparative law does not need to justify its existence with practical applications, and a sufficient aim for it is to generate knowledge (Husa, 2015, p. 22; Kischel, 2019, pp. 45–47).

2.4. The comparative law research process

Comparison in comparative law may be done on a larger or smaller scale or at a higher or lower level. These different "species" of research are called *macrocomparison* and *microcomparison* (de Cruz, 1999, p. 227). Macrocomparison refers to comparing the spirit and style of different legal systems, their methods of thought and the procedures they apply (Zweigert & Kötz, 1998, p. 4). It can even be done between macro-constructions like legal families, legal cultures and legal traditions (Husa, 2015, pp. 102–103). Microcomparison, by contrast, is focused on specific legal institutions or problems (Zweigert & Kötz, 1998, p. 5). As argued by a number of authors, there is no clear dichotomy or polarisation between macrocomparison and microcomparison (Husa, 2015, pp. 103–104; Kischel, 2019, p. 10; Samuel, 2014, p. 50; Siems, 2019, p. 48; Zweigert & Kötz, 1998, p. 5),

and mesocomparison has even been distinguished by some scholars as an intermediate level of analysis (Örücü, 2006, p. 31; Romano, 2016; Siems, 2019, p. 14).

Comparative law literature offers a number of blueprints outlining a model research process in the field. At the same time, it is noted that such a process does not consist of a sequence of clearly divisible steps, and at each stage of the research, all other stages need to be considered (Kischel, 2019, p. 194). Due to space constraints, a synthesis of the major research activities has been provided below based on more recent literature.

To start with, a comparative study needs a topic, the choice of which, in many cases, depends on the comparatist's research interests (Kischel, 2019, pp. 194–195). It is necessary to precisely identify the research problem (de Cruz, 1999, p. 235) and units of comparison (Örücü, 2006, p. 37), select the legal systems to be compared (de Cruz, 1999, p. 235; Örücü, 2006, p. 37) and decide on comparative strategies (Örücü, 2006, p. 38).

Next, the comparatist needs to acquire substantial general knowledge and knowledge of the specific legal issue in question. A prerequisite for the research is also the knowledge of comparative law and its methods (Kischel, 2019, p. 195). The comparatist needs to become familiar with the general characteristics of a particular legal system, the respective area of law and the specific subject under review. The sources of information include foreign university studies, general comparative law literature, the foreign legal system's local literature and comparative works concerning the particular subject. An existing thorough knowledge of the researcher's own legal system will also be helpful (Kischel, 2019, pp. 195–196). In particular, the comparatist needs to consult primary and secondary sources of law, including bibliographies, comparative encyclopaedias, introductory works, the Internet, constitutions, legislation, law reports, journals, legal scholarship, etc. (de Cruz, 1999, pp. 236–237). They should examine the law beyond the text level to reach the underlying cultural phenomena (Eberle, 2011, p. 60), so legal-sociological and legal-ethnological literature, the press and conversations with local experts could also prove helpful (Kischel, 2019, p. 199). The material collected can, for instance, be structured in columns setting out the similarities and differences between the domestic and foreign legal systems (de Cruz, 1999, p. 237). However, a fully-fledged comparative law study does not stop at the description and juxtaposition of comparable concepts and rules, but it should proceed to explanation (Örücü, 2006, pp. 38–39).

Finally, research results are put together to draw conclusions on the foreign legal system and on how the research reflects on the comparatist's own legal system (Eberle, 2011, pp. 65–66). The conclusions need to be related to the original purpose of the enquiry. Caveats, if necessary, and critical commentary should be set out (de Cruz, 1999, p. 238). At the end, the comparatist gives the study its final structure (Kischel, 2019, p. 200).

3. Legal translation

This section provides a brief discussion of the definition, status, goal and process of legal translation, demonstrating its nature as "a special and specialised area of translational activity" (Cao, 2007, p. 7).

