

LE MULTILINGUISME JURIDIQUE

Guy MAZET

A foreign juridicial databank inquiry gives to difficulties not only with the linguistic problem of the translation but also with the comparison of the different law systems. So, it's necessary to create a device able to resolve the collation of different juridicial systems specially when the files data retrieval is realised by a foreign user. These interfaces use specific connexion which allow an efficient documentary research and protect the integrity and the specificity of each national law systems.

*Este trabajo ha sido presentado como ponencia en el reciente IV Congreso Internacional "LAW AND COMPUTERS", organizado por la Corte di Cassazione (Tribunal Supremo) de Italia y celebrado en Roma del 16 al 21 de Mayo de 1988 y se recoge, con el correspondiente permiso, en este número extraordinario de THEORIA dedicado al tema en la seguridad de que con su selección y rápida difusión prestamos un gran servicio a nuestros lectores interesados en la materia, y en especial a los españoles, quienes, de nos ser así, difícilmente tendrían tan inmediato acceso a tan importante texto.

Guy MAZET

Juridicial translations constitute an example of difficulties encountered through the existence of a jurilinguistic system - we constantly come across the duality of the concept and its expression.

Juridicial multilingualism has two aspects - that of plurilingual systems in which a unique juridicial order has several linguistic versions ; French speaking communities present several examples - Belgium, Switzerland, Canada. The European Community also clearly illustrates the problem, because European Law, before it can touch upon national jurisdictions, must surmount seven official Community languages. In this multilingual hypothesis we must find texts in which the train of thought and the juridicial effects are similar in each of the official languages. The objective is to ensure the simultaneous emergence of identical rules expressed in the different languages.

The second aspect of juridicial translation brings us to the possibility of access to acquaintance with other national jurisdictions. In effect, the internationalization of economic exchanges, provokes among jurists, the necessity to acquire information with regard to these foreign systems. The existence of juridicial data-banks seems to be able to meet this necessity. The use of these instruments is upset by a conceptual obstacle which surpasses linguistic barriers In fact, the interrogation of foreign files by a jurist belonging to another jurisdiction brings about a real confrontation which comprises legal comparison. It seems necessary, therefore, to

LE MULTILINGUISME JURIDIQUE

draw up linguistic instruments of the thesaurus type capable of handling this confrontation, that is, to guide the foreign user towards some pertinent information without interfering with the integrity of the internal jurisdictions. We can see the problem : because we have gone beyond just simple transposition, is it not more a question of interpretation than translation. It is to this specific question that the Multilingual Thesaurus of the IRETIJ responds - to legal matters concerning French and Italian Company Law.

In effect, if we proceed in a traditional fashion to a comparison between French and Italian Company Law, that is, if we position it at the level of general juridicial principles without omitting the economic, social and political environment in which they are placed, we can clearly perceive what differentiates them :

French Company Law, for some years, has shown a tendency to confuse Company Law with that of the small firms. The law passed on the first of March, 1984, concerning the prevention and amiable settlement of the difficulties of small firm as well as the law of the 11th of July 1985 concerning one director "S.A.R.L." confirms this propensity.

Italian Law, on the other hand, makes a distinction between the small firm (impresa) and the company (societa). "L'impresa", specially definde in the Italian Civil Code (art : 2082) is principally concerned with the internal relations

Guy MAZET

regarding the right to work. The provisions of Company Law are laid out under another totally specific heading.

But, if we "emerge" Italian and French Company Law through the means of documentary computer science, this idea of maintained relations becomes modified. In effect, documentary juridicial computer science, allows us to find a juridicial rule beginning with the expression of fact. It implies here an essential characteristic of discipline. This faculty of automatic research of qualification is determining where methodology is concerned because it will replace "the scale of comparison" (1). It is the juridicial rules in their specificity, in their reaction to concrete and objective situations that will be able to be compared.

From this moment on, we can see that French and Italian law are no longer only situated in a strict relation of difference, but, on the contrary, they have similarities or maintain analogies. It is this complexity of relations of national juridicial rules that the bilingual Thesaurus should master in order to effectively aid the user, moreover, to these problems of juridicial comparison must be added clearly linguistic difficulties.

If we consider the translation as the science of the equivalent, the proceeding remarks seem to doom to failure all attempts in the juridicial domain, at least when emphasizing the nature or degree of this equivalence.

LE MULTILINGUISME JURIDIQUE

Effectively, a narrow relationship does exist between the juridicial concepts and the language in which they are elaborated. It is this narrow band, between language and law which makes the juridicial translation delicate and does not allow the jurist, as in litterature, to follow "the path of creation".

The interpenetration of language and law will bring about particular difficulties with regard to multilingual access. In effect, in the presence of two juridico-linguistic systems it may occur that we are faced with a morpho-semantic equivalence.