3.1. Definition(s) of legal translation

Since there is no comprehensive definition of legal translation, two definitional shortcuts are used instead, one referring to a non-exhaustive list of legal texts and the other – to the legal function or setting of a text (Wolff, 2011, ch. 16.3). These two ways of defining legal translation may be seen as complementary. On the one hand, discussions of particular genres subject to legal translation (e.g. Alcaraz Varó & Hughes, 2002, pp. 101–152; Matulewska, 2007, pp. 160–292) are particularly useful from the perspective of translation training and practice. On the other hand, by defining legal translation as "the translation of texts used in law and legal settings" (Cao, 2007, p. 12) or "translation of texts for legal purposes and in legal settings" (Engberg, 2002, p. 375), it is possible to capture not

only texts written in legal language but also those with a particular legal significance or a particular legal function.

3.2. Is legal translation unique?

Regardless of the text type, legal translation "is a practice which stands at the crossroads of three areas of theoretical enquiry: legal theory, language theory (. . .) and translation theory" (Joseph, 1995, p. 14). It belongs to the category of specialist translation (Cao, 2007, p. 8) and, as such, is of a utilitarian nature. This means that it is typically produced to order and immediately used for a particular social purpose (Tomaszkiewicz, 1996, pp. 182–183). There is controversy about whether legal translation has a special status among other branches of specialist translation (Harvey, 2002). On the one hand, the challenges it poses may be the cumulative effect of difficulties present also in other areas of specialist translation (Harvey, 2002, p. 182). On the other hand, its unique nature may be corroborated by the potential legal consequences it can trigger (Cao, 2007, p. 7) and by the peculiar properties of legal language, considered not simply a means of transmitting legal messages (Mattila, 2006, pp. 31–33) but a component of legal phenomena and 'substrate' of law (Pieńkos, 1999, p. 107). All this means that in the case of legal translation, a specialist translator's duty of loyalty towards their communication partners, as well as the duty to protect them from damage (Nord, 2006, pp. 37, 40), may be particularly challenging to meet.

3.3. The goal of legal translation

Apart from the purpose (*skopos*) that guides a translator in creating a target text adapted to its intended use (Kierzkowska, 2002, pp. 72–76), the goals of legal translation can also be expressed in more general terms. From this perspective, the goal of legal translation may be to: produce "a text which expresses the meaning and achieves the legal effects intended by the 'author'" (Šarčević, 1997, pp. 72–73); create "opportunities for individuals in the target text situation to construct knowledge relevantly similar to knowledge normally constructed by individuals in the source text situation" (Engberg, 2020, p. 267); "convey the sense of the message" (Kielar, 1977, p. 152); preserve the singularity of the source text and "not to transgress the text" (Glanert & Legrand, 2013, p. 517). These varying views can, perhaps, be to some extent reconciled by the observation that the objective of any legal translation project is to create a target text that somehow reflects, or bears a certain relationship to, the source text. This relationship can be broadly described as conveying the legal sense of the source text by means of the target text (cf. Šarčević, 1997, p. 235).

3.4. The legal translation process

Multiple models of the translation process have been put forward in general and legal translation literature as well as ISO standards. Such models allow three basic steps of the legal translation process to be distinguished, a brief summary of which is provided below.

At the preliminary stage, the translator becomes familiar with the translation brief and the source text. Some formalities, administrative tasks and preparatory work may also need to be completed (International Organization for Standardization, 2015, pp. 7–8, 2020, p. 11). A few basic questions should be asked about the function and author of the source text, the function and recipients of the target text as well as the legal realities of both legal systems (Matulewska, 2007, p. 311). The translator should check whether any specific terminology has been imposed (e.g. by the client) and decide on the translation strategy. Before proceeding with the translation, they ought to consider all relevant elements of its communicative situation (Kierzkowska, 2002, pp. 170–174).

The 'translation proper' phase includes gaining a thorough understanding of the source text in order to grasp its sense and be able to re-express it in the target language (Tomaszkiewicz, 1996, pp. 67–91). The translator should consider several levels: the text itself, the reality it refers to, its structure and mood and naturalness (Newmark, 1988, pp. 22–30). An important unit of legal translation is

terminology. Searching for translation equivalents of legal terms is generally presented as a kind of conceptual analysis, typically including references to comparative law (Engberg, 2017, pp. 7–15; Klabal, 2020, pp. 54–62; Monjean-Decaudin & Popineau-Lauvray, 2019, pp. 121–128; Pommer, 2006, pp. 141–152; Šarčević, 1997, pp. 237–249).

At the broadly understood review stage, a preliminary version of the target text is checked (revised) against the source text to verify its linguistic and factual accuracy, suitability for the intended purpose (International Organization for Standardization, 2020, pp. 2, 12), comprehensibility for the target reader (Tomaszkiewicz, 1996, p. 141) and style (Newmark, 1988, pp. 36–37).

4. Comparative law in legal translation literature

LTS is a diverse field interfacing with legal science, linguistics and translation studies (Prieto Ramos, 2014, p. 266). This makes it impossible to select the literature to be reviewed in the present section based on the backgrounds of particular authors. Therefore, *legal translation literature* will be understood as any books and papers that primarily deal with legal translation, and their authors will be referred to as *legal translation scholars*.

4.1. The place of comparative law in legal translation

Legal translation scholars assign to comparative law different roles in relation to the legal translation process. On the one hand, several authors see it as part of a legal translator's competence, general knowledge or training (de Groot, 1987; Doczekalska, 2013, p. 64; Dullion, 2015; Kęsicka, 2017; Klabal, 2020, pp. 54–71; Piecychna, 2013, p. 154; Prieto Ramos, 2011, p. 13; Šarčević, 1997, pp. 113–114; Soriano-Barabino, 2016), thus treating it as a background that provides legal translators with the knowledge and skills required for their job. On the other hand, comparative law may be positioned as a direct component of the translation process. For instance, Prieto Ramos (2011, p. 13) claims that "an exercise of comparative law" comes "before any translation procedure can be applied to culturally-marked segments on reasoned grounds". According to Pieńkos (1999, p. 176), the translator's effort starts where comparative law ends. In a similar vein, Soriano-Barabino (2016, pp. 19–22) argues that the application of comparative law initiates the translation process as the first step towards effective communication. Dullion (2015, p. 99) emphasises that comparative law can provide the translator with a basis for making translation decisions, but it does not offer ready-made terminological solutions. Rather than that, comparative law can help the translator decide which terms from the foreign legal system to avoid (Pieńkos, 1999, p. 176; Sin, 2013, p. 71), create an explanatory translation (Galli, 2021, p. 5) or find potential natural equivalents (Monjean-Decaudin & Popineau-Lauvray, 2019, pp. 123–126; Soriano-Barabino, 2016, pp. 19–22).

4.2. Comparative law in the translation of terminology

The component of legal translation for which comparative law is seen as the most relevant is the translation of legal terminology (Engberg, 2017, p. 7). There is, apparently, "general consensus in the field about the relevance of comparative legal and discursive analysis" for translation-related terminological work (Prieto Ramos, 2021, p. 177), and it is argued that "translators of legal terminology are obliged to practise comparative law" (de Groot & van Laer, 2006, p. 66). Notably, Šarčević's (1997, pp. 235–249) influential concept of *functional equivalent*, referred to by many authors (e.g. Klabal, 2020, pp. 56–59; Kozanecka et al., 2017, pp. 87, 94, 104–105; Matulewska, 2017, p. 20; Soriano-Barabino, 2016, p. 159), is directly linked to the functional method of comparative law. A broader view on the role of comparative law in legal translation has been put forward by Jopek-Bosiacka (2019, pp. 246–249), who claims that it can be used at the semantic, stylistic and even textual levels.

Comparative law is also invoked in a number of research papers that refer to the translation of terminology. There are considerable differences between them in the research design, sources used

and level of detail. Some of these papers discuss the translations of larger legislative texts and mainly describe the merits of particular translation decisions, which is not accompanied by a detailed comparative analysis of the respective legal concepts or other elements of the legal realities involved (Fuglinszky & Somssich, 2020; Sanchez Lasaballett, 2018). While one of the authors argues that the translator should comply with "the methodological rigours of comparative law" (Sanchez Lasaballett, 2018, pp. 447–448), he does not provide any details of the comparative law methods applied. Other authors deal with more limited research material, i.e. several specific terms, thanks to which their discussion of the particular legal concepts is more elaborate (Jopek-Bosiacka, 2013; Kęsicka, 2014). Jopek-Bosiacka (2013, pp. 112, 120–121) is also more specific about comparative law methodology, emphasising the role of microcomparison and referring to the functional method, the common core method and the comparative law research process. Finally, some papers focus on one pair or group of supposed terminological equivalents and provide a very detailed analysis of the underlying concepts supported by a wider range of sources (Geeroms, 2002; Kusik, 2022; Matulewska, 2022). Yet, even these papers either focus only on the functional method or do not explain the comparative law methodology applied in greater detail[1].