Is it the phenomenon of pure, literal translation in which signifying and signified in each language find themselves in a situation of complete equivalence ; examples abound, be either unique terms - BILAN, BILANCIO - or phrases - INSCRIPTION AU REGISTRE DU COMMERCE, ISCRIZIONE PRESSO L'UFFICIO DEL REGISTRO DELLE IMPRESSE etc...

We should, however, be careful, because in numerous cases, the morphological equivalence is not coupled with the semantic equivalence. Thus, in French Law ADMINISTRATEUR has a precise juridicial signification applying only in the case of a "Société Anonyme avec Conseil d'Administration" excluding the "S.A. à directoire" ; but, in Italian Law, the term ADMINISTRATORE is used for the ensemble of directors regardless of the social form (S.A.R.L., Société par Actions, etc...). We can see, therefore, the consistent peril of using a closely-

Guy MAZET

related morphological term for a semantic equivalent. Such is also the case for the Italian term PROMOTORE, translated in a certain juridicial Franco-Italian dictionary (2) by PROMOTEUR, that is, he who signs the (prospectus) forms in the case of the setting up of a company through subscription. Such a concept corresponds in French Law to a FONDATEUR whether it refers to a simultaneous or successive creation of a joint-stock Company. On the contrary, the Italian FONDATEORE, translated in the same dictionary by FONDATEUR is the associate who participated in the first constitutive meeting, from which the participants emerge as share-holders.

Another stumbling-block is the existence of a semantic equivalence being expressed by describers peculiar to each language and which attests to its genius. Ex : ATTO CONSTITUTIVO and STATUTS. It should be noticed that the literal translation ACTE CONSTITUTIF or STATUTO remains possible but does not correspond to an orthodox juridicial expression. From this moment on, with regard on automated documentary research, we are faced with silence, that is, the absence of responses, even though the concept exists.

Finally, a particularly important case is that where a juridicial concept is peculiar to a given concept and therefore has no equivalent, although a translation is still possible. Thus, PRESTAZIONI ACCESSORIE is an original notion from Italian Law participating in the notion of APPORTS in the same way as APPORTS en NATURE or APPORTS en NUMERAIRE, but which does not allow us to establish a relationship of semantic

LE MULTILINGUISME JURIDIQUE

equivalence between APPORT and CONFERIMENTI. The connection to be established is of necessity of another nature because the respective juridicial contents are different. The same situation exists in the case of the concept COLLEGIO SINDACALE, the organ controlling on the one hand management, on the other hand the accounts ; with regard to management, we can associate the members of the CONSEIL de SURVEILLANCE ou SOCIETES à DIRECTOIRE (art. 1281, loi 1966) and with regard to accounts, COMMISSAIRES AUX COMPTES. But here again, we must not allow ourselves to establish a relationship of semantic equivalence.

We can see that the conception of a bilingual instrument of access to juridicial data-banks cannot be reduced to a linguistic problem of translation. In effect, the relationships of morphological and semantic equivalence do not justify (explain) in themselves the modalities of the conjunction of juridicial systems. If it is convenient, of course, to retain them until an opportune moment presents itself, we must also look for a standard of intrinsic relations existing between the two jurisdictions - a "FUNCTIONAL EQUIVALENCE".

Its bringing into operation function according to a method which consists of surpassing the standard of concepts in order to achieve the goals which juridicial rules put forward to be attained. These goals can have diverse forms in their modes (forms) and solutions : those of autonomous juridicial rules.

Guy MAZET

Thus perhaps, we could assert that there is an equivalence of functions between the COLLEGIO SINDACALE, the COMMISSAIRES AUX COMPTES and the CONSEIL DE SURVEILLANCE, because all of them pursue the same objectives - control and management in a distributive form (depending on) to the country.

Each organ is acquainted with the "heaviness" of the juridicial system which created it. It is no less true that we may find a similarity if we measure it according to the distance of the "goal to promote in Law" (3).

Institutions, regimes and organs can vary according to each legal system, while continuing to subsist as the equivalence of their functions.

How do we detect this ? One of the most effective means seems to entail recourse to the definitions contained in the texts. In fact, a number of them function as veritable rules of interpretation (4) ; either they allow us to determine the domain of application, or they indicate the forms, modes of interpretation. It is in this sense that we can speak of juridicial language as a language not only of the expression of rules of law, but also of its application. It follows therefore that we can justifiably invoke authentic "words of action" of Law.