A different concept for applying comparative law in legal translation is building ready-made terminology bases, which legal translators could use instead of carrying out comparative legal analyses themselves. The terminological entries in such bases would provide a range of information to help the translator make choices depending on the circumstances of a particular assignment (Bastos, 2020; Bestué, 2019; Orozco-Jutorán, 2017).

4.3. References to selected elements of comparative law methodology

Due to space constraints, it is impossible to explore particular comparative law methods in the present paper. Useful lists of such methods have been compiled by a number of comparative law scholars (Husa, 2015, pp. 96–146; Samuel, 2014, pp. 65–134; Siems, 2019, pp. 15–228; Tokarczyk, 1999, pp. 171–185; Van Hoecke, 2015). Even though the expositions of comparative law methodology differ, they clearly show that functionalism – albeit still one of the most widespread comparative law methods (Monateri, 2021, pp. 3–4) – is no longer the only method, as it was once seen (Zweigert & Kötz, 1998, p. 34). Notably, it has also been subjected to substantial criticism (Frankenberg, 1985; Legrand, 2003). Van Hoecke (2015, pp. 28–29) refers to the variety of methods put at a comparatist's disposal as "a pluralist toolbox". Graziadei (2003, p. 101), in turn, observes that "in fact, no one could have foreseen the plurality of methods which are currently being practised when comparative law was thought to be a method in itself" (see Subsection 2.2).

Despite these developments, the classic textbook by Zweigert and Kötz (1998)[2] – which is a basic lecture on the functional method of comparative law (Gordley, 2012, p. 107; Graziadei, 2003, pp. 101–102) – is one of the most (if not the most) frequently cited comparative law publications in LTS. This includes major books on the interactions between both fields (Pommer, 2006, pp. 107–108; Soriano-Barabino, 2016, pp. 15–17) and the theoretical underpinning of Šarčević's (1997, pp. 235–236) concept of *functional equivalent*. At the same time, relatively few authors have noted risks and limitations of reliance on functionalism (Bajčić, 2017, p. 114; Doczekalska, 2013; Engberg, 2017) or referred to alternative approaches (Dullion, 2015, p. 97; Engberg, 2017, pp. 9–12; Pommer, 2008, pp. 18–19; Skytioti, 2021).

Apart from the functional method, references to some other elements of comparative law theory can be found in legal translation literature, too. One of them is the classification of legal systems into macro-constructions: legal traditions, legal families and legal cultures. In particular, the degree of

[1] The present author has recently published a practical terminological study that seeks to go beyond the ways in which comparative law has typically been applied to legal translation (Kusik, 2023).
[2] Originally published in 1971.

similarity – or genetic affinity – between legal systems is considered to influence the level of difficulty of legal translation between the respective legal languages (de Groot, 1987; Jeanpierre, 2011; Kozanecka et al., 2017, pp. 12–13, 27–56; Pieńkos, 1999, pp. 174–175).

Legal translation scholars have also considered the usefulness of macrocomparison and microcomparison, with most authors emphasising the special relevance of microcomparative analysis for legal translation purposes (Engberg, 2020, p. 274; Jopek-Bosiacka, 2013, p. 120; Kęsicka, 2014; Klabal, 2020, pp. 55–56). Bajčić (2017, pp. 114, 135), by contrast, argues that both microcomparison and macrocomparison are needed (which is actually in line with comparative law theory – see Subsection 2.4), and Bielawski (2017, p. 96) indicates different types of texts to which either macrocomparison or microcomparison should be applied.

Finally, it is worth noting that legal translation scholars tend to attribute special importance to legal concepts, which they seem to consider the main or the only object of study in comparative law (Bajčić, 2017, p. 113; Engberg, 2020, p. 279; Klabal, 2020, pp. 55–56; Prieto Ramos, 2011, p. 13). This is not surprising, given that – as aptly put by Dullion (2015, p. 96) – the translator enters the field of comparative law at the level of concepts and through the door of terminology. For comparative lawyers, however, concepts are only one of the possible levels of comparison (Doczekalska, 2013, p. 70), and research in comparative law can focus on such diverse objects as legal rules, legal systems, legal mentalities, various conditions affecting interpreters of law and even the ways legal systems perceive the facts of cases (Samuel, 2014, pp. 121–135).