Thus, constant recourse to the articles of the Italian "CODICE CIVILE " and the law of 1966 on firms, allows

LE MULTILINGUISME JURIDIQUE

us to find a functional equivalence with reference to the identity of the need expressed and the goal which is pursued in these texts. Taking as an example the Conseil de Surveillance, article L. 128, alinea 1 defines its role : the "Conseil de Surveillance" exercises permanent control over the management of the Board. On the other hand, article 2403 of the Italian Civil Code stipulates :

2403. DOVERI DEL COLLEGIO SINDACALE. - Il collegio sindacale deve controllare l'amministrazione della società, vigilare sull'osservanza della legge e dell'atto costitutivo ed accertare la regolare tenuta della contabilità sociale, la corrispondenza del bilancio e del conto dei profitti e delle perdite alle risultanze dei libri e delle scritture contabili, e l'osservanza delle norme stabilite dall'articolo 2425 per la valutazione del patrimonio sociale (2407). Il collegio sindacale deve altresì accertare almeno ogni trimestre la consistenza di cassa e l'esistenza dei valori e dei titoli di proprietà sociale o ricevuti dalla società in pegno, cauzione o custodia.

I sindaci possono in qualsiasi momento procedere, anche individualmente, ad atti d'ispezione e di controllo.

Il collegio sindacale può chiedere agli amministratori notizie sull'andamento delle operazioni sociali o su determinati affari.

Degli accertamenti eseguiti deve farsi constare nel libro indicato nel n.5 dell'articolo 1421 (trans. 209).

Guy MAZET

The comparison allows us to establish a relation of equivalence between the concepts (here control of management), then each systems finds its true specificity through the wording of juridicial rule : Conseil de Surveillance and Commissaire aux Comptes in France ; Collegio Sindacale en Italie.

It is this technique which permits us, through the Thesaurus, if not to resolve, at least to lessen the difficulty of juridicial multilinguism, again a convincing demonstration of the jurilinguistic system. The production of the interface, with respect to the problem presented above, is carried out in the following manner :

Having compiled a register of the vocabulary of the material, we create semantic networks within each system with the help of relationships such as analogy (relation E.P.), hyponomical (5) and taxinomical inclusion (I.D. relation), synonymy etc...

We can note that this type of relation bears witness to the intellectual practice of the jurist such as reasoning through analogy or through extension or again, the qualifying of facts.

Once the structures have been conceived in each system, the next step is to connect them. In other words, following a horizontal mode, we bring relations of automatic

LE MULTILINGUISME JURIDIQUE

synonymy or of equivalence into operation, notably functional equivalence (I.N.F. relation).

These relations allow us to ensure the complementarity between the structures ; in effect, once a relation between the concepts is established, regardless of its nature, it leads to relations between the semantic fields of these concepts. This signifies that, to the relations between concepts from each country, we can add those established - beginning with these concepts in each of the internal orders.

In consequence, it is an ensemble which ordered with regard to another without prejudice to the integrity of each of the juridicial systems.

The exploitation of the interface can be modified according to the needs and the quality of the users :

We can enter into the interface with the aid of a simple term and ask for all the conceptual describers it contains, then label the structures which contain the describers etc...

Then the user can ask for the exploration of the semantic field of the concept proposed, either by putting into operation himself the ensemble of relations (analogy, inclusion, information) at the same time as the instrument proposes them, or by indicating a semantic distance. In this last case, he has only to pre-occupy himself with the nature of

Guy MAZET

the relations he is bringing into operation - this is the system which explores, in its turn, the structure according to the standard semantic distances already established, or according to the degree of proximity which he has designated.

Résumé :

L'interrogation d'une base de données juridiques étrangère pose un problème qui ne se réduit pas à la seule difficulté linguistique de la traduction mais relève également de la comparaison des droits ; il est donc nécessaire de concevoir des instruments destinés à gérer la confrontation des systèmes juridiques provoquée par l'investigation des fichiers par un usager étranger.

Ces interfaces mettent en oeuvre des relations spécifiques permettant une recherche documentaire pertinente en préservant l'intégrité et la spécificité des ordres juridiques nationaux.

NOTES

(1) Voir : V. ZLATESCU "Quelques aspects méthodologiques de la comparaison des droits" in REVUE INTERNATIONALE DE DROIT COMPARE, 1979, p. 569

(2) Dictionnaire Juridique, EDITIONS de NAVARRE, p. 407

LE MULTILINGUISME JURIDIQUE

(3) Voir : C. ATIAS "EPISTEMOLOGIE JURIDIQUE"

(4) Voir : G. CORNU "LES DEFINITIONS DANS LA LOI" LINGATECH -
Conseil de la langue française - MONTREAL, 1982, p. 271

(5) A hyponym is a term which is hierarchically more specific
than another.

Institut de Recherche et d'Etude pour le Traitement
de l'Information Juridique (IRETIJ)

Faculté de Droit de Montpellier, France