5. Legal translation vs. comparative law

This section attempts to contrast several aspects of legal translation and comparative law, including their goals and processes, discussed in Sections 2 and 3, against the backdrop of the literature reviewed in Section 4.

5.1. Goals

As already noted by several authors (Doczekalska, 2013, p. 70; Dullion, 2015, p. 99; Engberg, 2020, p. 279; Pommer, 2006, pp. 154–155; Prieto Ramos, 2014, p. 267; Soriano-Barabino, 2016, pp. 19–20), the goals or interests pursued by comparative law and legal translation are different. However, since legal translation has been explicitly listed among the goals of comparative law (Demarsin & Pieters, 2023, p 25), this statement requires some elaboration.

First of all, it needs to be recognised that although comparative law can serve multiple practical uses (sometimes described as goals), its primary goal is to acquire information on the similarities and differences between legal systems, i.e. to generate knowledge – no matter whether the research is purely academic or practical (see Subsection 2.3). By contrast, the principal goal of legal translation, inherently practical and utilitarian, is to create a target text that, broadly speaking, conveys the legal sense of the source text (see Subsection 3.3). Comparative law is not about producing such texts, nor is legal translation intended to scientifically explore similarities and differences between legal systems. The difference in goals holds true also when comparative law is juxtaposed with the conceptual analysis conducted by a legal translator (the component of legal translation typically associated with comparative law – see Subsection 3.4). As Samuel (2014, p. 147) aptly observes, “focusing on words and dictionaries is not comparative law”. To put it more blatantly, comparative law is not about finding or creating terminological equivalents.

The different goals of legal translation and comparative law do not preclude them from supporting each other in the accomplishment of their respective goals. Indeed, legal translation can be a useful or even an indispensable element of comparative law research (Husa, 2022, p. 45; Kischel, 2019, pp. 10–12), in the course of which the comparatist may either use translations prepared by a professional legal translator or perform translations on their own. Similarly, translators may either use the results

of professional comparative law research or try to apply elements of comparative law methodology in the translation process themselves.

5.2. The role of comparison

A common feature of comparative law and legal translation seems to be the fact that both fields involve some comparative enquiry into different legal systems, including the identification of similarities and differences between them. However, as noted by Bogdan (2013, p. 8), "one cannot begin to speak about comparative law until (. . .) the comparison is at the heart of the work and not merely an incidental by-product". Admittedly, in the case of legal translation, law comparison is, at best, an element of a broader process, and – due to, among others, the availability of alternative, quicker-to-use sources of translation equivalents (Biel, 2008, p. 22) – it is certainly not carried out in the case of every term. Comparison in legal translation is also strongly focused on legal concepts, which are only one of the possible levels of comparison in comparative law (see Subsection 4.3). Furthermore, while comparative law seeks to explore and explain the reasons for the similarities and differences identified in the course of comparison, a legal translator does not normally go beyond justifications for their terminological choices.

5.3. Scale of enquiry

What strikes the most is the difference in the scales of comparative enquiry in comparative law and legal translation. While a comparatist is supposed to refer to a large number of legal and extra-legal sources when investigating their research topic, it is difficult to expect a translator (even the most diligent one) – who typically faces multiple problematic terms within a single assignment – to carry out a comparative legal analysis to that extent. Several authors have already pointed out that extensive comparative legal analyses would be too time-consuming in daily translation work (Bestué, 2019, p. 158; Biel, 2008, p. 22; Kusik, 2022, p. 19; Šarčević, 1997, p. 237). This is also illustrated by the terminological research discussed in Subsection 4.2: the more material (terms) a particular author analysed, the less thorough the analysis was. Hence, unless a translator is provided with extremely comfortable working conditions, conducting analyses that do come close to professional comparative law research seems rather implausible.

5.4. Skills

A potential limitation in the use of comparative law by a legal translator is the lack of relevant skills. For instance, Simonnæs (2013, p. 151) argues that "one obviously cannot expect a translator who is not a lawyer to be able to apply the chosen method (i.e., a functional method of comparative law) with all its subtleties". However, even though applying comparative law methods clearly requires relevant competence (see Subsection 2.4), this factor must be considered highly individual. Arguably, a legal translator can – and, according to legal translator competence models (Piecychna, 2013, p. 154; Prieto Ramos, 2011, p. 13; Šarčević, 1997, pp. 113–114), is even expected to – acquire comparative law skills and knowledge. This leads to the conclusion that the factor of skills does not necessarily preclude a legal translator from working with comparative law methodology.

5.5. A distorted picture of comparative law?

The way comparative law is presented in LTS clearly differs from the picture emerging from the recent comparative law literature. Legal translation scholars might somewhat reductively portray it as a tool (Jopek-Bosiacka, 2013, p. 112; Pieńkos, 1999, p. 172; Soriano-Barabino, 2016, p. 19) or conceptual comparison (see Subsection 4.3). There is, generally, little in-depth discussion of its theory and methodology, especially methods alternative to the traditional functional approach. Furthermore, in light of the literature review discussed in Section 4 and the above comparative account of key aspects of comparative law and legal translation, the statements that legal translation

is *an exercise in/of comparative law* cited in Section 1 seem to present a distorted picture of not only comparative law but, surprisingly, also legal translation itself. This is because they apparently rest on an implicit and tautological assumption that if legal translation is about comparing legal concepts from different legal systems, then it is no (or not much) different from comparative law, which, too, is about comparing legal concepts. In fact, neither legal translation nor comparative law can be reduced to conceptual comparisons or conceptual analyses.

6. Conclusion

As Kischel (2019, p. 12) aptly notes, while comparative law can aid the translation process, solving translation problems "remains the translator's task". The present research has further demonstrated a distinction between legal translation and comparative law in terms of not only their goals but also the scales and roles of the comparative enquiry they entail. Therefore, the answer to the research question posed in Section 1 is that *legal translation is not an exercise in/of comparative law*, nor does it normally involve it. Legal translation is guided by its own goal and has its own process. While comparison of elements of different legal systems can be involved in this process, its nature is not the same as in comparative law and thus should not be dubbed as *comparative law*.

The above is not to say that there are no mutual links between both fields. Doczekalska (2013, p. 72; see also Engberg, 2020, p. 279) has rightly observed that comparative law and legal translation – despite being "separate domains" – are "intertwined and interdependent". This means that they are potentially useful to each other. Legal translators, in particular, can tap into the knowledge base – or, in other words, "the legal comparative *acquis*" (Demarsin & Pieters, 2023, p. 34) – generated by comparative law research (as part of professional training or practical work) or make use of comparative law methods. However, the latter will need some adaptation to adjust them to the nature and goal of legal translation – just like the comparative law notion of *functional equivalence* has been redefined for legal translation purposes by Šarčević (1997, p. 236). The use of adapted comparative law methods in legal translation, an example of which has been discussed by the author elsewhere (Kusik, 2023), is a separate issue that definitely merits further research. To distinguish such methodological borrowings from actual comparative law research, they can be captured under the term *translational comparative legal analysis* (see also Kusik, 2024, pp. 4–5).

Finally, while one can appreciate the rhetorical value of the statements cited at the outset of this paper, their potential adverse effects should not be overlooked. The conviction that legal translation constitutes comparative law provides no motivation for translators to reach into the field of 'genuine' comparative law, potentially an abundant source of ideas for legal translation. Moreover, viewed from a different angle, such statements may also offer a diminished view of legal translation itself, suggesting that it has no methodology of its own. This would be far from the truth, especially given the dynamic growth of legal translation as a field of professional practice and academic research (Biel et al., 2019, p. 1). While this paper does not discuss the approaches to legal translation taken by comparative lawyers (which would be another interesting subject for further research), it is worth noting that serious concerns have been raised over comparative law literature's frequent neglect of legal translation issues (Glanert, 2014)[3] (even though positive changes in this respect have also been observed (Biel, 2024)). Hence, it appears that mutual recognition of autonomy would ensure greater understanding between the representatives of both fields, allowing them to learn more and better from each other.

[3] Notably, some of the controversial statements equating legal translation with comparative law were made by scholars with a comparative law background.

7. References

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